

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law & Equity Division

2025/CLE/gen/00380

BETWEEN:

JASON WATSON, HAROLD L. WATSON AND GERALD MORTIMER
in their capacity as
The Trustees of The Automotive & Industrial Distributors Limited Staff Retirement
Fund
Claimant

AND

MILLER ENTERPRISES LTD.

First Defendant

EARL MILLER

Second Defendant

Before:	The Hon. Madam Justice Carla D. Card-Stubbs
Appearances:	Ms. Michelle Deveau and Ms. Adrienne Bellot for the Claimant Mrs. Rose Green Thompson for the First and Second Defendants

Hearing Date: October 15, 2025

*Application to set aside grant of interlocutory injunction and to extend stay pending appeal -
Considerations for granting a stay of execution pending appeal
Wrong jurisdiction invoked – Whether within power of the court to rectify - Rule 26.9 CPR*

RULING

CARD-STUBBS, J

INTRODUCTION

[1.] This is the Defendants' application to set aside this Court's order granting an interim injunction and/or to stay the execution of the order pending appeal. On October 16, 2025, this Court delivered its oral ruling and its note thereon. The following are reasons for that ruling.

BACKGROUND

[2.] On May 15, 2025, the Claimants filed a Fixed Date Claim Form with Statement of Case. The Claimants, Jason Watson, Harold L. Watson and Gerald Mortimer, described as the Trustees of The Automotive & Industrial Distributors Limited Staff Retirement Fund, Claimants sued the Defendants in trespass seeking various relief, including vacant possession.

[3.] On May 15, 2025 the Claimants filed a Notice of Application seeking interlocutory relief. The Application was heard inter partes and on September 4, 2025, this Court issued its written ruling and made the following Order per paragraph 75 of its written ruling:

The order and direction of this Court is THAT:

1. The Defendants, their directors, servants, employees and/or agents be and are hereby restrained from occupying the property beyond October 20, 2025, such property being the land and appurtenances identified in Real Property Tax Assessment No. 72874, described as

ALL THAT piece or parcel of land situate at the junction of Harrold Road and Knowles Drive in the Western District of the Island of New Providence aforesaid containing by ad measurement 2.370 acres which said piece or parcel of land has such position shape marks boundaries and dimensions as are set on the diagram or plan attached annexed hereto and is thereon edged in "PINK" and designated "A" and located at Harold Road/Bozine Hill Road Nassau, Bahamas (*"the Property"*),

subject to further order of this Court.

2. The Defendants do deliver up possession of the Property to the Claimants on or before October 20, 2025, subject to further order of this Court.

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 Defendants, or any of them, shall have sustained any loss by reason of this Order and that such Defendants, or any 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 7 days' notice to the other parties herein.

5. Costs of this Application are to be costs in the cause.

THE APPLICATION

[4.]The Defendants filed a Notice of Application on September 9, 2025 and thereafter an Amended Notice on September 23, 2025. The Application is supported by an affidavit of Mr. Miller filed on September 12, 2025.

[5.]In summary, the Defendants, by that application, seek an order to

1. Set aside the court's order made on September 4, 2025 in its entirety. Setting aside the order would have the effect that the Defendants would not have to give up vacant possession of the property by October 20, 2025.
2. Additionally, or in the alternative, stay execution of the order pending appeal. A stay of the order would have the effect that the Defendants would not have to give up vacant possession of the property by October 20, 2025.

[6.]The filed Amended Application reads, in part, as follows:

1. The Defendants, Miller Enterprise Limited and Earl Miller make application for the Court to exercise its jurisdiction to set aside its Order dated 4th September 2025 in its entirety pursuant to CPR Rules Part 13.4, of the Supreme Court, Civil Procedure Rules, 2022; and under the inherent jurisdiction of the Supreme Court; and, or alternatively,
2. Extend the stay of its Order granted 4th September for the period ending, 20th October, A.D., 2025, to stay the execution thereof pending appeal, pursuant to CPR Rules Part 9.8(1),(2) and (3)(4) of the Supreme Court, Civil Procedure Rules, 2022.
3. That an injunctive relief is temporary and should not be final in nature. To grant the right to vacant possession is a final relief, thus prejudicing the Defendants to their rights to ventilation all the issues as to the ownership, sale and conveyance of the property as prescribed in the Notice of Application and Fixed Date Claim Form of the Claimants.
4. That further, the publicity given to the Judgement and Order (local newspapers and other social media) dated 4th September 2025 is an affront to natural justice and is prejudicial to the trial.

