COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMERCIAL DIVISION

CLAIM NO. 2023/COM/com/00057

BETWEEN

THE COMMITTEE TO RESTORE NYMOX SHAREHOLDER VALUE, INC (CRNSV) — **First Claimant**

RANDALL LANHAM — **Second Claimant**

CHRISTOPHER RILEY — **Third Claimant**

M. RICHARD CUTLER — **Fourth Claimant**

STEVEN RILEY — **Fifth Claimant**

ARTHUR DIEDRICH — **Sixth Claimant**

MARK RAMINA — **Seventh Claimant**

MAURIZIO BIAGGI — **Eighth Claimant**

TODD MITMESSER — **Ninth Claimant**

ROBERT S. PILAND — **Tenth Claimant**

JAMES BYROM — **Eleventh Claimant**

SEAN BEASLEY — **Twelfth Claimant**

v.

PAUL AVERBACK — **First Defendant**

PATRICK DOODY, ESQ. — **Second Defendant**

JAMES G. ROBINSON — **Third Defendant**

DAVID MORSE — **Fourth Defendant**

NYMOX PHARAMACEUTICAL CORPORATION — **Fifth Defendant**

Before: **Her Ladyship The Honourable Madam Senior Justice Deborah Fraser**

Appearances: **Mr. John F. Wilson K.C., Ms. Michelle I. Deveaux and Ms. Adrienne Bellot for the Claimants**

Mr. Colin Jupp for the Defendants

Judgment Date: **03 November 2023**

Application to Stay Execution of Injunction Order – Rules 1.1, 1.2, 1.3 and 43.12 of the Supreme Court Civil Procedure Rules, 2022 – Good Reasons – Financial Ruin – Court's discretion – Just and Equitable

JUDGMENT

1. This is an urgent application brought by Messrs. Paul Averback, Patrick Doody, James G. Robinson, David Morse and NYMOX Pharmaceutical Corporation ("**Defendants**") requesting a stay of execution of an injunction order made on 03 October 2023 and filed on 05 October 2023 ("**Injunction Order**").

Background

2. The background facts of this case are quite extensive. For the purposes of this judgment, I will condense them and only mention the most salient facts.

3. The Fifth Defendant, NYMOX Pharmaceutical Corporation ("**NYMOX**") is a company continued in The Bahamas pursuant to the International Business Companies Act as IBC Company No. 175894B pursuant to a Certificate of Continuation dated 06 October 2015 and Articles of Continuation issued by The Bahamas' Registrar of Companies ("**Articles**"). NYMOX is the successor in title to its predecessor NYMOX PHARAMACEUTICAL CORPORATION previously known as CORPORATION PHARMACEUTIQUE NYMOX Company No. 315239 in Canada ("**Canadian Company**").

4. NYMOX was struck off the Register of Companies on 11 January 2018. It is also a publicly traded entity in the United States of America ("**USA**") on the Over-the-Counter ("**OTC**"): Pink Sheets Market, maintained by OTC Markets Group, Inc., under the symbol "NYMXF" and is regulated by United States regulators including the USA's Securities and Exchange Commission ("**SEC**").

5. The First Claimant, The Committee to Restore NYMOX Shareholder Value Inc. ("**CRNSV**") is a US Domestic Corporation incorporated on 07 July 2023 in the State of Nevada, USA. CRNSV acts as trustee for and on behalf of the shareholders of NYMOX.

6. The Second, Third and Fourth Claimants are listed shareholders of CRNSV and the Second and Third Claimants are its only directors.

7. The Second Claimant, Randall Lanham ("**Lanham**") is a shareholder of NYMOX and was at all material times a director of NYMOX. Lanham was appointed a director of the Canadian Company in December of 2006 and continued as a

director of NYMOX having been duly elected by the shareholders in every annual meeting thereafter. Lanham was purportedly removed on 27 June 2023. Lanham was appointed Chief Operating Officer (COO) and General Counsel and Secretary of NYMOX in January 2023 until his purported termination on 17 June 2023.

8. The Third Claimant, Christopher Riley ("**Riley**") is a shareholder of NYMOX and was at all material times an officer of NYMOX having served as Chief Financial Officer (CFO) from January 2023 until his purported termination on 17 June 2023.

9. The Fourth Claimant, M. Richard Cutler ("**Cutler**") was and is at all material times a director and shareholder of NYMOX. Cutler served periodically as external counsel for NYOX and was elected a director of NYMOX by the shareholders in December of 2015 and reappointed by the shareholders in every annual meeting thereafter until his purported termination on 27 June 2023.

