

CHAMBER HEARING

Monday 24th October, 2008

CORAM

The Hon. Ms. Ola Mae Edwards, Justice of Appeal (Ag.)

SAINT LUCIA

APPLICATION

Case Name

**David Alan Pollock et al v Caribbean Ventures International Limited (Liquidation) et al
[Civil Appeal No. 35 of 2007] and [Civil Appeal No. 33 of 2008]**

Appearances:

Appellants: Mr. Marcus Foster

Respondents: Mr. Bota McNamara

Issue:

**Application for Stay of Execution pending appeal
Application for Stay of Execution of Receiver's Order**

Result:

The decision was reserved. The Order and written reasons were delivered on 27th October, 2008. The Order provided as follows:

The Applications for a stay of the execution of the judgment of Cottle J. delivered on the 13th August 2007 and a stay of the operation of the Receiver's order made on the 16th July 2008 and entered on the 7th August 2008 are granted pending the determination of appeal No. 35 of 2007 or No 33 of 2008 whichever is first, on the following conditions:

- (i) The Appellants, David Alan Pollock and Kelly Iverson Pollock, may return to the property in question at Seagrape Crescent registered as Block 1255B, Parcels 441 and 442 and occupy same from Wednesday the 29th October 2008 at 1:00 p.m. until the determination of appeal No. 35 of 2007 or No 33 of 2008, whichever is first.**
- (ii) The Appellants are restrained from dealing with the property in the terms of paragraph 4 of the suspended Receiver's order.**
- (iii) The respondent, Mr. Marcus Wide, and his attorney-at-law, their servants or agents, shall be permitted to enter and carry out a weekly inspection of the said property including the dwelling house at a time to be agreed on by the parties and their counsel, and take inventory of the premises.**
- (iv) The 2 appeals are adjourned for further case management directions on Friday the 31st October 2008 at 2:00 p.m. when the parties are to report on the adequacy of the arrangements in place.**
- (v) The costs of the 2 applications shall be costs in the appeal.**

Reasons:

- (1) A stay of execution should only be granted if the appellant would face ruin without the stay, provided that the appeal had some prospect of success. The appellants satisfied the evidential burden of proving that they would be ruined if the stay was not granted and that the appeal against the receiver's order was arguable.**
- (2) Having regard to the affidavit evidence, the order, the law and submissions of counsel, and having taken into account the uncertainty as to when the transcripts of both proceedings will be available, the circumstances of the appellants and the grounds of the appeals cumulatively take the appellants' case outside the ordinary. Special circumstances have therefore been disclosed which should serve to prevent the ordinary rule not to grant a stay from applying.**
Linotype-Hell Finance Ltd. v Baker [1993] 1 WLR 321, Turkey v Awadh [2004] EWCA Civ 1471 and Winchester Cigarette Machinery Ltd. v Michael John Payne and another (unreported) (QBD), No. FC3 93/6788/C Royal Court of Justice, 10th December 1993 applied.