The grounds are set out below.

ISSUES

[7.]The issues for determination are:

- (1) Whether this Court's ought to set aside its order dated September 4, 2025 and
- (2) Whether this Court ought to exercise its discretion in favour of the Defendants to grant a stay of execution of the order pending appeal.

ISSUE 1 – APPLICATION TO SET ASIDE THE ORDER

[8.]The Defendants make their application pursuant to the inherent jurisdiction of the Court, and Part 13, Rule 13 (4)The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR').

[9.]**Part 13 of The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR')** provides for the applicable procedure and practice regarding setting aside a default judgment. **Rule 13. 4** provides:

13. 4 Applications to vary or set aside judgment – procedure.
- (1) An application may be made by any person who is directly affected by the entry of judgment.
 - (2) The application must be supported by evidence on affidavit.
 - (3) The affidavit must exhibit a draft of the proposed defence.

[10.] A court has jurisdiction to set aside its own judgment in circumscribed instances. I describe them as such lest it be perceived that a court may embark on a process tantamount to a review of its decision akin to an appeal. A court has inherent jurisdiction to set aside a judgment in order to prevent an abuse of its process. Statutory and procedural rules may also provide for the exercise of a court's jurisdiction to set aside judgments. Usual circumstances include where there is evidence of a procedural irregularity such as lack of proper service, or evidence of fraud or mistake in the granting of the judgment. A court may also set aside a judgment in circumstances set out in statute or procedural rules. An example of a procedural rule is Part 13, The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR'). The burden is on an applicant seeking to set aside an order to show why the order was irregularly or improperly obtained or ought not to have been made and/or is an abuse of process.

[11.] The Defendants, by supplemental submissions, sought to introduce evidence by way of an unfiled affidavit, presumably to introduce evidence not adduced at the initial hearing. Despite counsel's insistence that the affidavit had been filed and despite being given an opportunity to provide evidence of same, there is no record that the affidavit was filed at the time of the hearing of the application. The affidavit formed an addendum to filed submissions. The supplemental submissions sought to introduce grounds not set out in the amended application. This course of action was highly

irregular and the Court could take no cognizance of the matters sought to be introduced into evidence.

[12.] The Application lists the following as grounds:

Grounds to set aside the Judgment Order are as follows:-

- a. Her Ladyship has decided that the Claimants are the legal owners of "the property", although the facts pertaining to this issue has not been fully ventilated at trial.
 - i. Her Ladyship erred in law and/or in fact at the interlocutory stage, by not advancing this matter to trial, and by granting the Claimants vacant possession of ALL THAT piece or parcel of land situated at the junction of Harrold Road and Knowles Drive in the Western District of the Island of New Providence comprising 2.370 acres and identified as (*"the Property"*).
- b. Her Ladyship in her judgement has granted vacant possession to the Claimants. Such a relief is final in nature and not the nature of an interim injunctive relief.
 - i. That Her Ladyship erred in law and/or in fact when she Ordered at the interlocutory stage, without advancing this matter to trial, that the Defendants deliver up possession of *"the Property"*, to the Claimants on or before 20th October, 2025;
- c. Her Ladyship decision was not in good faith as it is prejudicial towards the First Defendant and will cause hardship to the Second Defendant.
- d. The decisions made by Her Ladyship in granting such reliefs to the Claimants' is are prejudicial to the Defendants since the substantial issues in this matter have not yet been tried.
 - i. That Her Ladyship, erred in law and/or in fact when she concluded that despite the agreement of all parties that there was a serious issue to be tried, she granted an Interim injunction rather than advancing this matter to trial.

