

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division

2025/CRI/GEN/FP/00001

B E T W E E N

MARK TSURKIS

Applicant

THE ATTORNEY GENERAL

1st Respondent

AND

THE MINISTER OF AGRICULTURE AND MARINE RESOURCES

2nd Respondent

Before: The Honourable Justice Andrew Forbes

Appearances: K. Brian Hanna for the Applicant
Patrick Sweeting, for the First and Second Respondents
Eureka Wilkinson Coccia for the Director of Public Prosecutions
(Watching brief)

Hearing Dates:

RULING ON STAY APPLICATION

INTRODUCTION

[1.] This application before the Court is for leave to appeal and a stay of this Court's decision made on 12 June 2024 pursuant to section 10 of the Court of Appeal Act, Chpt 52 and Rule 43.12 of the Supreme Court Civil Procedure Rules, 2022.

[2.] This application for Stay of the Judgement was filed on 9 July 2025. However, the Court notes no Affidavit in Support was filed, though the Respondents state that they intended to. On June 30, 2025, the Court rendered its oral ruling, and a written decision was published on July 1, 2025.

[26.] The Court accepts that it has Jurisdiction upon an application made within sixty days. The Vessel was seized on January 27, 2025, and the Application was filed on March 19, 2025, within the sixty-day window. The Court can, therefore, determine whether a Bond should be applied for or the Vessel should remain seized.

[27.] At the current rate, if the invoice is accepted, it will potentially cost the Government of the Bahamas approximately three thousand plus dollars to store per month. The Vessel is reportedly valued at Seven Hundred Thousand Dollars (\$700,000.00). The fine awardable is not more than One Hundred Thousand Dollars \$100,000.00. In this case, the Court considers a Bond of Two Hundred Thousand (\$200,000.00) as reasonable. The Applicant will also be required to pay the sum of Seven Thousand Six Hundred and Fourteen Dollars and Ninety-eight cents (\$7,614.98) to be paid to Bradford Marine.

[28.] The Applicant is to make further arrangements for the Vessel to be removed from Bradford Marine at his expense. The Rods and other marine material are to be returned to the boat. Any fish or other marine product seized is to be photographed if that has not occurred yet, if that remains plausible, and distributed to the Children's and Elderly persons living facilities, which is again dependent upon there being items and, if so, those items remain viable.

[29.] If there are no items or they are no longer viable, a sworn affidavit must be filed stating the same. If distributed, then an Affidavit stating so is also required. Should the matter proceed to Trial and the Occupants are convicted, the Court will order the immediate return of the vessel; a failure to return the boat as ordered will result in forfeiture of the Bond to the Crown.

[30.] Parties aggrieved by this decision may file an Appeal.

BACKGROUND

[3.] The brief background to this matter is that the Second Defendants seized the vessel "Highly Migratory, a 2018 Freeman 42 LR Sports Fishing Vessel (US Coast Guard #1291270) ("the Vessel") due to the alleged criminal acts of third parties. As a result of the seizure, the Applicant made an application for the release of the Vessel pursuant to section 104 of the Fisheries Act, 2020.

[4.] In a written decision the Court granted judgment as described in paragraph 2 above.

[5.] The order was perfected on the 8 July, 2025.

EVIDENCE

[6.] The evidence in support of this application is the Affidavit of David Whyms states, in part, that:

- a. He is the Counsel in the Office of the Attorney General and Ministry of Legal Affairs and principal legal advisor to the Government of The Bahamas, responsible for the

administration of legal affairs and legal proceedings for and against the State in The Bahamas;

- b. That the Court erred in the release of the Vessel on bond;
- c. That the Intended Applicant has a good defence on the merits;
- d. That the Intended Respondent would suffer no prejudice or injustice because of the Appeal;
- e. The seriousness of the charges lead to a duty to appeal;
- f. The Intended Applicant has a good prospect on appeal; and
- g. That the Court grants the leave pursuant to section 10 (1) of the [Court of Appeal] Act and a stay of execution pursuant to Rule 43.12 of the CPR and further to the Court's inherent jurisdiction.

[7.] On the 21 July 2025 the Intended Respondent filed an affidavit in response to the matter, which stated, in brief:

- a. That he is the father of four children, two of which are minors;
- b. That he resides with his family – the biological mother of his children and the two minor children;
- c. That the Vessel poses no threat to The Bahamas – it was permitted to be in The Bahamas; the firearm was found on Matthew Logman's person; there was no agreement that the Vessel would be detained as a result of the plea; and the payment of Mr. Logman's fines are annexed;
- d. That he has a right to his property nor is he a party to any criminal proceeding;
- e. That without the Vessel his business would suffer great hardship;
- f. That the Defendants ought to release the Vessel; and
- g. That the return of the Vessel would not hinder any trial, as there is no need for exhibits.

[8.] Both Counsel laid over submissions the Court Acknowledges receipt of both. The Court read and considered the submissions of Counsel thoroughly.

LAW

[9.] Part 26.1 (2) (q) empowers the Court to stay the whole or part of any proceedings. Specifically, it states:

(2) Except where these rules provide otherwise, the Court may —

.

..

(q) stay the whole or part of any proceedings generally or until a specified date or event;

[10.] This exactly mirrors the previous Rules of the Supreme Court Order 31A r. 18(2)(d) which provide:

“(2) Except where these Rules provide otherwise, the Court may —

(d) stay the whole or part of any proceedings generally or until a specified date or event;”

[11.] Moreover, 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:

an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below.”

[12.] Further, Part 43.12 gives parties to whom a judgment or order has been made the right to seek a stay of execution of the judgment, order, or other relief. Specifically, Part 43.12 states:

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.

