

Sup. Ct. - Ex parte - stay of proceedings - whether any "proceedings" to which a stay of execution could apply - whether Court has power to stay - whether Minister's decision - whether executive decisions. S 56(1) Judicature (Civil Proceedings Code) Act. HELD - Court acted without jurisdiction - order varied. Case referred to

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M 1993/M-157

IN THE MATTER OF AN APPLICATION BY MOTOR AND
GENERAL INSURANCE COMPANY LTD. FOR LEAVE TO
APPLY FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF THE INSURANCE ACT

AND

IN THE MATTER OF THE MOTOR VEHICLE (THIRD PARTY
RISK) ACT.

BETWEEN

MOTOR AND GENERAL INSURANCE
COMPANY LIMITED

APPLICANT

A N D

THE SUPERINTENDENT OF INSURANCE

1ST RESPONDENT

A N D

THE MINISTER OF FINANCE

2ND RESPONDENT

A N D

THE ATTORNEY GENERAL

3RD RESPONDENT

Norman Wright and Paul Beswick instructed by Wright,
Dunkley and Co. for the Applicant

D. Leys and Nicole Foga instructed by the Director
of State Proceedings for the Respondents.

Heard 10th & 13th December 1993

PITTER, J

On the 17th November 1993, upon the hearing of an ex-parte application
for leave to apply for an Order of Certiorari, this Court made the following
Order:-

- (i) That leave be and is hereby granted to the Applicant to
apply and remove into this Honourable Court and quash
the decision of the Superintendent of Insurance in
cancelling the Certificate of Registration of the
Applicant;

- (ii) That the proposal and cancellation by the Superintendent of Insurance of the Certificate of Registration of the Applicant be stayed until the hearing of the application herein;
- (iii) Liberty to the Respondent to apply;
- (iv) Costs of this Application to be costs in the cause.

Paragraph (ii) of the said Order did not find favour with the Respondents and on the 22nd November 1993, a summons was filed for leave to vary the order by removing therefrom the said paragraph on the following grounds:-

- 1) That there are no judicial or quasi-judicial or other proceedings connected to or arising from the issue of the directive by the Superintendent of Insurance contained in the letter dated November 16, 1993, to the Applicant, to which a stay could apply;
- 2) That the said directive is an executive decision;
- 3) That the Order for a stay of proceedings cannot apply to an executive decision already taken;
- 4) That the effect of the Order contained in sub-paragraph (ii) of the aforesaid Order is to grant injunctive relief for which no application had been made and in respect of which no jurisdiction is conferred by Section 564(B) of the Civil Procedure Code.

In response to this the Applicant contends inter-alia that:-

- 1) The stay was a mere consequential relief following from the Order granting leave to apply;
- 2) That the question of judicial or quasi-judicial proceedings is not relevant to a grant of stay;

- 3) That the stay is a condition precedent to the grant of leave;

4) **Laches**

The background to the litigation lies in the Insurance Act which provides for the registration and cancellation of Insurance Companies. Pursuant to section 17 of this Act, the Superintendent of Insurance by letter dated the 16th November, 1993, notified the Applicant company of his intention to cancel its registration as an approved company in Jamaica to carry on motor vehicle insurance business. This notification is the implementation of a directive by the then Prime Minister and Minister of Finance and Planning, dated 24th July, 1984 resulting from an appeal made to him by the Applicant under section 16 of the Act which provides for appeal against the Superintendent's proposal to cancel registration. It reads:-

"16 - (1)

(2) The ~~Minister~~ shall after considering the appeal, give his decision in writing and may either -

(a) with or without variation, confirm the Superintendent's proposal; or

(b) direct the Superintendent not to cancel the registration of the company in respect of such class or classes as the ~~Minister~~ may specify,

but any direction under paragraph (b) may be expressed to be conditional on the company's complying, to the satisfaction of the Superintendent, with such conditions as the Minister may specify.

(3) The decision of the Minister shall be final.

(4) The Minister shall forward one copy of his decision to the Superintendent, (and one copy to the Company) and the Superintendent shall give effect to his decision."

