

**Commonwealth of The Bahamas
In the Supreme Court
Common Law and Equity Division
Claim No. 2018/CLE/gen/00096**

B E T W E E N

FAIRNESS LIMITED

Claimant

AND

LARRY DAVIS

Defendant

Before: Her Ladyship The Honourable Madam Justice Cheryl Bazard KC

Appearances: Mr. Byron Woodside for the Claimant

Mr. Sidney Dorsett for the Defendant

Hearing Dates: 19 November 2025

RULING

Civil Procedure – Order 42 of the Rules of the Supreme Court - Part 15 Supreme Court Civil Procedure Rules 2022 (“CPR”) – Striking Out – Stay of Execution - Whether Order perfected after Judge demit office is invalid – Whether the Registrar of the Supreme Court acted ultra vires in signing and sealing an order of a retired Judge – *nunc pro tunc*.

BAZARD, J:

[1.] The issues before the Court centered on two applications: firstly, a Notice of Application by Larry Davis, the Defendant and Judgment Debtor (“the Defendant”), seeking to stay the execution of an order to sell certain properties and secondly, a Notice of Application for Summary Judgment filed by Fairness Limited, the Claimant and Judgment Creditor (“the Claimant”).

Background

[2.] The present matter arose from an Application filed by the Claimant on 10 June 2025, seeking an order for the sale of the Defendant's properties to satisfy the debt owed to the Claimant.

[3.] On 7 October 2025, the Defendant filed a Notice of Application for Stay seeking the following reliefs:

“1.1 A stay of execution of these proceedings pending determination of the validity of the judgment allegedly dated 3 December 2021.

1.2 A declaration that the judgment of the Honorable Madam Justice Ruth Bowe-Darville dated 3 December 2021, is void ab initio, having not been perfected prior to demitting office on that date.

1.3 An order setting aside any taxation of costs and assessment of damages conducted pursuant to the said judgment, on the ground that the Registrar failed to ascertain whether the judgment was perfected.

1.4 A declaration that the Claimant bore the burden of drawing up and filing the Order pursuant to the judgment and failed to comply with Rule 42.5(1) of the Supreme Court Civil Procedures Rules 2022.

1.5 An Order directing the Learned Registrar to not accept or file any Order purporting to perfect the judgment without the leave of this Honorable Court and, in all fairness, notice to the Defendant.”

[4.] The grounds for the Application are:

“2.1 The judgment dated 3 December 2021 was not perfected prior to demission of office of the Honourable Madam Justice Ruth Bowe-Darville and is therefore invalid under Article 96 of the Constitution of The Bahamas.

2.2 The Registrar proceeded to tax costs and assess damages without verifying whether the judgment was perfected, and in circumstances where perfection was impossible nunc pro tunc, given the absence of judicial authority after 3 December 2021.

2.3 The Claimant failed to draw up and file the Order pursuant to the judgment, contrary to Rule 42.5(1) of the Supreme Court Civil Procedure Rules 2022, thereby rendering the execution proceedings premature.

2.4 The Defendant was not served with the Consent Order allegedly filed on 22 August 2023 and was not perfected by counsel with continuing authority at the time of such filing.

2.5 The execution proceedings threaten to dispossess the Defendant based on a judgment that is void and unenforceable, and the balance of justice requires a stay pending proper inquiry.

2.6 Re Pinochet (No.2) [1999] UKHL 1 establishing that a judge who has ceased to hold office cannot participate in a judgment; judicial authority ends upon demission.

2.7 Flowers Development Co. Ltd v BTC et al (SCCiv App No. 14 of 2022) – the Court of Appeal emphasized the importance of timely perfection and condemned post-retirement judgments as unconstitutional. This citation was later withdrawn by Counsel in an Errata dated 18 November, 2025.

2.8 Part 42.5(1) of the Supreme Court Civil Procedure Rules 2022 – establishing that the party in whose favour a judgment is given shall draw up the Order unless the Court directs otherwise.”

[5.] The Defendant’s Notice of Application was supported by the Defendant’s affidavit filed on 7 October 2025 as well as the Defendant’s Second Affidavit filed on 7 November 2025.

[6.] On 4 November 2025, the Claimant filed a Notice of Application for Summary Judgment to Strike Out the Defendant’s Application pursuant to **Part 15, Rule 2(a) of the Supreme Court Civil Procedure Rules, 2022 (“CPR 2022”)**, on the basis that the Defendant has no real prospect of succeeding in the claim. The Application is supported by the Affidavit of Indira Gaitor, filed on 5 November 2025, and the Supplemental Affidavit of Andrea Knowles, filed on 20 November 2025.

