

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 63 OF 2008

MOTION NO. 18 OF 2009

**BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.**

**BETWEEN ROSH MARKETING LIMITED APPLICANT
AND CAPITAL SOLUTIONS LIMITED RESPONDENT**

Miss Carol Davis for the Applicant.

Christopher Dunkley, instructed by Phillipson Partners for the Respondent.

November 26 and December 10, 2009

HARRISON, J.A.

1. The applicant seeks conditional leave to appeal to Her Majesty in Council from a decision of this Court, delivered on July 30, 2009, allowing an appeal from the judgment of Daye, J., in the Supreme Court wherein summary judgment which was awarded in favour of the applicant was set aside. It was further ordered that the matter between the parties should proceed to case management conference with a view to the trial date being fixed in due course.

2. Briefly, the appeal had its genesis in a claim brought against the defendant/respondent who had sued the defendant on his cheque in the sum of

US\$300,000.00 which said cheque was dishonoured. The applicant/respondent contended that he had given consideration to a third party who had provided for the said consideration, a properly authorized cheque drawn on the defendant's account.

3. The defendant filed a defence claiming inter alia, that no consideration for the cheque had passed to them, and as such they were not bound by it. The applicant succeeded before Daye, J., and summary judgment was awarded in favour of the applicant.

4. This application seeking leave to appeal to Her Majesty in Council is made pursuant firstly, to section 110 (1) (a) of the Constitution of Jamaica on the following ground:

"The matter in dispute on the Appeal to Her Majesty in Council is of a value of one thousand dollars or upwards and/or the appeal directly or indirectly involves a claim to or question respecting property or a right of value of one thousand dollars or upwards."

In the alternative, the applicant contends pursuant to section 110 (2) that:

"The questions involved in the proposed appeal are of great general or public importance or otherwise and ought to be submitted to Her Majesty in Council."

5. The applicant argues that the proposed appeal relates to the interpretation of certain sections of the Bills of Exchange Act and that the important questions raised are set out inter alia as follows:

- (a) Whether on a proper interpretation of the Bills of Exchange Act, consideration is required to pass directly to the drawer of the

cheque, and/or whether it was sufficient that proper consideration was in fact given albeit to a third party.

- (b) Whether the payment by the appellant to the third party constituted an antecedent liability which was not valuable consideration within the meaning of section 27(b) of the Bills of Exchange Act.

6. Mr. Dunkley, on behalf of the respondent, has resisted the application for leave to appeal to the Privy Council on two bases, namely:

- 1. That the judgment of the Court of Appeal is plainly not a final judgment in that the dispute between the parties has been referred to the Supreme Court for trial. In those circumstances, he says, that leave to appeal to Her Majesty in Council would not lie as of right; and
- 2. That the proposed appeal does not raise an appeal of great general or public importance or otherwise.

7. We turn first to the application under section 110 (1) (a). There is clearly no doubt in our minds that there is merit in the submissions made by Mr. Dunkley on this issue. When one applies the "application test" which this Court has been applying over the years, it could not be said in the instant matter that there was a final order or judgment which would satisfy the test for an appeal as of right.

8. With respect to the alternative limb, in matters of this kind, the applicant has the responsibility to establish that the question involves a matter of great general or public importance.

9. The principle which guides the Court in deciding whether to grant leave is that it is not enough that a difficult question of law arose, it must be an important question of law; further, the question must be one not merely affecting the rights of the particular litigants, but a decision which would guide and bind others in their commercial and domestic relations. See **Olasemo v Barnett Ltd.** (1995) 51 WIR 191.

10. In our judgment, this case turns on its particular circumstances. The issue before the Court was whether on the facts of the case it could be said that the learned Judge was correct in holding that the appellant had no real prospect of defending the claim. In its decision this Court considered the questions raised in respect of the value given for the cheques and found that the appellant could only be liable to the respondent if the respondent was a holder for value and in keeping with section 29(b) of the Bills of Exchange Act, a holder for value must be a holder in due course.

10. Although this Court felt that the original payee of a bill of exchange cannot be recognized as a holder in due course, there is still the question to be determined as to whether the respondent is a holder for value. We are therefore of the view that the applicant has failed to show that his application qualifies under section 110 (2). It could be said that the application is a bit premature. The alternative ground also fails.

11. In the circumstances, the Motion is dismissed. There shall be costs to the respondent to be taxed if not agreed.