

Judgment 6/2005

Pirito v. Curth – Court of Appeal (Civil Appeal 321) – 20 January, 2005

Application for leave to appeal to Judicial Committee of the Privy Council (see Judgment 23/2003) – severance of joint interests in real property – appeals from the Court of Alderney to the Royal Court and from the Royal Court to the Court of Appeal had been dismissed – eviction and saisii proceedings – no time limit in the Court of Appeal (Guernsey) Law 1961 or elsewhere for seeking leave to appeal to the Judicial Committee – held that Court of Appeal has residual inherent power to refuse leave to appeal where pursuit of an appeal would involve serious abuse of process – leave refused – need for review of the provisions governing appeals to the Judicial Committee from the Court of Appeal.

COURT OF APPEAL OF THE ISLAND OF GUERNSEY

The 20th day of January, 2005 before Richard Charles Southwell, Esq., Q.C., Presiding, Peter David Smith, Esq., Q. C., and Christopher Simon Courtenay Stephenson Clarke, Esq., Q.C.

GUISEPPE CATALDO PIRITO

(Appellant)

v.

HILDA CURTH

(Respondent)

On the application of Mr Pirito: -

- (i) for leave to appeal to the Judicial Committee of the Privy Council from the judgment and order made by the Court of Appeal on 10th April, 2003; and
- (ii) for a further stay of the eviction order and the Interim Vesting Order made by the Court of Alderney on 12th February, 2004

THE COURT, having on 13th, 15th and 16th December, 2004, heard Advocates N. J. Barnes and P. J. G. Atkinson for Mr Pirito and Miss Curth respectively, thereon and having reserved judgment, this day ISSUED JUDGMENT in the terms attached hereto and: -

1. REFUSED the application for leave to appeal to the Judicial Committee of the Privy Council;

2. REFUSED the application for any further stay of the eviction order and the Interim Vesting Order except to the following extent, and ORDERED that
- (i) the eviction order shall take effect at and from 10.00am on Friday, 11th February, 2005;
 - (ii) the Interim Vesting Order shall take effect at and from 10.00am on Friday, 25th February, 2005;
 - (iii) the claims registered by the Income Tax Authority shall remain unaffected;
 - (iv) Miss Curth's costs of and occasioned by the applications for leave to appeal to the Judicial Committee of the Privy Council and for further stay of the eviction order and the Interim Vesting Order shall be paid by Mr Piritto on the standard recoverable basis;
 - (v) if Mr Piritto shall have vacated the house and land at or before the time and date specified in (i) above, and shall have before that time and date joined with Miss Curth in taking agreed steps for the sale of the house and land with vacant possession and for the payment out of the proceeds of sale of (a) Miss Curth's half share; (b) all other sums due to Miss Curth whether by way of costs or otherwise; (c) all sums due to the Income Tax Authority; and (d) the balance remaining to Mr Piritto, there will after the time and date specified in (i) above be liberty to apply to the Royal Court for a variation of the time and date specified in (ii) above.

K. H. TOUGH
Registrar of the Court of Appeal

20th JANUARY, 2005

COURT OF APPEAL

Before

Richard Southwell, Esq., QC; presiding
Peter Smith, Esq., QC
Christopher Simon Courtenay Stephenson Clarke Esq., QC

GUISEPPE CATALDO PIRITO

v.

HILDA CURTH

Judgment delivered by Southwell, JA

1. This is an application by Mr Pirito dated 16th November 2004 for leave to appeal to the Judicial Committee of the Privy Council against the judgment and order of the Court of Appeal of 10th April 2003. On this application, Advocate Barnes has appeared for Mr Pirito and Advocate Atkinson for Miss Curth. We are greatly indebted to each advocate for his assistance.
2. Before coming to the issues arising out of this application it is necessary to set out some of the background and chronology (for the events down to April 2003 derived from the judgment of this Court now sought to be appealed from).
3. In about 1972 or 1973 Mr Pirito and Miss Curth began to live together in Alderney in premises rented by Miss Curth. In December 1982 they together bought a plot of land in Alderney with a view to building a house for both of them to live in. Their ownership is registered in Alderney as joint ownership. The house was built and in 1984 they moved in to live there together. Three daughters were born to them in 1982, 1986 and 1988. They never married. Their relationship broke down and in 1998 Miss Curth left the house to live in rented premises. Ever since Mr Pirito has continued to live in the house. As a joint owner he has not had to pay for his occupation. Miss Curth lives in poor rented accommodation paying £100 a week.