[13.] In this Court's opinion, the grounds as set out in the Defendants' Application are misconceived. The Applicants have failed to demonstrate why the order was irregularly or improperly obtained or ought not to have been made or that it is an abuse of process. The grounds, as set out, serve to invite this court to reconsider its findings, analysis and determinations. Such reconsideration is the sole prerogative of an appellate court and is not properly within a court's jurisdiction to set aside an order.

[14.] This court also notes that the Defendants have not properly invoked the jurisdiction of the Court under the CPR. The September 4, 2025 order does not constitute a default judgment. Part 13, CPR deals with "setting aside or varying default judgment". Rule 13.4 CPR is inapplicable. The Defendants in oral argument sought to invite the court to "rectify matters" under Rule 26.9 CPR. However, Counsel for the Defendants could not indicate what matters were to be rectified.

[15.] Rule 26.9 CPR provides:

26.9 General power of the Court to rectify matters.

- (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.
- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the Court so orders.
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the Court may make an order to put matters right.
- (4) The Court may make such an order on or without an application by a party.

[16.] It seems to me that Rule 26.9 CPR contemplates a procedural error including errors such as the failure to comply with a rule or practice direction or court order. It does not contemplate supplying a party with a basis for invoking the court's jurisdiction especially where the party fails to identify, and could not identify, such a basis in a contested application. The Defendants did not seek leave to amend their application.

[17.] The application to set aside is dismissed.

ISSUE 2 – APPLICATION TO STAY OF EXECUTION PENDING APPEAL

[18.] The Defendants make their application for a stay pursuant to Part 9, Rule 9.8 The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') and the inherent jurisdiction of the Court.

[19.] **Part 9 of The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR')** provides for the applicable procedure and practice regarding acknowledgment of service and notice of intention to defend. **Rule 9.8** provides for the procedure for a applying for a stay etc.:

9.8 Procedure for applying for a stay etc.

- (1) A defendant who contends that the Court should not exercise its jurisdiction in respect of any proceedings may apply to the Court for a stay and a declaration to that effect.
- (2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgement of service if he has not previously done so.
- (3) An application under paragraph (1) of this rule may be made at any time.
- (4) An application under this rule must be supported by evidence on affidavit.
- (5) If on application under this rule the Court does not make a declaration, it
 - (a) may —
 - (i) fix a date for a case management conference; or

- (ii) treat the hearing of the application as a case management conference; and
- (b) must make an order as to the period for filing a defence if none has yet been filed.²³
- (6) Where a defendant makes an application under this rule, the period for filing a defence, where none has yet been filed, is extended until the time specified by the Court under paragraph (5)(b) and such period may be extended only by an order of the Court.

[20.] At the outset, it is apparent that Rule 9.8 offers the Defendants no grounding for their application. That rule addresses a situation where a Defendant wishes a stay of proceedings for the purpose of objecting to the court's exercise of jurisdiction. That is clearly not the case here and the jurisdiction is not properly invoked in this matter. To that extent, the application is misconceived.

[21.] The Defendants also rely on section 16(3) of the Supreme Court Act. The Court's jurisdiction in law and equity is specifically preserved by **Section 16 of the Supreme Court Act** as is its power to stay any proceedings. Section 16(3) provides:

16. (3) Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person whether or not a party to the proceedings.

[22.] The principles of law operative on the court's exercise of its discretion as to whether to grant a stay pending appeal are well-established. The parties appear to be *ad idem* on the law in this regard.

[23.] The Claimants rely on the cases of **David Cummings et. al. v Sumner Point Properties Limited SCCivApp. No. 18 of 2016** and **In the Matter of the Contempt of Donna Dorsett-Major [2020] 1 BHS J No 102**.

[24.] In **David Cummings et. al. v Sumner Point Properties Limited**, Justice of Appeal Isaacs reiterated the applicable principles for a stay at paragraphs 14 to 16:

14. The principles for granting a stay pending appeal have been enunciated many times before. It is, I think, accepted by the parties that the Court has the jurisdiction to grant a stay of the proceedings whilst an appeal against it is pending. It is a discretion that should be exercised where a failure to grant a stay would result in the appeal being rendered nugatory. In *Wilson v. Church* (No 2) [1879] 12 Ch D 454 at 458-459, Cotton LJ stated:

"I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this Court ought to see that the appeal, if successful, is not nugatory."