10. Lanham, Cutler and Riley will be collectively referred to as the "**Individual Claimants**".

11. The Fifth to Thirteenth Claimants are also shareholders of NYMOX.

12. The First Defendant, Dr. Paul Averback ("**Averback**") was at all material times a director of NYMOX having been appointed Chief Executive Officer, President and Chairman of the Board of Directors of the Canadian Company on or about May of 1995. Averback's employment with NYMOX is governed by an employment contract dated 17 July 2015 ("**Employment Contract**").

13. The Second Defendant Patrick Doody, Esq., a partner at Pillsbury Winthrop Shaw Pittman LLP ("**Doody**"), is currently the fourth director of NYMOX having been purportedly appointed on 12 July 2023.

14. The Third Defendant James G. Robinson ("**Robinson**") is a director of NYMOX who was appointed as a director of NYMOX on 01 July 2015.

15. The Fourth Defendant David Morse ("**Morse**") was appointed as a director of NYMOX since 08 June 2006 and has continued as a director to date.

16. Averback, Doody, Robinson and Morse ("**Director Defendants**") purportedly represent all of the directors of NYMOX. The Claimants allege that the Director Defendants have acted dishonestly and knowingly in assisting Averback in his actions (explained below) which allegedly continue to cause loss and damage to NYMOX and its shareholders.

17. The Claimants allege that Averback has acted unilaterally between 2015 and 2022 on behalf of NYMOX regarding matters which require authorization of the Board of Directors ("**BOD**") and has unlawfully misappropriated funds and assets of NYMOX for his own benefit. Specifically, they allege that he paid himself

$600,000 annually and received 250,000 restricted shares per month in NYMOX – such acts being contrary to his Employment Contract (as he was, purportedly under the terms of the contract, to select either the $600,000 annual cash payout or the 250,000 per month, but not both).

18. Between 2015 and 2022, NYMOX received capital injections of approximately $49,140,000.00. During the same period on differing occasions, it is also alleged that, Averback paid himself a total of at least USD$45,179,074.00 out of capital injections of NYMOX. During the same period, the Claimants further allege that he issued himself approximately 30,323,143 shares of common stock of NYMOX. The Claimants allege that together, this compensation amounted to payment to Averback of approximately 94% of all of the shareholder funds raised by NYMOX.

19. The Claimants further allege that Averback misrepresented and/or caused NYMOX to publish inaccurate and misleading information and/or omissions in its annual filings with the SEC for the periods of 2015 to 2022. The Claimants also allege that Averback failed, neglected and/or refused to accurately and adequately disclose the extent and value of remuneration received by him. They further allege that the BOD approved and authorized by resolution on 10 November 2021 an additional payment to him of $500,000 for "many years of service" thereby being unjustly enriched. Averback purportedly allotted a total of 21,000,000 shares to himself in excess of the shares which he was entitled to have allotted to him pursuant to the Employment Contract. ("**Averback Excess Shares**"). There are other allegations of unjust enrichment which I will not go into at this time.

20. The Claimants also alleged that there was an unauthorized issuance of 2,000,000 shares by the BOD to Robinson that were significantly undervalued (USD$1.00 per share) ("**Robinson Excess Shares**").

21. There are also multiple allegations of misrepresentations and unauthorized press releases allegedly made by Averback on behalf of NYMOX which have purportedly negatively impacted the reputation of NYMOX and consequently, caused a diminution in value of the shareholdings of NYMOX.

22. Based on the above, the Claimants alleged that, on several occasions between 2015 and 2022 either by themselves and/or by virtue of their agreement, acquiescence and/or condonation of the acts or omissions of Averback, the Director Defendants from the date of their respective appointments have committed breaches of their directors' duties, fiduciary and statutory duties owed to NYMOX which have caused NYMOX loss and damage.