4. On 7th January 1999 Miss Curth started an action in the Court of Alderney seeking as relief (inter alia) severance of their joint interests and judicial auction (licitation) of the house so that each could take their half-share of the proceeds of sale for the purpose of re-housing. In June or July 2000 Mr Pirito paid £10,000 to Miss Curth; this payment was agreed “to be regarded as a payment on account of Miss Curth’s interest in [the house and land] and without prejudice to the parties’ rights to sue or defend the licitation/severance proceedings and/or appeal”. The case was heard in May 2001. In its judgment on 7th June 2001 the Alderney Court, having heard the evidence of both parties, decided that on severance the property should be held in equal undivided shares and ordered licitation. Mr Pirito appealed to the Royal Court of Guernsey. Judgment was given on 27th September 2002 dismissing his appeal, relying so far as concerns Alderney law on the recent decision of this Court in Waterman v. McCormack (25th May 2002, unreported).

5. Mr Pirito then appealed to the Court of Appeal who delivered judgment on 10th April 2003 dismissing his appeal. This Court, while pointing out that it was not bound by its previous decisions, reviewed the law of both Alderney and Guernsey and followed Waterman v. McCormack with similar reasoning. In the course of its judgment the Court of Appeal stated:

“It is a matter of no little regret that this relatively simple case has taken over 4 years to reach this Court. The objective for all involved in civil proceedings (parties, lawyers, court staff and Courts) must be to progress to a final determination of the dispute in accordance with agreed or ordered timetables at a reasonable level of cost and within a reasonably short time.”

6. The position had thus been reached in April 2003 that Miss Curth had in her favour concurrent findings of fact in three levels of Court and two decisions of this Court on the relevant legal principles. It might therefore have been thought that this would be the end of the legal warfare between the parties, so that the house could be sold, and each party (but especially Miss Curth) could be re-housed in an appropriate way.

7. It appears from the documents before us that after the decision of this Court in April 2003 Mr Pirito was minded in July 2003 (see the letter of 8th July 2003 from his then Advocate to the Clerk of the Court of Alderney, and the order of the Court of Alderney dated 10th July 2003) to appeal to the Privy Council under Section 16 of the Court of Appeal (Guernsey) Law 1961 (“the 1961 Law”). For whatever reason, but

perhaps because he was faced with the concurrent fact findings and the two decisions on the law, Mr Pirito then decided not to appeal to the Privy Council.

8. Instead, he started on a campaign of prevarication, which (as will be seen) not only has delayed the time when the house can be sold and Miss Curth (and the daughter who lives with her) can be re-housed, but also has placed in serious jeopardy Mr Pirito's own half-interest in the house and in the proceeds of its sale.
9. On 10th July 2003, on Miss Curth's application on notice (but in the absence of Mr Pirito who did not attend) the Alderney Court made an order that Mr Pirito permit a valuer to have access to the house, or in default he should pay a penalty of £1,000 a week. To this day Mr Pirito has refused to allow any valuer to have access to the house, and has thereby prevented steps being taken to sell the house. Miss Curth has so far refrained from seeking to enforce the penalty. On 1st August 2003 Mr Pirito filed notice of appeal with the Royal Court against this order of the Alderney Court, but he did not pursue this appeal, which must be regarded therefore as abandoned.
10. On 11th September 2003 the Court of Alderney granted judgment to Miss Curth against Mr Pirito in the sum of £9,886.60 in respect of costs awarded in her favour, together with a Preliminary Vesting Order. The effect of such an order (a "PVO") is that Miss Curth irrevocably elected to recover her debt from Mr Pirito's realty, his half-interest in the house, and not to recover it from his personalty. Further effects are that

- (1) this is a judgment against the debtor giving power to levy execution against his realty;
- (2) the debtor may be evicted from his realty and the judgment creditor may sell it; and
- (3) a register has to be opened for 28 days so that any creditors of the debtor can register their debts: any debt not registered within that period cannot be enforced against the debtor's realty.