15. *And per Brent LJ at page 459:*

'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 the judicial discretion that where the right of appeal exists...the Court as a

general rule ought to exercise its best discretion in a way so not to prevent the appeal, if successful, from being nugatory.’

16. Further guidance was given by the English Court of Appeal in *Leicester Circuits Ltd v Coates Brothers plc* [2002] EWCA Civ 474 (per Potter LJ at para 13):

“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 least 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...”

[25.] In the Matter of the Contempt of Donna Dorsett-Major [2020] 1 BHS J No 102

Charles J, as she then was, confirmed the wide powers of the court with regard to the grant of a stay. There the learned judge considered the principles which ought to guide a court in the exercise of its discretion. At paragraphs [23] to [27] Charles J opined:

[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, 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.

[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 LJ 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?"

[26.] The Defendants rely on several authorities including **2019/CLE/gen/00593, Enos R. Miller v McKinney Bancroft & Hughes and Hartis E. Pinder**. In dismissing an application for a stay and for leave to appeal, Charles, J, as she then was, reiterated the principles earlier enunciated in **the Matter of the Contempt of Donna Dorsett-Major**. The Defendants also relied on the case of **Linotype-Hell Finance Ltd. V Baker [1993] 1 WLR 321-323**, which is a case cited with approval in the Court of Appeal case of **David Cummings et. al. v Sumner Point Properties Limited**.

[27.] The principles as set out in the authorities relied on by the parties can be summarized as follows:

1. The court has a wide discretion to grant or to refuse a stay. The question for the court is whether there is a risk of injustice to either or to both parties if it grants or refuses a stay.
2. The court must balance the risks of injustice to both parties. Key considerations include:
 - i. Whether refusing a stay would render the appeal nugatory or cause it to be stifled.
 - ii. Whether granting a stay would prevent the respondent from enforcing the judgment if the appeal fails.
 - iii. Whether refusing a stay would make it difficult for the appellant to recover any monies or property if the appeal succeeds.
3. A stay is generally granted only if there are special circumstances, supported by evidence, that justify delaying the enforcement of a judgment. A successful party should not be deprived of the benefits of the judgment it holds unless there is good reason to grant a stay. An example of a good reason is where the appellant can provide evidence to show that without a stay, they would face significant harm, such as financial ruin. In addition, the appellant must demonstrate that the appeal has some prospect of success.

[28.] In this case, the Defendants rely on the following grounds:

Grounds to stay the Judgment Order pending appeal are as follows:-

- a. The learned Judge erred in her judgement by granting a relief with final affect [sic] of vacant possession to the Claimant instead of a temperory [sic] injunctive relief.

- b. The publication was not in good faith as it was prejudicial towards the defendants, and harmful to the Second Defendant's business.
- c. The nature and effect of the decisions made by Her Ladyship is that the substantial issues in this matter have already been tried.

[29.] The Defendants asserts that the Second Defendant will be “financially crippled or ruined without a stay.” The Defendants seeks to rely on matters considered by this court in determining the risk of irremediable harm to the parties. It has been the position of the Defendants that the Second Defendant lives in the building and operates businesses there. That is not an answer to a claim of trespass. The considerations of the circumstances advanced by the Defendants were taken into account in this Court’s September 4, 2025 ruling. This Court found that the balance of convenience lies with the Claimants. Those matters are well-traversed in the ruling and need not be rehearsed here. There is no persuasive evidence that the Defendants will be financially crippled or ruined *without a stay*.

[30.] The grounds for a stay of execution as well as the grounds founding the appeal appear to be rooted in misstatements of the findings of the Court. Such misstatements include the representation that “her ladyship has decided that the Claimants are the legal owners “of the property”, although the facts pertaining to this issue has not been ventilated at trial.” [As set out in the grounds to set aside the order.]

