

BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.18 OF 2003

BETWEEN:

IPOC INTERNATIONAL GROWTH FUND LIMITED

Applicant

v

[1] LV FINANCE GROUP LTD.
[2] TRANSCONTINENTAL MOBILE INVESTMENT LIMITED
[3] OOO CT-MOBILE
[4] SANTEL LIMITED
[5] AVENUE LIMITED
[6] JANOW PROPERTIES LIMITED
[7] BARROWS ALLIANCE LIMITED
[8] CORMACK SELECT LTD
[9] STEGMAN UNIVERSAL LTD
[10] SMART FINANCE LIMITED
[11] CARBERT INTERNATIONAL LTD
[12] RAMPTON ENTERPRISES LIMITED
[13] ALAMOSA HOLDINGS LIMITED
[14] NORMAN LIMITED
[15] OOO ALFA-ECO

Respondents

Before:

Sir Dennis Byron

Hon. Chief Justice

2003: October 30th

JUDGMENT

[1] **BYRON, C.J.:** On 27th October, 2003 the Applicants filed a document headed summary appeal apparently intending to invoke the provisions of the Civil Procedure Rules 2000, Part 62.6[3]. Paragraph three [3] specifically provides that the matter be dealt with by a Single Judge of the Court. I am the Judge assigned to deal with appeals listed for today.

- [2] It is instructive to quote the operative section of that document:
- "TAKE NOTICE that the appellant (being the claimant in the court below) hereby appeals to the Court of Appeal against the decision of the Honourable Madam Justice Suzie D'Auvergne made 24th October, 2003 refusing to hear until 4th November, 2003 at 8.30 am and furthermore refusing to decide on such date an extremely urgent application and another of exceptional urgency which said applications had originally been listed for hearing on Friday, 31st October, 2003."
- [3] It is also instructive to relate the Orders sought by the Appellant;
- "4. **Orders sought:**
- (1) leave to appeal;
- (2) the determination of the applications in particular of the application for directions and injunctive relief.
- (3) Costs of the appeal and of the hearing below."
- [4] This application was accompanied by a document headed Certificate of Urgency and skeleton arguments on behalf of the Applicant.
- [5] On 28th October, 2003 Mr. Michael Pringle acting for the Applicant wrote the Chief Registrar in response to her enquiry that there was no evidence of the agreement of the parties that the appeal should proceed as a summary appeal in accordance with Part 62.6[1][b] of the Civil Procedure Rules, 2000. Mr. Pringle contended that under the provisions of Part 62.6[3] a Judge assigned to determine whether the appeal should proceed summarily has the power to dispense with procedural requirements.
- [6] On 29th October, 2003 the Chief Registrar gave notice to the parties that the matter was listed for directions before a Single Judge of the Court on Thursday 30th October, 2003.
- [7] On 29th October, 2003 Messrs Freshfields Bruckhaus Deringer, London based Solicitors wrote the Chief Registrar indicating that they act for ten [10] of the Respondents in this matter and they have retained Mr. John Carrington and McW.

Todman & Co. to represent them in the British Virgin Islands. Mr. Carrington cannot be available until Sunday 2nd November, 2003.

- [8] On 29th October, 2003 Conyers Dill & Pearman wrote to the Chief Registrar indicating that they do not consent to the matter proceeding as a summary appeal.
- [9] On 30th October, 2003 Dancia Penn & Co. acting for the second Respondent wrote the Chief Registrar submitting that the appeal does not satisfy the criteria under the Civil Procedure Rules 2000 to be considered as a summary appeal. They specifically state that these submissions are without prejudice to their application challenging the jurisdiction of the Court to hear the Applicants claim.
- [10] On 30th October, 2003 Walkers acting for the fourth to sixth Respondents submitted preliminary arguments for consideration. These arguments referred to this appeal as an abuse of process because the attendance before the Learned Trial Judge had been purely administrative to see whether the applicants would be heard on 31st October, 2003. They contend that there had been no application notice.

FINDINGS

- [11] I cannot resist indicating my support for the contention that this is abusive of the process of the Court of Appeal. In his Notice of Summary Appeal the Applicant included the following section;
1. **Details of order appealed:** no order has as yet been drawn up.
 2. **Details of –**
 - (a) **any finding of fact:** the learned judge made no findings of fact;
 - (b) **any finding of law:** the learned judge made no findings of law;

and consequently none are challenged apart from the propriety of her said decision.

- [12] This clearly supports the contention that it was a purely administrative exercise.
- [13] This application cannot achieve its apparent purpose. The 4th November, 2003 is next week Tuesday, just four [4] calendar days including a Saturday and Sunday from today. It is obvious that no action taken by the Court of Appeal could produce a hearing before that date to resolve the allegedly urgent relief being sought by the Applicant.
- [14] Despite the lengthy skeleton arguments submitted on behalf of the Applicant and the Fourth to Sixth Respondents, it is not with the intention of being disrespectful that I do not consider it necessary to address any specific points in these arguments.
- [15] It is just patently obvious from a common sense point of view I have determined that the only appropriate order is to dismiss this appeal so that the hearing can proceed as directed by the Learned Trial Judge on Tuesday 4th November, 2003 at 8:30 am.

ORDER

- [16] Accordingly I dismiss the appeal. In my view the Respondents have been put to trouble, time and expense and they are entitled to their costs. I would order that the Applicants pay the Respondents costs to be assessed by the Deputy Registrar of the Court of Appeal in Tortola, on application.

Sir Dennis Byron
Hon. Chief Justice