

BRITISH VIRGIN ISLANDS COURT OF APPEAL

CAGE St Lucia Limited -v- Treasure Bay (StLucia) Limited and The Gaming Authority and The Attorney General of Saint Lucia and the National Lotteries Authority

PROCEDURE - LEAVE TO APPEAL - LEAVE APPLICATION TO BE EX PARTE

This concerned an action arising from an application made to the High Court by CAGE to be joined as a party to judicial review proceedings in the court below. The Trial Judge had dismissed the application. CAGE applied for permission to appeal that order (the first application) and for an order staying the judicial review proceedings pending the hearing of the appeal (the second application). The first Application was heard by a Judge on paper and granted without hearing the parties. The second Application was considered by a separate Judge and was granted following an, *inter partes*, hearing. Treasure Bay then applied to the Full Court to revoke, vary, or discharge both the orders of the single justices.

The Court of Appeal held that Civil Procedure Rules 62.16(A) which gives the Court jurisdiction to vary discharge or revoke any order or direction or decision given by a single judge only applies to interlocutory orders made within the context of a pending appeal. The jurisdiction would necessarily not arise where a Notice of Appeal had not been filed because then it could not be said that the orders were made within "the context of a pending appeal". The order granting a stay was said to be a nullity. Second, the Court citing *Jolly -v- Jay* [2002] All E.R. (D) 104 held that an application for leave to appeal was essentially a without notice procedure and such applications were not strictly interlocutory applications.

It was said that dealing with applications for leave to appeal in this manner promoted proportionate, cost-effective and expeditious resolution of cases, was in keeping with the overriding objective, while at the same time mindful of the constitutional guarantees to all litigants. The Court was of the

view that denying a respondent the opportunity to participate at the leave stage would not prejudice the respondent's substantive rights. Treasure Bay therefore was not entitled to file a notice of objection or otherwise oppose CAGE's application for leave to appeal.

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