

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2004/CLE/gen/01075

BETWEEN

BERNARD A. MILLER

Plaintiff

AND

RUBY MAE FOX  
JOHN WENDELL ARCHER  
AND

SAMUEL SPURGEON ARCHER

(As personal representatives in the estate of George and John Archer, deceased)

First Defendant

AND

HAROLD ROAD PROPERTIES LIMITED

Second Defendant

BETWEEN  
2004/CLE/gen/01125

HAROLD ROAD PROPERTIES LIMITED

Plaintiff

AND

BERNARD MILLER

Defendant

BETWEEN  
2006/CLE/gen/00344

CLAUDIA FRANKS-CYRUS  
TODD FRANKS THERESA FRANKS  
CLIFFORD FRANKS JR  
AND

BERNARD MILLER

(As Administrator in the Estate of Elsie Agalla Franks, Deceased)

Plaintiff

AND

RUBY MAE FOX  
JOHN WENDELL ARCHER  
AND  
SAMUEL SPURGEON ARCHER  
(As personal representatives in the estate of George and John Archer, deceased)  
First Defendant

AND

HAROLD ROAD PROPERTIES LIMITED  
Second Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Sidney Dorsett for Bernard Miller  
Norwood Rolle for Harold Road Properties Limited

1 AUGUST 2023

DECISION

**WINDER, CJ**

1. This is the application of Bernard Miller (Miller) for a stay of the Writ of Possession issued by this Court on 20 January 2023.
2. The Writ of Possession was issued to enforce a judgment of former Chief Justice Sir Michael Barnett dated 2 May 2014. That judgment refused an application by Miller and others to set aside a Certificate of Title which had been granted over property on which Miller was said to reside. That action had been consolidated with an action which had been brought by Harold Road Properties. Harold Road Properties had been granted the Certificate of Title by Sr Justice Ricardo Marques and sought an order for possession against Miller.
3. Miller had alleged that the Certificate of Title was obtained by fraud. In the judgment the former Chief Justice found that the claim of fraud had not been proven and refused to set aside the Certificate of Title. The Court of Appeal agreed

with the decision of Sir Michael Barnett and dismissed the appeal in December 2016.

4. The present stay application was made on 14 June 2023. The notice cites 5 grounds as the basis for the application: These are:
  - (1) Bernard Miller is endeavouring to appeal to the Privy Council;
  - (2) There is an interlocutory appeal pending in respect of the erroneous decision of [Registrar Carol Misiewicz];
  - (3) The Order granting leave to issue the Writ of Execution is erroneous as obvious mistakes were not corrected on page 2 which confuses the identity of who applied for the Order;
  - (4) At the date of the said Order and Writ of Possession the real applicant, Harold Road Properties Ltd did not own the 14 acres. Its directors allegedly misled the Court; and
  - (5) The applicant for a stay, Bernard Miller, will suffer irreparable loss if it is not granted.
5. The application is supported by an affidavit of Miller, also filed on the 14 of June, 2023 and a supplemental affidavit of Miller, filed on July 17, 2023.
6. A stay is not a free standing application and must support some other pending application or the happening of some event. It is ordinarily applied for on the basis that the status quo ought to be maintained until the happening of this application or event, otherwise the process would be rendered nugatory.
7. The relevant principles for the grant of a stay were set out by Isaacs JA in the Court of Appeal case of *Bahamas Real Estate Association v Smith SCCivApp 109 of 2015*. According to Isaacs JA:

The principles which guide the considerations of a stay application are: whether the appellant is entitled to appeal as of right; whether the appellant has an arguable case; whether the absence of the stay would render a successful appeal nugatory; whether there is a risk of injustice to one or other of the parties if it grants or refuses a stay; whether the appellant has given sufficient evidence by affidavit as to why a successful appeal could be rendered nugatory.
8. No evidence was advanced as to any matter before Registrar Misiewicz, its nature or its prospects of success or how it impacts this Court's decision to issue a Writ of Possession. In any event that Registrar has retired since late 2021.

9. In this case Miller says that he wants the application stayed pending his appeal of the Court of Appeal's decision to the Privy Council. This is supported by the affidavit of Miller where he says at paragraph 11:

*"I am endeavoring to appeal the judgment of the Court of Appeal to the Privy Council and have already managed to pay the bond in time. I now beg that the Order and Writ of Possession in this matter be stayed."*

10. I am not satisfied on the evidence that there is such an appeal pending to the Privy Council, despite Miller's assertion of a pending appeal. Even if there was an appeal I am not satisfied that it is a viable appeal having regard to the fact that some of Miller's co-appellants, in the Court of Appeal (although not Miller) attempted to appeal the Court of Appeal decision to the Privy Council. The Privy Council refused their application for special leave to appeal on 16 February 2022, citing that the matter did not raise a point of law of general public importance. I have not been provided with any appeal documents to assess the strength of an appeal, as I am required to do.

11. The stay application appears to be based on an allegation that Harold Road Properties was not full and frank in its disclosure in that it did not disclose that it had divested itself of the portion of property occupied by Miller. That is not a ground for a stay, but perhaps for the setting aside of the order granting the Writ of Possession. There is however, no application to set aside but only for a stay. Whilst a stay application, in the absence of an application to set aside the Writ of possession, appears misconceived, I nonetheless did not find that Miller had made out the non-disclosure point.

12. Miller relies on a decision and judgment of Justice Thompson given on 23 November 2005. The judgment appears to provide for the partition of the property, between several parties to that action. Harold Road Properties was one of the plaintiffs in the action. Whilst there may have been an order for the partitioning of the properties by Justice Thompson, there is no evidence that the property was in fact partitioned. No conveyances or otherwise have been provided. The judgment of Sir Michael Barnett was given for Harold Road Properties and as such it was entitled to possession of the property occupied/claimed by Miller. Even if, which has not been proved, there was a partitioning of the property, Harold Road Properties still had the benefit of the judgment even if in a fiduciary capacity.

13. The challenge which Miller has is that the Thompson decision predated the Chief Justice's decision. Sir Michael Barnett's decision was made some 10 years after the judgment of Justice Thompson. These matters, if relevant, ought to have been

raised before the Chief Justice. A court considering a Writ of possession cannot re-litigate an issue already heard by the trial judge, and which has gone to the Court of Appeal. A Writ of Possession is merely an enforcement mechanism. In any event, it would seem inappropriate for Miller to assert that although he was ordered to deliver up possession to Harold Road Properties, that someone else is entitled. The authorities suggest that Miller cannot rely on the title of others and he must rely on his own title to defeat Harold Road Properties. Again, this was a matter to have been raised prior to the judgment made by the Chief Justice or to be argued at that trial or in the Court of Appeal.

14. In all the circumstances I am in no position to grant the stay sought by Miller.
15. The perfected order contained an obvious clerical error. Miller was improperly described as the applicant for the Writ of Possession rather than Harold Road Properties. Miller himself described the error as obvious in his grounds for the stay. Harold Road Properties has applied for an amendment to correct the perfected order. In the circumstances I will accede to the application of Harold Road Properties to correct the perfected order, under what is commonly called "the slip rule".
16. Costs for the stay application to Harold Road Properties Ltd and Costs for the amendment to Miller.

Dated this 25<sup>th</sup> day of August, 2023

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Sir Ian R. Winder

Chief Justice