

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 92/94

MOTION

**BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.**

BETWEEN	JAMAICA FLOUR MILLS LIMITED	APPELLANT
A N D	WEST INDIES ALLIANCE INSURANCE COMPANY LIMITED AND OTHERS	RESPONDENTS

***David Muirhead QC., and Miss Judith Hanson instructed by
Clinton Hart & Company for the Appellant***

***Emil George QC., John Vassell and Mrs. Ingrid-Mangatal-Munroe
instructed by Dunn, Cox, Orrett & Ashenheim for the Respondents***

May 5, 7-8 and 16, 1997

RATTRAY P.

On the 5th May 1997 the Court of Appeal was moved by counsel for the defendants (hereinafter referred to as the "Insurance Companies") for the following Orders:

"1. For leave to Appeal to the Judicial Committee of the Privy Council from the Judgment of this Honourable Court delivered on the 21st day of March,

1997, allowing the Appellant's Appeal from the final Judgment of the Honourable Mr. Justice Panton delivered on the 28th day of July, 1994 whereby this Honourable Court ordered that the Judgment of the Supreme Court be set aside and judgment entered for the Appellant with costs to be taxed or agreed, both in respect to the trial in the Supreme Court and in the Court of Appeal and that the matter be remitted to the Supreme Court for the damages to be assessed.

2. That the order remitting the matter for Assessment of Damages and execution of the order for costs be stayed pending the determination of the Appeal by the Judicial Committee of the Privy Council."

The matter in dispute between the parties is of a value of over \$1,000.00. Consequently by virtue of the provisions of Section 110(1)(a) of the Constitution of Jamaica the "Insurance Companies" are entitled to be granted leave to appeal as of right. Leave is therefore granted on the following condition:

That the appellants within a period of ninety days from the date hereof enter into good and sufficient security to the satisfaction of the Court of Appeal in a sum of one thousand dollars for the due prosecution of the appeal and the payment of all such costs as may become payable by the appellant in the event of the appeal being dismissed for non-prosecution or the Judicial Committee of the Privy Council ordering the appellant to pay costs of the appeal (as the case may be) and also within the said period take the necessary steps for the purpose of procuring the preparation of the record and despatch thereof to England.

However with respect to the second Prayer in the Motion Counsel for the plaintiff (herein after referred to as the "Flour Mills") has made certain submissions which require to be examined.

The Order of the Court of Appeal remitting the matter to the Supreme Court for damages to be assessed requires that this issue, the quantum of

damages, be determined by the trial Judge Panton J, who has already heard the evidence and the submissions of counsel on damages, but who in view of the fact that he gave his judgment in favour of the "Insurance Companies" made no assessment in this regard.

The Court of Appeal therefore does not anticipate any prolonged hearing with respect to damages. If the proceedings are stayed, the "Insurance Companies" would proceed with their appeal to the Judicial Committee of the Privy Council which if successful would obviate the need for any assessment of damages at all. If unsuccessful, however, at that stage the trial Judge would then proceed with the assessment of damages.

In our view the latter event raises the probability of a further appeal to the Privy Council on the question of quantum of damages, and a further prolongation of a final determination of this matter.

Panton J should therefore embark upon his mandate as early as possible so that if there is any appeal to the Judicial Committee of the Privy Council on that issue, it could be heard at the same time as the appeal against liability. It is just and convenient that the matter should thus proceed.

With respect to the application for stay of execution of the Order for costs pending the determination of the appeal by the Judicial Committee of the Privy Council, Mr. Emil George QC for the "Insurance Companies" has relied upon Rule 6 of the Jamaica (Procedure in Appeals to the Privy Council) Order in Council 1962, which provides as follows:

"Stay of Execution"

6. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into

execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon."

Mr. George QC has adumbrated the principles upon which a stay of execution will be granted, and the terms under which the Court of Appeal will exercise its discretion in this regard.

If I have not gone into his submissions at any length it is no reflection on his industry or presentation.

However, Mr. David Muirhead QC for the "Flour Mills" has submitted that at this stage the judgment appealed from does not require "the appellant to pay money or do any act" and therefore the provisions of Rule 4 dealing with Stay of Execution do not apply. An Order for costs, Mr. Muirhead QC has urged, is not one which requires "the appellant to pay money or do any act."

He found support for this proposition in the judgment of the East African Court of Appeal in ***G. R. Mandavia v. The Commissioner of Income Tax*** [1957] Eastern African Law Reports p. 1, where a Rule in similar terms had to be interpreted, and in our own jurisdiction in the judgment of White JA in ***Lorraine Marie Issa v. John David Stannard and Others***, [SCCA No. 51 of 1983], and in ***Vehicles and Supplies Ltd et al v. The Minister of Foreign Affairs, Trade and Industry***, [SCCA No. 10/89] in the judgment of the Court of Appeal delivered by Rowe P.

In our judgment the submissions of Mr. Muirhead QC are well founded.

The application therefore for a stay of proceedings, and a stay of execution are dismissed with costs to the Jamaica Flour Mills Limited the respondents on the Motion.