IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2025/CLE/GEN/ 00121

BETWEEN

MILLER ENTERPRISE LIMITED

1st Claimant

AND

EARL MILLER

2nd Claimant

AND

SHUNDA STRACHAN
(In her capacity as Chief Valuation Officer (Acting)
THE MINISTER OF FINANCE
DEPARTMENT OF INLAND REVENUE
Commonwealth of The Bahamas

1st Defendant

AND

THE TREASURER
Commonwealth of The Bahamas

2nd Defendant

AND

THE ATTORNEY GENERAL
Commonwealth of The Bahamas

3rd Defendant

Before: The Honorable Madam Justice Carla Card-Stubbs

Appearances: D. Halson Moultrie for the Claimants
Zoe Gibson, Kenria Smith and Perry McHardy, of Office of the Attorney General, for the Defendants

Hearing date: **April 30, 2025; May 1, 2025 (and May 5, 2025 on further written submissions)**

RULING

Application for Leave to appeal discharge of an injunction – Whether an intended Appellant first requires the leave of the Supreme Court's to appeal the discharge of an injunction – Section 11(f)(ii) Court of Appeal Act

Application for Leave to appeal interlocutory order - Test to be applied for leave to appeal – Reasonable prospect of success – Whether matter raises issue which should in the public interest be examined

Application for Stay pending appeal - Test to be applied for a stay

By way of Amended Notice of Application filed April 11, 2025, the Applicants/Intended Appellants sought leave to appeal the Court's order of March 20, 2025 and a stay of that order. By that order the court discharged an injunction preventing the Defendants from exercising a power of sale or accepting bids on the Claimants' property. The evidence before the court was that at the time of the Claimants' application for injunctive relief, a bid had been accepted and the power of sale already exercised.
HELD: If a court has granted an injunction and, on application, discharges it, then the court has refused to continue the injunction. It would be too narrow or technical a construction to place on the wording of the statute a meaning that would exclude orders of discharge or variation from the scope of section 11(f)(ii) Court of Appeal Act. Section 11(f)(ii) is to be construed as including the grant or refusal of applications for discharges of injunctions.

The grounds of appeal advanced by the Claimants are meritless. There is no ground of appeal raised which has a reasonable prospect of success. There is no issue of public importance that arises that would cause the court to grant leave to appeal. Leave to appeal is refused.

The effect of a stay would be to maintain an injunction aimed at restraining activities already undertaken and fully executed. The injunction in the terms sought and issued is of no aid to the Claimants and a court must not act in vain. The stay is refused.

The Defendants'/Respondents' costs of the application are to be paid by the Claimants/ Applicants/ Intended Appellants, to be assessed if not agreed.

CARD-STUBBS J.

INTRODUCTION

[1.] This is the Claimants' (1) application for leave to appeal this Court's order of March 20, 2025 and a stay of that order and (2) application for leave to apply for judicial review. Both applications are said to be constituted in the Claimant's Amended Notice of Application filed on April 11, 2025. This ruling deals with that part of the Amended Notice of Application seeking leave to appeal and a stay of the court's order.

[2.] For the reasons set out below, the application for leave to appeal is refused.

[3.] For the reasons set out below, the application for a stay is refused.

[4.] In this ruling, the Claimants may also be referred to as the Applicants or the Intended Appellants. These references will be used interchangeably.

[5.] In this ruling, the Defendants may also be referred to as the Respondents. These references will be used interchangeably.

THE BACKGROUND

[6.] On 13th February, 2025, the Claimants filed a Notice of Application and a Certificate of Urgency supported by the Affidavit of Earl Miller , 2nd Claimant, also filed on 13th February 2025. The Application sought, inter alia, to restrain the Defendants from "exercising the Power of Sale and/or accepting bids to purchase" the Claimants' property.

[7.] On 19th February, 2025, the court heard the matter *ex parte* and acceded to the Claimant's application, granting an injunction upon the Claimant's undertaking to file the requisite Claim Form and Statement of Case and with liberty to any party to apply to discharge or vary the order upon notice to the other party.

[8.] On 5th March, 2025, the Defendants filed a Notice of Application and a Certificate of Urgency supported by the Affidavit of Shunda Strachan, also filed 5th March 2025. The Application sought the discharge of the injunction.

[9.] On 5th March, 2025, the Claimants filed a Fixed Date Claim Form for Judicial Review and on 6th March, 2025, the Claimants filed an Amended Fixed Date Claim Form for Judicial Review supported by the Affidavit of Earl Miller filed on 5th March 2025.

