

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO 33/2018**

**APPLICATION NO 79/2018**

**BEFORE: THE HON MR JUSTICE MORRISON P  
THE HON MRS JUSTICE SINCLAIR-HAYNES JA  
THE HON MR JUSTICE PUSEY JA (AG)**

<b>BETWEEN</b>	<b>TYRONE SEAN LEWIS</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>AND</b>	<b>ANNETTE JEAN BLOUNT</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>AND</b>	<b>COURTNEY GEORGE LEWIS</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>AND</b>	<b>NATIONAL COMMERCIAL BANK JAMAICA LIMITED</b>	<b>RESPONDENT</b>

**Applicants in person**

**Litrow Hickson instructed by Myers Fletcher and Gordon**

**13, 19 December 2018 and 27 April 2020**

**MORRISON P**

[1] I have read in draft the reasons for judgment of my brother Pusey JA (Ag) and agree with his reasoning and conclusion. I have nothing to add.

**SINCLAIR-HAYNES JA**

[2] I too agree.

## **PUSEY JA (AG)**

[3] This is an application for leave to appeal against an order of K Anderson J on 23 March 2018. The learned judge granted the respondent's application for summary judgment against the claimants, refused the applicants' application for summary judgment and ordered costs against the applicants.

[4] The applicants, Tyrone and Courtney Lewis, are business persons who primarily carried out the transaction in this matter. The applicant, Ms Annette Blount, is a joint owner of the subject property at 67 Harwood Drive, Washington Gardens and guarantor of the loan, which is subject of this action. The respondent, National Commercial Bank Jamaica Limited, is a commercial bank carrying on business in Jamaica.

[5] When the matter first came for hearing in November 2018 it was discovered that leave to appeal had not been sought in the court below. This court, mindful of the fact that the applicants were self-represented, guided them to have the application for leave to appeal heard by the court below. That application was heard by K Anderson J and refused. This court then proceeded to hear the application on 13 December 2018. On 19 December 2018 we made the following order:

- “1. The application for leave to appeal is refused.
2. No order as to costs.”

We promised then to reduce our reasons to writing. With an apology for the delay, this is a fulfilment of that promise.

[6] I understand the applicants to be asserting that they sought and obtained a loan from the respondent for the sum of over \$4,900,000.00. The loan was to assist in obtaining trucks which would be used for commercial haulage of aggregate. The applicants contend that the loan was secured by a promissory note on the trucks.

[7] The applicants assert that the persons who had contracted the haulage done by the trucks did not pay promptly and therefore the applicants informed the respondent of the difficulty and sought an additional loan from the bank. This sum was secured by a mortgage on the subject property. The mortgage was for the sum of \$5,250,000.00. The applicants indicated that this sum was in addition to the original loan. The applicants argue that the trucks were security for the original loan and the mortgage was a second loan.

[8] The applicants contend that it was the respondent which proposed this additional loan which was secured by a mortgage. In their view, this was an additional amount which they sought from the bank. This money was needed as working capital to maintain the business. The applicants indicated that their understanding was that there was no need for additional security as the trucks were security for the loan by way of the promissory note.

[9] The applicants contend that it was as a result of the negligence of the respondent in not providing the second loan, that they were unable to service the loan.

[10] The respondent's case rests on the documents. These are the same documents upon which the applicants rely. A careful reading of the documents shows that the

applicants obtained a loan for the \$5,250,000.00 and signed the relevant mortgage document. This sum was in fact credited to the applicants, who acknowledged that they received it. The documents also show that they received legal advice before entering into the loan/mortgage agreement.

[11] The applicants displayed a document that they contend demonstrated the fraud by the respondent bank. This document was said to be the link between the two agreements, namely the agreement secured by promissory note and the agreement secured by mortgage. Mr Courtney Lewis, on behalf of the applicants, indicated that he had sought an investigation of this fraud but the court below was unwilling to enter into such an investigation.

[12] Having examined all the documents and listened carefully to the applicants' arguments, the court was fully satisfied that the factual position was as set out in paragraph [10] above.

[13] The principle governing the grant of leave to appeal is, to put it simply, that the applicants must show a reasonable prospect of success in the proposed appeal. That is, they must show an arguable case that the learned judge in the court below misapplied some legal principle or failed to consider some important aspect of the evidence.

[14] In this case there is no indication that the court below failed to apply the law. The applicants disagree with the judge but have not identified an issue of law that the judge has not followed. Additionally, all the relevant facts rose before this court have been considered by the learned judge.

[15] The court noted that the applicants at this time are not represented by attorneys. We understand that this puts them at a disadvantage in assessing any legal points that are in their favour that the judge may have overlooked or misapplied or that the respondents may have failed to properly deal with.

[16] For that reason, the court took great care in examining the evidence and submissions to determine whether there are any facts or legal principles that may assist the applicant.

[17] After extensive review we have not found any legal points upon which the applicants may rely.

[18] It is for the foregoing reasons that, as indicated in paragraph [5] herein, the application for leave to appeal is refused.