[2018 Gib LR 293]

IN THE MATTER OF WARDOUR TRADING LIMITED

SAGREDOS v. COHEN (as liquidator of WARDOUR TRADING LIMITED)

COURT OF APPEAL (Kay, P., Rimer and Smith, JJ.A.): October 25th, 2018

Civil Procedure—appeals—extension of time—on application under Court of Appeal Rules 2004, r.8 for extension of time to appeal, court adopts practice of English Court of Appeal—application treated as application for relief from implied sanction of inability to pursue appeal if extension not granted—court (i) to assess seriousness and significance of failure to comply with any rule, practice direction or court order; (ii) to consider why default occurred; and (iii) to evaluate all circumstances so as to deal justly with application, including (a) requirement that litigation conducted efficiently and proportionately, and (b) interests of justice

The appellant applied for an extension of time to file a notice of appeal.

The respondent was the liquidator in the compulsory winding up of a company, Wardour Trading Ltd. His predecessor as liquidator had sued the appellant and a Mr. Nekrich for declarations that each was personally liable for all of the company's debts and accountable to the company for assets they had misapplied or retained. The Supreme Court (Jack, J.) gave judgment on February 9th, 2015 and made an order on March 18th, 2015 declaring that the appellant and Mr. Nekrich were jointly and severally liable to pay certain sums to the company and ordering them to pay those sums. The total amount to be paid was US$89,536,826.84.

In July 2015, the appellant applied to set aside that judgment and order on the ground that he had not been properly served with the proceedings or alternatively that because of his non-attendance at the trial there should be a retrial. That application was dismissed in February 2016.

On August 28th, 2015, the appellant had also filed a notice of appeal against the judgment of February 9th, 2015 and order of March 18th, 2015. Rule 48(1) of the Court of Appeal Rules 2004 required such a notice to be filed within 14 days "of the decision complained of," *i.e.* within 14 days of the February judgment. The notice was therefore some six months late. It also sought an extension of time and a stay of execution of the order pending the outcome of the application. The application for an extension was stayed by consent until after the disposal of the application

for setting aside. In January 2018, the respondent issued a notice of motion asking for the extension application to be heard.

The respondent adopted a passive role on the application, leaving it to the appellant to make his case.

The appellant submitted inter alia that (i) in Gibraltar, in contrast to the practice in England and Wales, an application for an extension of time to appeal was not correctly characterized as an application for relief from sanction (r.48 of the Court of Appeal Rules 2004 imposed no express sanction), with the consequence that the merits of such an application were not subject to the three-stage test as explained by the English Court of Appeal (in *Denton* v. *T.H. White Ltd.*, [2014] EWCA Civ 906); and (ii) the discretion to extend time for appealing in Gibraltar was governed by more general criteria.

Held, granting the application for an extension of time:

(1) The correct way for this court to determine a r.8 application for an extension of time for appealing was to adopt the English Court of Appeal's practice of treating such an application as an application for relief from the implied sanction of the inability to pursue the appeal if an extension were not granted (the sanction being implied because there was no rule in the CPR expressly providing that the failure to file a notice of appeal in time would result in such an inability). There was nothing in r.48 or elsewhere in the Court of Appeal Rules 2004 imposing an express sanction on a would-be appellant who filed his notice of appeal late. Rule 46 provided that "in any case not provided for by these rules the practice and procedure for the time being of the Civil Division of the Court of Appeal in England shall be followed as nearly as may be." As the Court of Appeal Rules 2004 offered no express guidance as to the criteria to be applied or the considerations to be taken into account, in the determination of a r.8 application for an extension of time for appealing, r.46 required the court to look for such guidance to the practice for the time being of the English Court of Appeal. The practice of that court to treat an application for an extension of time to appeal as an application for relief from the implied sanction that, if the notice of appeal was late, the appeal could not be pursued made good sense (paras. 18–21).