[10.] On 5th March, 2025, the Defendants filed an Affidavit of Shunda Strachan and on 11th March 2025, the Defendants filed an Acknowledgment of Service of the Amended Fixed Date Claim Form.

[11.] On 18th March, 2025, the Claimants filed an Affidavit of Earl Miller in response to the Defendants' affidavit.

[12.] At an *inter partes* hearing on 20th March, 2025, the court discharged the injunction.

[13.] The Claimants filed a Notice of Application seeking leave to appeal the Court's order and for 'a stay of execution of the said order' on 24th March, 2025 followed by an amended Notice of Application also filed on 24th March 2025 supported by an affidavit of Earl Miller filed 24th March 2025.

[14.] By Order dated 25th March, 2025, this Court granted the Claimants leave to further amend their Notice of Application and acceded to the Claimant's application for a stay of the Court's Order of 20th March, 2025. The stay was granted until the hearing of the Claimants' application on April 30, 2025 and, on April 30, 2025, extended pending the determination of the Claimants' Application for leave to appeal.

[15.] The Claimant filed an Amended Notice of Application on 3rd April, 2025. This Amended Notice of Application is drafted as (1) Application for leave to appeal and for stay of proceedings and (2) Application for leave to apply for judicial review pursuant to Part 54, The Supreme Court Civil Procedure Rules (CPR), 2022. Notably this was the first introduction of any application for leave to apply for judicial review. The Application for leave to Appeal was supported by supplemental affidavits of Earl Miller filed 3rd April 2025 and 24th April, 2025. The Claimants also filed a Notice of Intention to Cross Examine the 1st Defendant on 7th April, 2025.

[16.] The Application for judicial review was supported by a second supplemental affidavit of Earl Miller filed 28th April 2025.

[17.] This ruling deals with that part of the Amended Notice of Application seeking leave to appeal and a stay of the court's order.

ISSUES

[18.] This court is called upon to resolve:

1. Whether the intended Appellant first requires this Court's leave to appeal the discharge of the injunction.
2. Whether this court ought to exercise its discretion to grant a leave to appeal and a stay pending appeal.

THE APPLICATION FOR LEAVE TO APPEAL

Grounds of Appeal

[19.] The Amended Notice of Application is said to be made pursuant to "CPR Rules of the Supreme Court, Civil Procedure Rules, 2022" and crafted as follows:

1. The Claimants, Miller Enterprise Limited and Earl Miller make application for the Court to exercise it's [sic] jurisdiction to grant leave to appeal it's [sic] Order dated 20th March, 2025 and to stay the execution of the said order pursuant to CPR Rules of the Supreme Court, Civil Procedure Rules, 2022 as the Defendants' decision and resultant public auction of the Claimant's property are irregular, an affront to natural justice and unconstitutional as the Claimants have shown every intention to meet their tax obligations despite unresolved disputes on quantum and the fact that the Defendants have failed to exercise certain legal rights within the statute of limitation and and address certain obligations against the Mortgagee.

[20.] The Amended Application lists the grounds of the application as:

2. The grounds of the application are:
   a. The Defendants did not act in good faith in the exercise of their duties;
   b. That the Defendants in exercising the Power of Sale abused the process and procedures as set out in the Real Property Tax Act as is evidenced by the irrefutable facts of Defendants refusal and/or failure to honour and/or respond to the queries, concerns and requests for information and explanations in this matter;
   c. That the Defendants fraudulently entered into a Sales Agreement with a purported sole bidder prior to being seized with seized with legal title of the subject property;
   d. Contrary to the assertions of the Defendants, the said property is classified as an "Owner occupied property" with two ongoing business concerns and the Defendants acted with total disregard to required and proper notice and the adverse impact that their actions would have on the businesses' twenty-three (23) employees;
   e. That in the circumstances, the Defendant is not entitled to exercise a Power of Sale and the purported purchaser is not entitled to have possession and the quiet enjoyment of the Claimants' property.

[21.] These grounds are adopted in the supporting affidavit of Earl Miller, 2nd Claimant, filed March 24, 2025, which exhibits a draft Notice of Appeal with the grounds of appeal. There the Draft Notice of Appeal recites:

1. That the Order dated the 19th March 2025 be set aside and any enforcement proceedings stayed until this appeal is determined·
2. That at a minimum the Intended Appellants be entitled to have their Claim restored and fully ventilated at trial with costs below and to this Court for the Appellants.
3. That this is a matter of public policy and critical importance and was not an appropriate matter to be determined on an interlocutory procedure.