Mr Pirito has never appealed against the PVO, and Miss Curth is entitled to an Eviction Order by reason of the PVO. This was confirmed by the Royal Court on 24th August 2004.

11. On 2nd October 2003 the Court of Alderney, on Miss Curth's application, ordered the appointment of Jurat Scott as Commissioner. The practice is for the creditor and the

debtor to appear before the Commissioner to verify the amount owed. On 6th November 2003 Jurat Scott certified that £10,225.29 (including the sum referred to in paragraph 10 above) is due from Mr Piritto to Miss Curth, the account having been agreed by Mr Piritto in person.

12. Following an earlier adjournment (for 2 months) on 11th December 2003, on 12th February 2004 the Court of Alderney granted Miss Curth's application for Mr Piritto to be evicted from the house, with a stay of one month, and made an Interim Vesting Order ("an IVO"), and ordered Mr Piritto to pay her costs. The effect of an IVO is to vest the debtor's realty in the creditor as trustee for all claimants against the debtor's realty. If a creditor sells the property at a price which exceeds the amount of the debts registered against the debtor, the surplus goes to the creditor selling the property, not to the debtor. The only debts previously registered against Mr Piritto's interest in the property are Miss Curth's and tax debts of about £26,000. It is apparent that if the house is worth about £300,000 (as was suggested to this Court) there might be a substantial surplus in Mr Piritto's half-interest which would go to one of the creditors, and not to Mr Piritto. This shows how unwise and contrary to Mr Piritto's own interests his conduct has been. In order of priority, starting with registered unsecured creditors, each creditor has the opportunity to take the property, pay off the other creditors, and take any surplus for him or herself (or bear any deficit).
13. However, under section 2(5) of the Saisie Procedure (Simplification) (Bailiwick of Guernsey) Order 1952, the Court has power, "if the circumstances advanced by the debtor appear to render it just so to do, from time to time to postpone the making, or the operation, of such order on such conditions, if any, as the Court shall think just."
14. On 10th March 2004 Mr Piritto gave notice of appeal against the decision of the Alderney Court of 12th February 2004 together with an application for leave to appeal out of time.
15. On 24th August 2004 the Royal Court of Guernsey, having heard the appeal on 19th, 20th, 21st and 29th July 2004: -
 - (1) gave leave to Mr Piritto to appeal to that Court out of time;

- (2) allowed the appeal against the eviction order to the extent that the order be stayed until 30th September 2004 with leave to apply;
- (3) allowed the appeal against the IVO to the extent that the making of the IVO was postponed to 30th November 2004 so that it would not become effective until that date;
- (4) ordered that the claims registered by the Income Tax Authority were to remain unaffected; and
- (5) granted costs in favour of Miss Curth, which costs together with the earlier costs were to come out of the Pirito half-share of the net proceeds of sale, which share would also bear the amounts payable to the Income Tax Authority by Mr Pirito.

16. The Lieutenant Bailiff made it clear that Mr Pirito had brought the making of the IVO on his own head by failing to cooperate in the valuation and sale of the house. But he said this (in paragraph 55) having expressed doubts as to the justice of Mr Pirito losing his half-share: -

“I am driven to conclude, with reluctance, that the Appellant should be given one last chance to realise the residual value of his former interest in the property, which will require taking immediate and constructive action on his part. The objective of both parties must be a speedy and mutually just resolution of the present impasse. This saga has continued for more than long enough, to echo the view expressed by the Court of Appeal back in April, 2003.”

