

COMMONWEALTH OF THE BAHAMAS

2022/CLE/gen/1000

IN THE SUPREME COURT

BETWEEN

RBC ROYAL BANK (BAHAMAS) LIMITED

Claimant/Respondent

AND

DEALS BUS SERVICE LIMITED

1st Defendant/Applicant

AND

ARTHUR W. DEAL

2nd Defendant/Applicant

Before: The Honourable Madam Carla Card-Stubbs

Appearances: C.A. Martin for the Defendants/Applicants
Audley Hanna for the Claimant/Respondent

Hearing Date: ON THE PAPERS
Written Submissions of Defendants/Applicants dated November 25, 2025
Written Submissions of Claimant/Respondent dated November 25, 2025

Application for leave to appeal and a stay of execution pending appeal – Whether order is final or interlocutory order – Test for determining a final order and an interlocutory order - Jurisdiction to grant leave

Application for a stay pending appeal -Whether failure to grant a stay would render the appeal nugatory

RULING

CARD-STUBBS J

INTRODUCTION

[1.] This is the Applicants/Defendants' application for leave to appeal a final judgment of this Court and for a stay of execution of the judgment pending appeal.

BACKGROUND

[2.] On June 29, 2022 the Claimant/Respondent (the bank) brought an action against the Defendants (Deal and Deal) by virtue of an Originating Summons seeking certain relief, including an order for possession, appointment of a receiver, sale of the mortgaged property and judgment for the sums outstanding under the said Mortgage.

[3.] On November 16, 2023, this Court refused an application by Deal and Deal to strike out the action. However, this Court determined that as a result of a previous action pursued by the bank against Deal and Deal, the bank was estopped from pursuing any further action for damages. This Court also found that the bank was at liberty to pursue the other remedies sought in the action. The Bank pursued its remedies as set out in the Originating Summons save that of a judgment for the sums outstanding under the said Mortgage (damages).

[4.] On October 27, 2025, this Court, by written ruling, granted the various remedies sought by the Bank and made an order in terms. By paragraph 37 of that ruling, the court ordered:

[37] The order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The First Defendant shall, no later than November 28, 2025, yield vacant possession over ALL THAT piece parcel or lot of land numbered 8 in a plan of allotments laid out on a tract of land situate on the Northwest corner of Wulff Road and Mackey Street in the Eastern District of the Island of New Providence and bounded on

the North by land now or formerly the property of William Alfred Carey and running thereon One hundred (100) feet on the East by Mackey Street and running thereon Fifty (50) feet on the South by a road reservation called and known as Rosedale Street and running thereon One hundred (100) feet and on the West by land formerly the property of the Estate of the late Helen Lord and running thereon Fifty (50) feet which said piece or parcel or lot of land has such position boundaries shape marks and dimensions as are set out and delineated on a plan of the said land attached to a Indenture of Mortgage made the 5th day of January, A.D 1996 made between the Claimant and the First Defendant and recorded in the Registry of Records in the City of Nassau in the Island of New Providence in the Commonwealth of the Bahamas in Book 7253 at pages 206 to 214 being (the “Mortgaged Property”).

2. The Claimant is entitled to exercise the power of sale with respect to the Mortgaged Property.
3. A Receiver or Receiver-Manager be appointed in accordance with the Mortgage and/or for the purpose of receiving the revenue, whether rent, profits or otherwise, of the Mortgaged Property and all other duties as it relates to the management and/or sale of the Mortgage Property.
4. Upon the appointment of a Receiver or a Receiver-Manager, the aforesaid Receiver or Receiver-Manager:-
 - a) Be added as a signatory to each of the bank accounts maintained by the Frist Defendant, until such time as he is able to open and maintain bank accounts in his name as Receiver or Receiver Manager of the First Defendant;
 - b) May be at liberty to receive revenue, whether rents, profits and/or otherwise, of the Mortgage Property;
 - c) May be at liberty to and/or be directed to sell lots of land or any part thereof comprising the Mortgage Property and/or which form assets of the First Defendant;
 - d) May be at liberty to now and in the future compromise all claims, demands and liabilities whatsoever and to settle each and every right and claim, matter or action and actions, cause and causes of action, suit debts, dues, sums of money, accounts, reckoning costs, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, demands non and that may arise any time hereafter in law or equity in respect of the property comprising the Mortgage Property and/or which form assets of the First Defendant; and to give effectual

- receipts and discharges pursuant to Section 26 (3) of the Conveyancing and Law of Property Act; and
- e) May be at liberty to execute sales agreements, conveyances or other instructions relating to the sale of the lots of land or any part thereof comprising the Mortgaged Property and/or which form assets of the First Defendant.
5. The Second Defendant shall deliver up possession of the Mortgaged Property and/or assets of the First Defendant to the Receiver or Receiver-Manager.
 6. Upon the appointment of the Receiver or Receiver-Manager, the Receivership in relation to the Mortgaged Property shall continue thereafter under the direction and/or supervision of the Court with liberty to apply thereafter.
 8. The Defendants shall pay the Claimant's costs of and occasioned by this action, such costs to be assessed if not agreed.

