

IN THE COURT OF APPEAL OF BELIZE AD 2016  
CIVIL APPEAL NO 21 OF 2014

**Nena Borrero  
Don Blunt  
Venessa Blunt  
Jenny Wildman**

Appellants

v

**Glenn Levy  
Nancy Levy**

Respondents

---

BEFORE

The Hon Mr Justice Samuel Awich  
The Hon Madam Justice Minnet Hafiz Bertram  
The Hon Mr Justice Murrio Ducille

Justice of Appeal  
Justice of Appeal  
Justice of Appeal

E H Courtenay SC and I Swift for the appellants  
D Vernon for the respondents.

---

9 June and 4 November 2016

**AWICH JA**

[1] I have read in draft form the reasons given by Hafiz-Bertram JA for agreeing to the orders that this Court made on 9<sup>th</sup> June, 2016 terminating this intended appeal. I agree to the reasons.

[2] In addition, I would like to make an observation that, it is time the ***Court of Appeal Rules, 1965***, a schedule made under ***s.11 of the Court of Appeal Act, Cap. 90, Laws of Belize***, were updated, in particular, the Rules in ***Order II***, regarding the

procedure for appeal. **Sections 13,14,15,16 and 17 of the Act** may also require updating.

[3] Since the facts of this intended appeal and the reasons for the order made terminating the intended appeal illustrate the points in my observation, it is convenient to set them out. Repetition of some of the points stated by Hafiz-Bertram JA will be inevitable.

[4] The orders that this Court made were made upon an objection in writing, made under **O. II r. 7(1)** by the respondents, the purchasers of property from the appellants, the vendors. The orders were that: 1. the objection by the respondents was upheld; 2. the “notice of appeal”, dated 21 July, 2014 and tendered to the Registrar (the Deputy Registrar) of this Court the same day, was not a true notice of appeal, it did not commence an appeal, it was struck out by the Court; 3. the second notice of appeal bearing the same date, but filed with the Registrar on 4 August, 2014 after leave had been granted was never served on the intended respondents, the appeal was irregular and not properly before the Court; 4. the appeal was dismissed and; 5. costs to be agreed, to the respondents, and could be enforced by realising the undertaking given to the Supreme Court as security for costs.

[5] The respondents were purchasers of property from the appellants, the vendors, under a written contract of sale of land dated 26 March 2014. The purchasers made a claim in the Supreme Court (the court below) that, the vendors had breached the contract. For relief the purchasers claimed specific performance, among others. Before the trial of the claim in the Supreme Court, the purchasers applied for and obtained a summary judgment order on 17 July, 2014 against the vendors. They were aggrieved; they embarked on appeal process.

[6] An appeal to this Court against an interlocutory order of the Supreme Court such as that order, could be made only by leave of the Supreme Court or of this Court – see **s. 14 (1) (a) of the Court of Appeal Act, and Order II rr. 2(1) and (2)**. On 21 July, 2014 attorneys for the vendors presented to the Deputy Registrar an intended notice of

appeal. They had not obtained leave to appeal. The Deputy Registrar correctly did not accept the notice for filing, she advised the attorneys of the need for obtaining prior leave of court. The intended notice was not collected back by the attorneys. In the meantime they sent a copy to the attorneys for the purchasers.

[7] On 30 July, 2014 the attorneys for the vendors obtained leave to appeal from the summary judgment order of the Supreme Court. The order granting leave was perfected very late on 7 May, 2015. On 4 August, 2014 the attorneys re-tendered successfully the intended notice of appeal for filing. An affidavit filed on behalf of the vendors stated that, the notice of appeal was subsequently served on the attorneys for the purchasers by enclosing it in an envelope which forwarded a letter dated 13 August, 2014. The letter was about a draft order granting leave to the vendors to appeal. It never mentioned a notice of appeal.

[8] On the other hand, an affidavit filed for the purchasers stated that, the attorneys for the purchasers never received a notice of appeal in the envelope enclosing the letter of 13 August, 2014 nor were they served with any notice of appeal in any other way after the vendors had obtained leave to appeal. We did not believe that attorneys for the vendors served a notice of appeal on the attorneys for the purchasers, after they had obtained leave of court on 4 August, 2014. On these facts we concluded that there was no appeal before this Court to deliberate on.

