

C.A. Appeal - Motion for conditional leave to appeal - under
provision of general or public importance - S110(2)(a) Constitution
of Jamaica. Leave refused.

Case referred to

Khan Chinna v Markanda Kothan & Anor (1921) W.N. 353
JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO.18/92

MOTION NO. 27/92

COR: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

BETWEEN S. IAN JONES
ELEANOR B. JONES DEFENDANTS/APPELLANTS

AND CENTURY NATIONAL MERCHANT
BANK & TRUST COMPANY
LIMITED PLAINTIFF/RESPONDENT

L.D.F. Smith for appellants

Dennis Goffe, Q.C. & Miss Minette Palmer for respondent

February 15 & June 14, 1993

GORDON, J.A.:

On 15th February, 1993, the motion for conditional leave to appeal to her Majesty in Council brought by the appellants was refused. We now place on record our reasons.

On 31st January, 1992, Reckord J granted the Plaintiff leave to enter final judgment in the writ brought by the respondent against the appellants. Notice and grounds of appeal were filed by the appellants on 14th February, 1992 and thereafter nothing was done by them for several months. By a motion, supported by an affidavit dated 30th September, 1992, returnable on 26th October, 1992, the respondent prayed for the dismissal of the appeal for want of prosecution. Spurred to action, the appellants by summons supported by affidavit sought leave to extend the time within which to file the record and an order that they have leave to file the record within twenty-one days from the date of grant of extension of time. The applications were heard by this Court on 17th November, 1992. The appellants were

denied the extension of time they sought and the respondent's motion was granted by an order:

"That the appellants' appeal be dismissed for want of prosecution and that the appellants do pay the costs of the appeal to be taxed if not agreed."

The writ filed in this action is endorsed thus:

- "1. The defendants made two (2) joint and several promissory notes dated March 7, 1989, both payable to the order of the plaintiff on demand.
2. One of the promissory notes was for Six Million Four Hundred and Fifty Seven Thousand Dollars (\$6,457,000.00) with interest at the rate of 19 percent per annum as well after as before maturity.
3. The other promissory note was for Four Million Six Hundred and Thirty Thousand Dollars (\$4,630,000.00) with interest at the rate of 19 percent per annum as well after as before maturity.
4. On November 13, 1990, at the Plaintiff's place of business at 14-20 Port Royal Street, Kingston, the plaintiff presented the said notes to the defendant for payment but they were dishonoured.
5. The plaintiff claims against the defendants jointly and against each of them severally the principal sum of Eleven Million and Eighty Seven Thousand Dollars (\$11,087,000), together with interest thereon at a rate of 19 percent per annum from March 7, 1989 until payment or judgment. As at November 15, 1990, such interest amounted to \$3,572,447.10."

At the hearing of the application for summary judgment, the appellants sought leave to defend the action on the basis, inter alia, that the note for the larger sum was negotiated on behalf of one of the defendants' companies. Reckord J. found that there was no triable issue, and there was no defence to the action. In his judgment he found inter alia:

"The plaintiff based its claim on the promissory note, not on the loan. The first defendant has not denied that the notes were presented and dishonoured. ... The note did not bear the seal of

"the company and therefore it could not be regarded as being signed by the defendants on behalf of any company There has been no assertion that money was not lent. Missing from the defendants' affidavits was a statement of what they say is owing.

There is nothing on the face of these two promissory notes to suggest that they were otherwise than personal loans to the two defendants. I find that they signed the notes and authorised the plaintiff to fill in the material particulars which it did within a reasonable time and strictly in accordance with the authority given. There is therefore no basis for the defendants' claim that the note for the larger sum was negotiated on behalf of one of the defendants companies. They are estopped from denying liability. This claim is therefore rejected.

The sums claimed are being challenged by these defendants. These can be checked by ordinary accounting processes.

I am satisfied not only that there is no defence but no fairly arguable point to be argued on behalf of the defendants."

This Court confirmed the decision of Reckord J, thus:

"In the face of such findings, which are well-founded on the facts, the appellants are impotent. ...further upon the findings of Reckord J the transactions ... are ... unassailable..."

In the latter finding this Court found that the transactions fall within the provisions of section 20 of the Bills of Exchange Act which provides:

"Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

In order that any such instrument, when completed, may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

"Provided that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time, and strictly in accordance with the authority given."

Against the background of the confirmation by this Court of the findings of fact made by Reckord J, and dismissal of their appeal for want of prosecution, the appellants sought provisional leave to appeal to Her Majesty in Privy Council.

The decision on extension of time, Mr. Smith submitted, was not final but there was a question of general public importance i.e. whether there was merit in the appellants' appeal. The question to be determined, he said, was one of fact, viz; were the promissory notes filled up in strict accordance with the authority given? Order 14 procedure required that where there was a dispute of fact, leave to defend should be granted. He relied on Order 14/3-4/8:

14/3-4/8 "Leave to defend - Unconditional leave - The power to give summary judgment under O.14 is "intended only to apply to cases where there is no reasonable doubt that a plaintiff is entitled to judgment, and where therefore it is inexpedient to allow a defendant to defend for mere purposes of delay" (Jones v. Stone (1894) A.C. 122). As a general principle, where a defendant shows that he has a fair case for defence, or reasonable grounds for setting up a defence, or even a fair probability that he has a bona fide defence, he ought to have leave to defend (Saw v. Hakim 1889) 5 T.L.R. 72.

Leave to defend must be given unless it is clear that there is no real substantial question to be tried (Codd v. Delap (1905) 92 L.T. 510, H.L.); that there is no dispute as to facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment (Jones v. Stone (1894) A.C. 122)."

The questions the appellants sought to have addressed are:

"(a) whether or not the Appellants' appeal to the Court of Appeal was devoid of any merit.

- "(b) if the said appeal was not devoid of merit, whether or not the issues raised therein were of sufficient importance or gravity as to warrant the granting of leave to file the Record despite the reason for the Appellants' delay.
- (c) whether or not there was sufficient material before the Court of Appeal on which the said Court could and should have exercised its discretion to grant leave to the Appellants to file the Record herein and to abridge the time for filing the same.
- (d) whether or not in the absence of a trial on the merits, and having regard to the fact that the Appellants were then ready, willing and able to proceed with the prosecution of their appeal, the appeal should have been dismissed."

Leave to appeal was sought under the provisions of section 110 (2)(a) of the Constitution of Jamaica which provides:

"An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases:

- (a) Where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings;"

The appellants have the responsibility to establish that the question involves a matter of great general or public importance.

In Khan Chinna v. Markanda Kothan & Ancr. (1921) W.N. 353 Lord

Buckmaster in delivering the judgment of the Board said:

'It was not enough that a difficult question of law arose, it must be an important question of law. Further, the question must be one not merely affecting the rights of the particular litigants, but one the decision of which would guide and bind others in their commercial and domestic relations.'

These are the principles which guide this Court and we adopt and apply them.

The appellants have failed to show that an answer to any of the questions raised in the application would be a guide to anyone in the future. The questions raised are not of substantive law and the issues involve questions of fact which, on the evidence, have been resolved by the trial judge and affirmed by this Court. We are satisfied that this is a case in which leave should be denied on the basis that, no question of general or public importance arises on the issues.

ROWE, P

I agree.

FORTE, J.A.

I agree.