COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2018/CLE/gen/00884

IN THE MATTER of Sections 15, 23 and other provisions of The Homeowners Protection Act, 2017.

AND IN THE MATTER of Sections 21, 25 and provisions of the Banks and Trust Companies Regulation Act of 2000.

AND IN THE MATTER of Section 23 and other provisions of The Financial Transactions Reporting Act, Chap. 368.

AND IN THE MATTER of certain borrowing arrangements as per commitment letters dated January 1994; 21st January 1998; 16th July 2003; 17th June 2011.

AND IN THE MATTER of certain advances secured by a Demand Mortgage and Further Charges of real and personal property and personal guarantee to secure advances by First Caribbean International Bank (Bahamas) Limited (formerly Barclays Bank PLC).

BETWEEN

Dr. GLEN S. BENEBY

First Claimant

AND

BENTECH LIMITED

Second Claimant

AND

FIRST CARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED

Defendant

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

Appearances: **Mr. Maurice Glinton KC for the Claimants**

Mr. Luther H. McDonald KC, Wynsome D. Carey and Darzhon J.R. Rolle for the Defendant

Hearing Date: **Heard on the Papers**

Civil Procedure – Notice of Application for Stay all further proceedings – Part 26.1(2)(q), Part 43.12 and Extension of Time – 26.1(2)(k) of the Supreme Court Civil Procedure Rules, 2022

RULING

FRASER, SNR

[1.] On 15 January 2025, the Claimants' filed a Notice of Application pursuant to **Parts 26.1(2)(q) and 71.10(2)** of the Supreme Court Civil Procedure Rules, 2022 ("CPR"). They are seeking an Order staying all further proceedings in the action pending the hearing and final determination of the appeal of my Ruling dated 2 December 2024 **("the December Ruling")** and for an Order pursuant to **Part 26.1(2)(k) of the CPR** extending the time within which to appeal.

[2.] The grounds for the Application are set out in paragraphs 1.02 – 1.04 which reads as follows:

> "**1.02. The present application is necessitated and justified in that the learned Judge overlooked or omitted to dispose of the Claimant's application for such relief in her Ruling, refusing them summary judgment in the action. Therefore, the Ruling is legally deficient to that extent, and the application for such relief is undetermined to be disposed of. It follows that the Judge is not functus officio and estopped from hearing the present application.**
>
> **1.03. The interim relief which the Claimants applied for under the subheading "Stay of enforcement of Mortgage/Money Lending actions" and is apparent from the Ruling not to have been dealt with and disposed of, is, briefly, "relief prayed in paragraph 29(120 of the Amended Statement of Claim.":**
>
>> **"An order cancelling or suspending exercise of the Bank's rights as lender and/or mortgagee, whether by managers or officers or employees thereof of otherwise howsoever, from taking any step to obtain repayment of any money secured by the Mortgage claimed to be owed the Bank, or to enforce performance of any covenants contained in the Mortgage."**
>
> **1.04. Nowhere does it appear from her Ruling that the learned trial Judge, having discretionary jurisdiction over whether to grant the said interim relief, nevertheless decided not to exercise discretion in the Claimants' favour. The Judge gives no reason for not doing so; and proceedings transcript should reveal there was no inquiry whether the Claimants abandoned or were still pursuing their application for the grant of the said interim relief. "**

<u>ISSUES</u>

[3.] The Court must determine whether to Stay the enforcement of further proceedings and grant the Claimants' an Extension of time to file leave to appeal.

LAW

[4.] The Court's general powers for an extension of time and stay of proceedings are laid down in **Part 26.1(2)(k) and Part 26.1(2) (q) of the CPR** states:

> **"(2) Except where these rules provide otherwise, the Court may –**
>
> **(k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed;**
>
> **….**
>
> **(q) stay the whole or part of any proceedings generally or until a specified date or event;" .**

[5.] **Part 43.12 of the CPR** gives the parties to whom a judgment or order has been made the right to seek a stay of execution of the judgment or order or relief, it states:

> **"43.12 Matters occurring after judgment: stay of execution etc.**
>
> **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."**

[6.] The effect of an appeal is set out in Part 66.3 of the CPR, which provides:

> **"The filing of an appeal does not operate as a stay of proceedings on the decision against which the appeal is brought unless—**
>
> **(a) The court; or**
> **(b) The tribunal or person whose decision is under appeal so orders".**

[7.] **Rule 12(1)(a) of the Court of Appeal Rules, 2005 ("the Rules")** provides:

> "(1) 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.