Evidence

Claimant’s evidence

[7.] In the Affidavit of Indira Gaitor, she states that Honourable Madam Justice Ruth Bowe Darville (Retired) issued a signed written judgment on 3 December 2021, and that the Order was prepared by the Claimant and submitted to the Registrar on 30 May 2022, which was then filed on 13 June 2022.

[8.] At paragraph 4 of the Andrea Knowles Supplemental Affidavit (Knowles Affidavit”), she states, *“the law Firm of Messrs. Johnson and Hassan & Co. represented the Defendant in this matter from the start of the Supreme Court action until the trial's conclusion before the Honourable Madam Justice Ruth Bowe Darville.”* At paragraphs 6 and 7 of Knowles Affidavit, she confirms that the Claimant's counsel sent a letter to the Defendant's counsel, which included a Draft Order of the Judge’s ruling for review and suggested modifications, and that the Defendant’s counsel expressed no objection to this draft order.

Defendant’s evidence

[9.] The Defendant relied on his Affidavit filed on October 7, 2025, in which he claimed that health issues affected his ability to respond to the proceedings or seek legal advice. In paragraph 4, he argued that the judgment, allegedly signed by the Honourable Madam Justice Ruth Bowe-Darville (Retired) on December 3, 2021, was not issued before she left judicial office. He also

denied being served with the Order and stated that the Registrar's assessment of costs and damages was premature and lacked verification that the judgment was finalized.

[10.] In his second Affidavit, the Defendant argues that the affidavit backing the Claimant's summary judgment application is defective and should not be admitted. He challenges paragraph 8 of Indira Gaitor's affidavit, asserting he neither appeared before the Deputy Registrar to confirm a consent order nor was he served with an order dated 3 December 2021 or a finalized order. He highlights that the judgment is invalid and lacks legal standing because it was finalized after the Judge's departure from office.

[11.] Lastly, in the errata noted *supra*, Counsel for the Defendant argues that:

“The function of *nunc pro tunc* order is to correct the judicial record to reflect an act that was done, but not correctly recorded, or to reflect a judgment that was rendered orally but was never formally perfected due to a clerical oversight, accident, or delay (like the judge retiring).”

Issues

[12.] The issues for determination are:

- 1. Whether this Court ought to grant the Defendant's application for stay of execution on the basis that the Order is invalid; and/or**
- 2. Whether this Court ought to strike out the Defendant's Application for stay based on having no real prospect of succeeding?**

Law and Analysis

[13.] As a starting point, the grounds for summary judgment are governed by **Part 15.2 of the Supreme Court Civil Procedure Rules of 2022 (“CPR”)**. CPR 15.2 states:

“15.2 Grounds for summary judgment.

The Court may give summary judgment on the claim or on a particular issue if it considers that the –

- (a) claimant has no real prospect of succeeding on the claim or the issue; or**
- (b) defendant has no real prospect of successfully defending the claim or the issue.”**

[14.] In considering the issues, I will refer to the Rules of the Supreme Court (“RSC”) as the determination of the case preceded the enactment of the Supreme Court Civil Procedures Rules 2022 (as amended).

[15.] The issue before me is whether the Court should strike out the Defendant's Application for a stay. In doing so, the Court must determine whether the validity of the Consent Order signed by the Registrar on 13 June 2022.

[16.] Order 42 of the Rules of the Supreme Court sets out the procedures by which Judgments and Orders are governed. **O.42, r.3** states:

“3. –(1) Subject to the provision of Rule 3A, a judgment or order of the Court or an official or special referee takes effect from the day of its date.”

[17.] **Order 42, rule 1(3) of the RSC states:**

“(3) Any order other than a consent order to which rule 5A applies must be marked with the name of the Judge, referee or Master by whom it was made and must be sealed.”

[18.] Mr. Dorsette argues that the Order signed by the Registrar on 13 June 2022 was ultra vires because it was not signed by the judge. Since the ruling was issued on December 3, 2021, the Order needs to be redrafted and entered *nunc pro tunc*. He contends that a successful litigant must prepare an order promptly after receiving judgment before the judge retires.

[19.] Mr. Woodside, Counsel for the Claimant, asserts that the drafted order signed by the Registrar complied with Order 42 r. 5 of the RSC and that the function of the Registrar was merely administrative. He argues that the Claimant sought to reduce the same to an Order and lodged it with the Registrar for filing.