*The Notice of appeal tendered on 21 July 2014.*

[9] Appeals from judgments and orders of the Supreme Court to this Court are of two categories; appeals as of right, and appeals with leave (permission) of the Supreme Court or of this Court. The categories are generally based on the nature of the judgment or order made. Where leave is required the intending appellant must first apply within twenty-one days, for and obtain leave. The application is made first at the Supreme Court. If the application is unsuccessful and leave is refused, the intending appellant may apply to this Court.

[10] The procedure for bringing an appeal from a judgment or an order of the Supreme Court in a civil case is provided for in **s.16 of the Act**, and set out in detail in

**O. I and O. II** of the Rules. For the purposes of this judgment **O.II rr. 1 (1), 2(1), (2), 3 (1), (2), (3), (4), 4 (1), (2) and (7)** are to the point. **Section 16 states:**

**16- Where a person desires to appeal under this Part to the Court of Appeal he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within twenty-one days from the date on which the order of the Supreme Court or a judge thereof was signed, entered or otherwise perfected.**

[11] So, **s. 16** disallows filing of a notice of appeal where leave of court is required, before the intending appellant has obtained the leave. When the vendors tendered the first “notice of appeal” on 21 July, 2014 before they had obtained leave of court, they acted contrary to **s.16**. The notice was correctly rejected by the Deputy Registrar. It had no effect, it did not commence the intended appeal of the vendors.

[12] As a matter of observation, I do mention here that, in **Murli Mahitani v Kevin Castillo, Civil Appeal no. 2 of 2009**, this Court (Mottley P Carey and Barrow JJA) held that, the 21 days within which to file a notice of appeal are counted from the date on which the judgment order of the Supreme Court is signed or otherwise perfected, and where an order is extracted and signed or otherwise perfected on a date later than the date on which the judgment is delivered, a notice of appeal presented for filing on or after the date of judgment, but before the judgment order had been signed or otherwise perfected is not a notice of appeal filed within the twenty-one days period required under **s.16** ,it is not a good notice of appeal. Sitting as a single judge of appeal in **Morning Star Breeze Limited v Eco Building Technologies Limited, Civil Appeal No. 5 of 2015**, I considered myself obliged to follow the *ratio decidendi* in **Murli Mahitani**.

[13] The effect of the two judgments is that, the days for filing a notice of appeal can be longer than twenty-one days from the day the judgment is delivered or the order of court is made, depending on when the order is signed and perfected. I suggest that whenever the Court of Appeal Rules will be revised, one of the questions to be raised is,

whether it is desirable that where an appeal lies as of right, a notice of appeal filed after the judgment has been delivered or an order has been made, but before the judgment order or order has been perfected, should be regarded as no notice. If the intention for giving notice within twenty-one days is to expedite the appeal, then a notice given immediately after the delivery of a judgment or the making of an order, but before the judgment order or order has been perfected, does indeed expedite the appeal.

[14] *Order II* complements *s. 16 of the Act* as follows:

## ORDER II

### CIVIL APPEALS

#### *Notices of appeal, cross-appeal and preliminary objection*

1. - (1) All appeals shall be brought by notice (hereinafter called “the notice of appeal”), to be filed together with a copy thereof with the Registrar which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part), state also the nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and be signed by the appellant or his legal representative.

...

2.-(1) Where an appeal lies by leave only, any person desiring leave to appeal shall apply for leave within twenty-one days, either by notice of motion or by summons (whichever is appropriate) and such application shall be made to the Court or to the court below or to the judge who made the order against which leave to appeal is sought.

(2) If leave is granted the appellant shall file a notice of appeal as provided by rule 1 of this Order within twenty-one

days from the grant of leave and a copy of the order granting leave shall be annexed to the notice of appeal.

...

**3.(1)** Subject to this rule, no appeal shall be brought after the expiration of twenty-one days from the date of judgement delivered or order made, against which the appeal is brought.

**(2)** An appeal shall be deemed to have been brought when the notice of appeal has been filed with the Registrar.

**(3)** A judge of the Court may by an order extend the time prescribed in paragraph (1) within which an appeal may be brought, provided an application for this purpose is made within one month of the expiration of the time so prescribed.

