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1 IN CHAMBERS  
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 283 OF 2000

6 BETWEEN:

7 JUAN GARCIA

Plaintiff

10 AND:

11 MCALPINE (CAYMAN) LTD.

First Defendant

14 AND:

15 ERROL RANKINE

Second Defendant

18 BEFORE: The Honorable Madam Justice Levers

21 APPEARANCE:

22 Counsel for the Plaintiff: Mrs. Keva Reid of McKinney Reid & Co.  
23 Counsel for the First Defendant: Mr. William Helfrecht of Ogier & Boxalls  
24 Counsel for the Second Defendant: Mr. Delroy Murray of Associated  
25 Advocates Chambers

27 Heard: 21<sup>st</sup> November 2005

28 REASONS



30 Levers J.

32 This is an application by the Second Defendant, Errol Rankine under section  
33 14 (a) of the Grand Court Rules.



1 He submits that by virtue of Order 14(a) (1) - the Court may upon its own  
2 motion determine any question of law arising in any Cause or matter at any  
3 stage of the proceedings, where it appears to the Court that:

4 (a) Such question is suitable for determination without a full trial of the  
5 action; and

6 (b) Such determination will finally determine (subject to any possible  
7 appeal). The entire cause or matter or any claim or issue therein.

8

9 Subsection 14 (a) (2) reads:

10

11 "Upon such determination, the Court may dismiss  
12 the cause or matter, or make such orders or  
13 judgment as it deems fit."  
14

15 Subsection 3 reads:

16

17 "The Court shall not determine any question under  
18 this Order unless the parties have either (a) had an  
19 opportunity of being heard on the question or (b)  
20 consented."  
21

22 The law allows in certain circumstances for preliminary issues to be tried  
23 and the cause of action to be dismissed against any defendant that is not  
24 joined properly or against whom there is no cause of action. If the issue is

1 one of law, the Court will further order the issue to be tried on the pleadings  
2 or on a case stated or on an agreed statement of facts. In **Allen v Golf Oil**  
3 **Fining Limited** [1981] AC 101 HL, Lord Roskill said:

4

5 “The preliminary point procedure can in certain  
6 classes of cases be invoked to achieve the desirable  
7 aim both of economy and simplicity. But cases in  
8 which invocation is desirable are few.

9

10 His lordship gave two examples of situations  
11 where the procedure may be appropriate:

12

13 (a) where ‘a single issue of law can be isolated  
14 from the other issues in a particular case,  
15 whether of fact or of law, and its decision may  
16 be finally determinative of the case as a  
17 whole.’

18 (b) Where the ‘facts can be agreed and the sole  
19 issue is one of law.’

20

21 Before reviewing the facts of this case I bear in mind the words of Lord  
22 Scarmon in **Tilling v Whiteman** [1980] AC 1. He said:

23

24 “They were too often treacherous short cuts. Their  
25 price can be delay, anxiety and expense.”

26

27 The danger, of course is that if the Court perhaps on appeal decides against  
28 the point of law the case has to go back to the courts of first instance to be

1 tried. One thing the House of Lords has protested against is the making of  
2 orders to determine points of law on assumed facts.

3

4 **The Facts of this Case**

5

6 The alleged facts are that the Plaintiff was employed to the Second  
7 Defendant who loaned him to the First Defendant. The question therefore  
8 arises, what is the scope of an employer's duty to his employees and in what  
9 circumstances does an employee who is the general employer of one person  
10 but whose services are temporarily put at the disposal of another, remain an  
11 employee of the general employer and not the particular employer, so as to  
12 render the general employer liable for injuries caused to the employee whilst  
13 in the employ of the particular employer.

14

15 Mr. Murray relies on the statement of claim, the amended defence and the  
16 witness statements. He asks this Court to look at the witness statements  
17 wherein it is admitted that the First Defendant was the one who had control  
18 of the employee at the material time. However, the law does not exonerate  
19 the original employer from a duty of care to the employee even in those

1 circumstances. The original employer's duty to his employee is to see that  
2 reasonable care is taken.

3

4 The agreed facts in this matter are that the Plaintiff was employed to the  
5 Second Defendant. The Second Defendant loaned him to the First  
6 Defendant and payment was made by the First Defendant to the Second  
7 Defendant for the Plaintiff's services. However, as Lord Dunedin said in  
8 **Bain v Central Vermont Ry** [1921] 2 AC at page 412 at 416:

9

10 "Payment is not everything, it is a circumstance  
11 pointing to who is the employer, but the real test is  
12 control."  
13

14 I have read the witness statements and it is clear that the Second Defendant's  
15 agent is the one who gave the Plaintiff the directions and had control over  
16 him at the material time. However, so much depends on the evidence that  
17 will be given *viva voce* at the trial as to the circumstances in which the  
18 employee was loaned, the conditions under which the employee was loaned  
19 and the extent of the knowledge the Second Defendant had, as to the  
20 working conditions to be provided by the First Defendant. The evidence at  
21 present in the witness statements as that the Second Defendant avers that he  
22 knew the First Defendant was a well established construction company and

1 therefore felt the employee would be safe. That with respect is not  
2 sufficient. As I have stated previously, the House of Lords has protested  
3 against orders for the trial of preliminary points of law on assumed facts and  
4 I think it is safe to say that if I allow this application, I will have to assume  
5 certain facts as to knowledge of the Defendant and the conditions of transfer  
6 of the Plaintiff's employment. In those circumstances, I dismiss the  
7 application and reserve the question of costs to be argued by Counsel now,  
8 or at the trial.

9

10 Dated this 6<sup>th</sup> December 2005

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13 Judge of the Grand Court