

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2017/CLE/gen/00240

IN THE MATTER of an Indenture of First Demand Legal Mortgage dated the 16th day of March A.D.,2005 and made between Christison Deleveaux and Marilyn Deleveaux (as Borrowers) of the one part and Bank of the Bahamas Limited (as Lender) of the other part to secure advances to the said Christison Deleveaux and Marilyn Deleveaux by the said Bank of the Bahamas Limited

AND

IN THE MATTER of All That piece parcel or lot of land Being Lot number 15 in Block number 16 of section 2 of Sea Breeze Estates Subdivision situate in the Eastern District of the Island of New Providence, the Bahamas

AND

IN THE MATTER of Rules of the Supreme Court Order 77

BETWEEN

BANK OF THE BAHAMAS LIMITED

Plaintiff

AND

CHRISTISON DELEVEAUX

1st Defendant

AND

MARILYN DELEVEAUX

2nd Defendant

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Jamal Davis for the Plaintiff
Arthur Minns for the Defendants

Hearing Date(s) 27 May 2025

DECISION

WINDER, CJ

This is my brief decision on the Defendants' application for a stay pending appeal.

[1.] The Defendants have applied by Notice of Application dated 14 May 2025 seeking a stay of execution following upon my decision dated 29 January 2025 (the Decision). In the Decision the Court granted judgement to the Plaintiff in the amount of \$207,530.74 as of 31 August 2021. The judgment was suspended for 90 days.

[2.] The stay is sought by the Defendants pending the appeal of the Decision to the Court of Appeal. The grounds identified by the Defendants indicate that new evidence has emerged since the Decision and that the new evidence demonstrates that they do not have a complete and accurate loan statement. They say that the stay will allow them to preserve the status quo until the Court of Appeal can consider the new evidence.

[3.] Section 16(3) of the **Supreme Court Act** provides that:

"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".

[4.] The principles relative to the grant of a stay of execution were helpfully outlined by Jones JA in Court of Appeal decision in **Bahamas Real Estate Association Applicant v George Smith** SCCivApp No. 109 of 2015. Jones JA stated at paragraphs 11 and 12 as follows:

[11.] The principles which guide a court when considering applications for a stay may be found in Order 59, rule 13 of the 1982 English Rules of the Supreme Court which states inter alia that even though the court should not make a practice of depriving a successful party of his winnings, the court should ensure that in the event the appealing party succeeds his judgment on appeal is not rendered nugatory.

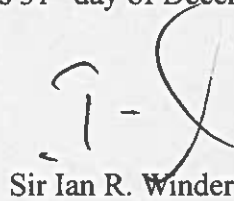
[12.] Further guidance as to matters the Court must take into account may be derived from the authorities. Some have been helpfully set out in the appellant's submissions, for example, (a) whether the appellant is entitled to appeal as of right; see also *Wilson v. Church* (No.2) (1879) 12 Ch 454; (b) whether the appellant has an arguable case; see *Mandeer Holidays Ltd v Civil Aviation Authority* Official Transcripts (1980-1989); (c) whether the absence of the stay would render a successful appeal nugatory; See *City Services Limited v. AES Ocean Cay Limited* [2012] 1 BHS J. No. 85 at para. 15 at TAB 8; see also *Wilson v. Church* supra; (d) whether there is a risk of injustice to one or other of the parties if it grants or refuses a stay; see *Hammond Suddards Solicitors v Agrichem*

Holdings Ltd [2001] EWCA Civ 2065; and (e) whether the appellant has given sufficient evidence by affidavit as to why a successful appeal could be rendered nugatory; see City Services supra at para. 16.

[5.] Applying these principles to the facts of this case, I am not satisfied that this is an appropriate case for the grant of a stay. I do not find that the Defendants have demonstrated a good arguable case in the appeal or that the risk of prejudice favors them as opposed to the Plaintiff. Further, the length of time which has passed and the failure of the Defendants to make any payments to the Plaintiff for a considerable period militates against any claim to the matter being rendered nugatory in the absence of a stay.

[6.] In the circumstances the stay is refused with costs to the Plaintiff.

Dated this 31st day of December 2025

A handwritten signature in black ink, appearing to be 'I-R. Winder', written over a horizontal line.

Sir Ian R. Winder

Chief Justice