**(4)** In exceptional circumstances, the Court having power to hear and determine an appeal, may on application extend the time within which an appeal may be brought beyond the period delimited for an application to a judge of the Court under this rule.

...

**(7)** When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal.

**4.-(1)** A true copy of the notice of appeal shall be served upon all parties directly affected by the appeal and it shall not be necessary to serve any party not so affected; but the Court may direct notice of appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have

**been given or made if the persons served with such notice had been originally parties.**

**(2) A true copy of the notice shall be served upon the respondent within seven days after the original notice has been filed.**

[15] **Order 3(1)** appears on the face, to be contrary to the precedent in *Murli Mahitani* which was decided under **s. 16 of the principal legislation**. The rule states that, "... no appeal shall be brought after the expiration of twenty-one days from the date of judgement delivered or the order made." It appears to indicate that the twenty-one days limitation is counted from the date on which the judgment was delivered or the order of the court was made. Of course, the interpretation of s.16 prevails. There is need to exclude ambiguity.

[16] In this jurisdiction drawing a judgment order is generally the duty of the court, unless the court orders otherwise - see **R 42.5 Supreme Court (Civil Procedure) Rules, 2005**. But the practice has continued that, the claimant draws a draft order and sends it to the defendant, requesting his concurrence. The agreed draft is submitted to the court for approval by the trial judge. If approved, the order is signed and stamped by the Registrar. It is not infrequent that the attorneys for the parties disagree on a draft order to be submitted to the court for approval. Sometimes much time is taken by this, and so, the time for filing a notice of appeal becomes much longer than twenty-one days.

[17] I would like to note also that, the **Rules of the Supreme Court, R 42.8 and R 42.9** which provide that a, judgment or an order of the Supreme Court takes effect from the day it is delivered or made, unless the court specifies otherwise; and a party must comply immediately unless the court specifies otherwise, are on the face, incompatible with the precedent in *Murli Mahitani* case. Again there is need for streamlining and eliminating ambiguity.

*The second notice of appeal.*

[18] The second notice of appeal was actually the draft notice dated 21 July 2014, which had been tendered for filing on that day and rejected. The draft notice was re-tendered on 4 August, 2014 for filing. It was accepted and filed well within time, on the fourth day after leave to appeal had been granted by the court below. It was a good notice of appeal, and “brought” the appeal – see **O II rr. 1(1) and 3(2)**.

[19] Thereafter, things went wrong; the appellants did not serve on the respondent a copy of the notice of appeal duly filed on 4 August, 2014. That was a failure to comply with **O. II r. 4(2)**. It appears that attorneys for the appellants assumed incorrectly that, the draft notice that they had sent to attorneys for the respondents before leave to appeal was granted was good enough.

[20] We decided that the appeal having been presented to this Court for hearing, without notice of it having been served on the respondents, must be dismissed.

[21] This Court last year, 2015, adopted a pre-hearing practice known as case management conference proceedings. Preliminary applications and other matters that require attention before the hearing of an appeal are raised at the conference. It seems beneficial if the Court or a judge is given the power to consider and decide some of the applications under O. II without hearing the parties (i.e. on the papers filed).

---

**AWICH JA**



## **HAFIZ-BERTRAM JA**

### **Background facts**

**[22]** On 26 March 2014, Glenn Levy and Nancy Levy ('the purchasers') entered into a written agreement dated 1 January 2014 with Nena Borrero, Don Blunt, Vanessa Blunt and Jenny Wildman ('the vendors') for the sale of a property for the purchase price of US\$570,000.00. As a result of breaches by the vendors, the purchasers brought a claim for specific performance of the written agreement and for damages to be assessed.

**[23]** On 8 April 2014, the purchasers brought an application for summary judgment against the vendors which was heard before Abel J in chambers. By an order dated 17 July 2014, Abel J granted the application for summary judgment after reading the claim form, statement of claim, defence, notice of application for summary judgment, the affidavits filed by the parties and submissions. The trial judge ordered summary judgment on the claim for specific performance of the written agreement for sale dated 1 January 2014. There was no order made for damages and the parties were ordered to pay their own costs.