AND FURTHER TAKE NOTICE that Grounds of Appeal relied upon by the Appellants are as follows namely:

1. That the learned Judge erred in law in finding that this is not an appropriate matter for the grant of leave for Judicial Review of the Chief Valuation Officer's malfeasance, nonfeasance and misconduct in the application of the Power of Sale of the Intended Appellants' property and failed to give sufficient weight to:
    a. The inadequacy and inaccuracy of Assessment Notices by the Department of Inland Revenue over the years;
    b. The Department of Inland Revenue failure to conduct proper expert assessments of the Intended Appellants property pursuant to the Real Property Tax Act (RPTA).
    c. The Department of Inland Revenue and in particular, the failure and/or refusal of the Chief Valuation Officer in responding to inquiries and letters;
    d. The Department of Inland Revenue failure to stipulate options and procedures for objections and the available arbitration process for disputes on their Demand Letters.

2. That the learned Judge erred in law and in fact in not giving sufficient weight to the following facts:
    a. The Respondents claimed disputed amounts of Tax arrears, Sur Charges, Interest and Other unexplained sums in damages for Outstanding Tax;
    b. From the onset, the Appellants disputed the quantum of the tax assessed and requested a reassessment and an explru1ation of the assessment ru1d/or calculation thereof;
    c. Notwithstanding, in good faith, the Intended Appellants expressed their intention to fulfil their tax obligations by making a $200,000.00 payment on the unsubstantiated claimed tax arrears and requested an extension of time to pay the confirmed outstanding balance.
    d. In an act of bad faith, empowered by the unchecked and unilateral Executive power conferred upon the Chief Valuation Officer by the section 25 Amendments of RPTA, in the interim the Intended Respondents purported to execute a premature and fraudulently executed Sales Agreement contrary to the provisions of the Law of Property and Conveyancing Act;
    e. Despite the undertaking of the Intended Appellants, the Intended Respondents purported to execute a conveyance thereby conveying the Intended Appellants' property to a "sole Bidder" in a 'Public Auction" that remains private, shrouded in secrecy and undisclosed;
    f. The Intended Respondents in acknowledging that they had either erred in their assessment and/or calculations and that the quantum of tax arrears claimed was incorrect and consented to review and revert;

3. That learned Judge erred in fact and in law in that she ought to have considered and given more weight to the fact that by conduct the Chief Valuation Officer acted not only [as] the actual complainant and assessor but also the investigating officer charging officer judge, and executioner of her own findings and judgment.

Extraordinary Circumstances - Serious Issues to be tried

4. That the learned Judge erred in fact and in law in that she ought to have considered:
    a. Whether a person or entity can lawfully sell by public auction or

otherwise and/or transfer title to property to which the person or entity has no legal title?

b. Whether a law or any provisions in any law exists which gives the Treasurer and/or Chief Valuation Officer power to enter into a Sales Agreement and to sell property prior to being seized with proper legal title to the land?

c. Whether the taxpayer has the right to dispute the amount of outstanding real property tax assessed and the rights to a reasonable explanation in such disputes?

d. Whether in such disputes, the tax payer has a right to due process before an impa1iial tribunal with respect ownership, equity of redemption and compensation for possible loss of their property?

e. Whether it would be justice to establish an insidious policy which purport to empower a Civil Servant to confiscate/seize property worth much more than the assessed outstanding tax debt and sell such property to a successful bidder without public disclosure of the bidding process and participants?

f. Whether the Section 25 Amendments to the Real Property Tax Act are ultra vires Article 20(8) and breached the Claimants' Constitutional rights pursuant to Article 20 (8) of Constitution of the Commonwealth of the Bahamas which guarantees a fair trial before an impartial Tribunal by exercising arbitrary, discriminatory and unilateral power without due judicial process?

5. The learned Judge erred in law when she did not properly interpret the meaning of a public auction and did not accede to the Intended Appellants' application for Judicial Review which if not overturned could have the effect of ousting the court's jurisdiction in matters and in the determination of administrative decisions of Executive initiatives.

6. The learned Judge failed to give sufficient weight to section 23 and other enforcement provisions of RPTA. Section 23 states: 'Where any tax due under this Act has remained unpaid for a period of thirty days after becoming so due the treasurer may forthwith cause proceedings the name of the Treasurer for the recovery of such tax against the owner concerned.'

7. The learned Judge failed to give sufficient weight to the fact that the Power of Sale was intended to be a last resort as opposed to a first option. Section 25A (1) states: ·'Notwithstanding section 23, where any real property tax relative to property not beneficially owned by a Bahamian is in arrears and unpaid the Treasurer may sell the said property in respect of which the tax is due and payable, for the recovery of such real property tax."

