



Neutral Citation Number: [2020] CA (Bda) 15 Civ

Case No: Civ/2020/9

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS
ORIGINAL COMMERCIAL JURISDICTION
THE HON. CHIEF JUSTICE
CASE NUMBER 2019: No. 491**

Dame Lois Browne-Evans Building
Hamilton, Bermuda HM 12

Date: 02/11/2020

Before:

**JUSTICE OF APPEAL GEOFFREY BELL
(Sitting as a Single Judge of the Court)**

Between:

ANDREW CRISSON

Appellant

- and -

MARSHALL DIEL & MYERS LIMITED

Respondents

Mr. Cameron Hill of Westwater Hill & Co. for the Applicant

Mr. Jai Pachai of Wakefield Quin Ltd. for the Respondent

Hearing date(s): 2 November 2020

APPROVED RULING

BELL JA:

1. By Originating Notice of Motion dated 26 August 2020, Mr Hill seeks an extension of time within which to appeal against the decision of the Chief Justice dated 7 May 2020.
2. I shall refer to that decision as the decision on the variation application, which is to be distinguished from the set-aside application, which has yet to be argued, but which Mr Pachai advises should be argued before the Chief Justice in February 2021.
3. Both applications stem from an injunction granted by Stoneham J on 13 December 2019, in proceedings brought by the Respondent firm (“MDM”) against the Appellant in respect of unpaid legal fees. Although the extension of time sought, and the underlying appeal if such extension were to be granted, relate solely to the Chief Justice’s ruling of 7 May 2020, both the affidavit sworn by Mr Hill on 3 October, and the submissions filed on Friday last, 30 October, contain extensive references to Justice Stoneham’s injunction and the failure of the court to fix a date for the set-aside application. It is important therefore to focus on the material events and their respective dates.
4. The Chief Justice gave his judgement on 7 May 2020. He rejected an application by Mr Crisson to vary Justice Stoneham’s injunction so as to allow for payment from the frozen funds for living expenses and legal fees, on the basis that Justice Stoneham’s injunction was made under the provisions of Order 29 Rule 2(1), and was not a Mareva injunction.
5. The injunction, and the rejection of the variation application were interlocutory, such that any application for leave had to be made within 14 days (i.e. on or before 21 May 2020).
6. Although Mr Hill said in argument that the judgment did not come to his attention immediately, this is not an argument which appears in his affidavit or in his submissions. Indeed, Mr Hill was unable to put a date on the extent of the alleged delay or whether the judgement in fact came to his attention. I reject that argument.
7. In fact, in both his affidavit and submissions, Mr Hill gave as the reason for his failure to comply with the time limits provided for in the rules, a matter which I will refer to as the Bolkiah complaint, when MDM sought to have Mr Hill prevented from continuing to act. Those matters had been raised by MDM before the hearing of the variation application and were dealt with by the Chief Justice on 12 August when he dismissed that application. Mr Hill said in his affidavit that he had agreed that “he would only advise Mr Crisson in relation to the then pending variation application” and offered to provide an undertaking in this regard, although he accepts that this was never done. Despite this admission in his affidavit, Mr Hill’s submissions refer to an undertaking having been given.
8. The question on this application is whether there exist “good and substantial reasons for the failure to appeal within the prescribed period” per Order 2 Rule 4(2) of the Rules of the Court of Appeal

for Bermuda 1965. In my judgment no such good and substantial reasons have been made out. Mr Hill acknowledges in his affidavit that he remained free to advise Mr Crisson in relation to that pending variation application, and indeed he did so, filing written submissions comprising 96 paragraphs (see paragraph 13 of the Chief Justice's judgment).

9. But if there was any doubt as to Mr Hill's ability to act on the variation application, this was put beyond doubt in an email sent by the Registrar of the Supreme Court on 21 April 2020, indicating that until the issue of the Bolkiaah complaint had been determined, the Chief Justice had directed that the variation application should proceed, as indeed it did.
10. The notion that Mr Hill was in any way constrained from continuing to act in the variation proceeding by filing a timely notice of appeal following delivery of the Chief Justice's ruling seems to me to be completely unsustainable, and I do not accept that Mr Hill was unable to file a notice of appeal within the 14 day time limit if so instructed. Instead, he allowed a full three months to elapse before making his application out of time.
11. Sir Alan Huggins JA in *Waxoyl* (Civil Appeal No. 29 of 1993, judgment dated 21 March 1995), emphasised the need for the Rules to be followed in relation to the explanation given for the failure to comply with the time limits imposed by the rules.
12. In the circumstances I would refuse the application.

