

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2021/0096

BETWEEN:

WWRT LIMITED

Claimant

and

(1) CAROSAN TRADING LTD

(2) BORIS KAUFMAN

Defendants

Determined on paper

2022 January 13

JUDGMENT

[1] **JACK, J [Ag.]**: On 10th December 2021 I delivered an oral judgment holding that the claimant had no standing to pursue the claims brought and that in any event the *forum conveniens* for this action was the Ukraine.¹ On 17th June 2021 I had granted a world-wide freezing injunction against the two defendants for £56 million sterling. In the light of my conclusion on standing, the injunction stood to be discharged. In order that the claimant might make an application to the Court of Appeal, I stayed the lifting of the freezing injunction until 14th January 2022. The claimant now applies by an application issued on 12th January 2022 to extend the stay. It asks for the matter to be determined on the papers.

¹ Approved version of the transcript, 30th December 2021, [2021] ECSCJ No 813.

- [2] The law in relation to stays pending appeal is now well-established: **C-Mobile Services Ltd v Huawei Technologies Co Ltd**.² It did not seem to me on 10th December 2021 to be appropriate to grant a stay pending appeal, since there did not seem to me to be good grounds for any appeal to be brought. I was, however, of course mindful that it was open to the Court of Appeal to take a different view. If they were of a different view, then equally the Court of Appeal might take the view that a stay on the lifting of the freezing order might be appropriate.
- [3] In order to hold the ring, I therefore ordered a limited stay of the lifting of the freezing order, in order to allow the claimant to apply to the Court of Appeal for a stay pending appeal. I had regard to Christmas pending and the fact that the Court of Appeal were sitting in this Territory in the first week of the Hilary term, commencing on 10th January 2022. I was (and am) particularly mindful of the fact that the defendants say that, even if (contrary to the views I expressed in their favour in my judgment of 10th December) there was a case for them to answer, the freezing order should be discharged in any event due to the absence of the risk of dissipation and for various breaches of the duty of full and frank disclosure. Because of the conclusions I drew in my judgment of 10th December, I did not hear argument from the defendants on this and I have not determined the force of this submission.
- [4] The claimant filed its application to the Court of Appeal for permission to appeal and for an extension of the freezing order on 7th January 2022. There is no explanation for this delay. Where a party is contemplating an urgent application to the Court of Appeal for a stay, one would expect steps to be taken as soon as the need for the application becomes apparent. In the current case, that would be very shortly after the delivery of my judgment on 10th December, in practice in the week of 13th December 2021. So far as appears from the letter sent by Dr Johns

² [2015] ECSCJ No 195 (15th September 2015).

to the Registrar on 12th January 2022, the first engagement with the Court of Appeal was on 7th January 2022.

[5] In my judgment the claimant has not shown any adequate grounds for an extension of the stay granted by me. They have had over a month to mount their appeal and obtain a listing from the Court of Appeal. They have had the approved written judgment since 30th December. In general, where a judge at first instance is not minded to grant a stay pending appeal, only a short period is given for the would-be appellant to apply to the Court of Appeal. In some cases, this can be as little as twenty-four hours. A month is much longer than is usual, but was justified by the Christmas and New Year break. There are no sufficient grounds to extend the period further.

[6] In the exercise of my discretion, I refuse any further extension of the stay. The claimant shall pay the defendants' costs of its application. I shall give Carey Olsen carriage of the order.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar