

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 64/2006**

<b>BETWEEN:</b>	<b>JAMAICA REDEVELOPMENT FOUNDATION</b>	<b>1<sup>ST</sup> DEFENDANT/ APPELLANT</b>
<b>AND:</b>	<b>PATVAD HOLDINGS LIMITED</b>	<b>1<sup>ST</sup> CLAIMANT/ RESPONDENT</b>
	<b>VIVIAN A. DALEY</b>	<b>2<sup>ND</sup> CLAIMANT/ RESPONDENT</b>
	<b>PATRICIA DALEY</b>	<b>3<sup>RD</sup> CLAIMANT/ RESPONDENT</b>

PROCEDURAL APPEAL

IN CHAMBERS

FOR CONSIDERDATION BEFORE:

- THE HONOURABLE MR. JUSTICE PANTON, J.A.

Written submissions filed by:

- Nunes, Scholefield, DeLeon & Co. for the Defendant/Appellant.
- DunnCox for the Claimants/Respondents.

**September 22, 2006**

**PANTON, J.A.**

In this matter, the parties have taken the stance that this is a procedural appeal.

I do not agree with them, in view of my interpretation of the Court of Appeal

Rules 2002. Rule 1.1(8) describes a procedural appeal as:

"An appeal from a decision of the court below which does not directly decide the substantive issues in a claim but excludes –

- (a) ...
- (b) ...
- (c) the following orders under CPR Part 17 –
  - (i) an interim injunction or declaration...."

The Order that is the subject of this appeal from Beswick, J., reads thus:

- "i. The hearing of the matter is adjourned to 14 September 2006 for 3 hours.
- ii. Written submissions to be filed on or before the 7<sup>th</sup> day of September 2006.
- iii. Interim injunction against the 2<sup>nd</sup> Defendant is extended to 14<sup>th</sup> September, 2006. The claimant gives the usual undertaking as to damages.
- iv. Claimants to pay the sum of \$20,000.00 on or before the 17<sup>th</sup> August 2006 to the 1<sup>st</sup> Defendant on account of their outstanding indebtedness failing which the application for interim injunction as against the 1<sup>st</sup> Defendant stands dismissed.
- v. The undertaking of the 1<sup>st</sup> Defendant not to exercise its powers of sale in respect of the subject property until the further hearing of the application for an injunction herein remains in force."

The document headed "Notice and Grounds of Appeal" reads in part:

- "2. The Appellant challenges the following orders:
  - (a) The Learned Judge's order at paragraph v. above that the undertaking of the 1<sup>st</sup> Defendant not to exercise its power of

sale in respect of the subject property until the further hearing of the application for an injunction herein remains in force.

The grounds of the Appeal are:

1. The Learned Judge erred, in law, in ordering that the First Appellant/Defendant's undertaking remain in force in circumstances when the First Defendant/Appellant through its Counsel had advised her it was not prepared to give any further undertaking beyond the 11<sup>th</sup> July 2006."

The written submissions have focused on the undertaking. However, it seems to me that at the heart of the appeal is the restraint that is in force in respect of the sale of the property. In other words, the appeal is about the interim injunction referred to in paragraph iii. of the Order. The undertaking is inextricably linked with the interim injunction. It is the foundation for the interim injunction. That being so, the appeal is really in respect of a matter which is excluded from the definition of a procedural appeal. In the circumstances, the appeal may not properly proceed as a procedural appeal.

It is noted that the matter had been adjourned to September 14, 2006. The current state of the proceedings in the Court below is not known. The Registrar is accordingly hereby instructed to list the matter for hearing before this Court at the earliest convenient date. In keeping with Rule 2.9 of the Court of Appeal Rules 2002, I am directing that there is no need for any further written

submissions; however, the parties to the appeal are to be allowed forty minutes each for oral arguments.