

Privy Council clarifies Bahamian law on appealing interlocutory judgments

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There has been some debate in the Bahamas over the concurrent jurisdictions that exist between the Supreme Court and the Court of Appeal as it relates to the two courts' jurisdictions to grant leave to appeal and stay. In *Junkanoo Estate Ltd v UBS Bahamas Ltd (in voluntary liquidation)* ([2017] UKPC 8, April 3 2017), the Judicial Committee of the Privy Council clarified this area of the law.

Decision

The ruling involved an application for special leave to appeal to the Privy Council, which arose out of the appellants' purported notice of appeal and application for a stay being dismissed in the Court of Appeal for lack of jurisdiction.

The respondent, UBS Bahamas Ltd (in voluntary liquidation), brought an action against the appellants in the Supreme Court for the possession of a residential property in the Bahamas belonging to the first appellant, Junkanoo Estate Ltd. Junkanoo had granted UBS a mortgage over the property to secure its indebtedness under a credit facility. The second and third appellants, Yuri and Irina Starostenko, were Junkanoo's guarantors.

On February 28 2014 UBS declared the credit facility to be in default and subsequently brought an action against the appellants in the Supreme Court for payment of the sums due under the credit facility and for possession of the property. On March 23 2015 UBS obtained a summary judgment in the Supreme Court for the outstanding judgment debt and possession.

On April 20 2015 the appellants purported to file a notice of appeal and an application for a stay in the Court of Appeal against the summary judgment order. However, they had not sought or first obtained leave to appeal from the Supreme Court or made an application for a stay in the Supreme Court. UBS took the preliminary objection in the Court of Appeal that as no leave had been sought or obtained, the Court of Appeal had no jurisdiction to entertain the appellants' purported appeal and stay the application since:

- the summary judgment resulted in an interlocutory order for which leave to appeal was needed; and
- an application for a stay had not first been sought and refused in the Supreme Court.

On November 2 2015 the Court of Appeal dismissed both the appellants' purported notice of appeal and stay application. This prompted the appellants to make an application to the Privy Council for special leave to appeal to set aside the Court of Appeal's ruling.

Privy Council ruling

In refusing to grant the appellants special leave to appeal from the Court of Appeal ruling, the Privy Council considered Section 11(f) of the Court of Appeal Act and Rule 27(5) of the Court of Appeal

Rules.

Section 11(f) of the Court of Appeal Act provides that "[n]o Appeal shall lie without the leave of the Supreme Court or of the court [of appeal] from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court".

Rule 27(5) of the Court of Appeal Rules provides that "wherever under the provisions of the Act or these Rules an application may be made either to the court below or to the court, it shall be made in the first instance to the court below".

The Privy Council, led by Lord Sumption, followed longstanding English authorities, confirming that a summary judgment results in an interlocutory order. The appellants therefore required leave to appeal to the Court of Appeal. In clarifying the proper course for applying for leave to appeal, the Privy Council set out the following procedure for appealing interlocutory orders and applications for a stay pending appeal:

- An application for leave to appeal must first be made in the Supreme Court on notice to the other parties.
- If the application to the Supreme Court is granted, the next step is to apply to the Court of Appeal for an extension of time to file the appeal, if necessary. There is a 14-day deadline to file a notice of appeal in the Court of Appeal from interlocutory orders.
- If leave to appeal is refused in the Supreme Court, an application must then be made to the Court of Appeal for leave to appeal with a correspondent application for an extension, if necessary.
- An application for a stay of execution must first be made in the Supreme Court. If the application is refused in the Supreme Court, the Court of Appeal will have jurisdiction to entertain an application for a stay.

Comment

This area of the law has been fertile ground for litigation over the years, given the lack of clarity regarding the concurrent jurisdiction of the Supreme Court and the Court of Appeal as to where and when applications for leave to appeal and stays should be made. The Privy Council ruling has now settled the law and given attorneys clear guidance regarding the proper procedure for appealing interlocutory judgments and applying for a stay pending appeal in the Bahamas.

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