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

CAUSE NO: 341 OF 1993

BETWEEN (1) HORVAT PROPERTIES
(CAYMAN ISLANDS) LTD.

(2) PAUL HORVAT

Defendants
(Appellants)

AND: HAROLD EVERETT BROWN

Plaintiff
(Respondent)

For the appellants: Mr. Andrew Jones
For the respondent: Ms. Cherry Bridges

HARRE C.J.J.

RULING

This Motion came before me as a single judge of the Court of Appeal. It sought leave to appeal against an order of Smellie J. made on 31st May 1994, he having already refused such leave. A preliminary point was taken with regard to the power of a single judge of the Court of Appeal to hear such an application, and in dealing with that I refer first to section 26 (1A) of the Court of Appeal Law.

This reads as follows -

"Any jurisdiction exercisable in any proceedings incidental to any civil case and not involving the hearing or determination of an appeal may, so far as may be prescribed by rules of court, be exercised by a single Judge in the same manner as it may be exercised by the Court and subject to the same provisions."

The powers of a single judge may be exercised for all purposes by a judge of the Grand Court and the decision of any single judge may be reviewed, discharged or varied by the full Court of Appeal.

It is necessary to consider the Court of Appeal Rules 1987 in

order to determine what is the prescribed jurisdiction of a single judge. The relevant rules are rules 21 and 24. Rule 21 is purely procedural in nature, and I turn to subrule 24 (1), which reads as follows -

"24. (1) In any case or matter pending before the Court, a single Judge may, upon application, make an order for -

- (a) a stay of execution on any judgment appealed from pending the determination of such appeal;
- (b) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject-matter of the appeal pending the determination thereof;
- (c) extension of time,

and may hear, determine and make an order on any other interlocutory application."

The matters covered in subrule 24 (1) paragraphs (a)-(c) are not this case, but paragraphs (a) and (b) assist interpretation of the rest of the subrule.

In my view the words "such appeal" and "the appeal" in subrule 24 (1) (a) and (b) are meaningless unless they refer back to the words "case or matter pending before the court" at the beginning of the rule. The whole of rule 24 refers, in my view, to a case or matter which is already pending before the Court of Appeal and not to any application for leave to take a case or matter before it. Such an application does not itself cause the case or matter to be pending before the Court.

I am fortified in that view by looking at the powers of a single judge in criminal cases under section 26 (1) of the Court of Appeal Law. They include, among other things, power to extend the time within which notice of appeal or application for leave to appeal may be given but do not include the power to grant such an application.

It would be an anomaly for that power to exist in civil but not in criminal cases.

The application for leave to appeal should be made to the full Court of Appeal and in consequence the defendant's summons for leave before me as a single judge of that court is dismissed with costs of the application to be paid by the defendants to the plaintiff.



G. E. Harre
Chief Justice

11th July 1994.