**[24]** By a notice of appeal dated 21 July 2014 which was delivered at the Registry and served on Sabido & Co. ("Notice No.1") on the said day, the vendors appealed the decision granting summary judgment to the purchasers. At this time, no leave to appeal had been made by the vendors.

**[25]** On 30 July 2014, an application for leave to appeal and stay of execution was filed by the vendors which was heard by Abel J. By consent order dated 7 May 2015, it was ordered that leave to appeal be granted, application for stay of execution withdrawn and original certificate of title for the property delivered to the purchasers.

**[26]** On 4 August 2014, the vendors filed a notice of Appeal ("Notice No. 2") pursuant to the order granting leave to appeal.

[27] On 1 February 2016, a list of documents for the record of appeal was settled before the Registrar of the Court of appeal and on 8 February 2016, an application to extend time to file the record of appeal was granted.

[28] The record of appeal was served on Sabido & Co. inclusive of Notice No. 1 (delivered to the Registry before leave was granted).

### **The application before the Court of Appeal objecting to the hearing of the appeal**

[29] By a notice of motion dated 15 of March 2016, the purchasers objected to the hearing of the appeal before the Court and prayed that the appeal be struck out, and the vendors pay the costs of the purchasers' application. The Court after hearing the parties ordered that the objection of the purchasers had succeeded having found that there had not been service of the notice of appeal filed on 4 August 2014 after leave to appeal was granted and therefore, there was no appeal before the Court. Further, the Court ordered that the purchasers were entitled to cost which was to be agreed by the parties. We promised to give reasons in writing and I do so now.

### *Grounds of application*

[30] The grounds of the application objecting to the appeal were that:

1. The vendors have failed to comply with Order II Rule 4 of the Court of Appeal Rules, since they failed to serve the purchasers with a true copy of the notice of appeal filed on 4 August 2014, within seven days after the original notice was filed;
2. The appeal had not been properly set down for hearing and the proceedings are irregular, since contrary to section 17 of the Court of Appeal Act, the notice of appeal filed on 4 August 2014, had not been served on the respondents;
3. Contrary to Order II Rule 2(2) of the Court of Appeal Rules, the appeal herein has not been properly entered on the list for hearing since the appeal has not been properly brought by the appellants and therefore, the proceedings are irregular;

4. Contrary to Order II Rules 2(2) and 4, the Notice of Appeal dated 21 July 2014, was served on the purchasers on 21 July 2014, before leave to appeal was granted on 30 July 2014.

### **The affidavit evidence**

#### *Affidavit of Oscar Sabido for the purchasers*

**[31]** The application was supported by an affidavit sworn on 15 March 2016 by Oscar S. Sabido SC. He deposed that he represented the purchasers in the court below and judgment was entered on 17 July 2014 and the judgment order perfected on the same date.

**[32]** At paragraph 4 of his affidavit he deposed that on 21 July 2014, he was served with a notice of appeal (“Notice of appeal No. 1”) which is part of the record of appeal.

**[33]** Mr. Sabido deposed at paragraph 5, that on 30 July 2014, the vendors obtained leave to appeal from Abel J. The purchasers nor his office had been served with a notice of appeal pursuant to the order granting leave to appeal.

**[34]** He deposed that the record of appeal was completed on 1 February 2016 but, as a result of the record being settled outside of the three months period requirement, an application for extension of time to file the record was made on 8 February 2016. On the same day the Court ordered the appellants to file the record and affidavit of service of the notice of appeal by 15 February 2016.

**[35]** Mr. Sabido further deposed that the affidavit in support of the application for extension of time to file the record of appeal by the vendors was sworn by Doris Tzul who deposed that the notice of appeal was filed on 21 July 2014 and that a copy of the notice was served on the purchasers on 21 July 2014. Tzul further deposed that leave to appeal was granted on 30 July 2014, and thereafter the appellants filed a second copy of the notice of appeal on 4 August 2014 (“notice of appeal No. 2’). Mr. Sabido however, maintained that only notice of appeal No. 1 was served on the vendors.

