

VMIS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 20/09

MOTION NO. 14/09

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MISS JUSTICE PHILLIPS J.A.**

**BETWEEN RAYTON MANUFACTURING LTD
BROTHERS PROGRESSIVE LTD
RMC COMMERCIAL EQUIPMENT LTD
RAMOND HUGH
ANTONIO HUGH** **APPLICANTS**

**AND WORKERS SAVINGS & LOAN BANK
CORPORATE MERCHANT BANK LTD
FINSAC LTD.
REFIN TRUST LTD.** **RESPONDENTS**

**Christopher Dunkley instructed by Phillipson Partners
for the applicants/appellants**

**Mrs. Sandra Minott-Phillips & Gavin Goffe instructed by Myers, Fletcher
& Gordon for the respondents**

26th, 30th October & 4th November 2009

ORAL JUDGMENT

PANTON, P.

1. This is an application for conditional leave to appeal to Her Majesty in Council from a judgment of this court delivered on the 30th July 2009. The Notice of Motion states that the ground for the application is:

"1. That the matter between the parties is for a value which is upwards of one thousand dollars (\$1000.00.)"

2. On the 12th February 2002, Rayton filed a suit against Worker's Bank. The proceedings were served but no defence was filed and Rayton sought leave to enter judgment in default. The motion was heard by Mr. Justice Reid, who denied it on the 30th May 2003 and made an order for costs to Rayton. The learned judge, who is now retired, also ordered that a defence which had been filed out of time by Workers Bank should stand. Leave to appeal was granted to Rayton, which proceeded to file an appeal. A single judge of this court dismissed a preliminary objection by Workers Bank to the appeal, and ordered that it be placed before the full court.

3. On the 26th September 2005, the appeal was withdrawn and on the 4th October 2005, Rayton filed formal "Notice of Withdrawal" of the appeal. On the 3rd April 2007, Rayton wrote to the Registrar of the Supreme Court, requesting that the suit filed on the 12th February 2002 be set down for case management conference. The Registrar scheduled the 2nd February 2008 for same. The objection was taken by Workers Bank that under the Civil Procedure Rules, case management should have been requested by the 31st December 2003. That not having been done, the claim had been automatically struck out, as submitted by Workers Bank. This position was disputed by Rayton. The case management conference proceeded before Mr. Justice Rattray who agreed and

ordered that the matter had indeed been struck out pursuant to Part 73.3(8) of the Civil Procedure Rules. It is this decision that gave rise to the appeal resulting in this court's decision of the 30th July 2009.

4. The application, though worded in the manner it has been, is clearly under section 110(1) of our Constitution which requires that the decision be a final decision. The section reads:

"110 – (1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases –

- (a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of one thousand dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of one thousand dollars or upwards, final decisions in any civil proceedings;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil, criminal or other proceedings on questions as to the interpretation of this Constitution; and
- (d) such other cases as may be prescribed by Parliament."

5. In determining matters of this nature, we wish to confirm that this court is guided by "the application approach" as stated and adopted in the case of ***Leymon Strachan v The Gleaner Co. Ltd. & Dudley Stokes*** SCCA No. 54/97 delivered 18th December 1998. Using that yardstick, it is clear that had the Court

of Appeal ruled in favour of the respondent, the dispute between the parties would not have come to an end as the suit would have proceeded with the holding of the aborted case management conference. That being so, the decision was not "final", for these purposes, and so section 110(1) cannot avail the applicant.

6. Section 110(2) was not prayed in aid, but it is arguable whether that would have been of any help. The applicants have ignored the rule as to what should have been done by December 31, 2003, and they also failed to take advantage of the provision which offered respite to those who missed the December 31, 2003 deadline; and so it is arguable that, that provision as to great general or public importance might not be available to them.

7. In the circumstances we are constrained by "the application approach" to dismiss the motion with the resultant order as to costs to be agreed or taxed.