

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 25/08**

**APPLICATION NO. 32/2008**

**IN CHAMBERS**

**BETWEEN                      OLINT CORPORATION LTD                      APPELLANT**

**AND                      NATIONAL COMMERCIAL BANK LTD                      1<sup>st</sup> RESPONDENT**

**AND                      MICHAEL HYLTON                      2<sup>nd</sup> RESPONDENT**

**Maurice Manning, Mrs. Georgia Gibson-Henlin, Miss Tanisha Brown and Catherine Minto, instructed by Nunes, Scholefield, DeLeon & Co., for the applicant**

**Dave Garcia and Carlene Larmond for the respondents**

**March 13 and 14, 2008**

**ORAL JUDGMENT**

**PANTON, P.**

1. The circumstances herein are unusual, and perhaps unprecedented in this jurisdiction. For sure, I have not been referred to any reported case from our Courts in this regard. Before me is an application to bar the Hon. Michael Hylton, Q.C., from representing or giving legal advice to National Commercial Bank Ltd (NCB) in a suit between the latter and Olint Corporation Ltd., pending the determination of an appeal against the judgment of Jones, J., delivered on March 6, 2008. This judgment was in respect of the propriety of Mr. Hylton, Q.C.,

appearing for NCB in the suit. The appeal has been listed for hearing in the Court of Appeal during the week of April 7, 2008. There are proceedings in the suit which were scheduled for hearing yesterday in the Supreme Court before Jones, J., but due to this application, they were rescheduled for Monday, March 17. This application is particularly aimed at preventing Mr. Hylton, Q.C., from appearing in those proceedings, prior to the determination of the appeal. As I understand it, however, all that is left for Mr. Hylton, Q.C., to do in those proceedings is to make oral submissions.

2. In determining this matter, I am fully conscious of the fact that the appeal is for consideration on April 7, 2008. A balance has to be struck in ensuring that the appellate hearing does not become academic. It has been argued by Mr. Manning that that will be the result if I do not grant this application. On the other hand, NCB has argued that the applicant has no great prospect of success in the appeal. In any event, said Mr. Garcia for NCB, even if learned Queen's Counsel is in possession of confidential information (which the applicant alleges, and the Judge has accepted in certain respects) the affidavit evidence is already in and it contains no confidential information from Mr. Hylton Q.C. Further, if the application is granted, NCB would be deprived of the services of their attorney-at-law of choice.

3. In the circumstances, given the nature and stage of the proceedings between the parties, I see nothing which is likely to happen that is of sufficient

force to drive me to bar the learned Queen's Counsel from acting for NCB between now and April 7. Any damage that is likely to occur to Olint as a result of the representation would have already occurred. On the other hand, preventing Mr. Hylton from giving his services to NCB at this stage, may result in injustice to NCB if at the hearing of the appeal it were to be found that there was nothing to warrant the applicant's fears. That being the position at this stage, the application is refused and costs are ordered to be costs in the appeal.