23. By Claim Form and Statement of Case filed on 03 October 2023, the Claimants brought an action against the Director Defendants and NYMOX for the multiple reasons mentioned above. They claim the following reliefs:

"I. A Declaration that Averback holds all Averback Excess Shares and all monies received by him in breach of his fiduciary duties owed to NYMOX and/or the traceable value or proceeds thereof for the benefit of NYMOX;

II. A Declaration that the Robinson Excess Shares sold to Robinson were sold at an undervalue;

III. An accounting and payment of such sums found due and owing on such accounting in respect of (I) and (II) above;

IV. Damages for breach of contract;

V. General Damages;

VI. The Claimants costs of this Action, to the extent not recovered from the Defendants to be paid out of the assets of NYMOX;

VII. Interest on any sums found due and payable by the Defendants pursuant to the Civil Procedure (Award of Interest) Act;

VIII. Such Further or other relief as to the Court seems just."

24. On the same day, the Claimants filed an ex-parte injunction application and was granted the Injunction Order in the following terms:

"…IT IS HEREBY ORDERED AND DIRECTED THAT:

1. Mandatory and Prohibitory Injunctions:

(1) The Defendants shall forthwith give notice of the convening of the 2023 Annual General Meeting or alternatively a Special Meeting to be held on a date not more than 28 days from the date of such notice for the purpose of considering, inter alia the matters set out in the draft Notice of Shareholders Meeting exhibited to the Affidavit of Randall Lanham, a copy of which is attached to this Order.

(2) If by close of business at 5:00pm Bahamas time on the 9th day of October 2023 the Defendants have failed to comply with the order at paragraph 1 above by giving such notice, the Claimants shall be permitted themselves to give notice of such Meeting to be convened in accordance with paragraph 1 above.

(3) The [Fifth Defendant] acting by it board of directors, shall give effect to all resolutions passed at the General/Special Meeting held pursuant to the Court's Order.

2. Until such time as the Special or General Meeting is held or until further order, that save for ordinary business expenses, the Defendants [shall] not whether by themselves, their servant[s], agents or assigns, dissipate reduce charge or assign or in any way diminish or reduce the assets of the Fifth Defendant company or issue any shares in the Company to themselves or to any agent or person connected to them.

3. Until trial of this Action the First and Third Defendants be restrained from voting the Averback Excess Shares and the Robinson Excess Shares (as defined in paragraphs 43 and 53 in the Affidavit of Randall Lanham filed herein on the 3rd day of October 2023), at the Meeting convened pursuant to this order and any other meeting of shareholders of the Fifth Defendant company until trial or further order.

4. Costs of this application be cost in the cause.

5. Liberty to any party to apply to the Court at any time to vary or discharge this Order by not less than two (2) days' notice to the other parties."

25. On 10 October 2023, the Defendants filed a Notice of Application and accompanying affidavit with a Certificate of Urgency requesting the Court to exercise its powers under Rules 1.1, 1.2 and 1.3 of the Supreme Court Civil Procedure Rules, 2022 ("**CPR**") or its inherent jurisdiction for Orders that:

> **"…**
>
> **a. The execution of the Injunction Order shall be stayed for a period of 20 days because:**
>
> **I. It is impossible to comply with the terms of the Injunction Order; and**
>
> **II. The Defendants intend to file an application to have the Injunction Order set aside and require the requested 20 day period to adequately take instructions and prepare for the same.**
>
> **b. That the Claimants shall pay the costs and expenses of this Application; and**
>
> **c. . Further or other relief as the Court deems fit and just.**
>
> **2. The grounds of the application are as follows:**

3. The Fifth Defendant at all material times employs and uses an agent known as Computershare Investor Services Inc., ("Computershare"), which operates from Montreal, Quebec Canada for the purposes of giving notice to shareholders of meetings ("Notice").

4. However, the Fifth Defendant has many shareholders and in accordance with the standard operating procedures of Computershare, there are several steps which must be complied with in order for a proper and valid Notice to be sent to the Fifth Defendant's shareholders.

5. The Fifth Defendant was not served with the Injunction Order until the afternoon of the 5th of October 2023 and the other Defendants were only provided with the Injunction Order and its voluminous supporting documents at approximately midnight on the 5th of [October].

6. The Injunction requires that the Notice be sent out no later than close of business at 5:00pm on Monday the 9th of October 2023.

7. However, Monday, is a public holiday in all of the jurisdictions relevant to this matter i.e. The Bahamas, Canada and the United States. As such Computershare will not be open to process any requests relative to the Notice.

8. Furthermore and in any event, the Defendants intend to make an application to have the Injunction Order set aside on the basis of several grounds including among others:

i. That the Defendants were not present when the Injunction Orders were made, there is good reason why the Defendants were not present and had they been present it is likely that some other order might have been made; and

ii. The Defendants have substantial evidence that one or more of the Claimants have perpetrated fraud in respect of the company;

iii. The Claimants have sought and obtained equitable relief from the Court in contravention of the equitable maxim that he who comes to equity must come with clean hands.

