

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2021CV00112

APPLICATION NO COA2022APP00141

BETWEEN	FIRST UNION FINANCIAL COMPANY LIMITED	APPLICANT
AND	SHARCA BROWN	RESPONDENT

Lemar Neale instructed by Samuel Beckford for the applicant

Garnett Spencer instructed by Robinson, Phillips and Whitehorne for the respondent

5 December 2022

ORAL JUDGMENT

BROOKS P

[1] The applicant, First Union Financial Company Limited ('the company') wishes to appeal an interlocutory judgment of a judge of the Supreme Court handed down on 10 December 2021. The learned judge refused the company's application for striking out of a claim and for summary judgment against the respondent, Ms Sharca Brown, who had sued it in respect of the right to title to land that she occupied. He, however, granted the company leave to appeal. It filed the required notice of appeal within the 14 days stipulated by the Court of Appeal Rules ('the CAR') but failed to file and serve its written

submissions in support of the appeal, within the time stipulated. It now seeks an extension of time within which to rectify its default. It also wishes to file and serve an amended notice of appeal and record of appeal or alternatively, that the record of appeal filed on 28 April 2022, stand as being properly filed.

[2] The background to the case which has given rise to the appeal concerns a dispute over the ownership of registered land. Ms Brown filed a claim against the company and a Mr Euton Smith. The latter had acquired a registered title to the land by virtue of adverse possession against the previous title holder, and thereafter sold the land to the company.

[3] Ms Brown claims that she has been in open and undisturbed occupation of the land from 1994 until November 2017 when she received a notice to quit and a commercial rental agreement from the company. She continues to occupy the property. Her case is that she had displaced the original registered proprietors of the land. She claimed that Mr Smith had fraudulently obtained a registered title to the land in 2016, based on adverse possession against the, then, registered proprietor. She asserted that the company, which acquired the registered title from Mr Smith in 2017, did so without due enquiry as to her occupation of the land and was not a bona fide purchaser for value without notice.

[4] Ms Brown served the company with the claim but not Mr Smith. The company applied to the Supreme Court to, among other things, strike out the claim as disclosing no reasonable cause of action against it or alternatively, grant summary judgment in its favour against Ms Brown. The learned judge struck out the aspects of the claim as it concerned fraud against the company but refused to strike out the claim in its entirety or to grant summary judgment. He ordered that the parties should pursue mediation.

[5] Being aggrieved, the company appealed. The reason given for failing to file and serve the written submissions within the time required by the CAR, is that its counsel was ill and unable to perform the task within the specified time. It first filed its

application for an extension of time in March 2022, when learned counsel was able to resume his duties. It also wishes to amend its notice of appeal. The company asserts that, based on learned counsel's illness, it has:

- a. a good reason for failing to file and serve the written submissions; and
- b. a good explanation for the delay in applying for the extension of time within which to comply.

[6] The company further contends that its proposed appeal has a real prospect of success and that Ms Brown, who is still in occupation of the land, will not be prejudiced by the grant of the application.

[7] The court is mindful of the principles governing the amendment of a statement of case (see **Jamaican Redevelopment Foundation, Inc v Clive Banton and Another** [2019] JMCA Civ 12 at paragraphs [21], [22] and [26]), and those which distil its discretion for the grant of extension of time (see **Leymon Strachan v Gleaner Company Limited and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999 at page 18). It is satisfied that all the main requirements to grant the application have been met. It has not escaped the court's attention, however, that the time for filing the written submissions expired before the company's counsel was certified to have fallen ill. The court has also noticed that counsel purported to file an amended notice of appeal prior to the time that he was said to have become ill, albeit after the expiry of the time for filing the written submissions. The medical certificate that he tendered in support of the application does say, however, that counsel was being treated even before the certified date. As a result, although the reason may not be completely satisfactory, it will be accepted for these purposes.

[8] The main issue to be resolved by the proposed appeal is whether the learned judge is correct in respect of his understanding of the importance of Mr Smith to the

case, particularly the validity of Mr Smith's registered title. It is an issue worthy of consideration by this court on appeal.

[9] Ms Brown is in occupation of the land and is unlikely to be prejudiced by the delay in the matter proceeding in the Supreme Court.

[10] Based on the above, the application succeeds. Costs will, however, not be awarded to the respondent, because of her dilatory response to the application.

Order

1. The application to amend the notice of appeal is granted.
2. The application for an extension of time within which to file and serve the amended notice of appeal and the written submissions is granted and the time to file and serve the same is extended to 12 December 2022.
3. The amended notice of appeal filed herein on 14 January 2022, the skeleton submissions filed on 30 March 2022 and the record of appeal filed on 28 April 2022 shall all stand as properly filed.
4. The time for the respondent to file and serve her written submissions is extended to 14 January 2023.
5. No order as to costs.