

25-3-09

PLAINTIFFS

DEFENDANT

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BEFORE THE HON. CHIEF JUSTICE

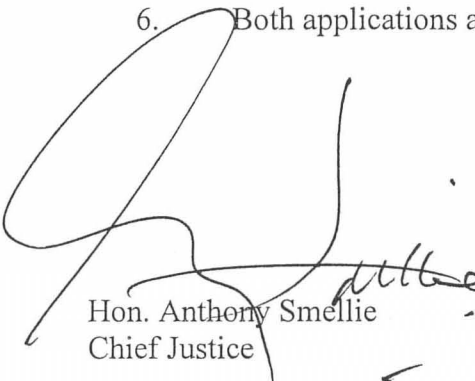
Mr. Nick Dunne of Walkers for the plaintiffs
Mr. Lee Freeman of Priestleys for the defendant

RULING

1. ABCI applies, in respect of summary judgment given against it in February 2008, for leave to appeal out of time. It also applies for leave to appeal, in respect of a decision refusing its application to set aside that summary judgment, which decision was given in September 2008.
2. ABCI's primary argument for leave to appeal now is that it has been prevented from having tried the factual matter whether Saudi Law governs the contract which it asserts exists as between itself and the plaintiffs. ABCI asserts that matters of fact, and in particular matters of fact going to the state of foreign Saudi law, are not given to summary dispensation. Thus it is said that ABCI now has an arguable case on appeal that that matter should be referred back to this Court for trial. At such a trial the contest would be between the competing experts on Saudi Law.
3. This argument is, in my view, bound to fail. A main basis on which Summary Judgment was given in February 2008 and on which the application to set that judgment aside was refused in September 2008, was that, as a straight-forward matter of contractual interpretation, Saudi Law was not shown to be the governing law of the contract upon which ABCI seeks to rely. Accordingly, there could be no factual dispute to be resolved as to the meaning and effect of Saudi Law thus found to be inapplicable to the dispute.
4. For that reason alone, ABCI now fails to show any prospect of success on appeal against the February 2008 summary judgment and its application must be refused.

5. It must also be refused in respect specifically of the September 2008 ruling. In that ruling, the issue of expert evidence as to Saudi Law was specifically addressed and its secondary importance to the more important matter of contractual interpretation demonstrated as a reason for not setting aside the summary judgment of February 2008. I also feel obliged to note – on the basis of the continuing absence of any proper explanation for its failure to defend against the Summary Judgment application in February 2008 or for failing to appeal earlier against it before September 2008 – that I am concerned that its real reason for seeking leave to appeal out of time now is to further delay the disposition of the case. ABCI's conduct in the past is the reasonable basis for this concern and is fully described in my earlier rulings in this matter. And so, to the extent that ABCI must satisfy me now that there are good reasons for its not having sought to pursue its appeal within the time frames allowed by the Rules of the Court, it has failed to do so.

6. Both applications are refused.



Hon. Anthony Smellie
Chief Justice

March 25 2009