Leave to Appeal

[8.] The relevant law with respect to applications for Leave to Appeal was set out by this Court in the case of **MS Amlin Corporate Member Limited v Buckeye Bahamas Hub Limited Claim No. 2020/COM/adm/00016**. At paragraphs [6] to [8] of that decision, wherein I stated:

> **"Leave to Appeal**

6. Section 11(f)(ii) of the Court of Appeal Act, 1965 [CH. 52] ("CCA")(See at Tab 1) provides as follows:

"11. No appeal shall lie –

….

(f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court…

7. In Lucayan Towers South Condominium Association v H. Godfrey Waugh and another; Lucayan Towers South Condominium Association v Gregg Waugh and another; Lucayan Towers South Condominium Association v Julie Glover and another [2022] 1 BHS J. No. 128 (See at Tab 2), Klein, J provides the following discourse on the subject:

> **"Jurisdiction and Principles**
>
> **4 Appeals to the Court of Appeal from interlocutory rulings or orders can only be done with the leave of the Supreme Court or, failing that, the leave of the Court of Appeals (s.11 (f) of the Court of Appeal Act). In this regard, Rule 27(5) of the Court of Appeal Rules provides that:**
>
> > **"Wherever under the provisions of this Act or of these Rules an application may be made either to the court below or to the court, it shall be made in the first instance to the court below."**
>
> **5 There is no dispute that a summary judgment ruling is an interlocutory order. As the Privy Council had occasion to observe in Junkanoo Estates Ltd v. UBS Bahamas (In Voluntary Liquidation) [2017] UKPC 8 [at para. 5]:**
>
> **"It is common ground that for this purpose [leave to appeal] an order giving summary judgment is an interlocutory order. The English rule to this effect was stated in White v Brunton [1984] QB 570 and has been applied for many years in the Bahamas."**
>
> **Principles**
>
> **6 The general approach of the court to the exercise of its power to grant leave to appeal are well known. Broadly stated, leave to appeal will only be given where: (i) the ground have a real prospect of success, or (ii) there is a compelling reason that an issue raised should be examined in the public interest.**
>
> **7 <u>Many expositions of the principles start with the guidance given by Lord Woolf MR in Smith v Cosworth Casting Processes Ltd. [1997] 4 All ER 840, where he stated:</u>**
>
> **(1) <u>"The court will only refuse leave if satisfied that the applicant has not realistic prospects of succeeding on the appeal. This test is not meant to be very different from that which is sometimes used, which is that the applicant has not arguable case. Why, however, this court has decided to adopt the</u>**

former phrase is because the use of the word "realistic" makes it clear that a fanciful unrealistic argument is not sufficient.

(2) The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court, or, to be more specific, this court may take the view that the case raises an issue where the law requires clarifying (emphasis added)"…

8. The test for leave to appeal was essentially adopted from Practice Note (Court of Appeal: Procedure) [1991] 1 All ER 186, Smith v Cosworth Casting Processes Ltd. [1997] 4 All ER 840 and succinctly formulated in the Court of Appeal decision of Keod Smith v Coalition to Protect Clifton Bay SCCivApp. No. 20 of 2017 at paragraph [23] as being 'whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying.".

Stay of Execution

[9] In **Tyson Strachan v Anthony Simon and others 2021/CLE/gen/00863,** this Court dealt with the issue of stay of execution. At paragraph 41it was comprehensively discussed:

"[41.] This Court delved into the relevant law in relation to Stay of Execution in The Committee to Restore NYMOX Shareholder Value, Inc (CRNSV) et al v Paul Averback et al – 2023/COM/com/00057. I made the following pronouncements in that decision:

35. A case which provides useful guidance on the applicable principles in a stay application (as the Claimant's 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/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] It is well established 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, LK 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 on 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…

[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 for no stay...(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 proceeding 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,"…the Court will grant it where the special circumstances of the case so require……

"…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 favor. The Court also emphasized that indications in past cases do not fetter the scope of the Court's discretion…' [Emphasis added]."

