

IN THE SUPREME COURT OF BELIZE A.D. 2010

CLAIM NO. 50 OF 2010

BETWEEN

THE BELIZE BANK LIMITED

CLAIMANT

AND

DELLON MOREY

DEFENDANT

Ms. Tania Moody for the claimant/respondent.
Mr. Kareem Musa for the defendant/applicant.

AWICH J

13.12.2010

RULING ON APPLICATION DATED 29TH OCTOBER 2010

1. *Notes: Permission to appeal a ruling denying defendant opportunity to call an expert witness whose witness statement was given to claimant late; whether the order is appellable.*
2. The defendant/applicant seeks permission from the Supreme Court to appeal to the Court of Appeal, the ruling made by this court on the 24th of September 2009. The intended appeal will be against the order made on that day denying the defendant opportunity to call an expert witness. Subsequently, an order was drawn and amended by myself in which it

was stated that the defendant would not call the expert witness and one other witness he intended to call. The witness was the defendant himself.

3. Regarding the one witness other than the expert, that is, the defendant himself, the ruling of the 24th September 2009 in fact did not deny the defendant opportunity to call another witness. But subsequent to that ruling, a draft order was submitted for approval of myself; and it is clear that I made a mistake by including the defendant as a witness not to be called. Ms. Tania Moody, learned counsel for the claimant, accepted that the ruling on 24th September 2009 did not exclude the defendant as witness; she went further to mention that I expressly stated at the ruling that the defendant would not be excluded as a witness.
4. In view of that, it seems to me that the proper thing to do would be an application by the defendant to this Court to correct the order perfected, so that the order reflects the true ruling made on the 24th of September 2009. I refuse leave to appeal regarding that matter.
5. Learned counsel Mr. Kareem Musa, for the defendant, further submitted that in the circumstances deposed to in affidavit, the court erred in making an order under Rule 29.11 denying the defendant opportunity to call the expert witness intended. The reason he gave was that the objection to having that witness called came too late, that is, at pre-trial review, and that the defendant had not been given the original document at issue, namely, a guarantee, for the expert to examine.

6. The response by Ms. Moody was that the Court of Appeal has no jurisdiction to hear the question of non-compliance with the Rules, and that the defendant ought to have made an application for relief to sanction that otherwise may be imposed for non-compliance.

7. My view is that the first thing for the defendant to have done was to apply for relief from sanction that the court may impose following failure to comply with the Rules or case management order. The defendant jumped the gun. Whether an interlocutory order regarding non-compliance with the Rules is appellable requires more consideration.

8. It does appear to me that the Court of Appeal may well settle this question finally and for that reason, I give permission to the defendant to appeal the question of whether the order imposing sanction for non-compliance with Rule 29.11 and case management order is appellable. The Court of Appeal may then well decide the question whether I erred in denying the defendant opportunity to call his expert witness based on non-compliance with the Rules. I grant permission for those two grounds of appeal.

9. **Delivered this Monday 13^h day of December 2010**
At the Supreme Court
Belize City

SAM LUNGOLE AWICH
Judge
Supreme Court