**[36]** At paragraphs 11 and 12 of his affidavit, Mr. Sabido deposed that pursuant to the order of the court made on 8 February 2016, the affidavit of service of the notice of

appeal was apparently filed with the Court of Appeal Registry on 15 February 2016. In the said affidavit of service, the vendors stated that the notice of appeal filed on 21 July 2014, was served on the purchasers on 21 July 2014 in accordance with the Court of Appeal Rules.

*Affidavit of Doris Tzul in response to Motion objecting to appeal*

**[37]** Doris Tzul, paralegal with the firm of Vernon and Lochan, in her affidavit sworn on 22 March 2016, deposed that at the conclusion of the hearing in the court below and after receipt of the Order of the court made on 17 July 2014, she was instructed by Ms Vernon to prepare and file with the courts a copy of the notice of appeal in relation to this matter. She was additionally instructed to serve a copy of the Notice of Appeal at the office of Sabido and Co. which was done on 21 July 2014 by their process server, Marlon Clarke.

**[38]** At paragraph 4 of her affidavit, she deposed that immediately after the notice of appeal was prepared, their office proceeded with preparing, filing and serving copies of its Notice for leave to appeal and application for stay of execution. The application was then served on the office of Sabido and Co.

**[39]** Ms. Tzul further deposed that she was informed by Ms Vernon that at the hearing of the application for leave to appeal on 30 July 2014, the parties consented to the applications and all that remained were for the parties to settle on the wording of the order for finalization before the court. She stated that after leave was granted, she personally contacted Ms. Perez, Court of Appeal Registrar, and informed her that leave had been granted. She was then reminded by Ms Perez that the notice of appeal had to be re-filed and re-served on the purchasers.

**[40]** At paragraph 7 of her affidavit, she deposed that the notice of appeal was filed on 4 August 2014 as evidenced by the Government of Belize receipt which was exhibited as "DT # 1".

**[41]** She further deposed that despite the parties consented to the order for leave to appeal, Counsel on both sides were unable to agree on the wording and several communications were sent back and forth between the parties. Further, that, "As we had not yet re-served the respondents with the Notice of Appeal after leave was

*granted, we did so on 13<sup>th</sup> day of August 2014 by placing a copy in an envelope addressed to Sabido & Co. together with a copy of our letter dated 13<sup>th</sup> August 2014 concerning the order for leave to appeal.”*

**[42]** Ms Tzul deposed that despite service on Sabido & Co. on 13 August 2014, they failed to get any immediate response and after numerous calls by their office, they finally received two separate copies of the same letter signed by Ms Clara Camal of Sabido & Co. bearing ‘receipt dates’ of 19 August 2014 and 20 August 2014 in relation to the documents served on the office. She exhibited copies of the letters evidencing receipt of the documents as “DT # 2 and DT # 3”.

**[43]** Ms. Tzul at paragraph 11 of her affidavit deposed that as a matter of oversight she had erroneously failed to include particulars of service of the second notice of appeal done on 13 August 2014, as the said notice later served on Sabido and Co. contained the exact same grounds of appeal and exact wording as the first notice served.

**[44]** She further deposed that when she prepared a hard copy letter of the list of documents intended to be used for the settling of the record, she omitted the second notice filed on 4 August 2014, by a mere oversight since it was identical as the previous notice and Mr. Sabido did not raise any objections. As such, they denied that the purchasers were never served with the second notice of appeal within the seven days as prescribed by the rules and prayed that the application be dismissed.

*Second affidavit of Oscar Sabido SC in response to the affidavit evidence of Tzul*

**[45]** Mr. Sabido deposed that the purchasers took no issue with the fact of being served on 21 July 2014 with Notice No. 1. However, based on his inquiries at the Registry, Notice No. 1 was never duly filed with the Registry on 21 July 2014 and therefore a true copy of Notice No. 1 was not served on the purchasers.

**[46]** He further deposed that on 17 February 2016, he met with the Deputy Registrar, Ms Perez and she explained to him what had occurred in the filing of the second notice of appeal. He said he was informed by Ms. Perez the following:

- “ i. On 21 July 2014, Notice # 1 was delivered to her for filing at the Court of Appeal. However, she was contacted by Vernon and Lochan who

informed her that they first needed to obtain leave to appeal and therefore, requested that she hold her hand on filing of the notice of appeal. Consequently, Ms. Perez did not date and stamp the notice of appeal with the “General Registry Filed” stamp. Upon review of the Notice # 1, Ms. Perez informed me that the date “21.7.14” on the Notice was not placed by her and is not her handwriting.

