



The Court of Appeal for Bermuda

CIVIL APPEAL Nos. 2 and 6 of 2019

B E T W E E N:

WF (INTERVENER) (No. 1)

Intending Appellant

MAHESH SANNAPAREDDY

1st Applicant

BERMUDA HEALTHCARE SERVICES

2nd Applicant

BROWN DARRELL CLINIC LIMITED

3rd Applicant

- v -

THE COMMISSIONER OF POLICE

1st Respondent

-and-

THE SENIOR MAGISTRATE FOR BERMUDA

2nd Respondent

Before: **Clarke, President**
Kay, JA
Smellie, JA

Appearances: Mark Pettingill and Victoria Greening, Chancery Legal Ltd., for the Intending Appellant;
Delroy Duncan, Trott & Duncan Ltd., for the 1st – 3rd Applicant
Mark Diel and Dantae Williams, Marshall Diel & Myers Ltd., for the Respondent

Date of Judgment:

3 June 2019

R U L I N G

CLARKE P:

1. This case has, for present purposes, a somewhat convoluted history. We do not have a transcript of what transpired, and have had to rely upon what we have been told by counsel, and what appears from the documents.
2. On the 2nd May 2019 Chancery Legal Ltd (“Chancery Legal”) was restrained from acting for the Intervener, WF, and the patients, by the judgment of Assistant Justice Kiernan Bell. A Notice of Motion was issued for leave to appeal from that decision, and was sent to the Registrar by a letter of the 8th May 2019; the letter said that the affidavit would follow.
3. It is not wholly clear from the Notice of Motion for leave to appeal on whose behalf the appeal was sought to be brought. However, in the first affidavit of Ms. Greening on the 10th May 2019, dealing with the appeal, she indicated that she was authorised to make the affidavit on behalf of Chancery Legal, which appeared to indicate that the appeal was being brought by Chancery Legal.
4. There was then an application for a stay of the ruling of the 2nd May 2019. It was originally made informally, but on the 10th May 2019, the judge said that there should be a formal application for a stay. That was made by a Summons which was sent to the Registrar under cover letter of the 11th May 2019 from Chancery Legal. On the 17th May 2019, Chancery Legal Limited sent to the Registrar a Notice of Appeal. That notice made plain that the intended Appellant was the Intervener, namely WF, and the letter explained that, having reviewed the law, and having heard what Assistant Justice Bell thought about the matter at the last hearing, Chancery Legal was of the firm view that they did not need to apply for leave, because in effect, WF had an automatic right of appeal.

5. On the 21st May 2019, there was a hearing in relation to the application for a stay. On that occasion, Mr. Mark Diel for the first Respondent suggested that there should be an adjournment for the stay application in order that WF could be represented by somebody, other than Chancery Legal. However, the judge entertained the stay application and rejected it. She also said, as we understand it, at the end of her judgment that Chancery Legal Limited was in contempt.
6. It appears that the judge had indicated that Chancery Legal might have a right of appeal without leave. However, Chancery Legal took the view that any appeal was, for WF to make, and that any such appeal was of right. It appears that the judge may have indicated that, in her view, an appeal by the Intervener, WF, was an interlocutory appeal for which leave was required. But whether or not that was the case, in any event, no application has so far been made for leave to appeal on the part of WF.
7. Against that somewhat convoluted background, our view is as follows. We take the view that in order for WF to appeal from the decision of the 2nd May 2019, they require leave from, in the first instance, the Supreme Court. That is because of the principle that is summarised in the White Book at Order 59/1/25; that an order is not final unless it would have finally determined the proceedings whichever way the application in the court had been decided.
8. In our view, the proceedings, which for present purposes, is the dispute between WF and others and the first Respondent, would not have been finally determined whichever way the application for the injunction in the court below had been decided. Accordingly, an application should be made forthwith to the Supreme Court judge for leave to appeal.
9. There should also, in our view, be a renewal of the application for a stay since it is doubtful whether or not the stay application in fact made, was effective when

made in relation to a Notice of Appeal for which no leave had been given or sought. Such an application will also provide an opportunity for considering whether or not, and if so in what terms, a stay should be granted.

10. That raises the question as to who should, or may, represent WF on the application for leave and for a stay. Since those applications are to be made to the Supreme Court, they are not applications of which we are currently seized. But, it seems to us right to say that, in our view, although it will be a matter for the Supreme Court judge, it would be appropriate for the judge to hear Chancery Legal on behalf of WF make an application for leave to appeal and an application for a stay, because, although that would be contrary to the terms of the existing order, it is that very order which WF seeks to appeal. That observation is subject to the proviso that Chancery Legal has undertaken that, pending the appeal, it will not discuss with WF or any co-counsel, anything other than the appeal itself.
11. That raises also the question of what is meant in this context by a stay. What is important for present purposes is the appeal against the decision made on the 2nd May 2019, which I shall call the conflict decision. It seems to us that it might be appropriate for an order to be made which in effect contains an exception to the order made on the 6th May 2019, so as to provide that Chancery Legal shall be at liberty to act for the Intervener on the appeal from the decision of the Supreme Court of the 2nd May 2019. But, that, as we say, is not presently a matter for us.
12. If leave is granted and a stay in some form or another is granted, then we propose that the appeal from a conflict ruling should be heard on Tuesday, 11 June 2019 in place of the case relating to WF which is currently listed to be heard on that date. If the stay and or leave is refused, we will hear any application that is made for leave to appeal to us and for a stay, and the parties should make preparations upon the footing that there will be a final hearing, or the equivalent, on the 11th June 2019 because, if the matter comes before us on the renewal of leave, we

intend that there should be a rolled-up hearing, such that if we grant leave, we should consider the appeal itself.

13. It seems to us also desirable if this can be done swiftly for there to be before the Supreme Court judge, a transcript of our ruling in relation to these matters.
14. We will grant a Certificate for two counsel for both the Intending Appellant and the 1st Respondent. Costs, however, will be reserved.

C.S. 95.C/16

Clarke P

Maurice Kay

Kay JA

Smellie JA

[Signature]