

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

CICA (Civil) No. 11 of 2000  
Grand Court Cause No. 638 of 1999

BETWEEN:

COLUMBRARIA LTD.  
Appellant

- and -

RAMON E. BETETA  
Respondent



BEFORE: The Rt. Honourable Mr. Justice E. Zacca, President  
The Rt. Honourable Mr. Justice T. Georges, J.A.  
The Honourable Mr. Justice I. Rowe, J.A.

August 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 10<sup>th</sup> 2000

Charles Haddon-Cave Q.C. and Del Magner instructed by Ritch & Connolly for the Appellants.  
Andrew Hochhauser Q.C. and Shaun McCann instructed by Bruce Campbell & Company for the Respondents.

**REASONS FOR JUDGMENT**

**GEORGES, J.A.**

This was an inter parties application to this Court for leave to appeal a decision of Kellock J. refusing such leave. The appellant also sought the leave of this Court to file fresh evidence at the hearing of the appeal. After consideration we announced shortly after the close of the hearing of arguments that we had decided to accede to the application for leave to adduce the fresh evidence and to grant the leave to appeal – the costs of these applications to be costs in the cause.

At the request of the parties we set out below our reasons for the decision to grant leave to adduce fresh evidence.

Rule 17(2) of the Court of Appeal Rules made pursuant to the Court of Appeal Law states:-

“The Court shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner.”

This is broader than the equivalent provision of the Supreme Court Practice 1999, Order 59, rule 10. That rule is, however, directed to the situation in which the fresh evidence is sought to be introduced “after trial or hearing of any cause or matter on the merits” (emphasis supplied). Such an application will be granted only on “special grounds”. These grounds have been defined in Ladd v. Marshall [1954] 1 W.L.R. 1489.

The substantive issue under consideration is one for leave to appeal to this Court consequent on the refusal by the judge at first instance to grant such leave. The substantive issue for determination was procedural – namely the forum for the trial of the dispute between the parties. No issue on the merits of that dispute arose for determination.

Clearly where the dispute between the parties has been decided on the merits, special grounds must be shown to justify the reopening of these issues. The conditions prescribed in Ladd v. Marshall (supra) would then be considered.

Where the issue decided is in the area of procedural matters the principles guiding the discretion of the Court in exercising its powers under our local rules are whether the evidence is relevant and whether the party against whom such evidence is tendered would be prejudiced by the granting of leave to adduce it.

We were of the view that the evidence was relevant. As regards any prejudice which the grant of the application would cause the respondent we were satisfied that this could be remedied by granting the respondent to the application leave to file affidavits in reply.