[10.] In considering the factors the Court ought to take into account when granting a stay was also discussed by Isaacs J (as he then was) in **Bahamas Real Estate Association v George Smith SCCiv App No. 109 of 2015** at paragraphs 12 -13, where he states:

> **"11. The principles which guide the court when considering applications for a stay may be found in Order 59, rule 13 of the 1982 English Rules of the Supreme Court, which states inter alia that even though the court should not make a practice of depriving a successful party of his winnings, the court should ensure that in the event the appealing party succeeds his judgment on appeal is not rendered nugatory.**
>
> **12. Further guidance as to matters the Court must take into account may be derived from the authorities. Some have been helpfully set out in the appellant's submission, for example,**
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> **(a) whether the appellant is entitled to appeal as of right; see also Wilson v. Church (No. 2)(1879) 12 Ch. 454;**
>
> **(b) whether the appellant has an arguable case; see Mandeer Holidays Ltd v Civil Aviation Authority Official Transcripts (1980-1989);**
>
> **(c) whether the absence of the stay would render a successful appeal nugatory; See City Services Limited v. AES Ocean Cay Limited [2012] 1 BHS J. No. 85 at para. 15 at TAB 8; see also Wilson v. Church supra;**
>
> **(d) whether there is a risk of injustice to one or other of the parties if it grants or refuses a stay; see Hammond Suddards Solicitors v Agrichem Holdings Ltd [2001] EWCA Civ 2065; and**
>
> **(e) whether the appellant has given sufficient evidence by affidavit as to why a successful appeal could be rendered nugatory; see City Services supra at para. 16."**

Extension of Time

[11.] **Rule 11(1)(a) of Rules, provides the time limit to file an appeal for an interlocutory order as:**

"11. (1) Every notice of appeal shall be filed and a copy thereof served by the appellant upon all parties to the proceedings in the court below who are directly affected by the appeal—

(a) In the case of an appeal from an interlocutory order, fourteen days;"

[12.] **Rule 9(1)(a) of the Rules provides for extension of time:**

"9. (1) The Court may, on such terms as it thinks just, by order –

(a) Extend the period prescribed by these Rules for the doing of anything to which these Rules apply;"

[13.] Counsel for the Defendant, Mr. McDonald KC referred the Court to the useful case of **Ares Custom Yachts, Inc. v The Owners and Parties Interested in The Motor Vessel "Lady Elyse" [2021] 1 BHS J. No. 66** where my learned sister Justice Hanna-Adderley in at paragraphs 23 discuss the procedure for extension of time:

(b) "…Pursuant to Rule 9(1)(a) of the Court of Appeal, "the Court" is the Court of Appeal, and the Court of the first instance has no jurisdiction to extend the time in which to appeal. Once leave is obtained, the application for the extension of time must be made to the Court of Appeal."

Discussion and Analysis

[14.] I have read and considered the Claimants' Skeleton Arguments and the Defendant Submissions laid over by Counsel.

Leave to Appeal

[15.] The authorities are clear, leave to appeal will only be granted where there is a real prospect of success or where the issue raised is a matter of public interest. The central ground for the Claimants' Notice of Application is that this court overlooked or failed to dispose of *"Stay enforcement of Mortgage/Money Lending actions*" issue in the December Ruling.

Judge Duty to give reasons

[16.] Mr. Glinton KC submits that the proper procedure for challenging the decision that disposes of a matter is by appeal. However he posits that a different approach applies when the court fails to address or determine an issue. In support of this position Mr. Glinton KC referred the Court to the case of **Julius Trevor Bethel v Patricia Bloom et al., 2018/SCCiv. App. No. 182**, where the Court of Appeal granted an appeal on the basis that the judge failed to rule on a preliminary objection raised by the appellant. In that case, the Court held that the judge in giving his decision on preliminary objections raised should provide brief reasons for his decision. The appeal was allowed and the matter was remitted to the Supreme Court for determination of the preliminary issue. On this premise, Mr. Glinton KC is off the view that the Court can rectify the

oversight and/or omission without prejudice to the Claimants' right to appeal any other aspect of the Ruling.

[17.] Mr. McDonald KC, Counsel for the Defendant firmly opposed the application, he argued that the assertion in the Claimants' Notice of Application is unfounded, as the December Ruling addressed all material issues, including those related to interim relief. Counsel contends that the Claimants' revisit of the December ruling is an improper effort to re-litigate the application for interim relief, which constitutes an abuse of process based on the principle of finality in litigation.

