

A/M 15

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 112 OF 1996

MOTION

BEFORE: *THE HON. MR. JUSTICE RATTRAY - PRESIDENT*
 THE HON. MR. JUSTICE BINGHAM, J.A.
 THE HON. MR. JUSTICE WALKER J.A. (AG.)

BETWEEN *R.B. MANDERSON-JONES* *PLAINTIFF/APPELLANT*

A N D *SOCIETE INTERNATIONALE DE* *DEFENDANT/RESPONDENT*
 TELECOMMUNICATIONS
 AERONAUTIQUES (SITA)

*Dennis Goffe QC instructed by Dr. R.B. Manderson-Jones for the
Plaintiff/Appellant*

*Ransford Braham instructed by Livingston Alexander & Levy for the
Defendant/Respondent*

April 30 and May 1, 1997

RATTRAY P:

By this Motion the plaintiff/appellant seeks from the Court of Appeal conditional leave to appeal to Her Majesty in Council from the decision of the Court of Appeal which on the 25th February 1997 dismissed on a Preliminary point the appeal of the plaintiff/appellant as being in violation of Section 11(1)(b) of the Judicature (Appellate Jurisdiction) Act.

The facts briefly stated are that the plaintiff/appellant an attorney-at-law filed Suit in the Supreme Court against the defendant/respondent in a claim to recover the sum of \$1,203,325.87 for professional services rendered together with interest thereon. Judgment in default of defence was entered in the Suit. This default judgment was set aside by Cooke J in the Supreme Court on the ground of irregularity; this being that the sum claimed was not a debt or liquidated demand. Leave was granted for the defendant/respondent to file a defence within a stated time. An appeal was dismissed on the ground that the provision of Section 11(1)(b) of the Act specifically stated that no appeal lies from the Order of a Judge giving unconditional leave to defend.

Before us in support of the Motion Mr. Goffe QC has urged us to hold that the question which is being sought to be determined by Her Majesty in Council, which is, whether the Order of Cooke J was one which granted unconditional leave to defend, is one of great public importance. This is so, he maintained it concerned the interpretation of a statutory provision affecting the jurisdiction of the Court of Appeal.

Mr. Goffe places reliance on two cases - ***Mason v Desnoes & Geddes Ltd*** [1990] 38 WIR 214 and ***Simpson v Ghany (No. 2)*** [1962] 5 WIR 262.

It does not appear that in either of these cases any point was canvassed as to whether the Court of Appeal could properly determine that it had the authority to consider an appeal from the Order of a Judge of the Supreme Court setting aside a default judgment and granting leave to defend.

Neither are we aware as to whether the first mentioned case went to the Judicial Committee of the Privy Council upon the certification of an important

point of law by the Court of Appeal or by way of Petition directly presented to the Board, when no such certification would be required.

It is important to note however that in each case the outcome was to permit the cases to proceed to trial on their merits.

Mr. Braham for the defendant/respondent referred us to SCCA No. 79 of 1988 - ***Jamculture v Black River Upper Morass Development Co. Ltd. and Others*** in which the Court of Appeal in a judgment of Rowe P. stated:

"This Court has a discretion in a matter which is not a final decision from the Court to determine whether or not there should be a further appeal in the interests of justice."

We fully agree with this pronouncement.

The interest of justice is best served by facilitating the determination of the issues in this Action in a contested hearing.

The Motion is dismissed with costs to the defendant/respondent.