

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Division

2021/FAM/div/00329

BETWEEN

NATALIE CHANTAL JUPP (nee Harding)

Petitioner

AND

ALEXANDER KEN JUPP

Respondent

**Before:** The Honorable Justice J. Denise Lewis-Johnson

**Appearances:** Michaela Barnett Ellis for the Petitioner  
Collin Jupp for the Respondent

**Hearing Date:** 1 March 2024

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ORAL JUDGMENT

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LEWIS-JOHNSON J:

**Introduction**

- I. This application is for an Order that the execution and/or enforcement of the Ruling dated 30<sup>th</sup> January 2024 be stayed pending the outcome of the Respondents Appeal pursuant to Rule 12 (1) of the Court of Appeal Rules. The Court made the following Ruling:
  - i. *Both parties submitted to the jurisdiction of the Canadian Court and are therefore bound by its ruling.*
  - ii. *The Canadian Court Order was a variation of the Consent Order of the Bahamian Court.*
  - iii. *The Respondent is to pay the Petitioner the balance outstanding in maintenance under the Canadian Order.*

- iv. *The Respondent is to contribute the sum of \$2,790.07 CAN monthly to the Petitioner for maintenance of the children.*
- v. *The Respondent's income is to be attached in the amount of \$2,790.07 Canadian Dollars payable to the Petitioner until the last child attains the age of 18 or further Order of the Bahamian or Canadian Court.*
- vi. *Cost to the Petitioner to be taxed if not agreed.*

2. By Summons dated 4 February 2024, the Respondent made an application, requesting a stay pending the outcome of the Respondents appeal on the grounds that: (i) The Respondent has filed a Notice of Appeal since the date of the Ruling, which has a reasonable prospect of success; (ii) If a stay of execution and/or enforcement is refused the Respondent will be financially ruined; (iii) If a stay of execution and/or enforcement is refused there is a substantial risk of injustice to the Respondent because:

- a. The Petitioner does not reside in the Commonwealth of The Bahamas but rather in the Province of Quebec Canada;
- b. Judgements, Rulings and Orders of the Bahamian Courts are not directly enforceable in Canada and vice versa;
- c. If a stay is refused pending the outcome of an appeal and the appeal is successful, the appeal would have been rendered nugatory because its Respondent would not be able to enforce the Court of Appeal's decision against the Petitioner

3. No finding was made in the Ruling as to the quantum of the balance payable under Canadian Judgement dated 5<sup>th</sup> January 2023, sometimes referred in these proceedings as the Canadian Order, nor the currency in which any such balance should be paid.

***Issue***

4. The Court will have to determine whether or not the stay should be granted in the circumstances.

## Relevant Law & Analysis

### Appeal not to operate as stay of execution

5. Section 12 (1) of the Court of Appeal Rules provides:

“Except so far as the court below or the court may otherwise direct — (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below; (b) no intermediate act or proceeding shall be invalidated by an appeal.”

6. In an application for stay, the Court ought to determine whether the Applicant has satisfactory grounds and the effects of denying the stay to the Applicant in the circumstances as presented.

7. The Applicant provided numerous grounds for the Court to consider in granting the stay among them being the following:-

- a. The financial ruin of the Applicant, the Affidavit of Alexander Ken Jupp dated 23 February 2024, inter alia, provides a view into the financial and income status of the Respondent, his inability to settle the amount owed to the Petitioner under the Canadian Order and the financial ruin which he may face if a stay pending appeal is not granted.
- b. The Applicant submitted that the Reciprocal Enforcement of Judgements Act was not applicable in this case as Canada does not fall within the applicable countries to which the Act applies.
- c. Further the Respondent contends that for the Court to enforce the Judgement of the Canadian Court, the Petitioner ought to have commence a fresh action at common law based on the Canadian Judgement relying on the case of **Marla J. Cramin v Bahama Divers (1976) Company Limited and Another [2018] 2 BHS J. No. 7.**

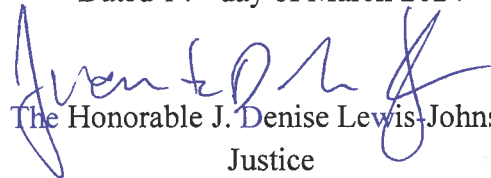
8. The Respondent relied on the case of **Linotype-hell Finance Ltd. v. Baker [1992] 4 All ER 887** and adopted by this court where *Staughton LJ* stated:

*“It seems to me that, if a 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. The passage quoted in The Supreme Court Practice from Atkins v Great Western Rly Co (1886) 2 TLR 400, 'As a general rule the only ground for a stay of execution is an affidavit showing that if the damages and costs were paid there is no reasonable probability of getting them back if the appeal succeeds', seems to be far too stringent a test today"*

9. The Respondent further submitted that as the Court did not specify an exact sum to be paid to the Petitioner, or the currency.
10. The Court after its review of the documents and evidence is of the view that the stay ought to be allowed and the matter examined by the Appellate Court.
11. I therefore, grant the stay.
12. No Order as to cost.

Dated 14<sup>th</sup> day of March 2024

  
The Honorable J. Denise Lewis-Johnson  
Justice