

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO. 51/08

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.(Ag.)**

BETWEEN	DEXTER CHIN	APPLICANT
AND	NATIONAL COMMERCIAL BANK JAMAICA LIMITED	RESPONDENT

**Mrs. Georgia Gibson-Henlin, instructed by Ms. Taneisha Brown of
Nunes, Scholefield, DeLeon & Co. for the applicant**

**Mrs. Denise Kitson and Ms. Yualande Christopher, instructed by Grant,
Stewart, Phillips & Co. for the respondent**

April 28, 29 and October 1, 2008

PANTON, P.

1. This suit has seen several applications. It bears the number C.L.N. 198 of 1999, suggesting that it is almost a decade old. The instant application is for permission to appeal the judgment of Paulette Williams, J. who on March 25, 2008, refused the applicant's application for summary judgment. In refusing the application, the learned judge made several orders which, if faithfully followed, will see the trial of this matter taking place in March, 2009. Those orders include disclosure and inspection of documents, exchange of witness statements, pre-

trial review, filing and serving of listing questionnaire and the amendment and service of pleadings.

2. At the heart of the dispute between the parties is the validity of a promissory note. The respondent herein National Commercial Bank Jamaica Ltd (NCB) is claimant in the suit which is against the applicant Dexter Chin and a company called Money Traders & Investments Ltd. and its directors. The latter company (Money Traders) is indebted to NCB. The directors of Money Traders are guarantors of the debt. Chin issued a promissory note payable on demand to the order of Money Traders. The latter unconditionally endorsed the said promissory note to NCB. Although NCB has demanded re-payment of the debt as evidenced by the promissory note, there is still a huge balance outstanding as at May 19, 1997.

3. Paulette Williams, J. found that there are issues requiring a trial; hence, she refused Mr. Chin's request for summary judgment. At the hearing of this application, nothing has been advanced to suggest that the learned judge was in error in any way. Mrs. Gibson-Henlin has pointed to what she says is a fact that has to be determined against NCB, that is, the date of the endorsement of the promissory note. However, in our view, that would not necessarily be the end of the matter.

4. We have been referred to earlier applications in this suit and the reasoning of the Court therein. We note that this is the second application by this

applicant for permission to appeal a ruling that has not been to his liking. The earlier application involved the said promissory note, although the applicant's attack then was from a different angle. In order to avoid the risk of being thought of as an abuser of the process of the court, the applicant would be well advised to concentrate on the trial of the issues. There is absolutely no merit in the application, which is accordingly refused. The respondent is to have its costs agreed or taxed.

5. Earlier, reference was made to the other components of the order of Williams, J. leading up to the trial of the matter in March, 2009. We wish to remind the parties that there are precise deadlines in the order to be met. We are not aware of any stay having been granted. Indeed, the learned judge denied such an application. For the avoidance of doubt, we now state that if there has been a stay, it is immediately lifted. The orders set out by Williams, J. are to be complied with strictly. In respect of the order for standard disclosure and inspection of documents, if it has not yet been complied with, then the parties are now being allowed until October 15, 2008, to comply. The other orders are to be followed as directed by the judge in her judgment on March 25, 2008.