

IN THE COURT OF APPEAL OF BELIZE, A.D. 2021

CIVIL APPEAL NO. 17 OF 2016

**ST. MATTHEWS UNIVERSITY
SCHOOL OF MEDICINE LIMITED APPELLANT/RESPONDENT**

AND

**JEFFREY SERSLAND, M.D. RESPONDENTS/APPLICANTS
SEFERINO PAZ JR.**

BEFORE:

The Hon. Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon. Madam Justice Minott-Phillips	-	Justice of Appeal
The Hon. Mr. Justice Foster	-	Justice of Appeal

22 October and 7 December 2021

WOODSTOCK RILEY JA

[1] This matter came before us for re-hearing. The Applicants, Jeffrey Sersland, M.D. and Seferino Paz Jr. apply to the Court of Appeal for an order pursuant to Section 6(a) of the Belize Caribbean Court of Justice Act, Section 104(1) (a) of the Belize Constitution and the Caribbean Court of Justice (Appellate Jurisdiction) Rules for leave to appeal against a judgment of the Court of Appeal made on 27 November, 2018 in *Civil Appeal No. 17 of 2016 St. Matthews University School of Medicine Limited and Jeffrey Serland, M.D. and Seferino Paz Jr.*

[2] By virtue of Section 6(a) of the Caribbean Court of Justice Act and Section 104(1)(a) of the Belize Constitution, an appeal shall lie from a final decision of the Court of Appeal as of right *‘in civil proceedings where the matter in dispute on appeal is of the value of not less than \$18,250.00... or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value.’* In their written and oral submissions both parties agree on the applicable provisions and there is no issue that the matter is a final decision in civil proceedings. The issue between the parties is whether the value requirement has been met.

[3] The matter involves a claim for the investigation into the affairs of the Appellant/Respondent and allegations by the Applicants of dealings in the Respondent amounting to mismanagement causing the Applicants prejudice and the Applicants shareholding to be wrongly diluted. The Court of Appeal held that the claim for appointment of inspectors under s.110 of the Companies Act could not be brought by the Applicants because they did not hold at least one-tenth of the shares issued.

[4] The Applicants wish to raise as grounds of appeal that the issue of fulfilling the conditions of section 110 of the Companies Act with respect to the amount of shareholding should not have been considered by the Court of Appeal, that the dilution of their shares was a major allegation, and/or that the investigation could show the allotment of shares resulting in the dilution was done in circumstances which may have rendered the allotment a nullity. In their Application for leave Affidavit evidence is given by one of the Applicants, Dr. Sersland, that his entitlement to shares and dividends exceeds \$18,250.00. The Applicant points out that there is no responding evidence from the Appellant/Respondents on this point

and therefor there is no challenge to Dr. Sersland's evidence of that value. The Applicants contend that the matter, as required, is of value of not less than \$18,250 and that this is also an appeal that involves directly, or at least indirectly, a claim or a question respecting property or a right that exceeds \$18,250.00. The Applicants submit that they have met the value threshold and their appeal to the Caribbean Court of Justice (CCJ) is therefor as of right.

[5] The Appellant/Respondent contends that:

- a. the Applicants have not met the value threshold and are not entitled to leave as of right;
- b. there is no claim that has a monetary value;
- c. that there is no property right in issue; and
- d. the subject matter of the intended appeal is whether the intended appellants had the requisite standing to initiate the claim and whether an inspector should be appointed.

[6] The considerations of a Court of Appeal on an application for leave are well established. The CCJ has set guidelines and summarized the principles to be applied by Courts of Appeal in deciding whether to grant leave in several cases. *Clyde Browne v Michelle Moore Griffith et al [2013]CCJ 6 (AJ)*, citing *Brent Griffith v Guyana Revenue Authority (2006) 69WIR 320* and *L.O.P. Investments Limited v Demerara Bank Limited [2009] CCJ 4* are referenced by the parties. Those principles and guidelines indicate there is no discretion in the Court of Appeal to withhold leave in as-of-right cases on the ground that the appeal lacks merit. With regard to this category of case (which falls within Section 6 (a) of the CCJ Act) once the proceedings are civil in nature and the matter in dispute is of a value of the prescribed amount or the appeal involves, directly or indirectly, a claim or a

question respecting property or a right of equivalent value, leave to appeal must be granted. In this category of case there is no requirement that the applicant for leave to appeal must demonstrate a genuinely disputable issue of fact or law. It is noted that the Court of Appeal may in rare cases take action to prevent an abuse of the process of the Court by striking out an application for leave to appeal, even in as-of-right cases. The Appellant/Respondent has not alleged that this application is an abuse of process.

[7] It is also established that to pass the value threshold, it is not necessary that there be a money claim.

[8] The matter before the Court is not simply (as contended by the Appellant/Respondent) the standing to bring a claim as was the case in *ECCO v Mega Plex SLUHCVAP2017/0032*. The standing to bring a claim in the instant case is related to the questions of:

- a. Whether the Applicants have the requisite shareholding,
- b. Whether the shareholding they do have entitles them to maintain the claim, and
- c. Whether the shareholding should have been considered by the Court of Appeal.

[9] That shareholding has a value (unchallenged) of over \$18,250.00. Therefore the matter in dispute has a value that is, at least indirectly, a question respecting property or a right valued at not less than \$18,250.00. The claim concerns the Applicants' rights and interests in the Appellant/Respondent, including their entitlement in shares and dividends and their right to participate in the business and operations of the Respondent and any monetary benefits derived therefrom.

[10] In the circumstances leave to appeal as of right pursuant to section 6(a) of the Belize Caribbean Court of Justice Act and section 104 (1) (a) of the Constitution is granted on condition-

- a. that the Applicants within a period not exceeding ninety (90) days provide security for costs which the Applicants may become liable or be ordered to pay in an amount not exceeding that specified in Schedule 5 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules, 2019; and
- b. that the Applicants provide to the proper officer within a period not exceeding ninety (90) days a list of the documents which they propose should be included in the record of appeal.

[11] The Applicants are to prepare and submit a draft of this order.

WOODSTOCK RILEY JA

MINOTT-PHILLIPS JA

I have read, in draft, the judgment of my learned sister Woodstock Riley, JA and concur in the reasons for judgment given, and the orders proposed, therein.

MINOTT-PHILLIPS JA

FOSTER JA

I have read, in draft, the judgment of my learned sister Woodstock Riley, JA and concur in the reasons for judgment given, and the orders proposed, therein.

FOSTER JA