- ii On 30<sup>th</sup> July, 2014, Ms Perez was informed by Vernon & Lochan that leave to appeal was granted and that their office would pay the filing fee that same day. Ms. Perez accepted their assurance and proceeded to stamp and date the Notice of Appeal 30-7-14 and priced on the reverse of the Notice of Appeal the filing fees and waited for Vernon & Lochan to collect the Notice to take to the cashier to pay the filing fee for Notice # 2. However, the Notice of Appeal was not collected.
- iii On 4<sup>th</sup> August, 2014, Ms Perez called Vernon & Lochan to remind them that they needed to collect Notice No. 2 and pay the filing fee. The Notice of Appeal was collected, filing fee paid and the cashier wrote the RCR Number 199750 on the reverse of the Notice of Appeal.”

**[47]** Mr. Sabido deposed that he reviewed both notices of appeal and Ms. Perez account was confirmed as to what occurred with the Notice of Appeal. He noted that in relation to Notice No. 1, it was not stamped with the “General Registry Filed” stamp. He also noted that rubric reflects the ‘Supreme Court of Belize’ instead of ‘Court of Appeal’, and claim no. 134 of 2012 instead of Civil Appeal No. 21 of 2014. In relation to Notice No. 2 dated 21 July 2014, it is stamped with the ‘General Registry Filed’ stamp which contains the date 30-7-14. He exhibited copies of both notices as “OAS-1” and “OAS-2” respectively.

*Affidavit of Seir Salam for the vendors*

**[48]** Seir Salam, paralegal for Vernon & Lochan swore to an affidavit on 8 June 2016 on behalf of the vendors. At paragraph 3 of his affidavit, he deposed that Doris Tzul who was in charge of filing, the preparation of documents and responsible for the

lodging of documents at the Registry, was no longer employed by the law firm since 30 April 2016.

**[49]** Salam deposed that that he was informed by Ms. Vernon that contrary to what was stated by Mr. Sabido SC, a notice of appeal was prepared by the office and immediately lodged with the registry. The notice was filed on 25 July 2014 and he exhibited a Government of Belize revenue receipt marked “S.S. # 1”. He deposed that it is customary for the firm to write on the receipt the breakdown of payments and clients. One of the breakdowns show “C# 134/14 – Glenn Levy v Nena Borrero \$7.50”.

**[50]** At paragraph 18 of his affidavit, Salam deposed that after the office of Vernon & Lochan communicated with the Deputy Registrar of the Court of Appeal, the Notice of appeal was again lodged with the Registry on 4 August 2014 and another Government receipt was issued which identified Civil appeal no. 21 of 2014 (the instant appeal), which he exhibited as “S.S 2”. He was informed that it was Ms. Tzul who wrote on the reverse of the receipt “C # 134/14 – Glenn Levy vs Borero”.

**[51]** Salam deposed that he was informed by Ms. Vernon that *“what Ms Tzul did in her filing of the Notice of 4 August 2014 was simply file the said Notice in its original form and date as was done on July 25, 2014.”*

**[52]** Salam further deposed that he was advised by Ms Vernon that when the parties had appeared before the Deputy Registrar for the purposes of settling the record, the only extraneous issue raised by Mr. Sabido SC with Madam Registrar was whether or not they had truly re-filed a copy of the Notice of Appeal with the Court after leave was granted.

**[53]** He deposed that he was further advised that when the Court enquired from Mr. Sabido SC at the hearing of the application for leave to file the record of appeal out of time on 8 March 2016, whether there were other issues or objections to be raised, he informed the Court that he had none except for the fact that the record ought to have been filed within three months of the leave being granted.

[54] Salam denied the allegations that the notice of appeal was never lodged with the Registry on 25 July 2014 and that the purchasers were never served with the second notice of appeal.

