In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2017: 33

VERNON C TROTT

Appellant

-v-

(1) SHEREEN FERGUSON

(2) JIMMY FERGUSON

Respondents

RULING ON APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL

(in Chambers)

Application for extension of time within which to appeal Consent Judgment-summary dismissal without hearing applicant-manifestly abusive and unmeritorious grounds-need to avoid denying judgment creditors access to the fruits of their summary judgments

Date of hearing: September 7, 2017
Date of Judgment: September 7, 2017

No appearances

Background

1. On May 5, 2016, the Learned Senior Magistrate entered judgment by consent in favour of the Respondents (the Plaintiffs below) against the Appellant in the amount of $2500.

2. On November 4, 2016, the parties appeared before the Learned Senior Magistrate and made an Order recorded in the following terms:

> "*Defendant has leave to file a Notice of Appeal and shall do so within 14 days. In default, Judgment shall stand.*"

3. The Magistrates Court Rules 1973 empower the Magistrates' Court to set aside default judgments but not final judgments, whether entered by consent or otherwise. If the Appellant could only set aside the Judgment by way of an appeal, his filing his appeal within the 14 days which the Magistrates' Court allowed him would not set aside the judgment under appeal. Whether or not a Notice of Appeal was filed, no question of entering a fresh judgment by default arose. All that the Learned Senior Magistrate intended to signify was that the judgment creditors would be free to enforce their judgment without any impediment if the Notice of Appeal was not filed within 14 days. This approach was entirely appropriate as it balanced the Appellant's right to demonstrate that he was serious about pursuing an appeal with the Respondents' right to enforce their judgment.

4. No Notice of Appeal was filed within 14 days. The Appellant filed a Notice of Appeal on or about April 27, 2017, almost five months' later. Rather than appealing against the May 5, 2016 Consent Judgment, the Notice of Appeal purported to challenge "*the Default judgment…given on January 20, 2017*". Based on the record, no such judgment was ever made. The only judgment which was ever made by the Magistrates' Court was on May 6, 2016.

Merits of application for an extension of time within which to appeal

5. The application for an extension for time within which to appeal is a manifest abuse of process and must be summarily struck out on the grounds that it discloses no reasonable case for an extension and is bound to fail. This is because:

(1) the Affidavit in support of the application offers no explanation for the delay; and

(2) the proposed grounds of appeal are manifestly unarguable setting out no legally or factually viable basis for setting aside a Consent Judgment for $2500. The fact that certain allegations in the Particulars of Claim were defamatory in nature (and could, hypothetically, have grounded a claim in libel) did not deprive the Magistrates' Court of jurisdictional competence to enter a money judgment against the Appellant by consent.

6. Because there appears to me to be a chronic problem of judgment creditors being denied the fruits of the their judgment in the Magistrates' Court through judgment debtors filing unmeritorious appeals and benefiting from the unfortunate automatic stay provisions of the Civil Appeals Act 1971, I have decided to dismiss this application summarily without hearing the Appellant, even though it is possible that the parties failed to appear because of some miscommunication with the Court about the rescheduled hearing of the present application.

7. The present application reinforces the concerns I expressed about the mischief which flows from the automatic stay pending appeal provisions of, *inter alia*, section 8 of the Civil Appeals Act 1971 in *Mitra Johnston-v- Mark Proctor* [2017] SC (Bda) 39 App (23 May 2017). It also highlights another problem. The present application could have been disposed of shortly after it was filed in late April 2017. Time and effort was wasted preparing an appeal record for an appeal which the intending appellant did not have leave to pursue.

8. There may be cases where, on the hearing of an application for an extension of time, a judge will direct that a mini-record be quickly prepared to enable the application to be properly heard. In the ordinary course, extension of time applications should be promptly listed for hearing without waiting for the preparation of a full appeal record. This is ultimately a matter of internal Court administration. Legislative intervention, however, is required to regularize the anomaly that filing an appeal against a final decision of the Magistrates' Court confers an automatic stay, a result that does not appertain in relation to appeals against decisions of the Supreme Court.

9. The practical result is that once a Notice of Appeal is filed against a final judgment and irrespective of its merits, the Magistrates' Court is hamstrung in terms of permitting judgment creditors to enforce their judgments. The amounts involved in such judgments are invariably very important to the litigants concerned and justice delayed is in such circumstances, to an unacceptable extent, justice denied. The judgment creditors in the present case are litigants in person

ill-equipped to initiate remedial steps to mitigate the unconscionable delays which have served to obstruct their path to justice.

Conclusion

10. The right to be heard is not absolute and only bites in relation to proceedings which are not on their face hopeless and which do not clearly constitute an abuse of the process of the Court.

Dated this 7th day of September, 2017 _____
IAN RC KAWALEY CJ