(2) The three-stage test applied on an application for relief from sanction required the court (i) to identify and assess the seriousness and significance of the failure to comply with any rule, practice direction or court order; (ii) to consider why the default occurred; and (iii) to evaluate all the circumstances of the case so as to enable the court to deal justly with the application, including (a) the requirement that litigation should be conducted efficiently and at proportionate cost; and (b) the interests of justice in the particular case. In the present case, the court regarded as compelling the appellant's point that his admitted delay in filing his notice of appeal had no serious or significant effect because even if it had been filed in time its prosecution would have been put on hold pending the final disposal of his set aside application. The delay in the filing of the notice of

appeal, while serious in terms of length, was not therefore significant in terms of its effect on the proceedings. Considering stage two of the test, namely the reason for the delay, the appellant did not learn of the February 2015 judgment until March 25th or 26th, 2015, and could not therefore be criticized for not filing his notice of appeal within 14 days of the judgment. In circumstances in which the issuing of the set aside application meant that the prosecution of the appeal would have been stayed in any event in the meantime, the court would not hold the delay against the appellant. It had no significant effect on the prosecution of the appeal and caused no prejudice to the respondent. Stage three of the test required the court to consider all of the circumstances including factors (a) and (b). There was nothing in factor (a), *i.e.* the requirement that litigation should be conducted efficiently and at proportionate cost, that militated against the application. As for factor (b), *i.e.* the interests of justice in the case, once it had been determined that in the circumstances the delay in filing the notice of appeal was not serious or significant, the interests of justice pointed compellingly to the conclusion that the appellant should have the opportunity to challenge the order by way of appeal. The proposed grounds of appeal raised apparently arguable points. In the circumstances and having had no argument as to why the court should refuse the appellant's application, an extension of time would be granted (para. 22; paras. 24–28).

Cases cited:

(1) *Att. Gen. (Trinidad & Tobago)* v. *Matthews*, [2011] UKPC 38, distinguished.
(2) *Bank of Scotland plc* v. *Pereira*, [2011] 1 W.L.R. 2391; [2011] 3 All E.R. 392; [2011] C.P. Rep. 28; [2011] H.L.R. 26, referred to.
(3) *Denton* v. *T.H. White Ltd.*, [2014] EWCA Civ 906; [2014] 1 W.L.R. 3926; [2015] 1 All E.R. 880; [2014] C.P. Rep. 40; [2014] 4 Costs L.R. 752, applied.
(4) *Mackay* v. *Ashwood Enterprises Ltd.*, [2013] EWCA Civ 959; [2013] 5 Costs L.R. 816, *dicta* of Lloyd, L.J. considered.
(5) *R. (Hysaj)* v. *Home Secy.*, [2014] EWCA Civ 1633; [2015] 1 W.L.R. 2472; [2015] C.P. Rep. 17, considered.
(6) *Rocca* v. *Gibraltar Health Auth.*, Civil Appeal No. 16 of 2014, C.A., February 4th, 2015; noted at 2015 Gib LR *N* [5], applied.
(7) *Salford Estates (No. 2) Ltd.* v. *Altomart Ltd.*, [2014] EWCA Civ 1408; [2015] 1 W.L.R. 1825; [2016] 2 All E.R. 328; [2015] C.P. Rep. 8; [2014] 6 Costs L.R. 1013, referred to.
(8) *Sayers* v. *Clarke Walker (a firm)*, [2002] EWCA Civ 645; [2002] 1 W.L.R. 3095; [2002] 3 All E.R. 490; [2002] C.P. Rep. 61, referred to.

Legislation construed:

Court of Appeal Rules 2004, r.8: The relevant terms of this rule are set out at para. 13.
r.46: The relevant terms of this rule are set out at para. 19.
r.48: The relevant terms of this rule are set out at para. 13.

P. Caruana, *Q.C.* and *C. Allan* for the appellant;
N. Howard and *D. Martinez* for the respondent.

1 **RIMER, J.A.:**

Introduction

This is an application by George Sagredos for an extension of time for appealing. The respondent is Samuel Cohen. Mr. Cohen is the liquidator in the compulsory winding up of Wardour Trading Ltd. By an originating summons dated August 10th, 2009, Mr. Cohen's predecessor liquidator sued Michael Nekrich and Mr. Sagredos for declarations that each was personally liable for all Wardour's debts to its creditors and was accountable to Wardour for assets they had misapplied or retained. Following a trial at which Mr. Nekrich was represented but in which Mr. Sagredos took no part, Jack, J. gave his judgment on February 9th, 2015 and then made an order on March 18th, 2015. The order (i) declared that Mr. Nekrich and Mr. Sagredos were jointly and severally liable to pay US$48,250,449.84 to Wardour and were similarly liable to account to Wardour for profits of US$11,303,238, and (ii) ordered them to pay such sums, together with interest, to Wardour. The total amount they were ordered to pay was US$89,536,826.84. Costs orders were also made, which I need not detail.