ISSUE 1

[22.] The first issue to be addressed is whether the intended Appellants first require this Court's leave to appeal the discharge of the injunction.

[23.] The Court's jurisdiction is derived from the Court of Appeal Act, section 11. Specifically, section 11(f) of the Act states:

"No appeal shall lie –
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 except —

i. where the liberty of the subject or the custody of infants is in question;
ii. where an injunction or the appointment of a receiver is granted or refused;
iii. in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;
iv. in the case of an order in a special case stated under the Arbitration Act;
v. in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; or
vi. in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions."

[24.] There is no dispute in this case as to the nature of the order. The order in question is an interlocutory order – it is not a final order which disposes of the issues before the court and it was secured by way of an application for interlocutory relief. However, the interlocutory order concerns the discharge of an injunction. At the hearing of the application for leave to appeal, I invited counsel to make written submissions on the applicability of the exception to section 11(f) Court of Appeal Act and, in particular, the application of sub-section 11(f)(ii) in this case.

Defendants' Submissions

[25.] Counsel for the Defendants submitted that the exception in sub-section 11(f)(ii) would be applicable in this case and that leave from this court is not needed. However, the Defendants also submit that sub-section 11(f)(ii) does not deprive this court of jurisdiction which "retains the inherent jurisdiction to assess whether an appeal concerns a live dispute, and whether the parties have a continuing sufficient interest in the subject matter to justify invoking appellate jurisdiction". The Defendants submit that this court ought to determine the application since the Claimants have brought the application before the Supreme Court.

Claimants' Submissions

[26.] Counsel for the Claimants/Intended Appellants submitted that the "practice" to approach the Supreme Court "is the safe approach and we further submit that the Supreme Court has taken a flexible disposition in this regard with respect to applying for stay of proceedings and leave to appeal." The Claimants further submit that "there was no Application by the Defendants to strike out the application for leave to appeal" and that "there is no prejudice to the Defendants" if this court were to determine the matter.

[27.] Counsel for the Claimants usefully provided the local case of **Hayward et al**, BS 2008 SC 124.

LEGAL ANALYSIS AND CONCLUSIONS

[28.] In **Hayward et al**, the matter before the learned trial judge was an application for a stay pending appeal of the discharge of interlocutory orders or alternatively an application for leave to appeal. The court had to determine whether the order was an interlocutory order The court found that striking out proceedings is an interlocutory order and required leave of the court to appeal. The court then considered section 11 of the Court of Appeal Act and the exception provided in subsection 11(f)(ii). The Plaintiffs, the intended Appellants in that case, had submitted that no leave to appeal to appeal was required on the ground that an injunction was being refused. The court considered the Defendants' submissions that the injunctions had been dissolved on judgment being given against the Plaintiffs and that no subsequent application had been made by the Plaintiffs to reinstate the injunctions. The learned judge then concluded that Section 11(f) ii of the Court of Appeal Act was not applicable in that case because an injunction or the appointment of a receiver was not being granted or refused

[29.] In an earlier case, from the Court of Appeal of England and Wales, **Atlas Maritime Company S.A. v Avalon Maritime Ltd (No. 2)** [1991] EWCA Civ J0501-1, [1991] 1 WLR 633, [1991] 4 All ER 781, the Court of Appeal had to determine the issue of whether leave to appeal is required to appeal a decision to vary an injunction or a decision to refuse to vary an injunction. In that case, the appellate court had to construe a section similar in terms to Section 11(f)(ii) of the Court of Appeal Act. The section under construction in that case was The Supreme Court Act 1981, section 18(1)(h) (iii) which provided:

> "No appeal will lie to the Court of Appeal—
>
> …
>
> (h) without the leave of the court or tribunal in question or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by the High Court or any other court or tribunal, except in the following cases, namely—
>
> …
>
> (iii) where an injunction or the appointment of a receiver is granted or refused."

[30.] The three appellate judges in **Atlas Maritime Company S.A. v Avalon Maritime Ltd (No. 2)** all agreed that a variation of an injunction, or a refusal to vary it, would fall within that section. The reasoning of the court in that case is helpful. Lord Donaldson, M.R. opined and determined:

> It is quite true that the paragraph does not mention variations, but it must include them because, if an application for a variation of an injunction is successful, what happens is that a new injunction in different terms is put in place. If, on the other hand, it is unsuccessful, what happens is that a new injunction in different terms is not put in place. In the first case it is granted and in the second case it is refused, and that is within the terminology of the paragraph.
>
> Accordingly, I would have no hesitation whatever in ruling that section 18(1)(h)(iii) is to be construed as including the grant or refusal of applications for variations in injunctions.