Having made the Orders in paragraph 15(1) to (4) above, the Lieutenant Bailiff said this:

“These orders, in my view, reflect the timescale of 3 months granted originally by the Court of Alderney and confirmed by the Court of Appeal in which the Appellant was required to participate in the licitation. It is appropriate that the eviction order should be stayed for a shorter period so that the property is vacant at the time of any public auction or so as not to deter a sale. No purchaser will commit himself if he has any doubts as to vacant possession being granted on completion of the purchase of the property.”

Then having made the Order in paragraph 15(5) above, he ended his judgment with these words:

“I should make it clear to the Appellant that it is now entirely a matter for him whether he realises the value of his interest in the former home (as has been determined by law), or he loses out completely. On the 1st December 2004, the IVO will have full force and effect unless in the meantime the property has been disposed of. I have specifically granted both parties leave to apply in respect of both orders to allow for a bare modicum of flexibility. So, for example, if the Appellant is only able to move into other premises on the 10th October, he is free to apply for extra time; on the other hand if by the 1st October the Appellant has made no effort to vacate the premises then the Respondent is free to apply to this Court for it to reconsider the length of stay in the coming into effect of the IVO. Equally, if effective progress is being made towards the sale of the property but it cannot finally take place prior to the 30th November, then clearly the Appellant must be free to apply for such further limited extension as the case requires. These examples are in no way definitive; and freedom to apply is no guarantee of success.”

17. Mr Pirito on 23rd September 2004 (one day before the one month period for appealing expired) filed a notice of appeal against the decision of the Royal Court of 24th August 2004. But he did not pursue that appeal at all. The appeal remained pending until on reading the documents filed in respect of the present application the President discovered that there was such a pending appeal. On his direction as a single Judge, HM Greffier informed Advocate Barnes that this appeal was to be heard at the same time as the present application. Thereafter on 6th December 2004 Mr Barnes wrote to HM Greffier stating that Mr Pirito had abandoned his appeal from the decision dated 24th August 2004.
18. Meanwhile by reason of the pendency of this appeal, Mr Pirito obtained from the Royal Court stays of the order for eviction on various occasions until 18th October 2004. On 19th October 2004 Lieutenant Bailiff Day gave judgment refusing any further stay beyond 4.00pm on 20th October 2004. In his judgment the Lieutenant Bailiff stated (inter alia): -

“I think it is fair to say that the Court has bent over backwards to give Mr Pirito the opportunity to pursue his application to stay the executive of the Eviction Order.”

He later went on: -

“The facility which was accorded to him to seek a stay beyond the 30th September [2004] was in terms designed to allow him to persuade the Court that he was making every effort to find alternative accommodation. From his correspondence it is abundantly clear that he is making no efforts in that behalf. I also bear in mind that as long ago as the 10th April 2003 the Court of Appeal ordered [Mr Pirito] to participate in the judicial auction of the jointly owned matrimonial home within 3 months. He has made no effort to comply with that order. Nor, I am informed, are any of his family now living with him.”

The Lieutenant Bailiff refused the application for any further stay of execution of this Eviction order whether based on the pending appeal against the decision of the Royal Court of 24th August 2004 or otherwise, except to stay until 4.00pm on 20th October 2004 to enable Mr Pirito to apply to a single Judge of the Court of Appeal.

19. On 2nd November 2004 the Bailiff sitting as a single Judge of the Court of Appeal ordered a further stay of the order dated 24th August 2004 as respects both the Eviction order and the making of an IVO until the sitting of the full Court of Appeal in the week beginning 13th December 2004, provided that Mr Barnes presented an application for leave to appeal to the Privy Council for hearing at that sitting and complied in all respects with the Bailiff’s procedural orders.
20. Thus the position of the parties is that
 - (1) They have been separated for over 6 years.
 - (2) Mr Pirito has continued to have the benefit of living in their home throughout these 6 years, and has not had to pay for his occupation.
 - (3) Miss Curth has had to live in rented accommodation (which we were told was of a poor standard) at a rent of £100 a week, and one of their daughters lives with her at least part of the week.
 - (4) As a result of the proceedings in the Court of Alderney and the appeals
 - (a) there are concurrent findings of fact against Mr Pirito in three tiers of court;