2 Mr. Nekrich appealed against Jack, J.'s order but, following his failure to comply with orders to provide security for Mr. Cohen's costs, his appeal was dismissed.

3 Mr. Sagredos's response to Jack, J.'s order was, on July 10th, 2015, to issue an application to set aside the judgment and order on the ground that he had not been properly served with the proceedings, alternatively that because of his non-attendance at the trial there should be a retrial: see CPR Part 39.3(3). I shall call this "the set aside application." It was heard by Jack, J. who, by his judgment of February 16th, 2016, held that the service on Mr. Sagredos had been regular and that, whilst the Part 39 application had been made promptly, there had been no good reason for Mr. Sagredos not to attend the trial and he had no reasonable prospect of success on a retrial. Jack, J. dismissed the application.

4 Mr. Sagredos appealed against that dismissal and Mr. Cohen applied for security for his costs of the appeal. By a judgment and order of November 4th, 2016, this court (Kay P., Potter and Rimer, JJ.A.) ordered Mr. Sagredos to provide additional security of £150,000 within 28 days. He did not do so and his appeal was dismissed.

5 In the meantime, on August 28th, 2015, Mr. Sagredos had also filed a notice of appeal against Jack, J.'s 2015 February judgment and March order so far as they concerned him. Rule 48(1) of the Court of Appeal Rules 2004 required the notice to be filed within 14 days "of the decision

complained of," which I consider meant within 14 days of the February 2015 judgment (see *Sayers* v. *Clarke Walker (a firm)* (8) ([2002] 1 W.L.R. 3095, at para. 5, *per* Brooke, L.J.; Kay and Staughton, L.JJ. concurring)). The notice was thus filed some six months late. It also sought an extension of time until August 28th, 2015 for its filing, a consequential extension of time for filing grounds of appeal ("the extension application") and a stay of execution of Jack, J.'s order pending the outcome of the application.

6 The effect of a consent order made by Dudley, C.J. on November 19th, 2015 was to stay the extension application until after the final disposal of the set aside application, following which either Mr. Sagredos or Mr. Cohen could apply to the Court Registry to set it down for hearing. Following such final disposal (see para. 4 above), neither party took any steps to reactivate the extension application until, on January 18th, 2018, Mr. Cohen issued a notice of motion asking for it to be heard and determined. It was due to be heard during this court's March 2018 session but was adjourned by consent to the court's September/October 2018 session.

7 Mr. Cohen's evidence in support of his application advanced no arguments against the giving of the requested extension, nor did Mr. Howard so argue at the hearing. His explanation was that Mr. Cohen, as liquidator and as an officer of the court, considered it appropriate for him to adopt a passive role on the application, leaving it to Mr. Sagredos, if he could, to make good his case on the merits. That stance puzzled me, but I say no more about it.

8 One thing that Mr. Cohen was, however, keen to establish was that, were Mr. Sagredos to obtain his extension, it should be on terms requiring him (i) to pay Mr. Cohen outstanding costs of £158,152; and (ii) to pay into court £250,000 by way of additional security for Mr. Cohen's costs of the appeal. The parties have agreed a form of draft order providing for such payments by specified dates, in default of compliance with which Mr. Sagredos's appeal (if he is permitted to pursue it) will stand dismissed without further order.

9 Sir Peter Caruana, Q.C., for Mr. Sagredos, devoted the bulk of his address to a submission that in Gibraltar, in contrast to the practice in England and Wales, an application for an extension of time for appealing is not correctly characterized as an application for relief from a sanction, with the consequence that the merits of such an application are not subjected to the three-stage test explained by the English Court of Appeal in *Denton* v. *T.H. White Ltd.* (3). Sir Peter submitted that the discretion to extend time for appealing in Gibraltar is governed by more general criteria, although he did not attempt to identify them. He also acknowledged that, if his submission that the extension application is not one for relief from a sanction was accepted, it would still be open to the court to

hold that the *Denton* test is anyway an appropriate one by which to determine it.

10 Mr. Howard addressed us briefly on whether the extension application is one for relief from a sanction, his submission being that it is, or should be so regarded, and that the *Denton* test governs its determination. In what follows I shall deal (i) with the "relief from sanction" question, and (ii) with the merits of the extension application.

Is the extension application one for "relief from a sanction"?

