

IN THE HIGH COURT OF BELIZE, A.D. 2023

CLAIM No. 480 of 2020

BETWEEN

BEST BUY LIMITED

CLAIMANT/RESPONDENT

AND

DWIGHT FLOWERS

DEFENDANT/APPLICANT

DECISION OF THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

Hearing Date: April 26, 2023

APPEARANCES:

Jaraad Ysaguirre, Counsel for the Claimant/Respondent.

Sharryn Dawson, Counsel for the Defendant/Applicant

DECISION ON LEAVE TO APPEAL

[1] Mr. Flowers seeks leave to appeal the 20 February 2023 decision of the High Court dismissing his application to strike out the claim. I declined the application on the basis that I do not have jurisdiction to hear the leave application in an oral decision. These are the written reasons in support of that decision. The newly promulgated *Senior Courts Act, 2022*,¹ vests exclusive authority to decide applications for leave to appeal with the Court of Appeal. Because the decision under appeal was rendered after the *SCA* came into force, I have no jurisdiction to decide this application.

[2] Prior to the *SCA* the Court of Appeal and the High Court were governed by two separate pieces of legislation. Having now been combined into a single Act, the practice and procedures of each court must be interpreted together to understand their meaning and intent. The regulation of appeals of civil matters to the Court of Appeal is now found in sub-part 2 of Part III of the

¹ Act. No. 27 of 2022 (“SCA”)

SCA. In Part III, section 187 defines “Court” as the Court of Appeal and “High Court” as the High Court of Justice. Section 199(1) of the SCA empowers the Court of Appeal to decide all questions related to civil appeals from the High Court:

199(1) Subject to this Part and to rules of court, the Court shall have jurisdiction to hear and determine appeals from judgments and orders of the High Court given or made in civil proceedings and for ***all purposes of and incidental to*** the hearing and determination of any such appeal. (emphasis added).

The use of “all purpose and incidental to” are clear and unambiguous. Where leave is required to appeal a High Court decision in a civil matter, the leave application is undoubtedly incidental to the hearing and determining that appeal.

[3] Subsection 199(1) uses the identical language to subsection 13(1) of the *Court of Appeal Act (CA Act)* save for changing “Supreme Court” to “High Court.” Under the *CA Act*, subsection 13(1) was not interpreted as precluding the Supreme Court from deciding on leave applications. That interpretation was undoubtedly informed by multiple provisions that followed subsection 13(1) which explicitly referenced leave to the Supreme Court or the judge who made the decision under appeal. For example, subsections 14(2)(b) and 14(3)(b) of the *CA Act* allowed appeals in otherwise prohibited matters “in any other case, except with leave of the Supreme Court, or if it refuses, of the Court.” The equivalent provisions in the SCA now read “in any other case, except with the leave of a single judge of the Court, or, if that judge refuses, with leave of the Court”. Court in this part of the SCA is defined as the Court of Appeal.

[4] In contrast, subsection 201(6) of the SCA expressly contemplates the High Court retaining jurisdiction to hear leave to appeal applications for *habeas corpus* matters:

(6) Notwithstanding, sub-section (4)(a), an appeal shall lie to the Court from the decision of the High Court, with the ***leave of that court*** or of the Court of Appeal, against any decision of the High Court granting or refusing a writ of *habeas corpus*. (emphasis added).

All other references to the Supreme Court considering leave to appeal applications of its own decisions in civil matters were removed when the equivalent provisions were incorporated into the SCA. I find that must have been a deliberate choice by the Legislature to limit the circumstances when the High Court will decided the question of leave of its own decisions.

[5] The rules, found in Part III of the SCA, that govern the procedure and conduct of civil appeals support my finding that the Legislature has intended that the Court of Appeal will decide whether leave will be granted in most cases. For example, subsection 201(1) outlines the types

of matters that can be appealed to the Court of Appeal. Subsection 201(5) empowers the Court of Appeal to decide whether a matter can be appealed where there is doubt:

(5) Where any doubt arises regarding the category set out in sub-section (1) into which an order of the High Court or a judge thereof falls–

- (a) if such doubt arises on an application to the Court, it shall be determined by a single judge of the Court, subject to a right of appeal to the Court;
- (b) in all other cases it shall be determined by the Court

That the matter is a proper subject of an appeal is a threshold question that if answered in the negative will result in the denial of leave. If the High Court was considering a leave application, subsection 201(5)(a) would require a further application to the Court of Appeal before the matter could be dismissed.

[6] Section 193 creates the office of “Chief Registrar” to the Court of Appeal. Section 10(2) creates the office of the “Registrar of the High Court.” Subsection 202(2) specifies that a person desiring to appeal a decision to the Court of Appeal must file their notice with the Chief Registrar. Subsection 202(3) empowers the Court of Appeal to enlarge time limits for filing the appeal.:

202.–(1) Where a person desires to appeal under this Part to the Court 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 High Court or a judge thereof was signed, entered or otherwise perfected.

(2) The appellant shall file notice of his grounds of appeal within twenty-one days after he has been notified by the Chief Registrar that the record is ready for his use.