*Affidavit of Marlon Clarke for the vendors*

[55] On 15 February 2016, Marlon Clarke, process server, swore to an affidavit issued on the said date, in which he deposed that the notice of appeal in the instant matter filed on 21 July 2014, was served upon the purchasers by personally serving a copy at No. 5 New Road, Belize City, on the said 21 July 2014, in accordance with the Court of Appeal Rules.

*Affidavit of Clara Camal for the purchasers*

[56] Clara Camal, paralegal at Sabido & Co. sworn to an affidavit on 24 March 2016 in response to the affidavit sworn by Doris Tzul dated 22 March 2016. She confirmed that a copy of a Notice of Appeal was served on the office of Sabido & Co. on the 21 July 2014 and she signed acknowledging receipt of same. This is the notice in the record of appeal which is item number 3 (Notice No. 1).

[57] Ms. Camal deposed that Sabido & Co. has not received any other notice of appeal which contained “the same grounds as previously filed”, as stated by Ms. Tzul at paragraph 7 of her affidavit.

[58] At paragraph 9 of her affidavit, Ms. Camal acknowledged receiving the letter dated 13 August 2014 which Ms Tzul exhibited as “DT-2”, but deposed that only the draft consent order in relation to the granting of leave by the court on 30 July 2014 was enclosed. A Notice of Appeal was not enclosed.

## **The Law**

*Appeal to be brought by notice and filed with Registrar*

[59] **Order II Rule 1** provides for the notice and grounds of appeal to be filed with the Registrar. Order II Rule 1 (1) provides:

“1.-(1) All appeals shall be brought by notice (hereinafter called “the notice of appeal”), **to be filed together with a copy thereof with the Registrar** which



shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part), state also the nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and be signed by the appellant or his legal representative.”

*Leave to appeal*

**[60]** An appeal has to be brought by leave as provided by Order **II Rule 2 (1)** and **(2)** which provides:

“2.-(1) Where an appeal lies **by leave only**, any person desiring leave to appeal shall apply for leave within twenty-one days, either by notice of motion or by summons (whichever is appropriate) and such application shall be made to the Court or to the court below or to the judge who made the order; the period of twenty-one days shall run from the date of the decision against which leave to appeal is sought.

(2) If leave is granted the appellant shall file a notice of appeal as provided by rule 1 of this Order within twenty-one days from the grant of leave and a copy of the order granting leave shall be annexed to the notice of appeal.”

*Time limit for appealing and when appeal deemed to have been brought*

**[61]** **Order 3 (1)** and **(2)** provide for time limits for appealing and when an appeal has been deemed to have been filed. Order 3(1) and (2) provides:

“3.-(1) Subject to this rule, no appeal shall be brought after the expiration of **twenty-one days** from the date of judgment delivered or order made, against which the appeal is brought.

(2) An appeal shall be deemed to have been brought when the notice of appeal **has been filed with the Registrar.**”

*Service and time limit for service*

**[62]** **Order II Rule 4 (1)** and **(2)** provides for the service of the notice of the appeal and the time limit for the service of the appeal

“4.-(1) A true copy of the notice of appeal **shall be served** upon all parties directly affected by the appeal and it shall not be necessary to serve any party not so affected; but the Court may direct notice of appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.

(2) A true copy of the notice shall be served upon the respondent within **seven days after the original notice has been filed.**”

### **Notice No. 1**

**[63]** There were two Notices before the Court, namely Notice No. 1 and Notice No. 2. I will firstly, consider the evidence in relation to Notice No. 1. I have examined the affidavit evidence on both sides and found that the Vendors did not file Notice No. 1 and therefore did not serve a true copy of Notice No. 1 on Sabido and Company on 21 July 2014. Notice No. 1 was merely delivered to the Registrar and not filed which is in contravention of **Order II Rule (1)**. At most, this was a draft Notice of Appeal which was served on Sabido and Co. Notice No. 1 which forms part of the record of appeal, at item number 3, was served on Sabido and Co. on 21 July 2014 and the notice reflected the same date. This Notice was not stamped with the “General Registry Filed” stamp and the rubric reflects the ‘Supreme Court of Belize’ instead of ‘Court of Appeal’. At this time, no leave to appeal had been granted by the court and this is contrary to **Order II Rule 2(1)**. Further, the failure to file a notice of appeal is contrary to **Order 3 Rule (2)** which provides that an appeal shall be deemed to have been brought when the notice of appeal has been filed with the Registrar.