11 The practice in the English Court of Appeal is to treat an application for an extension of time for appealing as one for relief from the *implied* sanction of the inability to pursue the appeal if time is not extended. The sanction is implied because there is no rule in the CPR expressly providing that the failure to file a notice of appeal in time will result in such an inability. The existence of the implied sanction was recognized (perhaps for the first time) by the Court of Appeal in *Sayers* v. *Clarke Walker (a firm)* (8) ([2002] 1 W.L.R. 3095, at para. 21, *per* Brooke, L.J.), who explained that applications for an extension of time for appealing should be dealt with by the application of the checklist in CPR Part 3.9, the "relief from sanctions" rule. Part 3.9 has since been simplified and *Denton* is now the leading authority on the test that the court must apply when presented with an application for an extension of time for appealing and thus for relief from an implied sanction.

12 I should refer also to the more recent authority of *R. (Hysaj)* v. *Home Secy.* (5), in which the leading judgment was delivered by Moore-Bick, L.J., with whom Tomlinson and King, L.JJ. agreed. The court there affirmed its practice of treating an application for an extension of time for appealing as one for relief from an implied sanction. Moore-Bick, L.J. said ([2015] 1 W.L.R. 2472, at para. 36):

> "As the authorities demonstrate, for the past 12 years it has been consistently understood that in the *Sayers* case [2002] 1 WLR 3095 this court deliberately equated applications for extensions of time for filing a notice of appeal with applications for relief from sanctions because in its view the implied sanction of the loss of the right to pursue an appeal meant that the two were analogous. Following the decision in the *Mitchell* case [2014] 1 WLR 795 the courts have continued to proceed on the basis that applications for extensions of time for filing a notice of appeal should be approached in the same way as applications for relief from sanctions under CPR r 3.9 and should attract the same rigorous approach. It might even be said that the decision in the *Mitchell* case has provided an independent basis for a similar approach to applications of that kind. The clearest example is perhaps to be found in *Baho v. Meerza* [2014] Costs LR

620, to which I have already referred. Whatever one may think of the doctrine of implied sanctions, therefore, particularly in the light of the views expressed by the Privy Council in the *Matthews* case [2011] UKPC 38, I think that the approach to be taken to applications of the kind now under consideration is now too well established to be overturned. It follows that in my view the principles to be derived from the *Mitchell* case and the *Denton* case [2014] 1 WLR 3926 do apply to these applications."

13 In Gibraltar, r.48 of the Court of Appeal Rules 2004 prescribes a 14-day period from the date of the decision within which any person desiring to appeal to this court in any civil cause or matter "shall . . . give notice of appeal . . ." Rule 8(1) provides that this court or a judge may (*inter alia*) extend the time "for bringing any appeal . . . notwithstanding that the time limited therefor may have expired . . ." Rule 46 provides that, in any case not provided for by the Court of Appeal Rules, "the practice and procedure for the time being of the Civil Division of the Court of Appeal in England shall be followed as nearly as may be."

14 To understand Sir Peter's submission, I should set out these parts of the English CPR. First, r.3.8(1) provides:

> "Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction."

Secondly, r.3.9(1) provides:

> "On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application . . ."

15 Sir Peter's submission is that as r.48 imposes no express sanction of the type referred to in CPR Part 3.8(1), there is no basis for regarding an application for an extension of time for appealing as one for relief from a sanction. He enlisted the support of the decision of the Privy Council in *Att. Gen. (Trinidad & Tobago)* v. *Matthews* (1) (to which Moore-Bick, L.J. referred in the passage from *Hysaj* (5), cited at para. 12 above). What *Matthews* decided was succinctly summarized by Moore-Bick, L.J. (with whom Ryder and David Richards, L.JJ. agreed) in *Salford Estates (No. 2) Ltd.* v. *Altomart Ltd.* (7). He said ([2015] 1 W.L.R. 1825, at para. 11):

> ". . . In [*Matthews*] the Privy Council considered rules 26.6 and 26.7 of the Civil Procedure Rules of Trinidad and Tobago, which were materially the same as CPR r 3.8 and r 3.9. The defendant had applied, after time had expired, for an extension of time for filing his defence. The claimant argued that, since the application had been

made out of time, it was necessary for the defendant to apply for relief from sanctions under rule 26.7. The Privy Council rejected that submission. Lord Dyson giving the opinion of the Board pointed to the similarity of language used in rules 26.6 and 26.7, which were materially indistinguishable from that used in CPR r 3.8 and r 3.9, and held that both were directed to rules which themselves imposed or specified the consequences of a failure to comply. 'Sanctions imposed by the rules', he said at para 16, 'are consequences which the rules themselves explicitly specify and impose'."