[31.] Lord Justice Nicholls agreed:

> The grant or refusal of a variation in an injunction is the grant or refusal of an injunction in the varied form. As such, such a grant or refusal is squarely within section 18(1)(h) of the 1981 Act.

[32.] It is my opinion that ***Hayward et al*** ought to be distinguished. The argument in that case was that the injunction was dissolved as part and parcel of the judgment of the court and that the intended Appellants had not applied to renew the injunction. As a result, there was no order refusing or granting an injunction that was the subject of an appeal. In the case before me, a party moved for the discharge of an injunction and that order was made. In my opinion, such an order is the equivalent of the refusal of an injunction.

[33.] At the *inter partes* hearing in this matter, the court heard both parties and made a determination to discharge the injunction. By acceding to the application of the Defendants, the court has refused to maintain the injunction notwithstanding the submissions in opposition by the Claimants who first obtained the order for the injunction. What is the effect of the discharge order for the parties if it is not a refusal to grant an injunction? It seems to me that the wording of section 11(f)(ii) ought to be construed to include those situations where an order is obtained in relation to an existing injunction if that order effectively terminates the injunction. If a court has granted an injunction and subsequently refuses to vary it, then the court has confirmed the injunction on its terms and an appeal lies in relation to the refusal of an injunction on varied terms. If the court varies the injunction, then a new injunction (new terms) has been granted and an appeal lies in relation to the granting of that injunction. If a court has granted an injunction and, on application, discharges it, then the court has refused to maintain the injunction and an appeal lies in relation to the refusal of that injunction.

[34.] It seems to me too narrow or technical a construction to place on the wording of the statute a meaning that would exclude orders of discharge or variation from the scope of section 11(f)(ii). The grant of the injunction at an *ex parte* hearing was discharged at an

inter partes hearing on the application of the Defendants. The Defendants' application was resisted by the Claimants who sought to keep the injunction in place. It seems to me that in those circumstances, the discharge of the injunction – the refusal to maintain an injunction - is the equivalent to an order "where an injunction is refused."

[35.] It is my ruling that section 11(f)(ii) is to be construed as including the grant or refusal of applications for discharges of injunctions. It is my determination that in matters such as those with which this Court is confronted, there lies an appeal as of right to the Court of Appeal pursuant to section 11f(ii) of the Court of Appeal Act.

[36.] However, this court is faced with the submissions of counsel on both sides, with the local authority of ***Hayward et al*** and with Counsel's practical submission that if this court is wrong in its determinations on section 11(f)(ii), the Claimants will be met with the hurdle of returning to this court to seek leave. I am cognizant that that would give rise to costs and that time would have run. It is for those reasons that I will now proceed to consider the application on its merits.

ISSUE 2

[37.] This court must determine 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 appellate court. What is before this court is an application for leave to appeal from an interlocutory order discharging an injunction.

[38.] The Court's order of March 20, 2025 reads:

> IT IS HEREBY ORDERED THAT:
> 1. The injunction of February 19, 2025 is hereby discharged.
> 2. Each party shall bear its own costs.

[39.] It is helpful to view the context of that order. The terms of the injunction discharged are to be found in the Court's order of February 19, 2025. The relevant terms are:

> IT IS HEREBY ORDERED THAT:
> (1) The Defendants be restrained from doing whether by themselves, their employees, servants, agents and/or assigns, or otherwise howsoever the following act viz. exercising the Power of Sale and/or accepting bids to purchase the property situate at Harold/Bozine Hill and known as the premises of Ron's Brakes & Muffler Center, Nassau, The Bahamas, and are hereby restrained until March 20, 2025 or the earlier discharge of this injunction by a Court order and subject to the determination of the Applicant's application for an interim order, such application to be heard on March 20, 2025 at 2:00pm. by Zoom.

(2) The Claimants shall file and serve a Claim Form and Statement of Case verifying their cause of action against the Respondents on or before March 6, 2025 2025.
(3) The Claimants undertake to, and shall, comply with any Order this Court may make in the event that this Court shall hereafter find that the Respondents, or any one of them, shall have sustained any loss by reason of this Order and that the Respondents, or any one of them, ought to be compensated for that loss by the Claimants.
(4) Any party shall be at liberty to apply to the court to discharge or vary the terms of this Order or to seek directions upon giving not less than 3 days' notice to the other parties herein.
(5) Costs of this Application are to be costs in the cause.