[20.] In determining whether the signing of the Order on 13 June 2022 by the Registrar is ultra vires, I considered the guidance stated in the 1993 White Book under Practice Direction for O.42 (provided by Counsel for the Defendant) where at summary 42/1/4 it states:

“Effect of judgment before entry – A judgment takes effect from the time when the Judge pronounces it, and the subsequent entry of it is a mere form in obedience to the direction of the Court (Hodgson (1889) 24 Q.B.D. 103)

[21.] Further at summary 42/1/7 it states:

“...It is doubtful whether there is still any distinction between a “judgment” and an “order” (per, Lord Esher M.R. in Onslow v Commrs. of Inland Revenue (1890) 25 Q.B.D. 465: “A judgment is a decision obtained in an action, and every other decision is an order.”

[22.] In the case of **Leighton v. The Information Commissioner (No. 2) [2020] UKUT 23 (AAC)**, the court states:

“...a judicial signature by and of itself does not magically transform a Judge’s determination from some inchoate and ineffective status to a document that is binding in law. The only question that conceivably might arise in practice is whether the ruling of 30 April 2019 on Mr. Leighton’s rule 4(3) application was indeed Judge McKenna’s decision. However, nobody has suggested it is not. It carries the official judicial crest. It was not recalled, withdrawn or set aside.”

[23.] In **Re Stubbs, Ezekiel BS 2013 SC 22**, Acting Registrar Darville-Gomez (as she then was) noted the following:

“9. The Court has accepted the submissions of Mr. Bain and in particular that the Order of the Honourable Mr. Justice Neville Adderley was perfected on January 23, 2012. The case of *Lant v. Lant* [1964] 2 All E.R. 608 confirmed that “perfected” means the date upon which the order was authenticated by receiving the seal of the court.

10. The Court is of the view that nothing turns in whether the Order had in fact been initialed by the Judge because Mrs. Cunningham had signed the Order prior to it being filed. Therefore, she would not have done so if it had not reflected the Order that had in fact been made by the Honourable Mr. Justice Adderley on August 17, 2011. This is the main reason why the Court finds that the objection made by her was unsustainable.”

[24.] The same applies to the matter at hand *mutatis mutandis*.

[25.] At paragraph 11, Acting Registrar Darville-Gomez continued:

“In any event, even if Mrs. Cunningham had not signed the Order, the Court would still have regarded the Order as having been perfected. There is a presumption of regularity. Naturally, if the perfected Order was contrary to the actual Order made by the judge it would be a different matter. However, that is not the case before the Court.”

[26.] The authorities relied upon by the Defendant and in particular, **MetCalfe v The British Tea Association (1882) QBD 31** was not helpful, as the issue for determination predated the position as stated in the summary 42/1/7. The case of **Wycliffe H. Baird v David Goldstar and Ors. (HCVAP 2008/005)** discussed the current position in CPR 42.8, *which is that an order takes effect from the date order is made/given or when the reason for order is issued.*

[27.] The case of **Richardson Roofing Company Ltd v. The Coleman Partnership Ltd [2009] EWCA Civ 839** is instructive. It involves a court order concerning costs and how the consent order should be interpreted where the order was referenced in several paragraphs. Jacob LJ, in paragraph 23, criticizes both the form and substance of the judges' order, which was referenced in several paragraphs and described as “extremely diffused”. At **paragraph 24**, he made a distinction between judgments and orders, stating:

“Judgments are reasons for orders, they are not orders. Any order of the court should make it clear to those concerned with what it is they are supposed to be doing or not supposed to be doing. The order should stand on its own face.”

[28.] I am satisfied that the judgment of Justice Ruth Bowe-Darville (Retired) was delivered on 3 December 2021 while she remained judicially *functus*. The subsequent signing and sealing of the Order on 13 June 2022 was an administrative action carried out by the Registrar in accordance with Order 42 of the RSC and did not involve the exercise of judicial discretion.

[29.] I agree with the Claimant that the Defendant’s contention that the Order is invalid because it was perfected after the learned judge demitted office is misconceived.

[30.] I am satisfied that for the time period in issue, a judgment takes effect from the date it is pronounced and the principle of *nunc pro tunc* does not arise.

[31.] Although raised, the issue of the contravention of the Constitution was not argued before the Court; nor were there any written arguments.

[32.] Accordingly, the Defendant’s Application for a stay of execution is without merit and discloses no real prospect of success. Therefore, the Claimant’s Application for Summary

Judgment to strike out the Defendant's Application pursuant to **Part 15 rule 2(a) of the Supreme Court Civil Procedure Rules 2022** succeeds.

[33.] The Defendant's Notice of Application filed on 7 October 2025 is hereby struck out. The Application for stay of execution is dismissed. The Claimant is entitled to proceed with enforcement of the Order of Justice Ruth Bowe Darville (Retired).

[34.] Costs is awarded to the Claimant in the fixed amount f \$4,000.00.

Dated the 24th day of February A.D., 2026


Justice Cheryl Bazard KC