



**COURT OF APPEAL OF THE CAYMAN ISLANDS
APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS FINANCIAL
DIVISION**

**CICA (Civil) Appeal No. 24 of 2022
(Formerly Cause No. FSD 242 of 2020 (MRHCJ))**

BETWEEN

RABSCO INC

APPELLANT

-AND-

SURESH PRASAD

RESPONDENT

On the Papers:

**The Rt. Hon Sir John Goldring, President
The Hon. Sir Richard Field, Justice of Appeal
The Hon. Sir Michael Birt, Justice of Appeal**

Appearances:

**Mr Ben Valentin KC instructed by Mr Ian Huskisson and
Mr Bhavesh Patel of Travers Thorp Alberga for the
Appellant**

**Mr Colin McKie KC instructed by Mr Nicholas Dixey and
Colm Flanagan of Nelsons for the Respondent**

Draft circulated:

3 November 2023

Judgment delivered:

10 November 2023

JUDGMENT

Birt, JA

1. This judgment is supplemental to a judgment dated 7 August 2023 (“the Judgment”) and words and expressions defined in the Judgment have the same meaning in this judgment.

2. In brief outline, Rabsco Inc sued Mr Prasad under a guarantee which Mr Prasad had given to Rabsco in respect of the indebtedness of a company called Midland Acres. Ramsay-Hale J (as she then was) dismissed Rabsco’s claim. Rabsco appealed to this Court and, for the reasons set out in the Judgment, this Court allowed the appeal and gave judgment against Mr Prasad for the sum of US \$ 35,017,406 plus interest (less the sum received by Rabsco by way of distribution from the liquidation of Midland Acres).
3. Mr Prasad now seeks to appeal to the Privy Council against this Court’s decision. It is accepted by Rabsco that the matter in dispute exceeds the value of £300 and accordingly, Mr Prasad has an appeal as of right to the Privy Council pursuant to section 3(1)(a) of the Cayman Islands (Appeals to Privy Council) Order 1984 (“the 1984 Order”).
4. The circumstances in which an appellate court can refuse leave to appeal to the Privy Council where such appeal lies as of right by statute are extremely limited. As the Privy Council pointed out in *A v R* [2018] UKPC 4, it may only do so where there is no “*genuinely disputable issue*”. That is a very low threshold bearing in mind that there is a statutory appeal as of right.
5. At the time of Mr Prasad’s application to appeal, the only ground of appeal given was that this Court “...*fell into error in overturning the decision of Ramsay-Hale J*”. This was completely inadequate and, had the matter rested there, the Court might well have concluded that this did not disclose that there was a genuinely disputable issue. However, detailed grounds of appeal have since been filed. Accordingly, in circumstances where Ramsay-Hale J reached one conclusion about the guarantee and this Court reached a different one, it cannot properly be said that there is no genuinely disputable issue. The Court must therefore grant leave to appeal.
6. Rabsco submits that the Court should attach a condition to the grant of leave to the effect that Mr Prasad may only pursue the appeal if he pays into court the judgment sum (or a substantial proportion of the judgment sum) together with Rabsco’s costs in this Court and in the Grand Court.

7. The question arises as to whether this Court has jurisdiction to impose such a condition on the grant of leave where an appeal lies as of right. In my judgment, it is well established that it does not.
8. In *Crawford v Financial Institutions Services Ltd (Jamaica)* [2003] UKPC 49, the Privy Council considered this issue in relation to Jamaica in circumstances where, on the facts of the case, an appeal lay as of right. The Court of Appeal of Jamaica had imposed a condition on the grant of leave to appeal that the appellant should pay the outstanding costs orders in the Court of Appeal and the court of first instance and had made consequential orders upon the failure of the appellant to comply with this condition.
9. Sections 4 and 7 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council (“the Jamaica Order”) were in the following terms:

“4 Leave to appeal to her Majesty in Council in pursuance of the provisions of any law relating to such appeals shall, in the first instance, be granted by the Court only

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(a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and

(b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the dispatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

6 Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as her Majesty in Council shall think fit to make thereon.”

10. The Privy Council held that there was no power to impose additional conditions beyond those in section 4. Neither section 4 nor section 6 conferred such a power and there was no inherent jurisdiction to impose additional conditions where the statute conferred an appeal as of right.
11. The provisions of sections 4 and 6 of the Jamaica Order are, for all practicable purposes, identical to sections 5 and 7 of the 1984 Order. The decision of the Privy Council in *Crawford* is therefore equally applicable in relation to appeals as of right from decisions of this Court.
12. It follows that this Court has no jurisdiction to impose the condition sought by Rabsco. Accordingly, leave to appeal is granted to Mr Prasad subject only to the statutory condition set out in section 5 of the 1984 Order.

Field, JA

13. I agree.

Goldring, President

14. I also agree.