IN THE COURT OF APPEAL OF BELIZE AD 2015

CIVIL APPEAL NO 4 OF 2013

COVENTRY CAPITAL INC **Applicant**

v

ANTIGUA OVERSEAS BANK LTD **Respondent**
(In Receivership)

______

BEFORE
The Hon Mr Justice Sir Manuel Sosa President
The Hon Mr Justice Samuel Awich Justice of Appeal
The Hon Mr Justice Christopher Blackman Justice of Appeal

A Bennett for the applicant.
D B Courtenay SC and P Palacio for the respondent.

______

5 November 2014 and 27 March 2015.

SIR MANUEL SOSA P

[1] The purported notice of appeal of Coventry Capital Inc should, in my opinion, be struck out with costs. I concur in the reasons for ruling of Blackman JA and in the additional particulars of the order for costs which he proposes, which reasons and order I have had the advantage of reading in draft.

____
SIR MANUEL SOSA P

AWICH JA

[2] I concur in the judgment of Blackman JA.

____

AWICH JA

BLACKMAN JA

[3] This appeal by the appellant has been challenged by the respondent on the ground that leave was required to appeal from the Court below, and if leave is refused, from this Court, and that in the absence of such leave, the appeal should be struck out.

BACKGROUND

[4] The appellant commenced legal proceedings against the respondent in April 2012 claiming the sum of US$86,101.58. On an application by the respondent pursuant to Rule 15.2(a) of the Supreme Court (Civil Procedure) Rules, for summary judgment, **Legall J** on January 16, 2013 granted the application and dismissed the claim by the claimant/appellant, with no order as to costs.

[5] The appellant on February 6, 2013 filed a Notice of Appeal against the Order granting summary judgment. On May 6, 2013 the respondent filed a Notice of Motion that the purported Notice of Appeal be struck out and the appeal be dismissed on the grounds (inter alia) that:

1. The appellant failed, in breach of Section 14 (3) (b) of the Court of Appeal Act, to obtain leave of the Supreme Court or of the Court of Appeal to appeal from the decision of the learned judge;

2. The appellant failed, in breach of Order II, Rule 2 (1) of the Court of Appeal Rules, to seek leave to appeal within the time limited by the said Rule.

[6] Mr. Derek Courtenay SC, Counsel for the respondent, both in his written and oral submissions submitted that the Order made by the learned judge on January 16, 2013 was interlocutory in nature and consequently that the appellant was required under the provisions of Section 14 (3) (b) of the Court of Appeal Act, to obtain leave of Supreme Court, or if it refuses, of the Court of Appeal.

[7] Mr. Courtenay further submitted that the test of whether an order of the court is final or interlocutory is governed by the principle that if the decision is conclusive as to the issues in question, the decision is final. Accordingly, if the application before the learned judge had failed, the matter would then have had to proceed to trial. In the circumstances, it was his submission that the order of **Legall J** was not a final order. As a consequence, leave not having been first obtained, the appeal was not properly before the court and was therefore a nullity.

[8] In support of the foregoing propositions reliance was placed on **Patrick v Walker (1966) 10 W.I.R. 110; Henderson v. Archila (1983) 37 W.I.R. 90; Sylvester v. Singh, St. Vincent and the Grenadines Civil Appeal No. 10 of 1992;** and **Nevis Island Administration v La Copproprte du Navire et al, St. Christopher and Nevis Civil Appeal No. 7 of 2005.**

[9] In rebuttal, Mr. Bennett for the respondent has urged that the order of the trial judge was final because the dismissal of the claim ultimately determined the issues between the parties, and that as a consequence no leave was required to appeal, and that further, the appeal had been filed in time.

[10] Mr. Bennett placed reliance for the foregoing submission on the findings made by **Legall J** as recited at paragraph 15 of his submissions, reproduced below:

a) "It is to be noted, at this point that the deposit of US $65,000 was made in the name of Glenn Godfrey & Co. LLP, in the account

mentioned above, and not in any account at the defendant in the name of Cascade Limited."

b) "What is shown by the evidence is, as we shall see below, that the documents establishing the account at the defendant do not show the establishment of the escrow account on behalf of the claimant."

c) "At this post case management order stage, we have on the one other hand Mr. Godfrey, the sole witness for the claimant on this point, in his witness statement alluding to discussion with Mr. Abbott about the establishment of an escrow trust account or a trust account; and on the other hand, documentary evidence to be examined below in which there is not mentioned of the establishment of an escrow trust account or a trust account in favour of the claimant."

d) "The amount was not refunded to the claimant."

e) "But it must be noted in this case before me that the account in question was not designated a trust account in favour of the claimant nor was it designated, in any other way, a trust account in favour of the claimant to indicate its fiduciary nature."

f) Mr. Godfrey the sole witness for the claimant on point, does not say in his witness statement that he or his firm held the US $86,101.00 in a fiduciary character or trust relationship for the claimant.

g) It is true that the account had the words "Glenn D. Godfrey LLP (Barrington Escrow Account) but that account was established on 29th September, 2011 at which date the claimant had not contracted to purchase the Barrington shares.

h) ***If the account was in any way designated an escrow or trust account on behalf of the claimant, the claimant would have a case for trial.***

i) ***If this matter goes to trial, the above inconsistency between Mr. Godfrey's witness statement and the above documents and emails, in the absence of Mr. Abbott to support Mr. Godfrey's statement, would have to be considered by the court; bearing in mind that the burden of trial will be on the claimant to prove the case on a balance of probabilities, I am not satisfied, bearing in mind the documentary evidence and the e-mails, and the absence of evidence from Mr. Abbott as discussed above, and the other matters mentioned above, that there is a real prospect that the claimant would succeed at the trial in proving it has a right to the amount in the claim"***

[11] I am however of the view, having regard to the above extract, that the order by the learned judge was interlocutory and consequently, one which needed leave to appeal, which the appellant failed to obtain.

[12] The foregoing issue has been considered in several decisions in the Caribbean, the most authoritative of which is that of **Owens Bank Limited v Cauche** and others [1989] 1 WIR 559, a decision of the Privy Council. In **Owens, the** Privy council upheld the decision of the Court of Appeal of St. Vincent and the Grenadines striking out a Notice of Appeal filed without leave when leave was required under section 31 of the West Indies Associated State Supreme Court (St. Vincent) Act 1970 whose provisions are in pari materia with section 14(3)(b) of the Belize Court of Appeal Act.

[13] The purported Notice of Appeal is therefore struck out for non-compliance with the obligation to obtain leave from the court below.

[14] The appellant to pay the costs of the respondent, to be taxed, if not agreed.

____

BLACKMAN JA