(3) The Court may, subject to such terms and conditions as it thinks fit, enlarge the time limits mentioned in sub-sections (1) and (2) or any provision that imposes a time limit herein, upon such terms as the justice of the case may require, and any such enlargement may be ordered although the application for the enlargement of time is not made until after the expiration of the time appointed or allowed under sub-sections (1) or (2), or the Court may direct a departure from this in any other way where this is required in the interests of justice

These powers would also be vested with the High Court if they had been given expansive jurisdiction to hear applications for leave.

[7] The provisions of the *SCA* governing the High Court's appellate jurisdiction provide final support for my decision to dismiss the present application for leave. Part II, sub-part 8 of the *SCA* defines the appellate jurisdiction of the High Court. That the *SCA* limits the High Court's appellate jurisdiction to hearing appeals from inferior courts is also clear and unambiguous. Section 112 provides:

Pursuant to section 31, any person dissatisfied with any decision of an inferior court may appeal to the Court subject to the conditions and regulations prescribed by this Act and by any rules of court.

[8] Similarly, sections 113, 116, and 177 which deal with appeal procedures, grounds of appeal, and stays of proceedings only contemplate appeals of inferior decisions:

113.-(1) Every appeal from a decision of an inferior court shall be heard and determined by the Court, and the practice and procedure of the Court in cases of appeal under this section shall be in accordance with this or any other Act relating to appeals from inferior courts and any rules of court.

116. The following grounds of appeal and no other may be taken, namely, that—

- (a) the Inferior court had no jurisdiction in the matter, but it shall not be competent for the Court to entertain that ground of appeal unless objection to the jurisdiction of the inferior court was formally taken at some time during the progress of the case and before the decision was pronounced;
- (b) the inferior court exceeded its jurisdiction in the matter;
- (c) the magistrate was personally interested in the matter;
- (d) the magistrate acted corruptly or maliciously in the matter, or took extraneous matter into consideration;
- (e) the decision was obtained by fraud;
- (f) the cause had been already heard or tried and decided by, or forms the subject of a hearing or trial pending before, some competent tribunal;
- (g) evidence was wrongly rejected, or inadmissible evidence was wrongly admitted, by the inferior court, and in the latter case there was not sufficient evidence to sustain the decision;
- (h) the decision was unreasonable or could not be supported having regard to the evidence;
- (i) the decision was erroneous in point of law;
- (j) the decision was based on a wrong principle or was such that the inferior court viewing the circumstances reasonably could not properly have so decided;

- (k) some specific illegality, other than hereinbefore mentioned, substantially affecting the merits of the case, was committed in the course of the proceedings therein or in the decision; or
- (l) the sentence was unduly severe or lenient.

117.–(1) Where any person has filed an appeal to the Court against a decision of an inferior court, the appeal shall not by itself result in the suspension of the decision under appeal, but the appellant may, within the time prescribed for filing such appeal, apply to the inferior court which made the decision under appeal, for stay of execution of any judgment appealed from, whether civil or criminal, pending the determination of such appeal.

In the absence of finding almost no mention in Part III of the High Court’s role in deciding questions of leave from decisions in civil matters arising from its own court, one would expect to find that authority in Part II if such a role exists. Instead, Part II only speaks to the High Court having appellate jurisdiction from matters arising from the inferior courts, further lending support to my finding that the High Court no longer has the jurisdiction to hear leave to appeal applications for its own decisions in civil matters.

[9] The *SCA* has only just come into force. The *Supreme Court (Civil Procedure) Rules, 2005* have yet to be revised to reflect the new procedure for appeals of High Court decisions. Because these rules are subsidiary legislation as understood by the *Interpretation Act*,² the rules are inoperative and do not apply to the extent of that they conflict with the *SCA*. Section 21(b) of the *Interpretation Act* provides:

21. Where an Act confers power on any authority to make subsidiary legislation, the following provisions shall, unless the contrary intention appears, have effect with reference to the making thereof,

...

- (b) no subsidiary legislation shall be inconsistent with the provisions of the Act under which it is made;

[10] The Court of Appeal Rules, however, are included within the *SCA* and are not truly subsidiary. A review of the rules reveals, like the CPR, no substantive changes have been made to reflect the new *SCA*. Until those changes are made, where a Court of Appeal rule can be interpreted in a way that does result in a conflict with the substantive sections of the *SCA*, it should endeavor to do so. For example, Order 2 outlines the procedure for civil appeals and reads:

² Laws of Belize, Cap. 1.

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 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.

This subsection ought to be read as only contemplating an application of leave to appeal being made to a High Court Judge in a civil matter where the High Court has expressly retained jurisdiction to hear the appeal. As previously explained, the High Court can hear leave to appeal a decision in a *habeas corpus* matter.

Disposition

[11] For the reasons explained above, I must dismiss the application for leave for lack of jurisdiction to hear the application. Mr. Flowers must bring his application to the Court of Appeal. I have made no order as to costs as I believe there is genuine lack of appreciation of the changes the *SCA* has made to the distribution of appellate jurisdiction in civil matters between the Superior Courts. The decision to provide a written decision on this application is intended as notice to the legal practitioners in anticipation of future appeals.

Dated April 27, 2023



Patricia Farnese
Justice of the Supreme Court of Belize