[2013] JMCA App 27

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 109/2012

APPLICATION NO 189/2012

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE McINTOSH JA

BETWEEN JACQUELINE KING APPELLANT

AND SANDCASTLES RESORTS LIMITED RESPONDENT

AND

BETWEEN JACQUELINE KING APPLICANT

AND PROPRIETORS STRATA PLAN NO 401 RESPONDENT

Miss Tamiko Smith instructed by Frater, Ennis and Gordon for the applicant

Maurice Manning and Miss Stephanie Forte instructed by Nunes, Scholefield Deleon and Company for the respondent, Sandcastles Resorts Ltd

19 & 22 February 2013

ORAL JUDGMENT

MORRISON JA

[1] This is an application to enlarge the time for filing and serving notice and grounds of appeal and to enlarge the time for the filing of written submissions. The applicant seeks to appeal from an order for security for costs which was made by Beckford J on 5 July 2012.

[2] A notice of appeal was filed on 25 July 2012, but the applicant now apprehends that this is a procedural appeal, as a result of which, the appeal ought to have been filed within seven days of the decision appealed from (Court of Appeal Rules 2002, rule 1.11(1)(a)). So it is now just short of two weeks out of time. The applicant challenges Beckford J's order that the applicant should provide security for the respondent's costs in the action, in the sum of $625,000.00, to be paid within 30 days of the date of the order. Miss Smith for the applicant submits that that order is excessive, exorbitant, prohibitive and wholly insurmountable.

[3] The application is resisted by Mr Manning for the respondent on a number of grounds and it seems to us that the application in this case faces a number of hurdles. First, this is an appeal from an interlocutory order, as a result of which, as Mr Manning quite properly pointed out, leave is required pursuant to section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act. Rule 1.8(2) of the Court of Appeal Rules 2002 requires that in these circumstances, the application for leave must first be made to the court below. There is no indication from the formal order filed on 10 July 2012 that an application for leave to appeal was made and refused by the learned judge below.

[4] But in any event, even if the applicant was able to surmount this hurdle, the proposed appeal in this case is from an order for security for costs, which is a matter entirely for the discretion of the judge in the court below. On well settled principles, this court will only interfere with the exercise of a discretion if it is shown that the judge acted on a wrong principle; in particular, it is not open to this court to interfere with a judge's exercise of her discretion on the ground that individual members of this court or the court acting together might have taken a different view on the application. The applicant's real complaint in this matter does not raise any question of the judge acting in excess of authority: it is that the sum ordered by the learned judge is too high. It is clear from the amount which was asked for security for costs, $950,000.00, that, in ordering that the applicant give security for costs in the lesser sum of $625,000.00, the learned judge applied her mind to the exercise that was before her and exercised her judgment in the light of the circumstances. Absolutely no reason has been shown to us upon which this court should interfere on appeal. Miss Smith's invitation to the court to reduce the sum ordered to $130,000.00 is totally unsupported by any justification in the evidence.

[5] In all the circumstances, we consider that, notwithstanding Miss Smith's articulate and attractively put submission, the applicant has not shown that she has an appeal that has a reasonable prospect of success, and on that basis the application must be dismissed, with costs to the respondents to be agreed or taxed.