

**S & A CONSTRUCTION PROJECT SERVICES LTD & ANOR v BANQUE DES
MASCAREIGNES & ANOR**
[Court of Civil Appeal]
2017 SCJ 129
SUMMARY

Facts: The present case is an appeal against the judgment of the learned Judge of the Commercial Division setting aside the Appellants' (then Applicants) application for an order enjoining the Respondents in this appeal (also Respondents in the application) to communicate to the Appellants certified copies of cheques issued by the Co-Respondent with respect to certain payments made by the Co-Respondent.

The Appellants contended as follows: firstly, given the reasons mentioned in the application for wanting discovery, the learned Judge should have found that there was good ground for such an application and should thus have ordered communication of certified copies of the said cheques; secondly, the learned Judge had failed to exercise her discretion in equity and thus denied justice to the Appellants (then Applicants).

The Co-Respondent objected to the appeal on the main ground that *“the grounds of appeal are no grounds at all as they do not challenge the reasoning and/or findings of the learned Judge as set out in her judgment.”*

Held: The Court of Appeal held that the grounds of appeal neither challenged the findings of the learned Judge where the latter gives reasons why the application was misconceived, nor do the grounds invoked any misdirection of the learned Judge in any part of her judgment.

The Court further highlighted that the then Applicants at no point indicated that the application was based on equitable principles but relied heavily on **Norwich Pharmacal Co. & Ors v Customs & Excise Commissions [1973] 3 W.L.R. 164** as authority for the equitable principles relating to discovery, when in fact the application was based on the Banking Act.

The Court reiterated the principle laid in down in **IT Rostom v D. Bheenuck [2013 SCJ 464]**, which states that what was not made an issue before the Court below cannot be raised for first time on appeal. The Judge thus upheld the said preliminary objection and the appeal was accordingly set aside with costs.

This summary is provided to assist in understanding the Court's decision. The full judgment of the Court is the only authoritative document.