TERRITORY OF THE VIRGIN ISLANDS

IN THE COURT OF APPEAL

HCVAP 2009/0005

BETWEEN:

NORRIS DONOVAN

Applicant/Defendant

and

[1] GARVIN ISHMAEL STOUTT (Sr.)
[2] GARVIN ISHMAEL STOUTT (Jr.)

Respondents/Claimants

Before:

The Hon. Mde. Janice George-Creque — Justice of Appeal

On written submissions of:

Stephen Daniels of V. E. Malone & Co. for the Applicant/Defendant
C. E. Dawson & Co. for the Respondents/Claimants

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2009: April 1.

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DECISION

[1] GEORGE-CREQUE, J.A.: This is an application for leave to appeal against the order of the trial judge made on 16th February 2009, after the matter had come on for hearing in which he ordered that the 2nd respondent/claimant:

(1) file his consent to be added as a claimant within 7 days;

(2) amend the statement of claim in accordance with his interest within 7 days;

(3) serve the same on the solicitors for the applicant/defendant within seven days; and

(4) file his witness statement within 7 days.

It was also ordered in essence that the trial be adjourned for continuation on a date to be fixed.

[2] The applicant/defendant states as his grounds for making this application that he "has a good and arguable grounds of appeal and a realistic chance of succeeding on the Appeal". This is not a ground of appeal. It takes the matter no further and amounts to no more than the applicant/defendant saying "my ground for appealing is that I have a good ground for appeal". CPR 62.2(2) says that the application for leave "must set out concisely the grounds of the proposed appeal. This requirement is in mandatory terms and serves to focus an applicant's or the legal practitioner's mind in formulating the reason why it is said an error of law or fact or both was made by a judge or court as the case may be. This court has in many decisions shown its disapproval where applications fail to state the grounds on which they are made. There are good reasons for the rule. Apart from the reason just given, another which readily comes to mind is the need for the other side to know precisely in what respect complaint is made. Neither the court nor the other party should be left to search in a supporting affidavit to see whether or not grounds have been made out. This practice is most undesirable and no doubt will only cease by applying the appropriate sanction. For this reason alone I am minded to dismiss this application.

[3] A further consideration however, is the fact that the trial of the matter is already underway and set to be continued. The orders made by the trial judge appear to be of the nature of case management directions and in my view, invites considerations of whether the issues are of such significance such as to justify the costs of an appeal at this stage, the loss of time which may be occasioned thereby if a stay is granted and whether it would be more convenient to determine the issue at or after trial.

[4] I do not consider that an interlocutory appeal in respect of the orders given at this stage of the trial process would do much in furthering the overriding objective. Indeed, all is not lost as it is open to the applicant/defendant to raise the matters complained of at the continued hearing of the trial. Furthermore, in the event that the applicant/defendant is dissatisfied with the decision following trial, then he is not debarred from raising the issues relating to the order complained of herein on an appeal from that decision. This approach would save both costs and time. There is also the likelihood that were the applicant/defendant to prevail on the conclusion of trial, he may no longer be desirous of proceeding with an appeal.

[5] For these reasons, I would dismiss the application for leave.

[6] By way of comment, I note that the respondents/claimants have filed skeleton arguments only as of 27th March 2009, which are well outside of the time limited for so doing. They also failed to serve notice of their intention to oppose as required by CPR PD2 of 2008 2(b)(ii). This requirement is also mandatory and should be visited with the sanction proportionate to such breach. Accordingly, no notice has been taken of the respondents'/claimants' opposition to the application.

[7] There shall be no order as to costs.

Janice George-Creque
Justice of Appeal