- (b) the relevant principles of Alderney law (which has not been submitted to be different from Guernsey law – except for the specifics of land registration in Alderney) have been confirmed in the two recent decisions of the Court of Appeal;
 - (c) Subject to the stay, Miss Curth has the benefit of an IVO and an Eviction Order and could obtain the eviction of Mr Pirito from the house, could have the house valued for the purposes of sale, could establish a further register of Mr Pirito’s creditors, and could sell the house using the proceeds to pay the debts owed to her and any other creditors (including the tax debts) and then retain the balance for the purpose of providing herself with her own accommodation.
- (5) That Mr Pirito might lose the balance of his interest in a half-share of the value of the house is due to Mr Pirito’s failure to comply with the order to admit a valuer, and his failure to agree as to the sale of the house so that the proceeds could be shared between him and Miss Curth. He is in this respect the author of his own misfortune.
21. It is in relation to these circumstances that we turn to consider Mr Pirito’s application dated 16th November 2004 for leave to appeal to the Privy Council.
22. The application for leave to appeal is made under section 16 of the 1961 Law which reads as follows:
- “16. No appeal shall lie from a decision of the Court of Appeal under this Part of this Law [relating to appeals in civil matters] without the special leave of Her Majesty in Council or the leave of the Court of Appeal except where the value of the matter in dispute is equal to, or exceeds, the sum of £500 sterling.”*
23. This section has be read in the light of Rule 2 in Schedule II to the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 which reads: -
- “2. No appeal shall be admitted unless either: -*
- (a) *leave to appeal has been granted by the Court appealed from; or*
 - (b) *in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council.”*

24. The apparent disjunction between provisions such as section 16 of the 1961 Law and Rule 2 has been clarified by the Privy Council in its Notes on Procedure in Commonwealth Appeals dated October 1983: -

“Even where the instrument governing the admission of appeals from the territory concerned refers to an appeal as being “as of right” (or similar words) it is still necessary for leave to be obtained. The Court from which leave is sought has to be satisfied that the appeal falls within the category of cases for which it may (or must) grant leave and it also imposes conditions as to security for costs, arranging for the dispatch of the record to London and (if appropriate) as to stay of execution; it will probably grant conditional leave in the first instance and only grant final leave when the conditions as to security for costs and arranging dispatch of the record have been fulfilled.”

25. The value of the matter in dispute in this case (a whole or half-share in the house) exceeds £500. There is no time limit laid down in the Law of Guernsey within which an application for leave to appeal to the Privy Council must be made.

26. The question the Court has to decide in relation to Mr Piritto’s application is whether: -

- (1) this Court must grant leave to him to appeal to the Privy Council;
- (2) this Court has power to refuse leave to appeal in the circumstances of this case.

27. The wording of section 16 appears on its face to require leave to be granted by the Court of Appeal where the value exceeds £500, and to afford this Court no power to determine otherwise.

28. Three decisions of the Judicial Committee were cited. The first was Ratnam v. Cumarasamy [1965] 1 WLR 8; [1964] 3 All ER 933. That concerned an appeal from the Federal Court of the Federation of Malaya. The appellant filed notice of appeal, but failed to file the record within the specified time. He applied to the Court of Appeal for an extension of time, but his application was dismissed. The appeal to the Privy Council was dismissed by the Judicial Committee, the practice of the Privy Council being stated to be generally not to interfere with the exercise of discretion by local courts on questions of procedure. The decision in Ratnam “was on the basis that an appeal lay as of right from a final order coming

within” the statutory provision referred to above: see Lopes (below) at [1968] 2 All ER page 138G/H.

