

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 20 of 2014

BETWEEN:

HALTON MARTIN

Intended Appellant

AND

CARSON GRANNUM

Intended Respondent

Civil Appeal No. 21 of 2014

ROYAL CARIBBEAN HOTELS LTD Intended Appellants

HALTON MARTIN

AND

CARSON GRANNUM

Intended Respondent

Before: The Hon. Sir Marston C.D. Gibson, K.A., Chief Justice, The Hon. Madam Justice Sandra P. Mason and The Hon. Justice Andrew D. Burgess, Justices of Appeal

2015: February 4; March 18; July 13, 21

Mr. Alair Shepherd, QC in association with Mr. Kevin A. Miller for the Intended Appellants

Mr. Deighton K. Rawlins for the Intended Respondent

APPLICATION FOR LEAVE TO APPEAL

BURGESS JA:

THE APPLICATIONS

[1] This matter concerns two applications in a proposed notice of appeal titled Civil Appeal No. 28 of 2014. The first, Civil Application No. 20 of 2014, is for a stay of execution of the order of **Cornelius J** made on 29 October 2014 dismissing an application by Royal Caribbean Hotels Ltd (Royal Caribbean) and Mr. Halton Martin to set aside the summary judgment of 27 March 2014 and ordering costs pending determination of this appeal. It was filed by the intended appellant, Mr. Halton Martin, who is the managing director of the second intended appellant in this appeal, Royal Caribbean. The second application, Civil Application No. 21 of 2014, seeks leave of this Court to file and serve notice of appeal out of time against the judgment of **Cornelius J** made on 27 March 2014 for summary judgment in the sum of \$24,082.02 against the first and second intended appellants. It was filed by the intended appellants, Mr. Martin and Royal Caribbean.

[2] We begin our consideration of these applications by setting out the relevant background.

BACKGROUND TO THE APPLICATIONS

- [3] By fixed date claim form filed on 30 June 2010, the intended respondent made a claim against the intended appellants for the sum of \$24,082.02 as moneys due and owing to him by the intended appellants for non-payment of wages for the period 9 May 2008 to 15 April 2009 together with expenses and vacation pay from 2001 to 2009.
- [4] On 10 August 2010, the intended appellants filed a defence to the intended respondent's claim. In their defence, the intended appellants denied the respondent's claim alleging that the Regency Cove Hotel, which is a part of Royal Caribbean Hotels Ltd, was leased to the intended respondent from 1 April 2007. They further alleged that the respondent was not an employee of the Regency Cove Hotel for the period 9 May 2008 to 15 May 2009 since he was dismissed for redundancy in or about May 2004. Finally, the second intended appellant denied personal liability and claimed that the intended respondent was never employed by him.
- [5] On 1 June 2012, the intended respondent applied to the court for summary judgment and the intended appellants responded to this application by affidavit dated 21 June 2012. **Cornelius J** heard the application on 3 March 2014 and made an order for summary judgment. That order was filed on 27 March 2014.

- [6] The intended appellants complain that the summary judgment was entered without any consideration of the intended appellants' affidavit in response to the application for summary judgment. They complain further that the order for summary judgment was made in their absence and that they were never informed of the date when the order for summary judgment was made.
- [7] In pursuance of their complaints, on 25 September 2014, the first intended appellant made an application that the summary judgment of 27 March 2014 be set aside. That application was heard and dismissed by **Cornelius J** on 30 October 2014. She also ordered then that a hearing in respect of costs would be fixed.
- [8] On 18 November 2014, the intended appellants filed Civil Application No. 20 of 2014 seeking a stay of that order. Subsequently, on 24 November 2014, the intended appellants filed Civil Application No. 21 of 2014 seeking leave to appeal the judgment of **Cornelius J** in which an order for summary judgment was entered on 27 March 2014.