16 The English Court of Appeal's practice of treating an application for an extension of time for appealing as an application for relief from an *implied* sanction is, therefore, out of line with the decision in *Matthews*. Sir Peter submitted that *Matthews* binds us to decide the present application by holding that there is no question of an application for an extension of time being one for relief from a sanction.

17 I do not, with respect, regard *Matthews* as binding us to decide anything relevant to the disposal of this application. *Matthews* turned on a consideration of the Rules of Court of Trinidad and Tobago, which in the material respects were indistinguishable from those of the English CPR. The question was whether the extension sought amounted to an application for a relief from a sanction. It was held that it did not, because the rule that the applicant had infringed imposed no express sanction for its breach within the meaning of the local equivalent of CPR r.3.8. The application for an extension therefore did not involve an application for relief from sanctions under the local equivalent of CPR r.3.9.

18 The decision in *Matthews* (1) does not, however, provide direct guidance for the disposal of this application because the rules of civil procedure on which it turned have no equivalent in Gibraltar. I would, however, agree with Sir Peter at least to this extent, namely that there is nothing in r.48, or elsewhere in the Court of Appeal Rules 2004, imposing an express sanction upon a would-be appellant who files his notice of appeal late. But, by itself, that tells us nothing as to the criteria the court should apply when considering an application under r.8 for an extension of time, which is the critical question upon which this application turns.

19 What does provide guidance as to that is the provision in r.46 that "in any case not provided for by these rules the practice and procedure for the time being of the Civil Division of the Court of Appeal in England shall be followed as nearly as may be." As the Court of Appeal Rules 2004 offer no express guidance as to the criteria to be applied, or the considerations to be taken into account, in the determination of a r.8 application for an extension of time for appealing, r.46 requires the court to look for such guidance to the practice for the time being of the English Court of Appeal. The practice there is for an application for an extension of time for

appealing to be treated as an application for relief from the implied sanction that, if the notice of appeal is late, the appeal cannot be pursued. That makes good sense because, failing any extension of time, the appellant will indeed suffer the very real sanction of being unable to pursue his appeal.

20 In my judgment, therefore, the correct way for this court to determine a r.8 application for an extension of time for appealing is by adopting the like approach as the English Court of Appeal, namely by applying the three-stage test in *Denton* (3).

21 The only Gibraltar authority on the topic to which we were referred is *Rocca* v. *Gibraltar Health Auth.* (6), a decision of this court in which the judgment was delivered by Parker, J.A. It concerned an application for an extension of time for filing grounds of appeal. Parker, J.A. approached the application as one for the relief from a sanction, to which the *Denton* approach was applicable. It appears that there was no dispute between counsel that this was the correct approach and so the decision cannot be regarded as a binding authority on the point. For the reasons I have given, however, I respectfully regard the court's approach in *Rocca* as correct.

Is Mr. Sagredos entitled to an extension on the merits?

22 In *Denton* (3), Lord Dyson, M.R. summarized thus the essence of the three-stage test ([2014] 1 W.L.R. 3926, at para. 24):

> ". . . A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the 'failure to comply with any rule, practice direction or court order' which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate 'all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]'."

Factors (a) and (b) are explained in *Denton* (*ibid.*, at para. 33) and are "(a) the requirement that litigation should be conducted efficiently and at proportionate cost; and (b) the interests of justice in the particular case."

23 Sir Peter's main point on the application of the *Denton* approach is that, whilst the delay in filing the notice of appeal was lengthy, in the circumstances it was neither serious nor significant because it has not delayed, or has had any adverse effect upon, or disrupted, the prosecution of the appeal or any other litigation. That is because, in addition to wishing to promote an appeal, Mr. Sagredos was also entitled, as he did, to bring his set aside application. It is not suggested that the bringing and pursuit of the set aside application was other than a legitimate application, albeit that it failed,

and the thrust of the guidance provided by the decision of the English Court of Appeal in *Bank of Scotland plc* v. *Pereira* (2) is that any such application should be pursued before the pursuit of any appeal against the challenged judgment. The point is most easily illustrated by what Lloyd, L.J. (who, with Lord Neuberger of Abbotsbury, M.R. and Gross, L.J., was a party to the decision in *Pereira*) said in *Mackay* v. *Ashwood Enterprises Ltd.* (4) ([2013] 5 Costs L.R. 816, at para. 67):

