IN THE COURT OF APPEAL OF BELIZE, A.D. 2007

CIVIL APPEAL NO. 6 OF 2006

BETWEEN:

RAYMOND BROWN	**Appellant**
AND	
CENTRAL BANK OF BELIZE	**Respondents**
PROVIDENT BANK & TRUST BELIZE LTD.	**Interested Party**

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BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Hubert Elrington for appellant.
Mr. Derek Courtenay S.C. for respondents.
Mr. Dean Barrow S.C. for Interested Party.

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24 October 2006, 8 March 2007

CAREY, JA

1. This case is all about the approach to the new rules governing civil procedure in this jurisdiction. The overarching principle which informs and governs The Supreme Court (Civil Procedure) Rules 2005 is the “overriding objective”. Rule

1.1 (1) provides that the overriding objective of the rules is to enable the court to deal with cases justly. Two of the considerations which relate to dealing with cases justly, are, saving expense and ensuring that the case is dealt with expeditiously. Although the rules came into effect in April 2005, it would appear that persons most affected by them, did not take the necessary time to familiarize themselves with the new procedures, nor to appreciate the importance of the overriding objective of the rules.

2. Awich J had before him an application for an order granting permission to bring judicial review proceedings regarding a decision of the Central Bank. Two objections were raised but only one of these concerns us, namely, that the application had not been verified by evidence on affidavit as required by CPR 56.3(4). The gravamen of the challenge was that the document could not have been "sworn to at Belize City….before Mark C. Owens, Notary Public No. 66829", when Mark C. Owens signed in the U.S.A. Counsel who appeared below for the applicant, the appellant in this court, informed the judge that the affidavit was prepared in Belize and sent off to the USA where it was sworn before a Notary Public who had omitted to cancel the words Belize City as the place where the affidavit was sworn. This, as I would have thought, tongue in cheek objection was viewed very seriously by the judge. He categorized the error as "a gross irregularity" and dismissed the application.

3. Before us after a somewhat circuitous route avoiding any reference to CPR 1.1, Mr. Hubert Elrington finally accepted that the affidavit was defective but that did not result in a fatality to the proceedings. Accordingly he requested an extension of time to amend the defect and file the affidavit in proper form so as to comply with CPR 1.1 which speaks to the overriding objective. Both Mr. Courtenay, S.C. and Mr. Barrow, S.C. agreed that time should be afforded to the appellant in the spirit of the overriding objective. One cannot help saying that the mountain had gone into labour and produced a mouse. Everyone was agreeing that the judge had fallen into error.

4. The need re emphasize the paramount importance of the "overriding objective" of the rules prompts me to make some comment in this case where we are disagreeing with the judge's conclusion. In a case decided earlier in this year, *Jenkins v. Bowman & Ors. (unreported)* 14 July, this court addressed the new rules. That case is not on all fours with the instant case, but illustrates the application of the "overriding objective". At para. 42 of that judgment, I expressed the opinion that – "the rules of procedure have not just been revised, they have been reformed".

Technicalities have given way to the "overriding objective" of the Rules which is "to enable the court to deal with cases justly". In the early part of this judgment I adverted to two of the considerations which affected dealing with cases justly, namely, saving expense and dealing with cases expeditiously. The application for permission to bring judicial review was heard in June 2006, now after an appeal, hence delay and costs thrown away, the applicant has not moved appreciably towards a resolution of his grievance. There can be no doubt that the overriding objective was not a consideration when the application was dismissed.

5. For these reasons, I agreed that the appeal be allowed, the order of Awich J set aside and the appellant allowed twenty one days within which to file a supplemental affidavit. I agreed that the case should be remitted to the judge for a hearing and that there be no order as to costs.

CAREY JA

MOTTLEY, P.

6. I have read the judgment of Carey JA and I agree with the reasoning and conclusion set out therein.

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MOTTLEY P

MORRISON, JA

7. I also agree with the judgment of Carey JA, and have nothing to add.

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MORRISON JA