**[64]** Further, I found that no filing fee had been paid in respect of Notice No. 1 and this is in contravention of **Order II Rule 29** read along with Part 1 of Appendix B, which provides that :

“29. (1) Except as hereinafter provided, the fees prescribed in Appendix B shall be charged in respect of the matters to which they

are respectively assigned. The fees chargeable under Part I of Appendix B shall be paid to the Registrar and those chargeable under Part II shall be paid to the Registrar of the court below.”

**[65]** A fee of \$30.00 is payable upon filing a Notice of Appeal. This fee was not paid since leave was not obtained at the time the Notice of Appeal was delivered to the Registrar and so it was not recorded. The Purchasers were served with this draft notice, Notice No. 1. In my opinion, the vendors failed to invoke the jurisdiction of the Court of Appeal since no leave had been obtained when the draft notice, Notice No. 1, was served on Sabido & Co. and further there was a failure to file the Notice and pay the mandatory filing fee in breach of **Order II Rule 29**. See the case of **Ibeabuchi & Ors v Ikpokpo & Ors [2013] LPELR – 20074 (CA)**, where the Court of Appeal found that Order 12 Rule 1 (similar to Belize Order II Rule 29), was mandatory and vested no discretion in the Registrar to not charge or the litigant to not pay the prescribed fee. In that case the appellant had paid only a portion of the filing fee and the appeal had been struck out.

### **Notice No 2**

**[66]** The Vendors obtained leave to appeal on 30 July 2014 and as shown by Tzul’s affidavit, duly filed the notice of appeal for which leave had been granted on 4 August 2014 (Notice No. 2). I have examined the evidence before the Court and I am satisfied that Notice No. 2 was not served on the Purchasers. This is evidenced by the letter dated 13 August 2014 concerning leave to appeal which was sent to Sabido & Co. I accepted the evidence of Ms. Camal that when she received that letter which is exhibited as “DT -2”, it was only the draft consent order in relation to leave which was enclosed. There was no mention in that letter that a notice of appeal, duly filed at the Registry, was enclosed. I was not satisfied with the evidence of Tzul and Clarke that Notice No. 2 was served on Sabido and Co., which Notice does not form part of the record of appeal filed in the Court. Further, in relation to Notice No. 2 dated 21 July 2014, it is stamped with the ‘General Registry Filed’ stamp which contains the date 30-7-14 and it has the correct rubric, “IN THE COURT OF APPEAL OF BELIZE, A.D. 2014”. Notice No. 1 was headed differently with the Supreme Court rubric. As such, I was not satisfied with the affidavit evidence of Salam in which he deposed that he

was informed by Ms. Vernon that “*what Ms Tzul did in her filing of the Notice of 4 August 2014 was simply file the said Notice in its original form and date as was done on July 25, 2014.*”

**[67]** The Vendors failed to comply with **Order II Rule 4** which provides that a true copy of the Notice of Appeal must be served on the respondents to an appeal **within 7 days** after the original notice had been filed. When the Vendors obtained leave to appeal they failed to serve the Notice of Appeal within the seven days period on the Purchasers and no extension of time for service was sought by them. Further, the appeal had not been properly set down for hearing, contrary to **section 17** of the **Court of Appeal Act** which provides that no appeal shall be set down for hearing earlier than 21 days after the respondent has been served with notice of the grounds of appeal. In the instant case, the Purchasers were not served with the notice of appeal which was duly filed in the Registry on 4 August 2014. As such, it was my view that this Court had no jurisdiction to hear the appeal.

### **Conclusion**

**[68]** It was for the above reasons that I agreed that it be ordered that the objection of the purchasers should succeed. I found that there had not been service of the notice of appeal filed on 4 August 2014 (Notice No. 2) after leave to appeal was granted and therefore, there was no appeal before the Court. Further, that the purchasers were entitled to their cost which was to be agreed by the parties.

---

HAFIZ-BERTRAM JA

**DUCILLE JA**

**[69]** I have considered the draft judgments of Awich JA and Hafiz-Bertram JA and I am in total agreement.

---

DUCILLE JA