

Felix Caballero
Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M40/91

IN THE MATTER of an Arbitration between
N.C. Smith Engineers Limited and the
Urban Development Corporation

AND

IN THE MATTER of Section 4 (b) of the
Arbitration Act

AND

IN THE MATTER of Section 686 of the
Judicature (Civil Procedure Code) Law

BETWEEN	URBAN DEVELOPMENT CORPORATION	PLAINTIFF
AND	N. C. SMITH ENGINEERS LIMITED	DEFENDANT

Mr. Arthur Hamilton instructed by Myers Fletcher and Gordon for the Plaintiff

Mr. R.B. Manderson-James for the Defendant

HEARD: JUNE 25, 26, 1991.

ORAL JUDGMENT

HARRISON J. (Ag.)

This is an application by the defendant for a Stay of Proceedings in respect of an Originating Summons wherein the plaintiff is seeking an order that a claim made by the defendant in certain arbitration proceedings be dismissed.

The defendant is now seeking to have these proceedings, that is, the Originating Summons, stayed on the grounds:

- (a) Pursuant to section 5 of the Arbitration Act.
- (b) That this Honourable Court has no jurisdiction to make the orders sought in the Originating Summons issued by the plaintiff and dated 12th June 1991.

Arbitration proceedings are currently being conducted before an Arbitrator arising from an arbitration agreement made between the parties on the 26th day of June 1989. The evidence presented before me revealed inter alia, that the Arbitrator made a ruling in respect of certain documents which were to be produced by the

defendant. As a result of the defendant's failure to produce these documents the arbitration proceedings were adjourned. The plaintiff was granted time by the Arbitrator to make an application to the court in respect of the non-production of the documents. The plaintiff proceeded to file an Originating Summons in the Supreme Court and is seeking an order to dismiss the defendant's claim before the Arbitrator.

Mr. Manderson-Jones submitted on ground (a) that upon an interpretation of section 5 of the Arbitration Act "that section comes into play when a party to a submission to arbitration commences any legal proceedings. Legal proceedings were commenced he says by the filing of the Originating Summons hence he is entitled to apply for a stay of proceedings. Section 5 of the Arbitration Act reads as follows:

"If any party to a submission or any person claiming through or under him, commences any legal proceedings in the court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings and the court or a Judge thereof, is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration may make an order staying the proceedings."

He further submitted that this section applies equally to an application for stay during the pendency of arbitration proceedings Penrice v Williams 1883 23 Ch. D. 353 was cited in support of this contention.

Mr. Hamilton submitted that section 5 of the Arbitration Act deals with a situation where the parties have by written agreement agreed to submit a dispute to arbitration and in face of this agreement one of the parties to the agreement instead of submitting to arbitration commences legal proceedings in court. He also submitted that section 5 would come to the aid of that person against whom such proceedings have been brought to seek a stay of proceedings in court. He concludes therefor that section 5 could not support the defendant's contention.

Turning to ground (b) Mr. Manderson-Jones cited several authorities in support. Mr. Hamilton contended that any submission regarding the propriety of the Originating Summons and regarding whether or not a stay should be granted

based upon the propriety of that summons, should be disregarded as these submissions relate to matters that are not presently before the court.

There are in my view five requisite conditions of obtaining a stay under section 5 of the Arbitration Act. They are:

- (a) A valid Arbitration Agreement which covers the dispute in question.
- (b) The applicant must be entitled to rely on the agreement.
- (c) The applicant must have taken no step in the proceedings after appearance.
- (d) The applicant must be ready and willing to arbitrate.
- (e) There must be no sufficient reason for refusing stay.

If these conditions are fulfilled, then it is for the party who wishes the matter to be litigated in court instead of being referred to arbitration to show that an order to stay will be made -- See Willesford v Watson (1873) and Ch. App. 473 and Russell v Russell (1880) 14 Ch. D. 471.

Now the application before me is seeking to stay proceedings in the Originating Summons filed by the Plaintiff. Arbitration proceedings have already commenced hence there is no need for me to decide whether or not there is an agreement in dispute to be resolved by arbitration.

On the arguments there is merit in Mr. Hamilton's submission. I am not convinced that the defendant has satisfied me that the present application falls within the frame work of section 5 of the Arbitration Act. I conclude therefore, the application for stay of proceedings is inappropriate and wholly misconceived. Accordingly, the summons is dismissed. There shall be costs to the plaintiff to be taxed if not agreed.