9. Therefore, the Defendants humbly pray that the Court grant the relief sought by this Notice because:

i. It is impossible to comply with the terms of the Injunction Order; and

ii. The Defendants intend to file an application to have the Injunction Order set aside and require the requested 20 day period to adequately take instructions and prepare for the same…"

ISSUE

26. The issue that this Court must decide is whether the Court ought to grant the reliefs sought by the Defendants?

Defendants' Evidence

27. The Defendant filed the Affidavit of Tamika Pinder ("**Pinder Affidavit**") on 10 October 2023. There were a few reference to evidence that can only be described as hearsay, thus I will not reference it and will only reference admissible evidence. It provides that: (i) the Defendants intend to file an application to have the Injunction Order set aside and require at least 20 days to adequately take instructions and prepare for same; and (ii) the grounds the Defendants intend to rely on for the set aside application (as mentioned above).

28. The Defendants also filed the Affidavit of Latoya Garland on 13 October 2022 ("**Garland Affidavit**"). The Garland Affidavit also has hearsay evidence, thus I will only reference admissible evidence. It provides: (i) an outline of steps involved, provided directly from Computer share itself, relative to any notices of shareholder meetings being sent out (the outline is exhibited); (ii) based on the documentation provided by Computershare, it is obvious that before any notice can be given to NYMOX's thousands of shareholders, numerous steps are involved including: (a) submitting a proper notice to computer share; (b) proceeding with the printing of notices and proxies in respect thereof; and (c) mailing or sending electronically to the thousands of shareholders; (iii) even if a proper notice could have been provided on 09 October 2023, the publication of the meeting date for an annual general meeting would not have been possible until 27 October 2023 and the actual meeting itself could not have been held until 08 December 2023.; (iv) in the case of a Special Meeting, publication of the meeting date would not have been possible until 16 October 2023 and the actual meeting itself could not have been held until 17 November 2023; and (v) therefore, in either scenario ,having a meeting not more than 28 days from the date of the notice, as required by paragraph 1 of the Injunction Order, would have simply been impossible.

29. The Garland Affidavit further states that: (i) Computershare is not authorized to act on instructions form the Claimants but rather can only act on instructions from the 5th Defendant and its principals.

Claimants' Evidence

30. On 18 October 2023, the Claimants filed the Affidavit of Devaugh Rolle ("**Rolle Affidavit**"). It provides that: (i) its purpose is to exhibit the executed but unfiled copy of the Second Affidavit of Randall J. Lanham ("**Lanham Affidavit**") which is made on behalf of the Claimants in opposition to the Defendant's stay application (the Lanham Affidavit being exhibited thereto); and (ii) that Mr. Lanham is outside

of the jurisdiction and has not yet been able to properly authenticate the Lanham Affidavit and courier it to the Defendants' counsel. The Defendants' counsel undertakes to file the Lanham Affidavit once received.

31. The unfiled Lanham Affidavit references some hearsay evidence and some other forms of evidence that is inadmissible. Accordingly, I will only reference evidence which can be relied upon. The Lanham Affidavit provides: (i) the documentation from Computershare exhibited to the Garland Affidavit ("**LG2**") relates to Computershare's application of Canadian Company Law Regulations. This is why the exhibit refers to "Regulations" within the paragraphs explaining steps towards a meeting; (ii) Computershare accepts same day filing requests with rush fees and arrangements made with the relationship manager for the client company to accelerate the issuance of a Notice within timelines other than those normally used; (iii) LG2 was purportedly obtained or printed on 06 October 2023 and shows that by that date the Defendants could have but did not take any steps to comply with the Injunction Order by accelerating the issuance of the Notice by Computershare although they could have done so with the Relationship Manager by 10 October 2023; and (iv) the Defendants have historically utilized Computershare for the purposes of keeping NYMOX's shareholder register and it is Averback who as Chairman has the power to call and give Notice of meetings of shareholders.

DISCUSSION AND ANALYSIS

Whether the Court ought to grant the reliefs sought by the Claimant?

32. The Parties did not provide written submissions, but did make oral submissions at the hearing of this application. The Court has considered them in this judgment and I now make my ruling.

