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In the Grand Court of the Cayman Islands
In Chambers the 31st May 1978

Before His Lordship Sir John Summerfield, C.B.E., Q.C., Chief Justice

Cause No. 634 of 1978

BETWEEN	KARL. R. BRANDON	PLAINTIFF
AND	IVAN FARRINGTON	DEFENDANT

Mr. Brandon in person representing himself

Mr. MacDonald for defendant

Application to remove stay of execution

RULING

An examination of the record herein and related documents reveals the following state of affairs.

The applicant (in this application) was the successful claimant in plaint No.28 of 1967 against the respondent (in this application) in a suit for damages for assault. That plaint was filed on the 25th April, 1967.

On the 22nd July, 1967, application was made before Mr. Justice Monteith by Mr. MacDonald, Counsel for the respondent, for an order that the trial of that action be before a jury. The application was refused and so was an application for a stay of proceedings. On the same day Mr. MacDonald gave notice of appeal against refusal of the application and this can be referred to as appeal No.1.

The substantive case was fixed for trial on the 25th July, 1967. Mr. MacDonald filed a notice of withdrawal from the case. The respondent filed a notice of change of solicitor.

On the 25th of July, 1967, the trial date, neither Mr. MacDonald nor the respondent appeared and Mr. Justice Monteith ruled that the case be heard in default of appearance. The case proceeded in the absence of the respondent or any counsel for him. It was concluded on the 26th July, 1967 and judgment was reserved.

Mr. Justice Monteith sealed his typed judgment in an envelope which he lodged with the Clerk of the Courts within the 2 month period required by section 157 of Cap. 74, with instructions that the judgment was not to be read until after the decision of the Court of Appeal had been delivered.

The Court of Appeal gave judgment in appeal No.1 on the 30th July, 1968, dismissing the appeal.

On receipt of this decision Mr. Horsfall, then Judge of the Grand Court, arranged to open the envelope and to read the judgment sealed therein by Mr. Justice Monteith in open Court in the presence of Mr. MacDonald and the applicant. This was on the 23rd September, 1968.

Before Mr. Justice Horsfall read the judgment, however, Mr. MacDonald objected to its being read on the ground of absence of jurisdiction and also on the ground that, even if the judgment had been lodged within the prescribed two months, the present occasion was not the first opportunity when the judgment could have been read.

Mr. Justice Horsfall then ruled that he was satisfied that he could read the judgment. Mr. MacDonald immediately gave verbal notice of appeal; and this can be described as appeal No.2. ✓

Mr. Justice Horsfall then informed Mr. MacDonald that he proposed to read the judgment and proceeded to do so. ✓

There is an obvious discrepancy in the judgment, in the calculation of the damages award^{ed}, but I am of the view that that aspect is of no concern in this application. ✓

After the judgment was read, Mr. MacDonald again immediately gave verbal notice of appeal against the judgment in court. This can be called appeal No.3. He further requested a stay of execution pending the result of both appeals (appeals Nos, 2 & 3). The appellant then asked for security for costs. Mr. Justice Horsfall's Order reads as follows:

"Stay of execution. ✓
Security for costs: Sum of £50. or one surety of £50."

Appeal No.1 was disposed of as recited hereinbefore. ✓

Appeal No.3 was never proceeded with. Grounds of appeal were never filed. Accordingly, the right of appeal ceased and determined. ✓

There remains appeal No. 2. The view has been taken that the order for the stay of execution relates ^{to} this appeal as well as appeal No.3. Although it is ambiguous, that is the view I must take for the purpose of this application. If the stay does not apply to appeal No.2 then, of course, the application is unnecessary.

Proceedings in appeal No.2 became sarled up because Mr. Justice Horsfall never prepared reasons for his decision. In the absence of written reasons, the

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intending appellant (i.e. the respondent) could not be advised of any such reasons. That is a step in the appeal procedure preparatory to an appellant filing grounds of appeal. For this reason the respondent (the intending appellant) filed no grounds of appeal in Appeal No.2. No attempt has been made to bring the matter before the Court of Appeal without the reasons of the judge, with an explanation for their absence.

Mr. Justice Horsfall retired as a judge of the Grand Court many years ago and has since been out of the jurisdiction.

I recognise that the respondent has been faced with this procedural difficulty. Nevertheless for 9 years or so he has taken no active steps to overcome this procedural difficulty by any process before this court or the Court of Appeal.

The Clerk of the Courts is unable to take any steps with regard to appeal No.2 and the Court of Appeal in the absence of the grounds of appeal.

In acquiescingⁱⁿ this deadlock the respondent effectively denies the applicant of the fruits of his judgment and would appear to be able to continue to do so indefinitely unless this application is allowed.

One cannot escape the conclusion that the respondent is content to allow this state of affairs to continue and to take no other appropriate steps to prosecute his appeal in appeal No.2.

The respondent resists this application for the removal of the stay of execution. He urges that there were special circumstances leading to the stay of execution in the first place and that, in any event, the stay should remain until the defect in the judgment is cured.

In my view, any steps necessary to cure the defect in the judgment would be the subject matter of a separate process and would have nothing to do with this application.

The stay was granted not for the purpose of correcting any error in the judgment but only for the purpose of an appeal to the Court of Appeal which, on the showing over the past 9 years, is never likely to be brought before that court.

For the foregoing reason, I allow the application and order that the

stay of execution be removed. This order will take effect one month after the date of this ruling to enable the respondent to apply to the Court of Appeal for an order for stay of execution if he seriously intends to pursue appeal No.2. ✓

The applicant is to have the costs of this application.

(Sgd.) J. b. Summerfield -

Sir John Summerfield

CHIEF JUSTICE

5 June 1978.