

JAMAICA

IN THE COURT OF APPEAL

MOTION NO. 60/01

**BEFORE: THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE PANTON, J.A.**

BETWEEN: NEDZIN GILL APPLICANTS

CHRISTINE FORREST

A N D: WILFORD WILLIAMS RESPONDENT

Leighton Miller for the applicants

R.S. Pershadsingh, Q.C., for the respondent

February 11, 12, and March 22, 2002

PANTON, J.A.

On February 11 and 12, 2002, we heard and determined this application. On the latter date, we not only gave our decision but also our reasons, albeit orally. The reasons have now been reduced into writing.

On November 9, 2001, the applicants filed an "application for stay of execution and notice of motion for leave to file notice and grounds of appeal out of time". The notice reads:

"Take notice that this Honourable Court will be moved on the 11th day of February, 2002 at 9.30 in

the forenoon, or so soon thereafter as counsel may be heard, on the hearing of an application on behalf of the defendants/appellants pursuant to Rules 9 and 22 of the Court of Appeal Rules and/or the inherent jurisdiction of this Honourable Court for the following:-

- (a) that the time for the filing of the notice and grounds of appeal be extended to 14 days from the hearing of this application;
- (b) that the costs of this application be costs in the cause;
- (c) that there be liberty to apply; and
- (d) that there be such further and/or other relief as may be just".

It will be observed that in this notice there is no mention of a stay of execution, nor did the notice contain any reference to the judgment that the applicant was seeking to appeal against. This latter observation is of some significance as there were two judgments delivered in the matter in the recent past. Firstly, on the 28th November, 2000, there was the judgment of Theobalds, J. in the assessment of damages; and, secondly, there was the judgment of Rattray, J. delivered on September 19, 2001, in which he dismissed an application to set aside service of the writ of summons and all proceedings flowing therefrom.

Mr. Miller, when requested by the Court to clarify the situation, advised that the intention was to seek leave in respect of the judgment of Theobalds, J. Thereupon, he sought and was granted leave to amend the notice of motion to read thus, after the word "following":

"(a) a stay of execution of the judgment of Theobalds, J. herein; and

(b) that the time for the filing of the notice and grounds of appeal against the said order be extended to fourteen days from the hearing of this application".

The paragraphs listed as (b), (c), and (d) in the original notice were now to read (c), (d), and (e) respectively.

The applicants, through an affidavit filed by Nedzin Gill, stated that at the assessment of the damages on January 31, 2000, they were not represented although they were aware of the notice of the assessment prior to the hearing. No writ of summons had been received by him, but he had met with the respondent's attorney-at-law and had been told that the sum being claimed was in the region of \$50,000 and that there was room for negotiation. He had been invited to sign a document but had declined so to do. According to Mr. Gill, he and the other applicant had not been told of any injury having been received by the respondent. Their understanding was that the claim was in relation to what they regarded as minor damage done to the respondent's motor vehicle.

Bearing in mind the applicants' understanding of the nature of the claim they had to face, it is appropriate to set out at this point the order that the applicants wish to challenge.

"Pursuant to interlocutory judgment herein entered on the 31st day of January 2000 whereby it was ordered and adjudged that the plaintiff recovers against the defendants damages to be assessed and costs to be taxed and such damages having been assessed by His Lordship the Honourable

Mr. Justice Theobalds on the 28th day of November 2000 in the presence of Mr. R. S. Pershadsingh of Queen's Counsel, Attorney-at-law for the plaintiff, the defendants not appearing nor being represented and services having been proved IT IS THIS DAY ADJUDGED that the plaintiff recovers against the defendants NEDZIL GILL and CHRISTINE FORREST as follows:

SPECIAL DAMAGES \$38,115.00

With interest at 6% per annum from
25/6/97 to 28/11/2000

GENERAL DAMAGES \$350,000.00

With interest at 6% per annum from
2/12/99 to 28/11/2000

Plus costs to plaintiff to be agreed or taxed."

No affidavit in response was filed by the respondent. In the light of that fact, and considering the state of the law, it is quite surprising that learned Queen's Counsel opposed the application. The legal position was summarised by me in **Leymon Strachan v. The Gleaner Co. Ltd and Dudley Stokes** (Supreme Court Civil Appeal- Motion No. 12/99, delivered on December 6, 1999). That too was an application by motion for extension of time to apply for leave to appeal an order of a judge of the Supreme Court. At page 20 of that unreported judgment, I said:

"The legal position may therefore be summarised thus:

- (1) Rules of court providing a time-table for the conduct of litigation must, prima facie, be obeyed.
- (2) Where there has been a non-compliance with a time-table, the Court has a discretion to extend time.

- (3) In exercising its discretion, the Court will consider-
- (i) the length of the delay;
 - (ii) the reasons for the delay;
 - (iii) whether there is an arguable case for an appeal, and
 - (iv) the degree of prejudice to the other parties if time is extended.
- (4) Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time, as the overriding principle is that justice has to be done."

In the circumstances of this case, liability is admitted. There is unchallenged evidence that the applicants had been led to believe that the respondent would have been engaged in negotiating a settlement with the applicants for a sum in the region of \$50,000.00. It goes without saying that the learned judge's assessment of the damages would not have been governed by the applicants' expectation. However, the medical evidence presented an interesting picture. It was presented in the form of a report dated October 20, 2000, signed by Dr. H. Laws Gascoigne. It stated that the respondent was assessed as having "injury to the neck secondary to motor vehicle accident". He was x-rayed, and a review of that x-ray indicated that "the bony structures of the neck appeared unremarkable". The report also included a note that the respondent had been attending the health centre of the University of the West Indies "for management of his other chronic illnesses". In the light of this medical evidence, the applicants seem to have an arguable case that the award

of \$350,000.00 for general damages is inordinately high. That being so, there can be no doubt that the applicants ought to be allowed to challenge the award.

Accordingly, leave is granted to the applicants to file notice and grounds of appeal out of time against the order of Theobalds, J. The notice and grounds of appeal shall be filed and served within fourteen days of the date hereof. Costs of this application shall be the respondent's, such costs to be agreed or taxed. Execution of the judgment of Theobalds, J. is stayed pending the hearing and determination of the appeal herein.

BINGHAM, J.A

I agree.

WALKER, J.A.

I agree.