Claimants' Submissions

[40.] The Claimant submits that the legal test on an application for leave to appeal is that an applicant has to demonstrate that he has some reasonable prospect of succeeding on the appeal. The Claimant cited **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840 and **N.E.P.M v J.L.M** and others [2018] 1 BHS J. No. 198 in this regard.

[41.] The Claimant also submits that a court may grant leave "even where the case has no real prospect of success, but there is an issue which, in the public interest, should be examined by the Court of Appeal". The Claimants rely on Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) [1999] 1 WLR 2 at pages 10-11, **Keod Smith v Coalition To Protect Clifton Bay** (SCCivApp No. 20 of 2017) and **AWH Fund Limited (In Compulsory Liquidation) v ZCM Asset Holding Company (Bermuda) Limited** [2014] 2 BHS. J. No. 53 in that regard.

[42.] The Claimant submits that there are principles of natural justice to be explored and that the constitutional rights of the Claimants are being infringed. The Claimants further submitted that, as an alternative to the application for judicial review, leave to appeal "together with a stay of the proceedings pending appeal would be in the interest of justice and protection of the Claimants' constitutional rights pursuant to Article 20 of the Constitution of the Commonwealth of The Bahamas." The Claimants submit that the substance of the appeal constitutes a matter of public importance and that a grant of leave would be "an important step in achieving a sustainable proper law and procedure on real property tax moving into the future."

[43.] In relation to the application for a stay, the Claimants submit that the stay is necessary for the protection of the rights of the Claimants, citing the case of **Enos R. Miller v Mckinney, Bancroft & Hughes and Hartis E. Pinder 2019/CLE/gen/00593.**

Defendants' Submissions

[44.] The Defendants submit that "the appeal lacks merit, serves no practical purpose and has no realistic prospect of success" because "the Claimants now seek to appeal the discharge of an injunction that was rendered moot by a completed and irreversible transaction. They no longer hold legal or equitable interest in the subject property, and the appeal, if allowed to proceed, would have no legal effect."

LEGAL ANALYSIS AND CONCLUSIONS

[45.] The relevant test for a leave application in this jurisdiction is set out in the case of **Keod Smith v Coalition to Protect Clifton Bay** SCCivApp. No. 20 of 2017, cited by the Claimants/Intended Appellants. In that case, Isaacs, JA, adopting the guidance from Lord Wolff in the case of **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840, noted at paragraphs 23 through 27 of his judgment:

> "23. The test on a leave application is 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: per Lord Woolf in Smith v Cosworth Casting Process Ltd [1997] 4 All ER 840.
>
> 24. In a Practice Direction issued by the Court of Appeal in the United Kingdom in 1999 Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) 1999 WLR 2, the following appears:
>
> > 'The general test for leave
> >
> > 10. There is no limit on the number of appeals the Court of appeal is prepared to hear. It is therefore not relevant to consider whether the Court of Appeal might prefer to select for itself which appeals it would like to hear. The general rule applied by Court of Appeal, and this is the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are

> where a case raises questions of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for consideration.
> 11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave. (Emphasis added)

25 Also in those Practice Directions, the Court of Appeal dealt specifically with appeals from interlocutory orders:

> 'Appeals from interlocutory orders
>
> 17. An interlocutory order is an order which does not entirely determine the proceedings: see R.S.C., Ord. 59, r. 1A. Where the application is for leave to appeal from an interlocutory order, additional considerations arise: (a) the point may not be of sufficient significance to justify the cost of an appeal; (b) the procedural consequences of an appeal (e.g. loss of the trial date) may outweigh the significance of the interlocutory issue; (c) it may be more convenient to determine the point at or after trial. In all such cases leave to appeal should be refused.'

26 The Notes to Order 59/14/7 of the White Book 1997 which provides guidance on civil procedure in England, outlines the test for the grant of leave to appeal to the Court of Appeal there -

> 'The Court of Appeal will grant leave if they see a prima facie case that an error has been made (see (1907) 123 L.T.J. 202) or if the question is one of general principle, decided for the first time (Ex p Gilchrist Re Armstrong(1886)17QBD 521 per Lord Esher MR at 528) or a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage (see per Bankes LJ in Buckle v Holmes[1926] 2 KB 125 at p. 127). Generally, the test which the Court applies is whether the proposed appeal has a reasonable prospect of success.'