[31.] The September 4, 2025 interim ruling of the court considered the relative strength of the parties’ case at the time of hearing, while giving explicit pronouncement that it was an assessment for the purpose of the interlocutory relief sought. The ruling contemplates a final trial. The ruling is also based on the court’s jurisdiction pursuant to Part 17 of the CPR to order an interim remedy notwithstanding that there is a final remedy of that kind sought in the proceedings.

[32.] However, I bear in mind that the order is an interim order with an execution deadline of October 20, 2025. The nature of the interim relief granted, and being appealed against, is possession of the property. The order is not a final order such that the Claimants would be prevented from enforcing the order if the appeal is unsuccessful. A stay will not prevent the Claimants from pursuing that remedy on an interim basis if the appeal is unsuccessful or as a final remedy if the appeal is successful. An interim order is subject to variation. That is the nature of an interim remedy. The complaint of the Defendants is that the interim relief granted in this case is, by nature and effect, a final relief. It is my view that if the stay is not granted, then any appeal regarding the nature and effect of the interim remedy in this case is rendered nugatory. If the stay is refused, the appeal would merely serve an academic purpose because the Defendants, on pain of contempt, would be required to vacate the premises.

[33.] The law is that the appellants must demonstrate that the proposed appeal has realistic prospects of success. **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another [2022] 2 BHS J. No. 160**, relied on by the Claimants, also provides that it is a principle of law that a court may, on an application for leave to appeal, consider whether the law requires clarifying. The matter before me is not an

application for leave. The Defendants have lodged an appeal. The Claimants have made submissions on whether the appeal was properly lodged but whether the appeal has been properly lodged is not a matter for this court.

[34.] For present purposes, the draft Notice of Appeal laid before this court sets out the following as the first ground of appeal:

1. That the learned judge erred in her granting a final relief as an interim relief. This is set out on the application for a stay as:

The learned Judge erred in her judgement by granting a final relief with final affect [sic] of vacant possession to the Claimant instead of a temporary injunctive relief.

[35.] It seems to me that the lodged appeal, if it were to proceed, raises the following question which may bear some clarification viz,

Whether the court has a discretion to grant a mandatory injunction, which amounts to vacant possession, as an interim remedy.

[36.] For the foregoing reasons, the stay is granted pending appeal.

[37.] The Amended Notice of Application was filed on September 23, 2025. The representation of both parties is that the Defendants have lodged an appeal in this matter although it is unclear when the appeal was lodged, why the appeal record has not yet been settled and why the appeal had not been pursued prior to the expiry of the stay granted by the September 4, 2025 ruling. By that ruling, the Defendants were given time to make the necessary preparations to comply with the court's order. This court remains aware that parties may sometimes engage in dilatory tactics to frustrate the order of the court. Mindful of the circumstances of this case and bearing in mind that the Defendants had already been granted a stay for the purpose of complying with the court's order, this court will impose a condition by virtue of a time limitation on its grant of a stay pending appeal.

CONCLUSION

[38.] In the premises, the application to set aside the order of September 4, 2025, is dismissed.

[39.] The order of the September 4, 2025 is stayed until November 20, 2025 or the earlier abandonment of the filed appeal and subject to order of the Court of Appeal or further order of this Court.

COSTS

[40.] I consider the delay of the Defendants in bringing this application. I consider that the Defendants were not wholly successful on their application and that, on each limb

of the application, they invoked inapplicable jurisdictions of the court. This required thoughtful preparation and response by the Claimants. I therefore order that the Defendants are to pay the Claimant's costs of this application, such costs to be assessed if not agreed.

ORDER

[41.] The order and direction of this Court is THAT:

1. The application to set aside the order of September 4, 2025, is dismissed.
2. The order of the September 4, 2025 is stayed until November 20, 2025 or the earlier abandonment of the filed appeal and subject to order of the Court of Appeal or further order of this Court.
3. The Defendants are to pay the Claimant's costs of this application, such costs to be assessed if not agreed.

Dated the 22nd day of October, 2025

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs

Justice