

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 87/09**

**APPLICATION NO. 41/2010**

<b>BETWEEN</b>	<b>DANIEL ROBINSON</b>	<b>APPLICANT/ INTERVENOR</b>
<b>AND</b>	<b>TRADE BOARD LIMITED</b>	<b>APPELLANT</b>
<b>AND</b>	<b>THE PEPPERSOURCE LIMITED GRAINS JAMAICA LIMITED</b>	<b>1<sup>ST</sup> RESPONDENT 2<sup>ND</sup> RESPONDENT</b>
<b>AND</b>	<b>CRG LEE CORPORATION</b>	<b>INTERESTED PARTY</b>

**Glenroy Mellish for the applicant**

**Miss Tova Hamilton instructed by the Director of State Proceedings for  
the Trade Board Limited**

**Miss Anna Gracie instructed by Rattray Patterson Rattray for The  
Peppersource Ltd**

**Emile Leiba instructed by DunnCox for the interested party, CRG Lee  
Corporation**

**1 and 2 June 2010**

**IN CHAMBERS**

**ORAL JUDGMENT**

**PANTON, P.**

[1] In this matter, the applicant, who is the bailiff of the Resident Magistrate's Court, St. James, seeks permission to intervene in the appeal which is pending

between Trade Board Ltd as appellant and The Peppersource Ltd and Grains Jamaica Ltd, respondents. CRG Lee Corporation is an interested party.

[2] Before Jones J in the Supreme Court was a relisted notice of application for court orders by The Peppersource Ltd seeking among other things a declaration of priority with respect to the equipment and machinery owned by Grains Jamaica Ltd. On 22 May 2009, Jones J declared that The Peppersource Ltd ranks in priority to the Trade Board Ltd Jamaica Rice Milling Co and CRG Lee Corporation in respect of the sums obtained from the sale of the Torrin mobile crane and the equipment and machinery listed in the report and valuation prepared by George Gregg and Company.

[3] Prior to the order of Jones J there had been an order by Reid J for the sale of chattels seized by the bailiff as well as land owned by Grains Jamaica Ltd. The sale price was to be applied in paying the costs of the sale, firstly, then settling all sums due to the bailiff, and the balance to be paid into an interest-bearing account with a commercial bank to be held in escrow until the determination of the priorities of the creditors to the proceeds.

[4] The priorities having been determined by Jones J and not being happy with that determination, the Trade Board has appealed. The bailiff now seeks to intervene in the appeal and to have in any event a substantial sum paid to him forthwith out of the monies realized from the sale of the assets of Grains Jamaica Ltd.

[5] Mr Leiba, for the interested party, submitted that the powers of the single judge do not extend to dealing with an application to intervene in an appeal. He referred to rule 2.11 of the Court of Appeal Rules in support. However, in the absence of substantial authority to the contrary, I hold that there is such jurisdiction in a single judge of the Court of Appeal. Rule 1.8 (5) of the Court of Appeal Rules provides that an application for permission to appeal made to the court may be considered by a single judge of the court unless it is an appeal involving a sentence of death. It follows, it seems to me, that if a single judge may grant permission to appeal, then he may also grant permission to intervene in an appeal.

[6] The main consideration I think though in this matter of determining the need or right to intervene in the appeal is whether the applicant has a compelling interest in the issues to be argued on appeal. Mr Glenroy Mellish, for the applicant, agrees that the issues for determination on appeal are as stated in paragraph 11 of the judgment of Jones J namely:

- “(i) Whether or not CRG Lee as Debenture Holder has priority in respect of a claim for equipment and machinery of Grains Jamaica over the Trade Board and Pepper Source, both Execution Creditors.
- (ii) Whether or not the stay of execution granted by the Court of Appeal with respect to a previous Writ of Seizure of Sale issued to Pepper Source over the equipment and machinery of Grains Jamaica has priority over a

later Writ of Seizure and Sale issued to another Execution Creditor, the Trade Board.”

[7] As I understand the situation, the bailiff is not involved in these issues, nor is he concerned about them. His concern is the monies he says is owed to him. Miss Gracie for The Peppersource Ltd and Mr Leiba for the interested party both filed written submissions. They are of the view that the applicant does not have an interest in the outcome of the appeal as the appeal is about priorities. They expressed the opinion that the applicant’s recourse is against the party that retained him. Miss Hamilton adopted Mr Leiba’s submissions.

[8] In my judgment, intervening in the appeal will not add to the jurisprudence in the case; nor will it secure the monies allegedly owed. No rights of the applicant will be vindicated by the intervention sought. In the circumstances, the application has to be denied.

[9] The applicant is, however, not without recourse. He has in his possession an undertaking from the Attorney General of Jamaica. It is in the form of a letter dated 1 February 2007, promising that at a convenient time there will be settlement of the various costs, fees and expenses owed to the applicant. It seems to me that the applicant ought to now impress on the Attorney General the need for payment.

[10] The application is refused. Costs of this application are awarded to The Peppersource Ltd and the interested party CRG Lee Corporation Ltd. No award

of costs is being made to the Attorney General seeing that she had it in her power to fulfill her undertaking and thereby avoid the perceived need for these proceedings.