

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 28/2010

APPLICATION NO. 47/2010

BETWEEN	CALVIN GREEN	APPLICANT
AND	WYNLEE TRADING LTD	RESPONDENT
AND	NAYLOR & TURNQUEST	GARNISHEE

Mrs M. Georgia Gibson-Henlin instructed by Henlin Gibson Henlin for the applicant

Miss Carol Davis for the respondent

Mrs Lilieth Turnquest (representing the garnishee)

13 April 2010

MORRISON JA:

[1] On 29 March 2010, I made an order refusing the application for a stay of execution of the order of Donald McIntosh J made on 9 March 2010. The question of the costs of the application before me was however reserved, pending the receipt of submissions in writing from the parties in this regard.

[2] Miss Davis for the respondent, which was the successful party on the application, submitted (by email dated 31 March 2010) that rule 64.6(1) of the Civil Procedure Rules 2002 ("the CPR") should apply, with the result that the applicant as the unsuccessful party should pay the respondent's costs. Costs, in other words, should follow the event.

[3] Mrs Gibson-Henlin, for the unsuccessful applicant, on the other hand submitted (by email dated 31 March 2010) that the costs of the application should be costs in the appeal, pointing out that, although he had not succeeded, it was not unreasonable for the applicant to have made the application for a stay of execution in the circumstances of the instant case.

[4] Mrs Turnquest also made an application (by email dated 1 April 2010) on behalf of the garnishee for costs, pointing out that the garnishee had been put to expense and had suffered loss as a result of having had to participate in the proceedings before me. This application was resisted by Mrs Gibson-Henlin, who submitted (also by email dated 1 April 2010) that the garnishee was not entitled to costs in these circumstances.

[5] Rule 1.18(1) of the Court of Appeal Rules 2002 provides that the provisions of the CPR Parts 64 and 65 shall apply to the award and quantification of costs in this court, subject to any necessary modifications. Rule 64.6(1) provides that where the court decides to

make an order for costs "the general rule is that it must order the unsuccessful party to pay the costs of the successful party". However, it is clear that, the general rule notwithstanding, the court does enjoy a wide discretion with regard to costs, rule 64.6(3) providing further that "In deciding who should be liable to pay costs the court must have regard to all the circumstances". Rule 64.6(4) then goes on to list a number of factors which are to be taken into account, including the conduct of the parties, the success of a party on particular issues and whether it was reasonable for a party to have raised a particular issue.

[6] In the instant case it is important to keep in mind, it seems to me, that the appeal itself is yet to be heard and that, when it is heard, it could well be disposed of in the applicant's favour. In that event I do not think that it would be just for the applicant to have had to pay the ultimately unsuccessful respondent's costs of this application. I am therefore of the view that the fairer outcome at this stage is to order that costs should be costs in the appeal, so that the party who ultimately succeeds on appeal will be fully protected in respect of all of its reasonable costs at all stages of the appeal.

[7] With regard to the garnishee's application for costs, I have already in my ruling on the application itself expressed my sympathy for the position in which Mrs Turnquest's firm had found itself in this matter, and I do not

doubt for a moment that the firm must have suffered loss and expense by having to take part in the garnishee proceedings. However, while rule 50.14(5) of the CPR does make provision for a garnishee who has appeared at attachment of debt proceedings to deduct its costs before paying any sum over to the judgment creditor pursuant to the attachment of debts order, I have been unable to locate any provision in the rules which would permit me to make an order for costs in the garnishee's favour on this application and I must therefore decline to do so.

[8] In the result, the order I make is that the costs of the application to stay execution are to be costs in the appeal.