

IN THE COURT OF APPEAL  
TURKS AND CAICOS ISLAND

Case No. CL-AP 45/2011

BETWEEN:

THE ATTORNEY GENERAL OF THE TURKS AND  
CAICOS ISLANDS

Appellant/Plaintiff

-AND-

- (1) SALT CAY DEVCO LTD.
- (2) SALT CAY ESTATES LTD.
- (3) SALT CAY GOLF CLUB LTD.
- (4) SC HOTEL MANAGEMENT LTD.

Respondents/Defendants

Before: The Rt. Hon Mr. Justice Zacca - President  
The Hon Mr. Justice Mottley - Justice of Appeal  
The Hon Mr. Justice Ground -Justice of Appeal

Hearing: 1 May 2012  
Judgment: 4 October 2012

Appearances:

David Phillips QC, Patrick Patterson, Khalila Astwood-Dorsett for the Appellant  
Stephen Rubin QC, Conrad Griffith QC and David Cadman for the Respondent

MOTTLEY, J.A.

[1] On 1 May 2012, we dismissed the Application of the Attorney General for Conditional Leave to appeal to the Judicial Committee of the Privy Council pursuant to Articles 3 (b) of the Turks and Caicos Islands (Appeal to Privy Council Order) (1965 S.I. No. 1863) (the Order). Article 3 (b) provides that an appeal shall lie;

*“with the leave of the Court, from any other judgment, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great or general importance or otherwise, ought to be submitted to her Majesty in Council for decision”.*

The Application was dismissed on the ground that the Court did not consider the Application satisfied the requirement that the question involved in the appeal was one by reason of its great or general importance or otherwise ought to be submitted to Her Majesty in Council for its decision.

[2] At the hearing of the Application, counsel on behalf of the Respondent objected to the Application on the ground, inter alia, that the Application was time barred under the provisions of Article 4 of the Order. We rejected this submission and promised to put our reasons for so doing in to writing. These reasons are now handed down.

[3] Article 4 provides:-

*“4. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the application shall give all other parties concerned notice of his intended application.”*

[4] The decision of the Court of Appeal was delivered on 26 January, 2012; the 21 day time limit for appealing commenced on that day. The Notice of Motion seeking conditional leave was filed by the Attorney General on 15 February 2012, within 21 days of the judgment. The Notice was not however served on the respondents until sometime later. It did not appear that there was any dispute that the Attorney General first sent an un-filed copy of the Notice of Motion to the respondents by e-mail on 23 February 2012. Mr. Rubin Q.C. counsel for the respondents stated that this service was more than 21 days after the date on which the Court of Appeal delivered its decision. Counsel submitted that the appellant was required to serve the Notice of Motion on the respondents within the 21 days as is required by the Act. Further, he submitted that the Court had no power to extend time.

[5] The gravamen of the Respondents' submission was that the appellant was required, not only to file his Motion within 21 days, but was also required to serve it on the respondents within that period of 21 days. He contended that Article 4 of the Order is clear as to 21 day time limit for filing and giving notice to the respondents. It is the contention of the respondents that they had not seen a copy of the filed Notice of Motion until more than 21 days after judgment had been delivered.

[6] Mr. Rubin submitted that the Court of Appeal did not have any power to extend the time for filing the Notice of Motion under Article 4 of the Order. For this proposition, he relied on *Tremblay v Bank of Nova Scotia Trust Co (Caribbean Ltd 9199) 58 WIR 29*. In considering Article 3 of the Barbados (Procedure in Appeals to Privy Council) Order 1966 which is identical in terms to Article 4 of the Turks & Caicos Order, the Court of Appeal in Barbados came to the conclusion that the provision of the Article was mandatory and consequently the Court had no jurisdiction to extend time. We do not consider that this case is

relevant as the Attorney General is not seeking any extension of the time stipulated in Article 3 of the Order.

[7] In response, Mr. David Phillips QC counsel for the Attorney General, submitted that what was required was the filing of the Motion within 21 days. There was no requirement to serve the Notice on the Respondent with that period.

[8] It appears to the Court that Mr. Rubin was seeking to apply to the application for leave to appeal to the Privy Council the provisions of section 15 (1) of the Court of Appeal Ordinance Cap 2.01. That section provides:-

*“15 (1) In the case of an appeal from any judgment, decree or order of the Supreme Court in the exercise of its civil jurisdiction, the appeal shall be brought by the appellant giving notice in writing, within twenty-eight days of the judgment, decree or order from the appeal is made, to the Registrar of the Supreme Court, and to the opposite party or parties in the action, of his intention to appeal and also of the general grounds of his appeal.”*

[9] Section 15 (1) expressly provides the manner in which an appeal from the Supreme Court to the Court of Appeal is to be brought. To comply with the requirements of this sub-section, the appeal must be brought by the appellant within 28 days of the judgment. Further, the requirements for perfecting an appeal are set out in this section. These are that (a) the appellant must give notice in writing of his intention to appeal to the Registrar and (b) to the opposite party within 28 days. Even though the Notice of Appeal is filed within 28 days of the delivery of the judgment, the appeal is not perfected until the opposite party is given notice of the appeal within 28 days.

[10] The Court is of the view that Article 4 of the Order only requires that the Application for leave to appeal has to be made by motion or petition within 21 days of the judgment. If it was intended that service on the respondents should take place within 21 days of the date of the judgment, the Article would have expressly provided that, not only should the Application to the Court for leave to appeal be made by motion or petition within 21 days of the date of the judgment to be appealed from but that the applicant shall give all other parties concerned notice of his intended application within the same period of 21 days of the date of the judgment. The Article only requires the filing of the motion or petition within 21 days.

[11] Article 4 of the Order does not contain any requirements that Notice of the Appeal must be given to the opposite party within 21 days. All the Article requires is that the Notice of Motion for leave to appeal must be filed within 21 days. It would be wrong for this Court to impose on an applicant requirements other than those set out in Article 4. A perusal of the Orders relating to appeals to the Judicial Committee of the Privy Council which are applicable in other countries will show that the provisions are standard.

[12] For the reasons set out above, we are of the view that Article 4 of the Order requires that notice of motion or petition for leave to appeal shall be made within 21 days of the date of the judgment from which the appeal is being brought. The Article did not require notice of the intended application to be given to the respondents within 21 days.

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Zacca, P.

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Mottley, J.A.

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Ground, J.A.