

ROYAL COURT  
(Samedi Division)

16th January, 1996.

P.R. Le Cras, Esq., Lieutenant Bailiff,  
Single Judge.

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Between:	Pacific Investments Limited	Plaintiff
And:	Robert Christensen	First Defendant
And:	Alison Mary Holland	Second Defendant
And:	Michael Allardice	Third Defendant
And:	Graeme Elliott	Fourth Defendant
And:	Firmandale Investments Limited	Fifth Defendant
And:	James Hardie Industries Limited	Sixth Defendant
And:	James Hardie Finance Limited	Seventh Defendant
And:	Govett American Endeavour Fund Limited	Eighth Defendant

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Advocate N.F. Journeaux for the Plaintiff.  
Advocate M. St.J. O'Connell for the First, Second,  
Third and Fourth Defendants.

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- (1) Application by Plaintiff for leave to appeal against Order of Royal Court of 5th October, 1995, for discovery.
  - (2) Application by Plaintiff for a stay of execution of the said Order, pending an application to the Court of Appeal for leave to appeal.

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JUDGMENT  
(on application for leave to appeal)

THE LIEUTENANT BAILIFF: Nothing which has been put before me today persuades me that there is an arguable case in respect of which I should grant leave to appeal. Indeed the arguments before me today have served only to reinforce my view as expressed in the judgment of 5th October, 1995. Leave to appeal is therefore refused.

JUDGMENT

(on application for a stay of execution of the Royal Court Order of 5th October, 1995 pending application for leave to appeal to the Court of Appeal).

On 5th October, 1995, the Court made an order requiring the Plaintiff to give to the First and to the Fourth Defendants specific discovery of certain documents.

The Plaintiff did not then seek leave to appeal against the order, but has done so subsequently. For reasons which are not germane to the application it was delayed until today.

Upon hearing the application the Royal Court refused leave to appeal.

The Plaintiff thereupon sought a stay pending consideration of an application to the Court of Appeal for leave to appeal upon which the First to the Fourth Defendants immediately raised the question as to whether the Royal Court had jurisdiction to entertain such an application, and to make any such order.

It is common ground that the Plaintiff, this being an interlocutory application, must seek leave to appeal, Article 13 of the Court of Appeal (Jersey) Law, 1961 reading:

*"No appeal shall lie .... without the leave of the court whose decision is sought to be appealed from, or of the Court of Appeal, .... from any interlocutory order or interlocutory judgment ...."*

The Royal Court, having refused leave, again it is common ground that that application must be made to the Court of Appeal.

Rule 15(1) of the Court of Appeal (Civil) (Jersey) Rules, 1964 reads:

*"Except so far as the court below or the Court may otherwise direct -*

*(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below".*

Rule 16(1) reads:

5       *"The Court or a judge thereof shall have power to enlarge  
the time appointed by these Rules, or fixed by an order  
enlarging time, for doing any act or taking any  
proceeding, on such terms (if any) as the justice of the  
case may require, and any such enlargement may be ordered  
although the application for the same is not made until  
after the expiration of the time appointed or allowed".*

10       Mr. Journeaux submitted that in Hambros Bank (Jersey) -v-  
Eves (28th October, 1994) Jersey Unreported the Court had granted  
a stay of an order *Vicomte chargé d'écrire*, and that the Court  
therefore has and is willing to use its inherent jurisdiction to  
15       grant a stay where prejudice might be caused.

20       He submitted that in Mayo Associates -v- Cantrade Private  
Bank, Touche Ross & Ors. (7th December, 1995) Jersey Unreported  
(where on an interlocutory application, leave to appeal was  
refused) an application for leave to appeal was before the full  
Court of Appeal. The Plaintiffs there had cross-appealed and had,  
he observed, been advised by the Greffier that they might apply  
for a stay either to the full Court of Appeal, or to a lower Court  
under Rule 15(1). The point had been discussed but not decided in  
25       Burke -v- Socex (4th July, 1988) Jersey Unreported.

30       Further, where, as in the present case, leave to appeal had  
not been granted there was no danger (as was the case in Pacific  
Investments -v- Christensen, Hardie & Ors. (24th November, 1994)  
Jersey Unreported CofA in the recent Court of Appeal hearing) of  
the Royal Court interfering with and overlapping the jurisdiction  
of the Court of Appeal.

35       Mr. O'Connell submitted that Rule 15(1) can be taken no  
further than its express words. It cannot apply here as there is  
no appeal in being, the Royal Court having refused leave to  
appeal. The Court accepts that view.

40       As to Eves this was part of a continuing discumberment,  
largely administrative, over which the Court must have an  
overriding control until the procedure is accomplished. There  
was no appeal pending against the order, "merely a stay sought in a  
continuing process.

45       Finally, once the decision is taken to refuse leave it is not  
for the Royal Court to make any order for a stay as it is out of  
its hands, and it is for the Court of Appeal (see Pacific  
Investments -v- Christensen, Hardie & Ors. supra) to regulate its  
own procedure. Furthermore, the Royal Court would be powerless to  
50       police any such stay.

The Court agrees that Eves is not on all fours. Mr. O'Connell's argument is cogent. Here, there is no continuing supervision, but merely an interlocutory order which this Court regards as final. The object of the Plaintiff here is not to  
5 obtain a stay while he pursues remedies elsewhere, but to mount an appeal against the order itself.

Finally, the Court accepts the submission that, having made the order refusing leave, any application for leave to appeal and, in consequence, any order sought ancillary to that application, can only be dealt with by the Court of Appeal.  
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The Court therefore declines to order a stay on the grounds that it has no jurisdiction to do so.

Authorities

Court of Appeal (Jersey) Law, 1961: Article 13.

Court of Appeal (Civil) (Jersey) Rules, 1964: Rules 15(1); 16(1).

Hambros Bank (Jersey) Limited -v- Eves (28th October, 1994) Jersey Unreported.

Burke -v- Sogex, Limited (4th July, 1988) Jersey Unreported.

Pacific Investments -v- Christensen, Hardie & Ors. (24th November, 1995) Jersey Unreported CofA.

Mayo Associates -v- Cantrade Private Bank, Touche Ross & Ors. (7th December, 1995) Jersey Unreported.