CONSIDERATION OF THE APPLICATIONS

- [9] We turn now to considering these applications. As the question of a stay only arises if an extension of time to appeal be granted, we deal first of all with Civil Application No. 21 of 2014 and the request for extension of time within which to appeal.

1. Application for Extension of Time to Appeal

[10] The rules governing the time for filing appeals are contained in **Rule 62.6**. In particular, **Rule 62.6 (1) (c)** stipulates that an appeal, other than a procedural appeal or an appeal where leave is required, must be filed within 28 days of the date when the order or the judgment appealed against was made or given, or any later date fixed by the court below. However, **Rule 62.6 (3)** confers on this Court (or a judge) discretion to allow the time specified in **Rule 62.6 (1) (c)** to be extended, “at any time for special reasons”. It is this discretion which the intended appellants, being in significant violation of the time limits specified in **Rule 62.6 (1) (c)**, prays this Court to exercise to allow them to file an appeal out of time.

[11] The specific principles which guide this Court in the exercise of the discretion conferred on it in **Rule 62.6 (3)** were enunciated by this Court in **James Ifill v The Attorney General and the Chief Personnel Officer Civil Appeal No. 3 of 2013**. In that case, it was firmly laid down that that discretion could only be exercised where “special reasons” were shown by an applicant. As to what amounts to “special reasons”, this Court said at paras [33] and [34]:

[33] Viewing “special reasons” through the prism of the mischief with which **Part 62.6** was introduced to deal leads inevitably to a presumption in every case that adherence to the

time limits specified in **Part 62.6 (1)** and **(2)** is the rule and that rebuttal of that presumption pursuant to **Part 62.6 (3)** is the exception. A necessary implication of this is that **Part 62.6 (3)** “special reasons” must be construed strictly as only being satisfied where the value of determination on the merits of the substantive issue in question outweighs the speedy and inexpensive determination envisaged in **Part 62.6 (1)** and **(2)**.

[34] The upshot of the foregoing is that the only reasons that can amount to “special reasons” are those which relate to the considerations listed in **Part 1.1 (2)**. So, as an example and we offer examples with trepidation, “special reasons” may be found under **Part 1.1 (2) (c) (ii)** where this Court considers the issue in the appeal should, in the public interest, be examined by the Court of Appeal or where special this Court takes the view that the case raises an issue where the law requires clarifying. Another example where “special reasons” may be shown is under **Part 1.1 (2) (b)** if the grant of an extension would have the effect of saving expense.

[12] As already intimated, the intended appellants admit that they are in violation of the time limits for the filing of an appeal stipulated in **Rule 62.6 (1)**. They further admit that in these circumstances, it is incumbent on them to evince “special reasons” as stated in **ifill** if this Court is to invoke **Rule 62.6 (3)** and excuse strict adherence to those time limits.

[13] The “special reasons” given by the intended appellants are as follows:

(i) the case “is a case of public importance since it involves the question of whether summary judgment was given on the merits”;

(ii) “Madam Justice Cornelius gave summary judgment without considering the Appellant’s (sic) evidence, which was filed in response to the application for summary judgment.”

(iii) “the appellant nor his attorney-at-law was present when summary judgment was given and it seems as though neither party was given notice of the hearing.”

[14] In our judgment, these reasons do not come close to being “special reasons” in the **Ifill** sense. They are nothing but restatements of the salient issues which are raised in the intended appeal. For this reason we cannot invoke **Rule 62.6 (3)** and must deny the order sought in Civil Application No. 21 of 2014.

2. APPLICATION FOR STAY

[15] Given our decision to deny leave to file an appeal out of time, the question of granting a stay pending appeal becomes otiose. Consequently, we shall not consider Civil Application No. 21 of 2014.

DISPOSITION

[16] The applications in Civil Application No. 20 of 2014 and Civil Application No. 21 of 2014 are dismissed. The intended appellants shall pay costs in the sum of \$2,500.00 to the intended respondent.

Chief Justice

Justice of Appeal

Justice of Appeal