



# The Court of Appeal for Bermuda

## CIVIL APPEAL No. of 2015

Between:

**ANTOINE HOLDER**

Applicant

-v-

**HAZEL HOLDER et al**

Respondents

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**Before: Baker, President**  
**Bell, JA**  
**Bernard, JA**

**Appearances:** Mr. Bruce Swan, Apex Law Group, for the Applicant  
Mr. Craig Rothwell, Cox Hallet Wilkinson, for the Respondents

**Date of Hearing & Decision: 16 June 2015**

**Date of Reasons: 16 June 2015**

### REASONS

**Baker, P**

1. The appellant, Antoine Holder, applies for leave to appeal out of time against a decision of Justice Hellman given on 18 March 2014. The relevant rule provides as follows:

“Every application for an enlargement of time within which to appeal shall be supported by an affidavit setting forth good and substantial reasons for the failure to appeal within the prescribed period and by grounds of appeal which prima facie show good cause why the appeal should be heard.”

2. The time for appealing is 6 weeks. Here we are now in June 2015 when the appellant is seeking leave to appeal against the judgment given in March 2014.
3. The affidavit of the appellant in support of his application is sparse in the extreme. In explaining his reasons for delay he says: -

“I had instructed my former attorneys, Christopher E. Swan & Co., to appeal this matter. It became apparent to me that my former attorneys had not filed such an appeal. I’ve now retained Apex Law Group Ltd. They’ve written to Christopher E. Swan to obtain my files without success. This has resulted in this delay in filing the appeal on my behalf.”

4. No detail is given with regard to dates. The first indication of anything suggesting that the appellant might have instructed his solicitors comes just after two months from the date of the judgment on 21 May 2014 in an e-mail. However, of more significance is the fact that on 15 August 2014 the appellant indicated that he was henceforth intending to act in person. There is very sparse information and in reality no explanation for the period of delay in particular between August and November of last year.
5. It is therefore the case that there aren’t good and substantial reasons set forth in an affidavit. Turning to the second limb of rule 2/4(2):

- (1) What are the grounds of appeal?
- (2) And do they indicate *prima facie* good cause why an appeal should be heard?

Again they are regrettably sparse:

- (1) The Judge erred in matters of fact and law in judgment dated the 18th March 2014.
- (2) The Judge did not accept documentary evidence that was provided by the Petitioner at trial.
- (3) The Judge presupposed that the Department of Planning would accept the proposed division and did not consider that the proposed division could be denied.

6. Ground (3) seems to us to be patently incorrect from a simple reading of the judgment, and as far as grounds (1) and (2) are concerned, the Appellant does not descend to any particulars.
7. This was a partition action and the judge gave a full and careful judgment. What is apparent from the face of the judgment is that he generally preferred the evidence of the respondent to that of the appellant and it is well known that

it is difficult on an appeal to upset findings of fact of a judge which is what the appellant is seeking to do in the present case.

8. The judge concluded that he should make an order for partition of the property into lots 'A' and 'B', that the subdivision was subject to planning permission and that he was satisfied that the boundary of the property was as marked on a November 1988 plan. He indicated that the cost of applying for planning approval for the subdivision should be borne by the appellant, Mr. Holder. There was also at the trial an issue about spillage from the appellant's side of the property onto that of the respondent. It was caused, at least in part, by circumstances for which the appellant was responsible.
9. It seems to us that this application fails, not only in meeting the first criterion under Rule 4(2) but also the second one. Even if the criteria are met, there is an overriding discretion on the part of the Court whether to allow an application. In exercising it, the Court considers not only the length of delay, which is very considerable in the present case, but also the prospects of success of the proposed appeal, again very limited in the circumstances of this case and further, the prejudice that would be caused to the other party by granting leave out of time.
10. It's plain that there would be prejudice. One of the purposes of the limited period of time for launching an appeal is the desirability of finality in litigation so that the parties to it can know where they stand. The partition ordered by the judge needs to be implemented. The respondent has waited long enough for this to be done and needs to know where she stands. In our judgment this is an application which gets nowhere near succeeding and is accordingly refused.

*Signed*

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Baker, P

I agree

*Signed*

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Bell, JA

I agree

*Signed*

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Bernard, JA