> "Although it was not cited to us (no doubt because this point was not in dispute) it seems to me that assistance by analogy is to be gained from the judgment of this court in *Bank of Scotland v Pereira* [2011] EWCA 241. That was concerned with the different provision in the CPR by which a party who has not attended a trial may apply to have the order made set aside or varied upon strict conditions: CPR rule 39.3(3) to (5). Both Lord Neuberger MR and I discussed the interaction between the exercise of that right and the parallel right to appeal. Although the potential range of circumstances in such cases may be wider and more various than in the present type of case, because the party applying will have had notice of the hearing, and has to show a good reason for non-attendance, nevertheless one theme that runs through the Master of the Rolls' judgment, with which both I and Gross LJ agreed, is that, normally, the right to apply to have the order set aside should be the first to be invoked."

24 Sir Peter's point is, therefore, that Mr. Sagredos's admitted delay in filing his notice of appeal had, in the events as they happened, no serious or significant effect because even if it had been filed in time, its prosecution would still have had to be put on hold (as in the event it was) pending the final disposal of his set aside application.

25 I regard that as a compelling point. The delay in the filing of the notice of appeal, whilst serious in terms of length, was not therefore significant in terms of its effect on the proceedings. That consideration lends, in my view, much force to the merits of Mr. Sagredos's extension application.

26 It is still necessary to consider stage two of *Denton* (3), namely the reason for the delay in filing the notice of appeal. In his judgment of February 16th, 2016 on the set aside application, Jack, J. accepted, at para. 66, that Mr. Sagredos did not learn of his February 2015 judgment until March 25th or 26th, 2015. He cannot therefore be criticized for not filing his notice of appeal within 14 days of the earlier judgment, and its filing was inevitably going to be late. Jack, J.'s further finding, after considering the evidence before him, was that in issuing his set aside application on July 10th, 2015, Mr. Sagredos acted with "reasonable celerity" and so had acted with sufficient promptness to meet the condition in CPR r.39.3(5)(a). Jack, J. was not also considering the promptness or otherwise with which, some six weeks later, Mr. Sagredos also filed his notice of appeal on August 28th,

2015, or why he did not file it until then, but the enormous task faced by Peter Caruana & Co. in coming to grips with this litigation when they were first instructed by Mr. Sagredos on May 18th, 2015 is fully explained by Christopher Allan in his affidavit of October 15th, 2015. Mr. Allan explains why it was not practicable to launch the set aside application earlier than it was. He does not, I believe, also explain the further six-week delay in filing the notice of appeal. In circumstances in which the issuing of the set aside application meant that the prosecution of an appeal would anyway be stayed in the meantime, I would not, however, hold that further delay against Mr. Sagredos. It had no significant effect on the prosecution of the appeal and caused no prejudice to Mr. Cohen.

27 Stage three of *Denton* requires the court to consider all the circumstances of the case, including factors (a) and (b) aforesaid. There is nothing in factor (a) that militates against Mr. Sagredos's application. As for factor (b), the interests of justice in the particular case, I favour the view that, once it has been determined that, in the circumstances of the case, the delay in filing the notice of appeal was not serious or significant, the interests of justice point compellingly to the conclusion that Mr. Sagredos should have the opportunity to challenge Jack, J.'s order by way of an appeal. Subject to being granted the necessary extension of time, he does after all have a *right* of appeal. We were referred briefly to his proposed grounds of appeal. The argument rightly did not attempt to descend into the substantive merits of the proposed appeal, but I would accept that, on their face, the grounds raise apparently arguable points.

28 In the circumstances, and having had no argument as to why this court should refuse Mr. Sagredos's application, I would extend his time for filing the notice of appeal until August 28th, 2015. It follows that the time for filing the grounds of appeal is also appropriately extended, as contemplated by para. 1.2 of the draft order we were shown, and counsel should agree the precise terms of that extension. I presume it follows also that the stay of execution of Jack, J.'s 2015 judgment and order imposed by para. 3 of Dudley, C.J.'s order of November 19th, 2015 must now be continued until after judgment on, or the earlier disposal of, Mr. Sagredos's appeal, and I would so order, although Mr. Cohen should be at liberty to apply on appropriate notice to vary or lift the stay. I would ask counsel also to agree the precise form of the continued stay. In default of any agreement as to the form of the order, they may ask the court to determine any differences.

29 **SMITH, J.A.:** I agree.

30 **KAY, P.:** I also agree.

Order accordingly.