[18.] With respect to the proper disposition of the interim relief, Mr. McDonald KC contended that the Court is not required to address every point raised emphasizing that the judges is only required to give sufficient reasons. Counsel referred the Court to the case of **West Island Properties Limited v. Sabre Investments Limited [2012] J. No. 57** relying on the legal principles articulated in the judgment of Allen, J at paragraph 74:

> **"74 Lastly, the leading case of Eagil Trust Co. Ltd. v. Pigott-Brown and another [1985] 3 All ER 119, as cited by Counsel for the appellant is instructive. In that case Griffiths L. J. said at page 122 that:**
>
> > **"…in the case of discretionary exercise, as in other decisions on facts or law, the judge should set out his reasons, but the particularity with which he is required to set them out must depend on the circumstances of the case before him and the nature of the decision he is giving. When dealing with an application in chambers to strike out for want of prosecution, a judge should give his reasons insufficient detail to show the Court of Appeal the principles on which he has acted and the reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what he says shows the parties and, if need be, the Court of Appeal the basis on which he has acted, and if it be that the judge has not dealt with some particular argument but it can be seen that there are grounds on which he would have been entitled to reject it, this our should assume that he acted on those grounds unless the appellant and point to convincing reasons leading to a contrary conclusion. [(see also: English v. Emery Reimbold & Strict Lt; DJ & C withers (Farms) Ltd. v. Ambic Equipment Ltd; Verrechia (trading as Freightmaster Commercials) v. Commissioner of Police of the Metropolis [2002] 3 All ER 385; 393).]" .**

[19.] The question this Court must resolve is whether it failed to give reasons when it disposed of the interim relief issue in the ruling delivered on 4 December 2024. I am not convinced by the Claimants' argument or the grounds set out in their Application. In answer to this point, I prefer the submissions of Mr. McDonald KC that there is no reason for a judge to address every point raise. I respectfully follow the ruling of the Court in the cases (**West Island Properties Limited v. Sabre Investments Limited [2012] J. No. 57** and **Eagil Trust Co. Ltd. v. Pigott-Brown and another [1985] 3 All ER 119)** referenced by Counsel for the Defendant and I likewise adopt the

observations of Barnett CJ in **Christopher Stubbs and another v Allan Crawford and another [2022] 2 BHS J. No. 172** where at paragraph 60:

> **"60 In Staechelin and others v ACLBDD Holdings Ltd and others [2019] EWCA Civ 817, the court, at paragraph, 39 said:**
>
> **"39. …The principle is clear. The judge must give reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. <u>The judge's duty is to give reasons for his decision. He need not give reasons for his reasons</u>: Secretary of State for Communities and Local Government v Allen [2016] EWCA Civ 767 at [19]. <u>There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case</u>. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted: English v Emery Reim-bold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409; FAGE at [115]. Where there is a conflict of fact between witnesses, it may be enough for the judge to say that one witness was preferred to another because he had a clearer recollection of events, or the other gave answers which demonstrated that his answers could not be relied on: English at [19]." [Emphasis added]**
>
> **61 Earlier, in Drury v Rafique and another [2018] EWHC 1527 (Ch), the court said:**
>
> **"17. A judge's duty to give reasons was explained in Flannery v Halifax Estate Agents [2000] 1 WLR 377 at 381g-h. These principles were not in dispute:**
>
> **'(1) The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties - especially the losing party - should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in Ex p. Dave) whether the court has mis-directed itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not."** **[Emphasis added]**

[20.] In analyzing the December Ruling, despite the absence of the terms "stay of enforcement", the question of interim relief was considered and addressed at paragraphs [45]–[46] where the Court applied the legal principles to the issue. I am satisfied that after consideration of the Claimants' application sufficient reasons was given in support of the findings that their claim for interim relief did not meet the evidential threshold necessary to justify restraining the Defendant's right to enforce its security interests. I therefore find the Claimants' application untenable and unsustainable.

[21.] In considering whether to grant the Claimants' leave to appeal, I am guided by the rule that where there is any doubt that the appeal would not have a real prospect of success, the

correct approach is to refuse leave to appeal. As stated in **Ares Customs Yachts, Inc. v The Owners and Parties Interested in the Motor Vessel "Lady Elyse" [2021] 1 BHS J. No. 66** the Court at paragraph 27 stated:

> **"[I]f the court of first instance is in doubt whether an appeal would have a real prospect of success or involves a point of general principle, the safe course is to refuse leave to appeal. It is always open to the Court of Appeal to grant leave.".**

For the foregoing reasons, the application for leave to appeal has no realistic prospect of success and is frivolous and without merit.

[22.] Based on the evidence, I find the Claimants' is not entitled to appeal as of right, the grounds in the application is unsustainable, as they would likely not succeed on appeal. Therefore leave is not granted in respect of the grounds raise in the application. Accordingly leave to appeal is denied.

