

IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Application No GY/A/CV2024/001
GY Civil Appeal No 67 of 2023

BETWEEN

THE ATTORNEY GENERAL OF GUYANA

APPELLANT

AND

ENVIRONMENTAL PROTECTION AGENCY
FREDERICK COLLINS
GODFREY WHYTE
ESSO EXPLORATION AND PRODUCTION
GUYANA LIMITED

RESPONDENTS

Before: Mr Justice Saunders, President
Mr Justice Anderson
Mme Justice Rajnauth-Lee

Date of Reasons: 30 July 2024

On Written Submissions

Mr Darshan Ramdhani KC and Mr Arudranauth Gossai for the Appellant

Mr Sanjeev J Datadin for the First Respondent

Mr Seenath Jairam SC, Ms Melinda Janki, Ms Abiola Wong-Innis and Mr Ron Motilall
for the Second and Third Respondents

Mr Andrew M F Pollard SC and Mr Edward A Luckhoo SC for the Fourth Respondent

Practice and Procedure – Intervention – Addition of party to appeal proceedings – Whether Attorney General may intervene in appeal – Whether Attorney General has sufficient interest and can make substantial contribution in appeal – Court of Appeal Act, Cap 3:01 – Supreme Court (Civil Procedure) Rules 2016.

Cases referred to:

A-G of Guyana v Andrew James Investment Ltd [1994]-[1995] GLR 159, *A-G v James Cleaver & Co* [2006] UKPC 28, (2006) 69 WIR 256 (KY), *Bacchus v Khan* GY 1982 CA 10 (CARILAW), (8 April 1982), *Sport Maska Inc v Bauer Hockey Corp* [2016] 4 FCR 3, *USA's application (Warner) v A-G, Re* (2016) 91 WIR 550.

Legislation referred to:

Guyana – Constitution of the Co-operative Republic of Guyana Act, Cap 1:01, Court of Appeal Act, Cap 3:01, Environmental Protection Act, Cap 20:05, Supreme Court (Civil Procedure) Rules 2016.

REASONS FOR DECISION

Reasons:

Saunders P (Anderson and Rajnauth-Lee JJ concurring)

[1] – [9]

Disposition

[10]

SAUNDERS P:

[1] On 13 September 2022, Frederick Collins and Godfrey White filed a Fixed Date Application against the Environmental Protection Agency ('EPA'). They alleged that the EPA had abrogated its statutory duties and functions by, among other things, failing and/or omitting to mandate compliance by Esso Exploration and Production Guyana Ltd ('Esso') with obligations stipulated in condition 14 of environmental permit (renewed) No 201 607 05 issued by the EPA on 31 May 2022 to Esso for the Liza 1 Phase 1 Development Project within the Stabroek Block Offshore Guyana.

[2] On 22 November 2022, Esso was granted permission to be added as a respondent by the High Court. On 3 May 2023, the High Court ordered the EPA to issue an Enforcement Notice directing Esso to perform certain obligations under condition

14:10 and 14:05 of the environmental permit. The Notice also directed Esso, among other things, to indemnify and keep indemnified the Government of Guyana and the EPA against environmental obligations undertaken by Esso and its co-venturers.

- [3] The EPA and Esso appealed the High Court's decision to the Court of Appeal. The Attorney General was not part of the proceedings before the High Court, but he desired to intervene in the action to be added as a party. His application to intervene was premised on the existence of a Petroleum Agreement into which the Government had entered with Esso, and on an interpretation of s 31 of the Environmental Protection Act, Cap 20:05.
- [4] The Court of Appeal refused the Attorney General's application to intervene, and the Attorney General then applied to this Court for permission to appeal that decision of the Court of Appeal. This Court ordered the parties to file written submissions on the application for special leave and ordered that, in the event the application for special leave was successful, the submissions rendered would be considered as being made for the purpose of the hearing of the substantive appeal.
- [5] Having considered the parties' written submissions, on 13 May 2024 this Court granted special leave to the Attorney General, allowed the appeal, and ordered that the Attorney General be added as a party to Civil Appeal No 67 of 2023. No costs award was made. These are the reasons for those Orders.
- [6] Regarding the application for special leave, the Court found that the basis for the grant of Special Leave was made out. The proceedings were of particular public importance and the Attorney General's appeal had a realistic prospect of success. In the circumstances, special leave was granted.
- [7] Regarding the substantive merits, the Court of Appeal possesses the judicial discretion to allow the intervention of a party that was not previously party to

proceedings before the lower court. See, for example, the Guyana Court of Appeal Act, Cap 3:01 and r 31 of the (Civil Procedure) Rules 2016. The discretion to add a party is necessary so as to not frustrate persons who may have a genuine interest in proceedings where the rulings of the Court may adversely affect them. Intervention at the appellate stage is not a novel concept. See: *Attorney General v James Cleaver & Co*,¹ *Bacchus v Khan*² and *Attorney General of Guyana v Andrew James Investment Ltd*³.

[8] The Attorney General of Guyana performs a constitutional role as legal adviser of the State⁴ and guardian of the public interest. The public interest may include several different facets, preservation of the natural environment being one of them. While it is true that the EPA can make submissions on this subject, it is evident that the Attorney General proposes to make submissions based on the Petroleum Agreement made between Esso and the Government of Guyana, to which the EPA is not a party. It is conceivable that the judgment of the trial court in these proceedings may be relevant to obligations created under the said agreement. Further, it is apparent that the Attorney General, as guardian of the public interest and in his role pursuant to the Constitution, proposes to provide submissions on the interpretation of s 31 of the Environmental Protection Act, Cap 20:05. We consider that in light of all the circumstances, he ought to be permitted to do so.

[9] Messrs Collins and Whyte submit that the Attorney General's interests are linked to a separate contractual agreement in which remedies can be recovered by a separate action. To support this submission, they refer to *Attorney General of Guyana v Andrew James Investment Ltd*⁵ in which it is noted that the Court of Appeal of Guyana considered that an intervening party must have some legal interest distinct from mere commercial interest. In that case, however, the proposed intervener was a private party and not the Attorney General. The interests of the

¹ [2006] UKPC 28, (2006) 69 WIR 256 (KY).

² GY 1982 CA 10 (CARILAW), (8 April 1982).

³ [1994]-[1995] GLR 159.

⁴ Constitution of the Co-operative Republic of Guyana Act, Cap 1:01, art 112.

⁵ *A-G of Guyana* (n 3) at 175.

Attorney General in this appeal are distinct from those of a person holding a mere commercial interest. Those interests include matters of general public importance.

Disposition

[10] In these proceedings, we consider that the Attorney General ought to be afforded the right to be heard in keeping with the natural justice principle *audi alteram partem*.⁶ The Attorney's submissions ultimately may or may not find favour with the court, but in proceedings of this nature, the ultimate question for consideration of the Court is whether the interests of justice require the intervention of the party as was considered in *Sport Maska Inc v Bauer Hockey Corp*.⁷ It is our view that in this case that question should be answered in the affirmative.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

⁶ *Re USA's application (Warner) v A-G* (2016) 91 WIR 550.

⁷ [2016] 4 FCR 3.