

COMMONWEALTH OF THE BAHAMAS

2021/CLE/gen/00443

IN THE SUPREME COURT

Common Law & Equity Division

IN THE MATTER of an Indenture of Mortgage made on the 12th day of July A.D., 2006 between Scotiabank (Bahamas) Limited of the one part and Phyllis A. Sullivan of the other part now of record in the Registry of Records in Book 9902 at page 314 to 325.

IN THE MATTER of a Further Charge made on the 19th day of May, A.D., 2008 between Scotiabank (Bahamas) Limited of the one part and Phyllis A. Sullivan of the other part now of record in the Registry of Records n Book 11129 at page 049 to 052.

AND IN THE MATTER of a Mortgage Action pursuant to Order 77 of the Rules of the Supreme Court 1978

BETWEEN

GATEWAY ASCENDANCY LTD.

Plaintiff

AND

PHYLLIS A. SULLIVAN

Defendant

AND

THE ATTORNEY GENERAL

Third Party

Before: The Honourable Justice J. Denise Lewis-Johnson

Appearances: Raphael Moxey for the Applicant
Akeira Martin for the Plaintiff
Moinique Millar for the Third Party

Hearing Date: 1 March 2024

ORAL JUDEMENT

1. This is an application is for leave to appeal out of time the Judgement dated 19th October 2023 “the Judgement”. The Court made the following pronouncement as reflected in the Judgement Order filed 15 February 2024:

IT IS HEREBY ORDERED THAT:-

A. The letter from the Office of the Prime Minister dated 24th July, 2015 was an offer of compensation to Scotiabank (Bahamas) Limited (“Scotiabank”), as mortgagee, in the amount of \$573,067.44, as a result of the Government of the Commonwealth of The Bahamas intention to compulsorily acquire the Plaintiff’s property.

B. The letter from Halsbury Chambers (acting on behalf of Scotiabank) dated 7th October 2015 was an acceptance of the offer of the Government’s compensation as a result of the Government’s compensation as a result of the Government’s intention to compulsorily acquire the Plaintiff’s property.

C. The Third Party shall satisfy the mortgage and further charge. Thereafter, any remaining shall be paid to the Defendant.

D. The Third Party shall pay to the Plaintiff and the Defendant costs to be taxed if not agreed.

2. Subsequently by Notice of Application “the Notice” and supporting Affidavit “the Affidavit” dated 3 January 2024, the Defendant sought leave from the Court to file an Appeal to the Appellate Court out of time. The Plaintiff provided no grounds in the Notice of Application which will be briefly discussed below.

Issues

3. Issues arising from the application are as follows:
- a. Whether or not the Court has jurisdiction to grant leave to appeal out of time;
 - b. Whether or not leave is required by the Court after the pronouncement and perfection of a final judgement; and
 - c. Whether the Applicant’s Notice of Application is in its proper form.

Relevant Law

4. The **Court of Appeal Act Section 11 (a)** states:

“No appeal shall lie —

(a) from any order allowing an extension of time for appealing from a judgment or order;”

5. **Civil Procedure Rules Part 11. 7 (1)** states:

“An application must state —

(a) briefly, the grounds on which the applicant is seeking the order; and

(b) what order the applicant is seeking.”

Brief Discussion

6. The Defendant’s application as outlined in the Notice of Application is rooted in **Section 11 (e) of the Court of Appeal Act** “the Act” which states,

“11. No appeal shall lie —

(e) without the leave of the Supreme Court or of the court, from an order made with the consent of the parties or as to costs only where such costs are by law left to the discretion of the Supreme Court;”

7. The Court pursuant to Section 11(a) of the Act does not have the jurisdiction to entertain an application for appealing out of time.

8. Further as submitted by the Plaintiff and accepted by this Court, the Judgement to which the Defendant seeks leave to appeal out of time is a final order, as such, leave is not required by the Court pursuant to **Section 11 of the Court of Appeal Rules** as the Judge is functus officio.

9. In **Millensted v. Grosvenor House (park lane), Limited.** [1936. M. 863.] [1937] 1 K.B. 717 the principle of a Judge becoming functus was stated by *Farewell J*:

“It is now well settled, that until an order made by a judge has been perfected, by being passed and entered, there is no final order, and consequently the judge may, at any time until the order is so perfected, vary or alter the order which he had intended to make...”

10. In the present case as the Judgement has been perfected, the Judge is now functus and no longer has jurisdiction to entertain applications arising out of this case.

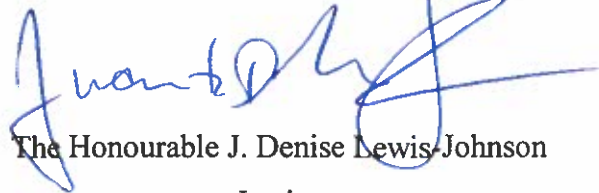
11. Section 11 of the **Court of Appeal Rules** outline the time limit in which the Applicant ought to have appealed to, the rightful court, the Court of Appeal being 6 weeks from the date of the Judgement, which has not been done by the Defendant. I am of the view that the Supreme Court is not the appropriate forum.

12. As this Court is functus, I see no need to consider the remaining issues particularly that of the form of the Notice.

13. The Court after its review of the law and the evidence before it is of the view that the leave cannot be granted in the circumstances as this court is functus.

14. No Order as to cost.

Dated the 26th day of March 2024



The Honourable J. Denise Lewis-Johnson

Justice