29. Lopes v. Valliappa Chettiar [1968] AC 887; [1968] 2 All ER 136. This also concerned an appeal from the Federal Court of Malaya. Though the case came within the terms of a statutory provision similar to section 16 of the 1961 Law the Federal Court had refused leave to appeal to the Privy Council. The appellant then sought special leave from the Judicial Committee, who held that (1) under the statutory provision the Federal Court had no discretionary power to refuse leave to appeal, but (2) the grant of special leave by the Judicial Committee “is a matter of discretion and not a right” ([1968] 2 All ER page 138 H/I), and the case was not a fit one for appeal, and special leave was therefore refused.
30. The next relevant decision of the Judicial Committee was Electrotec Services Ltd. v. Issa Nicholas (Grenada) Limited [1998] 1 WLR 202. This was not cited to us but was referred to in Crawford (below). In Electrotec the appellant from the Court of Appeal of Grenada had an appeal as of right and complied with the relevant conditions. The respondent applied to the Judicial Committee for an order that the appellant provide substantial security for costs on the ground of the appellant’s insolvency under a statutory provision claimed to be relevant or under the inherent jurisdiction. The Judicial Committee dismissed the application, holding that the statutory provision did not apply to appeals. Their Lordships expressed the view that there was much to be said for the conclusion that any inherent power to order security had been impliedly excluded by the code of procedure for appeals from Grenada. However, it was not necessary to decide whether the inherent jurisdiction had been excluded, because even if such jurisdiction existed, “it should be exercised only in exceptional cases; for example, when it appears likely that the bringing of the appeal is an abuse of process” (page 206), and there was not such abuse in that case.
31. The third case cited to us was Crawford et al v. Financial Services Institutions Ltd [2003] 1 WLR 2147. This was an appeal from the Court of Appeal of Jamaica. Because of the value of the matter in dispute the appellants were entitled to appeal as to the Privy Council under a provision of the Jamaican Constitution similar in terms to section 16 of the 1961 Law. The Court of Appeal granted leave on conditions including payment by the appellant of the respondents’ outstanding costs of the trial and the appeal. Such costs were not paid, and the Court of Appeal rescinded the grant of leave to appeal. The Judicial Committee, on a petition for special leave, held that the Court of Appeal (where

the appellant had an appeal as of right to the Privy Council under the Constitution) had no power under either the relevant procedural order or its inherent jurisdiction to impose any condition additional to those falling within the terms of the procedural order. Accordingly the Court of Appeal was in error in not granting final leave to appeal.

32. As regards the inherent jurisdiction it was submitted in Crawford on behalf of the respondent that the Court of Appeal had inherent power to control its own procedure and to stop any abuse of that procedure. Not surprisingly the Judicial Committee held that in any event there had been no such abuse, and expressed the view that the Court of Appeal was not entitled to exercise any inherent power to impose further conditions or to make further orders which restricted the right of appeal given by the relevant section of the Jamaican Constitution (para 17).
33. As regards the grant of special leave, the Judicial Committee held, relying on the decisions in Lopes and Electrotec, that they were not obliged to grant special leave to appeal solely because the Court of Appeal had erred, and they retained a discretion to refuse leave. But this discretion would be exercised only “in exceptional circumstances as, for example, where it was clear that the appeal was wholly devoid of merit and was bound to fail” (para 23).
34. The circumstances in the present case are different from those in the above four decisions. In our judgment, they require this Court to consider whether there are any circumstances in which leave to appeal, apparently as of right by virtue of section 16, can be refused by this Court acting under an inherent jurisdiction to restrain abuse of process. This question is of particular importance because, if this Court gives final leave under Section 16 and Rule 2, there appears to be no means by which the pursuit of the appeal thereafter could be restrained, however abusive that might be.
35. In our judgment this question can be tested by taking a hypothetical example. There is no time limit in the 1961 Law or elsewhere within which an appellant has to seek leave to appeal. Suppose that the proposed appellant had allowed the decision of the Court of Appeal to remain unappealed for a considerable time, and the decision had been acted upon and the necessary steps taken to give it effect, before any application under Section 16 for leave was made. In such a case, in our judgment, it would be essential, if serious abuse was to be prevented, for this Court to have the inherent power to refuse leave. Such a power would be necessary to prevent the appeal process being carried forward and the whole basis

on which the civil dispute had been resolved as between the parties being overturned ex post facto.

