

12:15 p.m.

Cor: Zacca P.

ORDER

An application for a stay and further that an injunction be granted pending the hearing of the Appeal -

Not an Appeal but an original motion seeking an injunction pending the hearing of the Appeal.

Court has to decide if the Applicant has made out a case entitling it to that injunction pending the Appeal.

Respondent says that there is a RICO claim and therefore that makes this a frivolous Appeal. This is a matter to be decided on the hearing of the Appeal. So are matters like single forum and choice of forum.

There are arguments to be put forward as to whether this is a single forum case - or a choice of forum case.

This is an arguable appeal - it may be successful.

Not a frivolous appeal.

In British Airways v. Laker an interim injunction was granted and also in Erinford pending hearing of the Appeal.

It has been submitted that only if the Appeal is successful it will be nugatory should be the only test in deciding whether or not to grant this application.

This is not the only reason that the Court should exercise its discretion in granting an injunction and/or a Stay pending an Appeal. There are other factors - hardship/prejudice on one or other of the parties. The only hardship to the Bank is the question of delay. The other matters are not of any merit. Delay is the only factor. Plaintiff has put forward work, expense, fees - not certain whether or not they would be recovered. In my view the Court in exercising its discretion can take into account the question of hardship. An injunction will not inflict any real hardship or prejudice on the Bank.

A delay of 3 months will not amount to hardship or prejudice to the Bank. In my view having regard to the circumstances of this case, it is my view that the granting of an injunction pending the determination of this Appeal would be the right course to take.

I therefore order that the interim injunction granted on the 18th July be extended until the hearing of the Appeal.