27 The approach of the English courts has generally been

> followed by the courts of The Bahamas when considering applications for leave to appeal and for leave to appeal out of time. I have been unable to find a local authority generally discussing the issue of leave to appeal to this Court but I am confident that the factors which call for consideration are much the same as those considered in leave to appeal out of time applications, of which there are many determined by the Court. …

[46.] I accept the Claimants' submission that the legal test on an application for leave to appeal is that an applicant has to demonstrate that he has some reasonable prospect of succeeding on the appeal. In this case, the Claimants must demonstrate that this court improperly exercised its discretion in making the determination to discharge the injunction.

[47.] It is necessary to capture, in summary, the evidence before the court at the time of the making of the Order.

[48.] At the *inter partes* hearing on March 20, 2025, the Court accepted the evidence as set out in affidavit of Shunda Strachan filed March 3, 2025 that:

> 1. (paragraph 17) On February 22, 2024, the First Defendant published a Notification of Sale by Public Auction in local newspapers notifying the public of its intention to sell the subject property for the recovery of past due real property tax, along with any penalties, interest and costs as provided for in the Act.
> 2. (paragraph 18) On June 20, 2024, a second Notification of Sale by Public auction was issued and published on June 24, 2024 in local newspapers notifying the public of its intention to sell the subject property for the recovery of past due real property tax, along with any penalties, interest and costs as provided for in the Act.
> 3. (paragraph 20) The property was sold at public auction. On November 20, 2024 a sales agreement was executed between the Treasurer of The Bahamas and the eventual purchaser of the subject property.
> 4. (paragraph 23) On January 22, 2025 the conveyance was executed and the property was conveyed to a purchaser.
> 5. (paragraph 26) Notice of sale of the property dated January 23, 2025 was hand-delivered to the 1st Claimant. The 1st Claimant was notified that the "2nd Defendant had accepted a bid and executed an Agreement of Sale of the Property." Proof of service was provided (Exhibit SS11).
> 6. (paragraph 28) Letter dated February 6, 2025 giving Notice to Vacate within 15 days recited exercise of the power of sale (Exhibit SS11) and was hand-delivered to 1st Claimant on February 6, 2025.

[49.] The court also considered that in the affidavit of Earl Miller, 2nd Claimant, filed on February 13, 2025 in support of the application for an injunction, the Claimants gave evidence of receipt of the Notice of Sale dated 23rd January 2025 (Exhibit EM5). This Notice of Sale conveyed notice that the Treasure had accepted a bid, executed an agreement for sale and intended to close on the sale within 45 days from the date of the notice. The Claimant also gave evidence of receiving a notice to vacate but the evidence of the contents

of that notice to vacate is missing from the 2nd Claimant's affidavit. It is that Notice to Vacate that confirmed that the power of sale had been exercised and that the sale had closed.

[50.] In submissions at the *inter partes* hearing, the Claimants did not refute that notice had been given to the Claimants. The Claimants contested the legitimacy of the process.

[51.] The Court determined to accede to the application of the Defendants and to discharge the injunction. In making its order, this Court made an oral ruling reflecting that it was satisfied that on the date of the Claimants' application for interlocutory injunctive relief, the Claimants had notice that the power of sale had already been executed and that the Claimants had not disclosed that fact to the court. The application made by the Claimants sought to restrain acts which had already been carried out, viz the acceptance of bids and the exercise of the power of sale. Considering that the court ought not to act in vain, and having been satisfied of the non-disclosure of the Claimants, the Court proceeded to discharge the injunction.

[52.] The Claimants make their application to appeal the March 20, 2025 order on 7 grounds.

[53.] Ground one

Ground one is that the learned Judge erred in law in finding that this is not an appropriate matter for the grant of leave for Judicial Review. I will dispose of this ground summarily. There was no application before the court for leave for judicial review and therefore this was not a determination made by the court. This ground is meritless and bound to fail.

[54.] Grounds 2,3,4

Grounds 2, 3 and 4 are grounds contending that the learned judge erred in not giving weight to facts that led to the purported exercise of the power of sale. The grounds urge that the court ought to have undertaken a process in considering whether the facts supported a proper exercise of the power of sale by the Defendants.

[55.] To my mind these grounds are misconceived. The issue of the propriety of the exercise of the powers of the Defendants was not an issue before the court. The issue before the court at the *inter partes* hearing was whether the injunction ought to be discharged and whether at the time of the making of the injunction, the Claimant had disclosed the relevant information to the court. In exercising its discretion to grant an equitable remedy, the court must give weight to the pertinent facts, including the strength

of the parties' cases. This includes whether the equitable remedy is necessary or had been overtaken by events.

[56.] Firstly, the injunction had already been overtaken by events at the time that the Claimants sought interlocutory injunctive relief. Secondly, the Claimants did not, in their application for equitable relief, make full and frank disclosure. Either of those considerations would constitute a sufficient ground for the discharge of the injunction.

