



The Court of Appeal for Bermuda

CIVIL APPEAL No 6 of 2014

Between:

LAEP INVESTMENTS LTD

Applicant

-v-

EMERGING MARKETS SPECIAL SITUATIONS 3 LTD

Respondent

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

Appearances: Mr. Delroy Duncan and Ms. Nicole Tovey, Trott & Duncan Limited, for the Applicant
Mr. John Wasty, Appleby (Bermuda) Limited, for the Respondent

Date of Hearing: 17 & 18 June 2015

Date of Decision: 18 June 2015

DECISION

BAKER, P

1. A point has been raised by Mr. Duncan in respect of Section 3 of the Appeals Act 1911. It provides as follows:

"Applications to the Court for leave to appeal shall be made by motion or petition within 21 days after the date of the judgment to be appealed from, and the Applicant shall give the opposite party notice of his intended application."

2. "Judgment" is defined in Section 1 of that Act as including "decree, order, sentence or decision." Mr. Duncan's situation is this: He is out of time with regard to the requirement that any notice of appeal should be given within 21

days of the date of the judgment to be appealed from, if one interprets that as meaning the date on which the Court's decision was given and the order made. On the other hand, since the Court's reasons for the decision were not supplied until some weeks afterwards, he is in time if the correct interpretation of Section 3 is that the decision given by the Court is only effective when it includes the reasons for it. We have been referred to several authorities. The only one to which it is necessary to refer is *International Risk Management Ltd v E.T. Barwick Industries and the Bank of Bermuda Ltd*, which was a decision of this Court given on the 13th of December 1976. That decision resulted in an appeal being dismissed and the correct interpretation of Section 3 being that time runs from the date of decision. It is common ground that in Bermuda there is no power to extend the time for lodging the notice, and the Court is, accordingly, not able to do so. The concluding words of the Court's judgment in the *International Risk Management* case were these:

"Consequently, we must dismiss the application, but we agree that the time limit of 21 days set by Section 3 of the Appeals Act does not allow the parties sufficient time for deliberation on the important considerations that have to be borne in mind when deciding whether to appeal to Her Majesty in Council. It could well merit the attention of the Legislature."

3. Unfortunately, the Legislature has not seen fit to take up that invitation, and the position remains precisely the same as it was in 1976. Mr. Duncan argues that the requirement that the parties be given reasons for a decision is all part of the constitutional requirement that parties are entitled to a fair trial, and he argues that, in consequence, reasons for the decision must be taken into account in assessing when time begins to run from the viewpoint of an appeal.
4. He referred the Court to *Flannery v Halifax Estate Agencies Limited* [2000] 1 WLR 377; and perhaps even more pertinently, the now-well-known case of *English v Emery Reimbold & Strick Limited* [2002] 1 WLR 2409. There is no doubt that the law has developed with the requirement of judges to give reasons, but neither of these cases, nor, as far as this Court is aware, any other authority, has yet thrown any doubt on the decision of this Court in the *International Risk Management Ltd* case. We can see where Mr. Duncan is coming from, and it is

obviously an inconvenience to a party to have to lodge an appeal without having full details of the Court's reasons for the decision.

5. On the other hand, we have considered the submissions of Mr. Wasty, who has drawn the Court's attention to the terms of the order in the present case, which provided, first of all, that the enforcement order be stayed; and secondly, that the order of the Supreme Court appointing Joint Provisional Liquidators be set aside.
6. The order winding up the Company on the 4th of April, 2014, was set aside. And most significantly, submits Mr. Wasty, paragraph 9, that the issue of whether the Respondent's petition should be dismissed was remitted to Mr. Justice Hellman of the Supreme Court.
7. The fact is that the order operated from the date on which the decision was given by this Court; namely, the 20th of March of this year, and that, in our judgment, is when time began to run.
8. And, accordingly, the view of this Court -- and I emphasize that the judgment that I've just given is the judgment of the Court -- is that Mr. Duncan's application fails on this point.

BELL, JA

9. Mr. Wasty has made an application for costs following this Court's ruling on the 20th of March, when we provided in relation to the costs of the appeal that the costs of the appeal were awarded to the Appellant. So we made that order on the 20th of March, but we gave the Respondent, Mr. Wasty's client, liberty to apply on the issue of the costs of the appeal and to file and serve such application together with written submissions to be made within 14 days. Mr. Duncan took a point on that, but we indicated we would prefer to deal with the substance of the application. In the circumstances, we see no reason for departing from the usual order that costs should follow the event.
10. In relation to the suggestion then made by Mr. Wasty that the Court should follow the example taken in the proceedings between *Kader v Desarrollo* [2013] CA (BDA) 13 Civ, when Sir Anthony Evans JA ordered, following consultation with myself on the matter, that in view of the possibility of rights of set-off arising from actual or potential costs orders in that case, and there being issues as to

what amounts would be paid to Kader, this Court made an order that costs should be paid into court, pending further order of the Supreme Court.

11. We are satisfied that that was an exceptional order in unusual circumstances and should not be taken as authority for departing from the normal order that costs should follow the event and, where ordered, should be paid, and that is the order that we make.

Signed

Baker, P

Signed

Bell, JA

Signed

Bernard, JA