Stay of execution

[23.] In order to grant a stay the test for stay of execution is that specific circumstances must be clearly articulated and established, showing that refusing to grant the stay would severely impact the Claimants. Mr. Glinton KC posits that the Court possess a broad discretion to grant a stay of execution when justice necessitates it, citing **Odgers on Civil Court Actions and the case of Wilson v Church (No.2),** he argues that denying the interim relief poses a significant risk of injustice, warranting the court to exercise its discretion in the Claimants' favour where a right of appeal exist.

[24.] In opposing the Claimants' request for a stay of enforcement, Mr. McDonald KC contends that the Claimants' did not demonstrate irreparable harm or provide the necessary special circumstances to warrant such a stay. Additionally, he avers that they failed to meet the evidential thresholds required for granting the stay. Mr. McDonald referred the Court to **Citibank, N. A. v Major [2001] BHS. No. 6** and **Junkanoo Estates Ltd. et al. v. UBS (Bahamas) Ltd. (In Voluntary Liquidation) SCCivApp & CAIS No. 24 of 2018**.

[25.] Furthermore, Mr. McDonald KC further contends that under equity the Court will not intervene to stop a mortgagee from exercising their rights unless there is a significant question regarding the validity of the mortgage transaction. Counsel referenced the case of **Birmingham Citizens Permanent Building Society v. Caunt [1962] 1 All ER 163 and Bank of the Bahamas Ltd v. Bosfield [2003]BHS J. No. 153.**

[26.] Mr. McDonald KC contends that the balance of prejudice favors not granting the stay, and cited the following cases where the balancing approach was applied **Finlayson v Caterpillar Financial Services Corporation SCCivApp No. 99 of 2022; Nygard v Smith et al SCCiv App. No. 184 of 2019 and Bahamas Real Estate Association v Geogre Smith SCCiv App No. 109 of 2015**.

[27.] Counsel argued that if the stay was granted, the Defendant will be severely prejudice and the harm to the Defendant include delays in recovering the amount owed under the Mortgage, loss of possession rights, property deterioration and loss in value due to neglect etc., and unnecessary prolonged litigation.

[28.] It is apparent this matter concerns a mortgage dispute for which the Claimants' is seeking to stay the enforcement of the Defendant right to possession. In **Citibank N.A [supra**] it was stated that the Court will not interfere to deprive a mortgagee of the benefit of his security. Ganpatsingh JA in discussing the Courts position states at paragraph 11 and 17 in the following terms:

> "**11 It is pellucidly clear therefore that there could be no power in the Court to vary contractual rights or to deny one party the benefit of the remedies which flow from the default of the mortgagor the mortgagee in such an event is entitled not only to possession, but as well the mortgage moneys which become presently payable as a lump sum and no longer by installments. The mortgagor in order to get relief must necessarily raise an action on the mortgage transaction itself.**
>
> **17 The cases cited on the impeachment of mortgage securities, all show that unless there is a mortgage action in which is raised a serious question to be tried, involving either the validity of the mortgage transaction itself or fraud on or irregularity in the exercise of the power of sale, the Courts will not intervene to prevent a mortgagee from exercising his lawful rights under the mortgage deed...**"

[29.] For the reasons already set out, this Court finds no proper basis to restrain the Defendant from exercising their right of possession. The Claimants' have failed to provide any specific details regarding the 'serious injury' or harm that would result from a refusal of the stay. On the evidence before the Court, the Claimants' case is unsustainable and the risk of injustice to the Defendant is greater than the risk of injustice to the Claimants. Accordingly, the stay of further proceedings is denied.

Extension of Time

[30.] Mr. Glinton KC seeks an extension of time pursuant to **Part 26.1(2)(k) of CPR** and section 11 of the Rules. Mr. McDonald KC submitted that the CPR cannot assist the Claimants as the issue of extension of time refers to matters relative to the Court powers. In that regard I agree with Counsel for the Defendant's submission, this Court lacks the jurisdiction to grant an extension of time. Part 26.1(2)(k) of CPR refers to extension of time by the Supreme Court in respect of its case management powers and under section 11 of the Rules the Court of Appeal is empowered to grant an extension.

[31.] Therefore pursuant to section 11 of the Rules this Court lacks the jurisdiction to grant an extension of time.

CONCLUSION

[32.] Based on the above legal principles, I conclude as follows:

1. The interim relief sought in the Summary Judgment action was disposed of in the December 4th, 2024 Ruling and the proposed appeal on those grounds is untenable and will not succeed.

2. The Claimant's request for Leave to Appeal and a Stay of Enforcement of Judgement is denied.

3. The Claimants shall pay the cost of the Defendant, to be accessed if not agreed.

Senior Justice Deborah Fraser

Dated this 28th day of April 2025