JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 14/91

COR: THE HON. MR. JUSTICE CAREY, PRESIDENT (AG.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

BETWEEN	JAMAICA CITIZENS BANK LIMITED	APPLICANT/APPELLANT
AND	DYOLL INSURANCE COMPANY LIMITED	PLAINTIFF/RESPONDENT
AND	LEON REID	DEFENDANT/RESPONDENT

Michael Hylton for applicant/appellant (intervener)

Gordon Robinson for plaintiff/respondent

Lawrence Haynes for defendant/respondent

25th, 26th & 31st July, 1991

CAREY, P. (AG.):

Dyoll Insurance Company Limited are the plaintiffs in an action against Leon Reid, in which they claim -

> 1. An injunction restraining the Defendant whether by himself or through his servants and/or agents from erecting or permitting to be erected on lands known as Lot 7 Billy Dunn in the parish of St. Andrew a building other than a private dwelling house, to wit, an apartment complex.
>
> 2. Damages for nuisance and/or breach of restrictive covenant."

The appellant applied for leave to intervene, or more precisely, to be added as a defendant on the ground that as mortgagee in respect of the premises known as lot No. 7 Billy Dunn in St. Andrew, his rights and interests in the premises would be adversely affected. By an Order dated 20th June, 1990, Master Harris (Ag.) refused the Order sought. The appeal is against that order. The power of the Court to add a party or parties lies in Section 100 of the Civil Procedure Code. It is in the following terms (so far as is material)

> "100. .....
>
> The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms

> "as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

This provision embraces two differing situations viz, parties who ought to have been joined and secondly, parties whose presence before the Court may be necessary to enable the Court to settle all matters in dispute effectually. The question at issue in this appeal, is whether the second situation envisaged in the rule, covers the circumstances in the instant case. Mr. Hylton for the intervener contends that the order for joinder should be made: Mr. Robinson takes the contrary view.

The rule in England which is akin to Section 100 of the Civil Procedure Code is R.S.C. Order 15 r. 6 (2)(b). The relevant terms of the rule are identical -

> "whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon."

In dealing with this rule, Lord Denning, M.R. in **Gurtner v. Circuit** [1968] 2 Q.B. 587 at p. 595 said this -

> ".....it seems to me that when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to 'be effectually and completely determined and adjudicated upon' between all those directly concerned in the outcome."

The case under the rule which was superseded by R.S.C. Order 15 r.6 (b) showed that a person may be added as a party who is directly affected either legally or financially by any order which may be made in the action. Mr. Robinson submitted that a narrow meaning should be given to "financial rights" and accordingly the mortgagee's interest in the present action was a mere commercial interest. He relied on **Amon v. Raphael Tuck & Sons, Ltd.** [1956] 1 All E.R. 273 where Devlin, J held that a mere commercial interest was sufficient to enable the joinder to take place. That case was treated by a Privy Council decision of **Penang Mining Co. v. Choong Sam** [1969] 2 Malay Law Journal 52 as having been rightly over-ruled by **Gurtner v. Circuit** (supra). **Amon v. Raphael Tuck & Sons, Ltd.** (supra) represented the narrow interpretation of the rule which **Gurtner v. Circuit** (supra) disapproved. The more liberal approach was also taken in **Re Vandervell Trusts: White v. Vandervell Trustees Ltd. & Anor.** [1969] 3 All E.R. 496. Lord Denning at p. 499 expressed himself in these words -

> "That wide interpretation was adopted and applied by this court in the recent case of **Gurtner v. Circuit** [1968] 1 All E.R. 328; [1968] 2 Q.B. 587. I know that there have been cases at first instance (such as **Amon v. Raphael Tuck & Sons, Ltd.** [1956] 1 All E.R. 273; [1956] 1 Q.B. 357, and **Fire Auto and Marine Insurance Co., Ltd. v. Greene** [1964] 2 All E.R. 761; [1964] 2 Q.B. 687), when the rule has been given a narrow interpretation. But that narrow interpretation should no longer be relied on. We will in this court give the rule a wide interpretation so as to enable any party to be joined whenever it is just and convenient to do so. It would be a disgrace to the law that there should be two parallel proceedings in which the selfsame issue was raised, leading to different and inconsistent results."

In my view, one of the purposes of joinder of parties, is to ensure that there is not a multiplicity of action. I am reinforced in this view by the statement of Sachs L.J. in **Re Vandervell Trusts** (supra) where he said at p. 500 -

> It seems to me that anything that will diminish a multiplicity of actions is something which will diminish the cost of litigation: accordingly that factor should be taken into account when construing the above rules. It follows, of course, that I

> "respectfully differ from so much of the judgment of Devlin, J., in **Amon v. Raphael Tuck & Sons, Ltd.** [1956] 1 All E.R. 273; [1956] 1. Q.B. 357, as would tend to a narrow construction."

This factor makes the modern interpretation, in my judgment, the proper approach to Order 15 r. 6 and therefore to Section 100 of the Civil Procedure Code.

I must mention **Sanders Lead Co. Inc. v. Entores Metal Brokers Ltd.** [1984] 1 All E.R. 857 in which it was held that -

> "A mere commercial interest in the outcome of the action, divorced from its subject matter, such as the interest of a creditor of one of the parties, was not sufficient to entitle a person to intervene."

Mr. Gordon Robinson relied very heavily on this case as demonstrating the return by the English Court of Appeal to the narrow interpretation of the Order. But in my view, this case is distinguishable from the present case. In that case, the Court, was being asked to join "a mere creditor." This case is valuable however for another reason. It shows that there need be no cause of action between the intervener and one of the parties; it is enough that the intervener has some direct interest in the subject matter. In the instant case, the party who wishes to be joined is the mortgagee of the premises. In my opinion, the mortgagee has a far more substantial interest in the outcome of the action. Indeed, Mr. Robinson said that if the action succeeded, the appellants would be obliged to foreclose the mortgage and file suit. The value of the mortgaged property, would plainly depreciate. This concession suggests that not only are the financial interests of the mortgagee affected, but so, would their legal rights.

In the result therefore, Master Harris fell into error and applied the wrong principles to arrive at her decision. For these reasons I agree with my brothers that the appeal be allowed and the order of the Court below be set aside. We ordered that the appellant be added as a defendant and we made a consequential order as to costs.

FORTE, J.A.:

I agree.

BINGHAM, J.A. (Ag.):

I agree.