

CA

Appeal — Application for leave — whether
matter one of great general importance S 110(2)
Constitution of J.C. — whether certifiable — application
dismissed.

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 57/86

BEFORE: THE HON. MR. JUSTICE ROWE, P.
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WHITE, J.A.

BETWEEN - SSI (CAYMAN) LIMITED

DR. STEVE LAUFER

FSI FINANCIAL SERVICES
U.S. INC.

- DEFENDANTS/APPELLANTS

AND - INTERNATIONAL MARBELLA
CLUB S.A.

- PLAINTIFF/RESPONDENT

Emile George, Q.C., and C.D. Morrison for defendants/appellants.

David Muirhead, Q.C., Hugh Small, Q.C., and Mrs. Hudson-Phillips
for plaintiff/respondent.

24th February, 1987

ROWE, P.:

This is an application by the defendants, SSI (Cayman) Limited, Dr. Steve Laufer and FSI Financial Services U.S. Inc. who are the defendants in Civil Appeal No.57 of 1986 for leave to appeal against the order of this Court which was made on the 21st January, 1987, varying the order of Mr. Justice Harrison in which it was ordered that the defendants and one or more of them pay into Court the sum of U.S. \$6,338,566 on or before the 31st January, 1987, and that if that money was paid then there would be a restraint upon the plaintiffs in respect of the sale of property known as Dragon Bay.

The point of law which Mr. George has identified is put this way: Whether a mortgagee or debenture holder has the right to exercise powers under the mortgage or debenture at a time when the validity of the security is actually being litigated before the Court and relevant proceedings are in progress?

In the course of the appeal, we were adverted to a number of cases coming from the English jurisdiction and from the Australian jurisdiction and they all seem to have been decided in one way, and one way only, that the Court will not interfere with the rights of a mortgagee to sell and dispose of property when that right has accrued unless the mortgagor brings into and pays into Court the amount claimed, or at the least, what the mortgagor admits that is owed. There does not seem to be any authority to the contrary.

Section 110 (2) of the Constitution, which gives power to this Court to grant leave to appeal, limits the grant to cases in which in the opinion of the Court the question involved in the appeal is one that by reason of its great general importance ought to be submitted to Her Majesty in Council. If in our view, the matters in issue had not been so often and so rigidly decided in one way there could be a question open for argument, but at this point in time, we think that the matter is settled and that there is no great general importance which requires a further appeal. On that ground the application for leave to appeal will not be granted.

It has been brought to our attention, also, that the mortgagor does not now exist in law and we were told that efforts are being made to have the mortgagor restored to the Register of Companies in the Cayman Islands. If we were going to act upon that alone, we would have granted the adjournment for which Mr. George asks, but because we are of the view, that whether he is on the register or he is not on the register, the point of law identified is not one which is certifiable, we will dismiss the application, with costs to the respondents to be agreed or taxed.