33. The Defendants brought this application under **Rules 1.1, 1.2 and 1.3 of the CPR**. Those sections provide:

> **"1.1 The Overriding Objective.**
>
> **(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.**
>
> **(2) Dealing justly with a case includes, so far as is practicable:**
>
> **(a) ensuring that the parties are on an equal footing;**
>
> **(b) saving expense;**
>
> **(c) dealing with the case in ways which are proportionate to —**
>
> **(i) the amount of money involved;**
>
> **(ii) the importance of the case;**

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders"

1.2 Application of overriding objective by the Court.

(1) The Court must seek to give effect to the overriding objective when —

(a) exercising any powers under these Rules;

(b) exercising any discretion given to it by the Rules; or

(c) interpreting these Rules.

(2) These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

1.3 Duty of parties.

(1) It is the duty of the parties to help the Court to further the overriding objective.

(2) In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure keep his duty under paragraph (1) (emphasis added)."

34. The Court's power to stay the execution of a judgment or order is derived from **Rule 43.12 of the CPR**. The rule provides:

> **"Without prejudice to rule 48.1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just."**

35. A case which provides useful guidance on the applicable principles in a stay application (as the Claimants' counsel relied on) is **Cheryl Hamersmith-Stewart v Cromwell Trust Company Ltd et al BS 2022 SC 83 ("Cromwell Trust")**. There, Charles Snr J (as she then was) made the following pronouncements:

> **"16 In In the Matter of the Contempt of Donna Dorsett-Major on 3 June 2020 2020/CLE/gen/0000, Ruling delivered on 8 December 2020, this Court dealt with the applicable principles on stay pending appeal. For**

present purposes, I merely reiterate them as set out fully in Donna Dorsett-Major at paras 23 to 28:

> **"[23] The starting point is that a judge has a wide discretion with regards to the grant of a stay. This is confirmed by the learned authors of Odgers On Civil Court Actions at page 460:**
>
> **"Although the court will not without good reason delay a successful plaintiff in obtaining the fruits of his judgment, it has power to stay execution if justice requires that the defendant should have this protection[…] [The] court has wide powers under the Rules of the Supreme Court."**
>
> **[24] As to how that discretion ought be exercised in these circumstances, the court's considerations have only broadened with the developing case law, beginning, most notably, with the decision of Brett, LJ in the case of Wilson v Church No. 2 [1879] 12 Ch.D. 454 at 459 wherein he stated:**
>
> > **"This is an application to the discretion of the Court, but I think that Mr. Benjamin has laid down the proper rule of conduct for the exercise of discretion, that where the right of appeal exists, and the question is whether the fund shall be paid out of Court, the Court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful, from being nugatory." [Emphasis added]**
>
> **[25] This was further developed in Linotype-Hell Finance Ltd. v Baker [1993] 1 WLR 321 wherein Staughton L.J. opined at page 323:**
>
> > **"It seems to me that, if the defendant can say that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success that is a legitimate ground for granting a stay of execution." [Emphasis added]**
>
> **[26] So, where an unsuccessful defendant seeks a stay of execution pending an appeal to the Court of Appeal, it is a legitimate ground for granting the application if the defendant is able to satisfy the court that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success. This requires evidence and not bare assertions.**
>
> **[27] Some additional principles that the Court should be guided by in considering an application for a stay pending an appeal is outlined in the case of Hammond Suddards Solicitors v Agrichem International**

Holdings Ltd [2001] EWCA Civ 2065 at para 22 (per Clarke JL and Wall J):

"By CPR rule 52.7, unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of execution of the orders of the lower court. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?"

[28] Guidance was also given by the English Court of Appeal in Leicester Circuits Ltd v Coates Brothers plc [2002] EWCA Civ 474. At para 13, Potter LJ said:

"The proper approach is to make the order which best accords with the interests of justice. Where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives to decide which is less likely to cause injustice. The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal (emphasis added).""

36. Our Court of Appeal also addressed relevant principles to a stay application in the case of **Esley Hanna and Eonlee Hanna v Brady Hanna SCCivApp No. 182 of 2017 ("Esley Hanna")**. There, Crane-Scott J.A. opined:

> **"Section 12 of the Court of Appeal Act mirrors the provisions of O 59. r. 13 of the former English Rules of the Supreme Court 1965. It is therefore useful to advert to the following portions of Practice Note 59/13/1 found at pages 1076–1077 of Volume 1 of The 1999 Edition of The English Supreme Court Practice:**
>
> > **" Stay of execution or of proceedings pending appeal**
> >
> > **… Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not "make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled," pending an appeal (The Annot Lyle (1886) 11 P.D. 114, p.116, C.A.; Monk v. Bartram [1891] 1 Q. B. 346); and this applies not merely to execution but to the prosecution of proceedings**

under the judgment or order appealed from — for example, inquiries (Shaw v. Holland [1900] 2 Ch. 305) or an account of profits in a passing-off action (Coleman & Co. v. Smith & Co. Ltd. [1911] 2 Ch. 572) or the trial of issues of fact under a judgment on a preliminary question of law (Re Palmer's Trade Mark (1883) 22 Ch. D. 88). But the court is likely to grant a stay where the appeal would otherwise be rendered nugatory (Wilson v. Church (No.2) (1879) 12 Ch. D. 454, pp. 458, 459, C.A.), or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the court. (Becker v. Earl's Court Ltd. (1911) 56 S.J. 206; The Retata [1897] P. 118, p. 132; Att.-Gen. v. Emerson (1889) 24 Q.B.D. 56, pp. 58, 59) and the Court will grant it where the special circumstances of the case so require……

"Where the appeal is against an award of damages, the long established practice is that a stay will normally be granted only where the appellant satisfies the court that, if the damages are paid, then there will be no reasonable prospect of his recovering them in the event of the appeal succeeding (Atkins v. G.W. Ry. (1886) 2 T.L.R. 400, following Barker v. Lavery (1885) 14 Q.B.D. 769 C.A.; ……Nowadays the court may be prepared (provided that the appeal has sufficient merit) to grant a stay, even where that test is not satisfied, if enforcement of the money judgment under appeal would result in the appellant's house being sold or his business being closed down. But if such a stay is granted the court should impose terms which (so far as possible) ensure that the respondent is paid without delay, if the appeal fails, and that appellant is prevented from depleting his assets in the meantime, except for any and necessary expenditure. This approach was endorsed in Linotype-Hell Finance Ltd v. Baker [1992] 4 All E.R. 87 (Straughton L.J., sitting as a single Lord Justice). It was also endorsed in Winchester Cigarette Machinery Ltd v. Payne (No. 2) (1993) The Times, December 15 #, but the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour. The Court also emphasized that indications in past cases do not fetter the scope of the Court's discretion (emphasis added).""

37. For clarity and the avoidance of doubt, Winder J (as he then was) in **Agatha Griffin v Jarvis Nathan Mcintosh BS 2020 SC 43 ("Griffin")** opined that:

"The law relative to a stay of execution was set out by the Bahamas Court of Appeal in Esley Hanna et al v Brady Hanna SCCivApp No. 182 of 2017. Although dealing with the issue of a stay pending appeal the discussion is nonetheless relevant to the instant matter."

38. In the ***Griffin*** decision, Winder J had to determine whether or not a stay should be granted pending a fresh action of the defendant against the plaintiff (who was the successful litigant in the initial action). Adopting the rationale of Winder J, I shall apply the principles mentioned in ***Cromwell Trust*** and ***Elsey Hanna*** within the context of the instant case (i.e. in an application for the stay of execution of the Injunction Order).

39. After considering the evidence, the submissions made by counsel and the relevant legal principles, I believe that a stay ought to be granted in the interest of justice. As it is stated in the Garland Affidavit that the Injunction Order was made in the absence of the Defendants and they intend (and now have) to bring an application to set aside the Injunction Order, I believe it is only fair that there be an inter partes hearing as there are many allegations made in the Claimants' Statement of Case and in the affidavits of both the Claimants and the Defendants which I believe should be considered in a fuller context, with all parties present.

40. Additionally, as extensive as the facts alone of this case are, there are several disputes and matters which need to be ventilated by both sides prior to any further order (or execution of any such order) being made.

41. Though there is no financial ruin evidenced (certain averments are made in the Garland Affidavit, but appear to be hearsay – I shall say no more on the matter), I glean from the evidence that there may be some irreversible consequences to NYMOX and by extension, its shareholders – including the Claimants.

42. In the premises, I will grant the stay pending the outcome of the set aside application of the Defendants (which has been filed on 19 October 2023)

CONCLUSION

43. In the circumstances and based on the authorities referred to above, the Court exercises its powers under 43.12 of the CPR and grants the stay of the execution of the Injunction Order. The stay shall remain in effect until further order of the Court.

44. Costs shall be in the cause.

45. I have noted the urgency of this matter. I encourage the Parties to make all necessary applications to have the substantive matter heard and determined expeditiously.

Senior Justice Deborah Fraser

Dated this 3rd day of November 2023