[57.] A challenge to the propriety of the exercise of the Defendants' purported powers, is not aided by interlocutory relief aimed at preventing the exercise of those powers when the evidence is that those powers have already been exercised. The court ought not to act in vain. The grounds are meritless and have no realistic prospect of success.

[58.] Grounds 4, 5, 6 and 7

Grounds 4, 5, 6 and 7 appear to fall under the rubric of special circumstances – serious issues to be tried. While the matters of the exercise of the powers of the Treasurer under the Real Property Tax Act might be of public interest or importance, those matters would not arise for determination at the appellate level since they had not arisen for determination in the court below. The question to be considered on the discharge of the injunction was whether the court had properly exercised its jurisdiction and discretion in discharging the injunction. These grounds are misconceived and there is no prospect of success on an appeal. There is no issue of public importance that arises that would cause this court to grant leave to appeal.

APPLICATION FOR A STAY

[59.] This Court must still consider whether to grant a stay pending appeal.

[60.] The Claimants rely on the dicta of the learned Charles, J, as she then was, in the case of **Enos R. Miller v Mckinney, Bancroft & Hughes and Hartis E. Pinder 2019/CLE/gen/00593.** In that case, the learned judge rehearsed the principles applicable to the grant of a stay. At paragraphs 29 to 30, she said:

> The law on stay pending appeal
> 29
> In this regard, I can do no better but to reproduce what I stated in *Robert Adams* [supra] with respect to the law on stay pending appeal. At paragraphs [22] to [24] of that Ruling, I stated:
>
> > "[22] Order 31A Rule 18(2)(d) provides that the Court may stay the whole or part of any proceedings generally or until a specified date or event.
> > [23] Further, rule 12(1)(a) of the Court of Appeal Rules, 2005 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."

[24] In the Matter of 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 wholly at paragraphs 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."

[61.] At paragraph 31of **Enos R. Miller v Mckinney, Bancroft & Hughes and Hartis E. Pinder**, the learned judge came to her conclusion on the application for a stay, having already determined that the grounds of appeal had no realistic prospect of success:

> This Court, having concluded that the proposed grounds of appeal of the Plaintiff are without merit, in the exercise of my discretion, I will refuse a stay. A successful party, like the Defendants, should not be deprived in obtaining the fruits of their judgment.

[62.] In this case, I ask myself "the essential question" of "whether there is a risk of injustice to one or other or both parties" if the stay is granted or refused. Is there a risk that the Claimants would suffer detriment if they were to be successful on an appeal and the stay is not granted? Is there a risk that the Defendants would suffer a detriment if they were to prevail on any appeal launched by the Claimants and the stay were granted? In this case, I have refused the Claimants' application for leave to appeal because I have determined that the grounds have no reasonable prospect of success.

[63.] The effect of a stay would be to maintain an injunction aimed at staying the exercise of a power of sale and the acceptance of bids. The evidence before the court is that the power of sale has already been exercised and that a bid was accepted prior to the obtaining of the injunctive relief. Having regard to this Court's determination that the injunction in the terms sought and issued is of no aid to the Claimants, and having determined that the court must not act in vain, there seems to me to be no justifiable reason to stay the discharge of the injunction. There would be no detriment suffered by the Claimants if they were subsequently granted leave to appeal and if they were to be successful on an appeal. Again, the injunction would be ineffective in its terms since the activities sought to be restrained have already been executed. It seems to me that the Claimants' remedies lie elsewhere. The stay is refused.

CONCLUSION

[64.] Having examined the several proposed grounds of appeal, I find that there is no arguable basis for an appeal. I find that there is no ground of appeal raised which has a reasonable prospect of success. There is no issue of public importance that arises that would cause this court to grant leave to appeal.

[65.] A stay pending appeal is refused.

COSTS

[66.] The Claimants/Applicants/Intended Appellants have been unsuccessful in the application for leave to appeal and for a stay. The Defendants/Respondents have successfully resisted the application. Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Claimants/Applicants shall pay the Defendants'/Respondents' costs, to be assessed if not agreed.

ORDER

[67.] For the foregoing reasons, the order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The Claimants/Applicants/Intended Appellants' application by way of Amended Notice of Application filed April 11, 2025 for leave to appeal and for a stay is dismissed.

2. The Defendants'/Respondents' costs of the application are to be paid by the Claimants/Applicants/Intended Appellants, such costs to be assessed if not agreed.

Dated the 8th day of May, 2025

Carla Card-Stubbs
Justice