

TELECONFERENCE

TERRITORY OF THE VIRGIN ISLANDS

Thursday, 25th February 2016

APPLICATION AND APPEAL

Case Name:

Olive Group Capital Limited

v

Mr Gavin Mark Mayhew

[BVIHCMAP2016/0002]

Before:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

Appearances:

Applicant:

Mr. Vernon Flynn, QC, with him, Ms. Kimberly Crabbe-Adams (Instructed by Harney Westwood & Riegels)

Respondent:

Mr. Mark Forte (Conyers Dill & Pearman)

Issues:

Application for declaration that no leave is required to appeal – Alternative application for leave to appeal – Application for stay of execution

Result / Order:

IT IS HEREBY DECLARED THAT:

- 1. No leave to appeal is required to be granted for the appeal herein to proceed and the notice of appeal filed herein was properly filed.**

AND IT IS HEREBY ORDERED THAT:

- 2. There be a stay of execution of the order and judgment of the Honourable Justice Leon dated 21st January 2016 in claim BVIHC(COM) 0115 of 2015 until the appellant's appeal to the Court of Appeal is determined.**
- 3. The respondent do pay the appellant's costs of this application to be assessed if not agreed within 21 days.**

Reasons:

The Court was of the view that no leave to appeal against

the order of the learned judge in the court below was required in so far as the appeal is against a preliminary issue decided by the judge and that if the matter had proceeded to trial, leave would not have been required as it would have been an appeal against a final order. Accordingly, the appeal would have been as of right. In reaching this conclusion, the Court had regard to the learning and specifically the dictum of Sir John Donaldson MR in *White v Brunton* [1984] 2 All ER which was applied by the Privy Council in *Strathmore Group Ltd v AM Fraser and Others* [1992] 3 WLR 1 and cited with approval in *Othniel R. Sylvester v Satrohan Singh* SVGHCV1990/0452. Importantly, the principles were also followed and adopted in the case of *Fairfield Sentry Limited (In Liquidation) v Alfredo Migani et al* by Pereira CJ and were stated as follows:

“Where there is a split trial or more accurately, in relation to a non-jury case, a split hearing, any party may appeal without leave against an order made at the end of one part if he could have appealed against such an order without leave if both parts had been heard together and the order had been made at the end of the complete hearing”.

The Court accepted this as good law.

Further, the Court was of the view that if were the case that rule 62.1(3) of the Civil Procedure Rules 2000 was engaged and it was necessary for the applicant to first obtain leave, the applicant would have met the threshold requirements for leave to appeal.

In relation to the application for a stay, the Court reviewed the factual context of the application and applied the principles enunciated in *C-Mobile Services Limited v Huawei Technologies Co. Limited* BVIHCMAP2014/0017. The Court was satisfied that learned Queen’s Counsel, Mr. Vernon Flynn, for the applicant had provided cogent evidence to support the position that if the stay was not granted the appeal would be rendered nugatory.