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HARRE

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE 200 OF 1994

In the matter of
The Evidence (Proceedings in Other Jurisdictions) (Cayman islands) Order 1978

and

In the matter of
Order 70 of the Rules of the Supreme Court

and

In the matter of
A Proceeding commenced by the Democratic Constituent Congress Committee investigating the Contracts for the Electric Train and Mass Transport Projects in Lima and Callao ("CITEL")

BETWEEN:	WORLDWIDE FINANCIAL HOLDING	APPLICANT
AND	CITEL	RESPONDENT

For the applicant: Mr Charles Quin
For the respondent: Ramon Alberga Q.C. instructed by
Mr. Shaun McCann

HARRE C.J. **RULING**

On 30th August I delivered a ruling in which I held that leave to appeal against the judgment of Schofield J dated 19th August had been properly applied for and thereupon refused. On the same day I heard further argument as to whether nevertheless there was a case or matter pending before the Court of Appeal in respect of which I, in exercise of the powers of a single judge of the Court of Appeal, could

make an order for a stay of execution of the judgment.

In disregard of the refusal of leave by the Grand Court Judge the unsuccessful party had lodged a notice and Grounds of Appeal on 22nd August. I affirm my conclusion, which was implicit in my previous ruling, tht I have no jurisdiction under rule 24 of the Court of Appeal Rules 1987 ("the rules") to grant such a stay. The present case can be distinguished from all the cases cited to me by the applicant.

In VPG v. Insurco (CICA unreported) the issue concerned an injunction and no leave to appeal was required by reason of the exception provided for in section 4 (f) (ii) of the Court of Appeal Law. That was also the case in Imbar Maritima & Ors v. Republic of Gabon (1988-9) CILR 286. In Wilson v. Church (No.2) (1879) 12 Ch D 454 an unsuccessful party was exercising an undoubted right to appeal. The submission made in support of the application - that the appeal to the House of Lords was a matter of right and that no leave was necessary, - was clearly accepted by the Court. In the present case we have a refusal of leave to appeal by a Grand Court judge in an interlocutory matter.

Horvat Properties (Cayman) Ltd (1994 unreported) stands for the proposition tht an application to a single judge for leave to appeal does not itself cause the case or matter to be pending before the Court of Appeal so as to give that judge jurisdiction under rule 24 of the Rules. In Horvat Properties, as in the present case, leave to appeal had been refused by the Grand Court judge. The merits of the matter and the possibility of the appeal being rendered nugatory

by the refusal of leave must have been considered by the judge. In the face of the Horvat Properties ruling the applicant has sought to bypass the problem. They have filed their Notice and Grounds of Appeal.

So the question I now face is whether the status of that Notice of Appeal is such as to bring into being a "case or matter" in respect of which rule 24 can be invoked. In Cumbes v Robinson (1951) All ER 661 a relevant set of facts was considered by the Court of Appeal in England. An appeal from the County Court was entered without leave. Before the Court heard the arguments on the main issue, Somervell LJ dealt with this point as follows -

> "I have come to the conclusion that the leave of the judge must be obtained before the notice of appeal is filed. That however, does not end the matter, because on that view of the section a party who has omitted to get leave to appeal can apply of an extension of time in which to file a further notice if he has filed one already, and, subject to costs, the matter can thus be put in order. Normally, applications to extend the time have to be by notice of motion supported by affidavit, but this is a case which clearly involves a point of substance in which the learned judge would have given leave, as he ultimately did, and we think it right, subject to costs, to allow counsel for the landlord to apply for an extension of time. We also think that an extension should be granted so that the case can proceed."

It needs to be noted that Somervell LJ is there referring to the filing of the notice of appeal, not the service of it as is said in note 59/1/46 on page 939 of the 1993 edition of RSC. So the Court of Appeal did not assume jurisdiction to entertain an appeal where leave was required until it had itself given an extension of time to file a further notice. For that reason that Court will raise any question of leave to appeal of its own motion. It is a matter of

jurisdiction. At note 59/1/47 of RSC the decision in Knighthood Assurance Consultants Ltd v. Meacher (1976) 120 SJ 117 CA is questioned for that reason. That case (the report of which I do not have) is referred to as having held that a respondent who had applied for security for costs had thereby waived the irregularity of failure on the part of the appellant to obtain leave to appeal.

So, in summary the present position in this case is this -

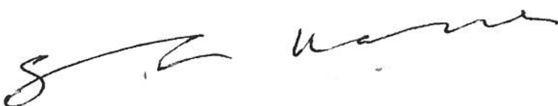
1. On 19th August Schofield J refused leave to appeal against his ruling made on that day.
2. It was, as I found on 30th August, an interlocutory ruling from which leave to appeal was required.
3. Notice of Appeal was filed without such leave having been obtained and in disregard of the refusal of leave by Schofield J.
4. That leave cannot be obtained from a single judge. See Horvat Properties (Cayman Islands) Ltd v. Brown. (Harre CJ unreported, 11th July 1994) and the Court of Appeal has, in my view, no jurisdiction to entertain the appeal until leave has been obtained: Cumbes v. Robinson (Supra).
5. The matter might nevertheless be dealt with by the full Court of Appeal in the manner described by Somervell LJ in Cumbes v Robinson (supra) and if so the time constraints of rule 12 of the Court of Appeal Rules would be addressed.

This conclusion raises difficulty in that the judges of the Court of Appeal are only intermittently resident in the Cayman Islands

and an appeal may be rendered nugatory or prejudiced by delay in obtaining leave from the full Court. That is a matter which a Grand Court Judge should consider very carefully when deciding to grant or refuse leave to appeal.

In this particular case the issue is whether confidential information should be disclosed to a foreign court or tribunal. The matter is still to be the subject of an application under s 3A of the Confidential Relationships (Preservation) Law. In his ruling ex parte the learned judge expressly provided that that application should be heard before him on a particular date. That date is now past but the matter is set for hearing before him next Monday. The Attorney General will appear at the hearing as of right. This present ruling concerns jurisdiction not merits, least of all those which may be argued on Monday.

I need in conclusion to mention Rule 17 of the Court of Appeal Rules which were called in aid by the applicant. It deals with the general powers of the Court once a matter is before it, not a situation where a purported Notice of Appeal has been lodged without leave. However liberally I seek to construe the provisions of the Law in the light of S. 22 I am driven to the conclusion at which I have arrived.



G. E. Harre
Chief Justice

2nd September 1994.