

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2008/0197

BETWEEN:

IN THE MATTER OF THE ARBITRATION ACT CAP 19
SECTIONS 18 AND 19

and

IN THE MATTER OF AN ARBITRATION BETWEEN
ONE CALL CONSTRUCTION COMPANY LIMITED
(TRADING AS ONE CALL COLLECTION SERVICE)
AND GRENADA SOLID WASTE MANAGEMENT AUTHORITY

BETWEEN:

ONE CALL CONSTRUCTION COMPANY LIMITED
(TRADING AS ONE CALL COLLECTION SERVICE)

Claimant

and

GRENADA SOLID WASTE MANAGEMENT AUTHORITY

Defendant

Appearances:

Ms. D. Forrester for the Claimant
Ms. A. Henry for the Defendant

2009: May 22

DECISION

[1] **HENRY, J.**, A dispute between the parties herein was submitted to arbitration pursuant to the terms of a contract made between them. The arbitrators gave their decision on 27th February, 2008. Claimant commenced this action by way of a Fixed Date Claim Form filed on March 28th, 2008. The claim seeks an order remitting the award to the arbitrators for reconsideration or alternatively setting aside the award on the grounds that the evidence was not fully recorded and the award was bad on its face.

Thereafter, the claimant filed this application for an order that the time for filing the claim herein be extended to 28th March, 2008 and that the claim be deemed properly filed. The grounds of the application are that the failure to file the claim in time was not intentional and there is a good explanation for the failure.

[2] Claimant asserts that in making the decision as to when to file the claim, it mistakenly applied the old Rules of Supreme Court 1970, Order 59 (4) which provided a period of 6 weeks after an award in which to apply to the Court to remit or set aside an arbitrator's award. The error was made, according to claimant, because the Civil Procedure Rules 2000 make no provision for Arbitration Proceedings; that accordingly the provisions of Part 62.15(1) of the UK Civil Procedure Rules, made applicable pursuant to section 11(1) of the Supreme Court Act, apply; that the UK CPR prescribes a 21 day period after the delivery of the award to file and serve the Claim Form; but that this time limit is not mandatory and the Court has jurisdiction to extend time.

[3] The defendant on the other hand, submits that Part 60 of CPR 2000 regulates the procedure for appeals to the High Court from arbitration proceedings; that the claim filed by the claimant is such an appeal; that the claim is filed out of time and that the Court ought to dismiss same.

[4] The Arbitration Act Cap 19 of the Revised Laws of Grenada is applicable. Section 18 provides:

“18 (1) In all cases where there has been a reference to arbitration the Court may, by order, remit for reconsideration by the arbitrator or umpire any or every matter contained in the reference.

(2) Where the Court has ordered that an award be remitted for reconsideration, the award must, unless the Court otherwise directs, be made within three months from the date of the order.”

Section 19 provides:

“19 (1) ...

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, and where an arbitration or award has been improperly procured, the Court may set aside the award.

“Court” in the Act refers to the High Court.

- [5] The Arbitration Act does not however, prescribe the procedure to be followed in seeking the order in the High Court.
- [6] Claimant asserts that its claim is not an appeal but rather a challenge of the proceedings and of the award made; that Part 60 of the CPR 2000 deals with appeals therefore Part 60 is not applicable. Claimant points out that under the old Supreme Court Rules applications to remit or set aside an award were made by motion supported by affidavit. Claimant therefore filed a Fixed Date Claim Form with supporting affidavit.
- [7] The Rules of Supreme Court 1970 were repealed and replaced with the Eastern Caribbean Supreme Court Civil Procedure Rules 2000. Part 60 deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated. Tribunal is defined in this part as “any tribunal other than a court of law established under an enactment.” Appeals from an arbitration tribunal as well as from a single arbitrator fall within the scope of this Part.
- [8] While section 18 and 19 authorises the High Court to, by order, remit for reconsideration or set aside the award, the word appeal is not found in these sections. However, the nature of the order the High Court is authorised to make gives some indication whether the proceedings in the High Court can fairly be called an appeal.
- [9] An appeal, strictly speaking, is one in which the question is, whether the order of the court [or tribunal] from which the appeal is brought was right on the materials which that court [or tribunal] had before it (per Lord Davey, **Ponnamma v Arumogam** [1905] A.C. 390). Elsewhere an appeal has been judicially defined as “resort to a superior court to review the decision of an inferior court or administrative agency; a complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed,” **Board of Education of Cleveland City School Dist. V Cuyahoga County Board of Revision**, 34 Ohio State 2d 231, 298 N.E.2d 125,128. Yet again “an appeal applicable to courts of law, means a complaint to, and a judicial examination by, a higher court of a decision of an inferior court. The Higher Court then approves, corrects or sets aside the judgment of the inferior court.” **Sita v Olivier** 1967 2 SA 442A at 447-448.

- [10] The claim herein is for the High Court to review the award of a tribunal. The claimant alleges that the award of the tribunal is bad; that it has resulted in unfairness to the claimant and therefore asks that the award be set aside or referred back for reconsideration. It is therefore an appeal to which Part 60 of the CPR 2000 applies.
- [11] The fact that under the old Supreme Court Rules the procedure would have been by way of a motion, does not make it any less an appeal. The new Rules have set up Part 60 as the procedure to be followed. Resort need not be made to the UK Civil Procedure Rules.
- [12] Part 60.4 provides that the claimant must serve the Claim Form and Grounds of Appeal on (a) every party to the proceedings in which the decision was made; and (b) the clerk to the tribunal, minister or other person by whom the decision appealed against was made. Part 60.5 provides that the Claim Form and Grounds of Appeal must be served within 28 days of the date on which notice of the decision was given to the claimant.
- [13] The arbitrators' decision was given on 27th February, 2008. According to the affidavit of service, the Fixed Date Claim Form and an affidavit of Stanford Simon were served on defendant on the 28th April, 2008, some 60 days after notice of the decision, and 32 days out of time.
- [14] The claimant seeks an extension of time and relief from sanction pursuant to Rule 26.8. The Court may grant relief under this rule, only if it is satisfied that the failure to comply was not intentional and there is a good explanation. The Court accepts that claimant's failure to comply was not intentional and that it was due to claimant's Counsel's error. Although the defendant urges that the Court ought to treat the error as fatal and dismiss the claim, the Court considers that a date for hearing of the matter has not yet been fixed, and there will be no prejudice to the defendant if the claim is deemed properly served. It is in the interest of justice that the matter be disposed of by a hearing on the merit. In furtherance of the overriding objective, the Court will grant the claimant's application for an extension of time and relief from sanctions.
- [15] Accordingly, the claimant's application for an extension of time to 28th March, 2008 to file and serve the claim is granted. The claim form and affidavit are deemed properly

served and the claimant is relieved from sanctions. The claimant shall comply with Rule 60.4 (b) within 7 days of this order.

[16] The matter is hereby set down for first hearing on 23rd July, 2009.

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Clare Henry
HIGH COURT JUDGE