36. In our judgment, therefore, despite some indications to the contrary in the decisions considered above, the existence of such a residual inherent power is necessary in the exceptional circumstance that pursuit of an appeal to the Judicial Committee would involve a serious abuse.

37. In the light of this reasoning, we turn to consider whether in the circumstances of the present case pursuit of an appeal by Mr Piritto would involve a serious abuse of process. The circumstances which seem to us to be most relevant are these: -

(1) Insofar as any findings of fact are involved (especially in relation to the circumstances in which the land came to be bought and registered in the joint names of Mr Piritto and Miss Curth) these are concurrent in three levels of Court.

(2) The relevant legal principles of Alderney law (which does not differ in this respect from Guernsey law) are clear principles confirmed by the Court of Appeal in Waterman and in the present case.

(3) The appeal has no merit, except perhaps by virtue of the position which Mr Piritto has created for himself of potentially losing the balance of his half-share of the house and land by virtue of the IVO once it comes into force. That Mr Piritto is in this position results primarily from his procrastination, including his refusal to join in allowing valuation of the house and selling it so that the proceeds could be divided equally between him and Miss Curth.

(4) The evidence referred to above shows that Mr Piritto had in mind an appeal to the Privy Council shortly after the Court of Appeal decision in April 2003, but deliberately chose not to pursue any such appeal.

(5) Mr Piritto then allowed several steps to be taken by Miss Curth in reliance on the judgments of the Court of Alderney, the Royal Court and the Court of Appeal. He tried hard and with some success to delay the taking of these steps without challenging those judgments. He allowed a valuer to be ordered on 10th July 2003 to be given access, while refusing entry to the valuer. Though he filed notice of appeal against that order, he did not pursue the appeal and effectively

abandoned that appeal. He allowed the PVO to be made on 11th September 2003 and did not appeal against the PVO, which entitled Miss Curth to an eviction order. On 6th November 2003 he agreed the account of costs due to Miss Curth (costs which he would no doubt have challenged if he had appealed to the Judicial Committee). He obtained a long adjournment of Miss Curth's application for an eviction order and IVO, the adjournment being specifically for the purpose of enabling him to allow valuation and sale of the house and land, and thereby to avoid the disadvantages to him which would flow from the making of an IVO. He appealed out of time against the Alderney Court's grant on 12th February 2004 of the eviction order and IVO. That secured him a further 6 months delay before the appeal was determined on 24th August 2004 by the Royal Court. By the order on his appeal (which was not founded on any question of an appeal by him from the Court of Appeal of 10th April 2003) he obtained further delay in the eviction order and even more delay in the IVO. He filed a notice of appeal to the Court of Appeal from the orders of 24th August 2004 on the last day of the period laid down for giving such a notice; but he did not pursue that appeal and he allowed that appeal to remain pending until it was abandoned on 6th December 2004. He obtained further stays of the eviction order, not on the basis of a potential appeal to the Privy Council, but on the basis of his appeal to the Court of Appeal against the Order of 24th August 2004, an appeal which he did not pursue and, it appears, he had no intention of pursuing. It seems that it was not until the matter came before the Bailiff as a single Judge of the Court of Appeal on 2nd November 2004 that the possibility of an appeal to the Privy Council from this Court's decision of 10th April 2004 was resurrected as a ground for obtaining a yet further stay of the eviction order and the IVO.

- (6) All these steps were taken against the background of the breakdown of the relationship in 1998, Mr Pirito being able to enjoy the ability to continue to live in the jointly owned house for the next 6 years, and Miss Curth having to live for those 6 years in poor accommodation rented at £100 a week.