Section 17 deals with implementation of the proposal to cancel registration and section 18 provides for summary cancellation of registration. It is abundantly clear from the above that when the Superintendent of Insurance notified the Applicant of his intention to cancel its registration, he was merely carrying out

a decision made by the Minister of Finance and Planning. It will be seen therefore that the Minister in determining the matter, performs a purely executive function which is exhausted once the determination has been made. The responsibility for implementing the determination devolves upon the Superintendent.

It is the decision of the Superintendent that is being challenged by the Applicants. Is there any basis in law for the Court to grant a stay of his decision? Mr. Wright argues that the stay is a condition precedent to the grant of leave to apply and he relies on the provisions of the Civil Procedure Code. Mr. Leyes on the other hand contends that a stay in this context is referable only to "Proceedings" in Court, and certainly not to a directive by the Minister.

The procedure for application for leave to apply for an order of certiorari is governed by section 564 (B) of the Judicature (Civil Procedure Code) which provides as follows:-

"564(B) (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this section.

(2) An application for such leave aforesaid shall be made ex-parte to a judge in Chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought and by affidavits verifying the facts relied on. The Judge may, in granting leave, impose such terms as to costs and to giving security as he thinks fit.

(3)

(4) The grant of leave under this section to apply for an order of prohibition or an order of certiorari, shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application or until the Court or Judge otherwise orders"

As to whether a judge or Court had a power to stay the decision of the Minister was settled in the case of Min. of Foreign Affairs v. Vehicles and Supplies Ltd. (PC) 1991 IWLK where an Order for a stay was challenged and a variation of the Order sought on the ground that the Minister's decision did not constitute "proceedings" capable of being stayed under section 564(B) (4) of the Judicature (Civil Procedure Code) Law (*supra.*) Lord Oliver who delivered judgment of the Privy Council said at page 556

"..... regardless of any question whether the evidence in support of the applicants' application to Clarke J, provided even prima facie ground for the grant of the leave sought, there was every ground for challenging the order as a matter of law. It seems in fact to have been based upon a fundamental misunderstanding of the nature of a stay of proceedings. A stay of proceedings is an order which puts a stop to the further conduct of proceedings in Court or before a tribunal at the state which they have reached, the object being to avoid the hearing or trial taking place. It is not an order enforceable by proceedings for contempt, because it is not, in its nature, capable of being "breached" by a party to the proceedings or anyone else. It simply means that the relevant court or tribunal cannot whilst the stay endures, effectively entertain any further proceedings except for the purpose of lifting the stay and that, in general anything done prior to the lifting of the stay will be ineffective..."

After setting out the provisions of section 564(B) (4) *supra*, he continued "this makes perfectly good sense in the context of proceedings before all inferior court or tribunal, but it can have no possible application to an executive decision which has already been made"

The words underlined are for emphasis only and I adopt this reasoning and apply it to the instant case. It is therefore very relevant to determine whether when the Superintendent acted, it was in course of some judicial or quasi-judicial proceedings if effect is to be given to section 564(B) (4) *supra*. I find that when the Superintendent notified the Applicants of his intention, this was not in the course of some judicial or quasi-judicial proceedings, but the mere carrying out of the Minister's directive.

Mr. Leyes' further contention was that the grant of the stay operated as an injunction against the Crown, allowing the Applicants to resume their business which in effect nullifies the order of the Superintendent. Mr. Wright's response was that the stay was a mere consequential relief from the Order granting leave to apply.

Section 16 (2) of the Crown Proceedings Act makes it abundantly clear that an injunction or an order for specific performance shall not be made against the Crown.

"16 (2) The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the Order would give relief against the Crown which could not have obtained in proceedings against the Crown."

I find there is merit in Mr. Leyes' contention. The relief which flowed from the stay should have been achieved only by an injunction, either mandatory or prohibitory, for which an appropriate application would have had to be made. There was no such application.

The plea of laches is not applicable to this case.

In conclusion I hold that when the Court granted a stay until the hearing of the application as it did on the 17th November 1993, it was not a stay of "proceedings" and it had no jurisdiction in law nor a discretion to do so by virtue of the provisions of section 564(B) (4)

There will therefore be judgment for the Respondents. The order is made in terms of the Respondents summons dated 22nd November 1993.