[13.] Further, when speaking to the Court's discretionary power to grant a stay, Halsbury's Laws of England 4th Edition, Volume 17, paragraph 455 states:

The court has an absolute and unfettered discretion as to the granting or refusing of a stay, and as to the terms upon which it will grant it, and will, as a rule, only grant a stay if there are exceptional circumstances, which must be deposed to on an affidavit unless the application is made at the hearing.

[14.] The determination to grant a stay is entirely at the court's discretion. As held in the case of **Linotype-Hell Finance Ltd. v Baker** [1993] 1 WLR 321 at page 323, *Staughton L.J.* opined:

“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.”

[15.] A stay will only be granted in exceptional circumstances, so as not to deny the successful Plaintiff of the fruits of his victory (see **Smith v. The Bahamas Real Estate Association** [2015] 2 BHS J No. 8; **Linotype-Hall** *supra*; and **Citibank NA v. McDonald** [2004] BHS J. No. 452).

[16.] Further, in the Court of Appeal case of **Elsey Hanna et al v Brady Hanna** SCCivApp No. 182 of 2017 *Crane-Scott, JA* at paragraph 11 in her decision referred to 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 which stated as follows:

“Stay of execution or of proceedings pending appeal

...Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not “make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled,” pending an appeal (*The Annot Lyle* (1886) 11 P.D. 114, p.116, C.A.; *Monk v. Bartram* [1891] 1 Q. B. 346); and this applies not merely to execution but to the prosecution of proceedings under the judgment or order appealed from - for example, inquiries (*Shaw v. Holland* [1900] 2 Ch. 305) or an account of profits in a passing-off action (*Coleman & Co. v. Smith & Co. Ltd.* [1911] 2 Ch. 572) or the trial of issues of fact under a judgment on a preliminary question of law (*Re Palmer’s Trade Mark* (1883) 22 Ch. D. 88). **But the court is likely to grant a stay where the appeal would otherwise be rendered nugatory (*Wilson v. Church* (No.2) (1879) 12 Ch. D. 454, pp. 458, 459, C.A.), or the appellant would suffer loss which could not be compensated in damages. The question of whether or not to grant a stay is entirely in the discretion of the court. (*Becker v. Earl’s Court Ltd.* (1911) 56 S.J. 206; *The Retata* [1897] P. 118, p. 132; *Att.-Gen. v. Emerson* (1889) 24 Q.B.D. 56, pp. 58, 59) and the Court will grant it where the special circumstances of the case so require...**

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

[17.] Therefore, the Court, recognizing that the Intended Respondent ought not be deprived of the fruits of his Labour, must determine whether there is good reason for the granting of a stay.

[18.] Further, the application is made with reference to the inherent jurisdiction of the Court. m Halsbury's Laws of England, Volume 12A of 2015 is noted as saying:

“The jurisdiction of the court which is comprised within the term ‘inherent’ is that which enables it to fulfill, properly and effectively, its role as a court of law. **It has been said that the overriding feature of the inherent jurisdiction of the court is that it is a part of procedural law, both civil and criminal, and not a part of substantive law; it is exercisable by summary process, without a plenary trial; it may be invoked not only in relation to parties in pending proceedings, but in relation to any one, whether a party or not, and in relation to matters not raised in the litigation between the parties; it must be distinguished from the exercise of judicial discretion; and it may be exercised even in circumstances**

governed by rules of court (although a claim should be dealt with in accordance with the rules of court, rather than by exercising the court's inherent jurisdiction, where the subject matter of the claim is governed by those rules). The term 'inherent jurisdiction' is not used in contradiction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court. Even in an area which is not the subject of statute or statutory procedural rules, the court's inherent jurisdiction to regulate how proceedings should be conducted is limited because (subject to certain established and limited exceptions) the court cannot exercise its power in such a way as will deny parties their fundamental common law right to participate in the proceedings in accordance with the common law principles of natural justice and open justice."

APPLICATION

[19.] The Court notes that the Intended Applicant is requesting leave to appeal the Court's ruling. However, the Court is of the view that this is a matter separate from that of the other criminal proceedings, and its judgment amounted to a final decision. Nonetheless, the Court, in its ruling, gave leave to appeal for the avoidance of doubt; therefore, the application pursuant to section 10(1) of the Court of Appeal Act is not required.

[20.] With consideration to the aforementioned law and pleadings the Court refuses the application for stay of execution on the following grounds:

- a. The Intended Appellant has not satisfied the Court that it would be in such ruin nor hardship as a result of this judgment;
- b. The Court does note the seriousness of the matter; however, the seriousness of the alleged crime is not a consideration for stay of execution;
- c. To grant the stay would amount to depriving the Intended Respondent the fruits of his Labour, in this instance, the Vessel;
- d. There is no evidence that the Appeal would be rendered nugatory in absence of a stay, the Vessel can be returned or damages can reasonably be recovered upon a successful appeal – the Court notes that the Intended Respondent is an American Citizen, However "damages reasonably recovered" in this Court's view does not necessarily mean "easily recovered" the Court recognizes that there may be additional steps but that does not mean that it is no possibility of a reasonable recovery; and

- e. The Court sees no reason to invoke its inherent jurisdiction as there is nothing before the Court of exceptional circumstance to pull on this residual power.

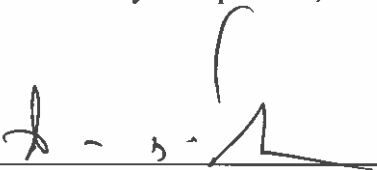
DISPOSITION

[21.] The application for Leave to appeal is dismissed as it was already granted on the date of the Judgment.

[22.] Application for stay of execution and stay of proceedings is denied.

[23.] The Court makes no order as to cost.

Dated this 3rd day of September, A. D. 2025



Justice Andrew Forbes