- (7) The serious injustice to Miss Curth of the continuing court procedures is obvious.
- (8) During most of the period covered by the various proceedings Mr Pirito has had the benefit of legal aid, including (i) for the purposes of the appeal to this Court in April 2003 with representation by Advocate Haskins; (ii) for advice in July 2003 as to the prospects of success in an appeal to the Privy Council from Advocate Robilliard; (iii) for representation from November 2003 to February or March 2004 by Advocate Dunster for the purposes of the Saisie proceedings; (iv) for representation by Advocate Strappini from May to August 2004 for the purposes of the appeals during that period, and for a potential application for leave to appeal to the Privy Council; and (v) for representation by Advocate Barnes for the purposes of the present application: see the affidavit of Advocate Barnes sworn on 8th December, 2004. Accordingly Mr Pirito could not argue that he has not been fully protected by legal advice and representation for all significant purposes in connection with the April 2003 hearing in this Court and subsequently.
38. This Court has kept fully in mind the need not to frustrate an appeal under Section 16 except in exceptional circumstances and in the face of serious abuse of process, as already indicated. In our judgment the circumstances we have summarised in paragraph 37 are exceptional, and represent the clearest abuse of the process of the courts involved. Mr Pirito has used the court procedures to gain for himself the maximum delays, while refusing to take the steps most likely to protect him against the consequences of an IVO. This Court cannot accept that a litigant is entitled to decide not to appeal to the Privy Council, to use the court procedures to gain delay on the basis that he is not going to appeal to the Privy Council, and then at the eleventh hour to decide to revert to an appeal to the Privy Council so as to gain further delay. This must apply particularly in a case in which the basic housing needs of his partner of 25 years and the mother of his three children are primarily involved. In our judgment the time has come to put an end to the delaying tactics of Mr Pirito. For the reasons we have set out this Court refuses to grant to Mr Pirito leave to appeal to the Judicial Committee.
39. For the same reasons we refuse any further stay of the eviction order and the IVO, except to the extent to which we now indicate. We order that

- (1) the eviction order shall take effect at and from 10.00am on Friday, 11th February 2005;
- (2) that the IVO shall take effect at and from 10.00am on Friday, 25th February 2005;
- (3) the claims registered by the Income Tax Authority shall remain unaffected;
- (4) Miss Curth's costs of and occasioned by the applications for leave to appeal to the Judicial Committee of the Privy Council and for further stay of the eviction order and the Interim Vesting Order shall be paid by Mr Piritto on the standard recoverable basis;
- (5) if Mr Piritto shall have vacated the house and land at or before the time and date specified in (1) above, and shall have before that time and date joined with Miss Curth in taking agreed steps for the sale of the house and land with vacant possession and for the payment out of the proceeds of sale of (a) Miss Curth's half share; (b) all other sums due to Miss Curth whether by way of costs or otherwise; (c) all sums due to the Income Tax Authority; and (d) the balance remaining to Mr Piritto, there will after the time and date specified in (1) above be liberty to apply to the Royal Court for a variation of the time and date specified in (2) above.

40. We should add that, even if we had given Mr Piritto leave to appeal, we would have been minded to refuse any further stay in the light of his conduct as summarised above.

41. Observations We add these further observations: -

- (1) We venture to suggest that the Bailiff and the other Island authorities might consider rather urgently (i) whether leave should hereafter be required for all appeals from the Court of Appeal (compare the position in England and Wales); (ii) whether there should be a time-limit for applications for leave to appeal of not more than one month, and (iii) whether specific provision should be made for appeals from the Court of Appeal to lie only in cases which raise either a far-reaching question of law or a matter of dominant public importance, or which concern the custody of children or the liberty of the citizen, or which may lead to

avoiding unnecessary future litigation, or which raise a question as to the jurisdiction to entertain appeals: see the summary of the Judicial Committee decisions in volume 10 of Halsbury's Laws of England, 4th edition reissue of 2002.

- (2) In future appeals, documents placed before the Court of Appeal should always be in strict chronological order. This requirement should be added to paragraph 41 of the judgment of the Court in this case dated 10 April 2003. We recommend that such paragraph 41, suitably elaborated, be converted into a practice direction of this Court.