NOTICE OF APPLICATION

[5.]The current application concerns that judgment. On November 4, 2025, Deal and Deal filed a Notice of Application “for stay of execution and leave to appeal”. The Notice reads as “an application for stay of execution of the Judgment of the Court delivered on the 27th day of October, 2025, and leave to appeal such judgment to the Court of Appeal.” The grounds are set out below at paragraph 23.

[6.]The application is supported by the affidavit of Nukeeba Cooper filed on November 4, 2025. Skeleton arguments were lodged on behalf of Deal and Deal on November 6, 2025 prior to lodging written submissions and prior to the parties’ request for the application to be determined on the papers.

LEAVE TO APPEAL

[7.]Deal and Deal have sought to proffer grounds of appeal which they say show that they have a good prospect of success in their appeal.

[8.]The Bank argues that this Court does not have the jurisdiction to grant leave because the “Court has already discharged all of its primary functions in this action”. The Bank

argues that the judgment rendered is a final and not an interlocutory judgment. The relevance of this argument is that leave to appeal is not within the jurisdiction of this Court.

[9.] I accept the test offered by the Bank as a test that determines what is interlocutory and what is final. The Bank relies on the dicta of President Allen of the Court of Appeal, The Bahamas, in **Farmer and others v. Security and General Insurance Company Limited the Court Appointed representative of the estate of the late Gemason Smith, SCCiv AppNo. 93 of 2011**. The question before the court was whether an order of the learned Chief Justice was an interlocutory order, requiring leave to appeal to the Privy Council or a final order. In coming to the determination that the subject order was an interlocutory order, President Allen reasoned at paragraphs 7 to 8 of her judgment:

7. In deciding whether an order is a final order or an interlocutory order for the purposes of section 23, this Court, in *Lockhart and others v Mitsui Sumitomo Insurance* adopted the application test formulated by Lord Esher M.R in the leading case of *Salaman v Warner and Others* (1891] 1 Q.B. 734. In that case Lord Esher opined at pg 735 of his judgment

“The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purpose of these rules it is final. On the other hand, if their decision, if given one way, will finally dispose of the matter in dispute, but If given in the other , will allow the action to go on, then I think it is not final, but interlocutory.”

8. The 1 July 2011 Order of the Chief Justice falls squarely within Lord Esher's definition of interlocutory order and so does this Court's order setting it aside. If this Court's order and were to stand, the proceedings against the IA in the Supreme Court will continue. On the other hand, should the Order be set aside, the matter would be determined and at an end.

[10.] An interlocutory order is made during the course of the proceedings. An interlocutory order usually addresses procedural issues or preliminary matters but it does not result in the disposition or termination of the proceedings. It does not make a final determination of the issues before the court. On the other hand, a final order disposes of the matter. A final order is one that resolves the issues before the court and determines the substantive rights of the parties. In this case the issues brought before the court by way of Originating Summons were resolved by the court's order of October 27, 2025. The issues were adjudicated upon and the substantive rights of the parties were determined. The Court's ruling was to grant the remedies sought by the Bank. Had the Court refused the remedies sought, the matters would also have been resolved and concluded but in favour of Deal and Deal. In other words, the nature of

the order made was to bring the proceedings to an end. In this case, the order is a final order and final judgment.

[11.] By virtue of supplemental arguments focused on the application for a stay, Deal and Deal seem to have accepted the proposition that after hearing the Bank's application for the relief sought under its Originating Summons, the order "brings an end to the trial of the Originating Summons".

[12.] Section 11 of the Court of Appeal Act provides for appeals in civil matters. It sets out restrictions on appeals and includes when leave for appeal is to be sought. In particular, leave is to be sought in relation to interlocutory matters caught by section 11(f):

11. No appeal shall lie —
 - (a) from any order allowing an extension of time for appealing from a judgment or order;
 - (b) from an order of a Justice of the Supreme Court giving unconditional leave to defend an action;
 - (c) from any decision of the Supreme Court where it is provided by the Constitution that such decision is to be final;
 - (d) from any order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point which would not have been available to such party on such appeal;
 - (e) without the leave of the Supreme Court or of the court, from an order made with the consent of the parties or as to costs only where such costs are by law left to the discretion of the Supreme Court;
 - (f) 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.

[13.] For the reasons given above, I have found that the decision being impugned is not an interlocutory order. It is a final judgment. The application for leave is not an

application in relation to an interlocutory order. The application for leave is misconceived and is hereby dismissed.

APPLICATION FOR A STAY OF EXECUTION

[14.] Deal and Deal have not indicated on which legal basis they purport to invoke the Court's jurisdiction for a stay. Nevertheless, I accept that this court has an inherent jurisdiction to stay its proceedings per section 16, Supreme Court Act. The jurisdiction to grant a stay of execution of its judgment was recognized in **Smith v. The Bahamas Real Estate Association [2015] 2 BHS J No. 8** and by rule 12(1) Court of Appeal Rules. The application for a stay pending appeal is properly lodged with this Court: rule 27(5) Court of Appeal rules.

[15.] The Applicants' submissions are bereft of authorities on the point but the principles of law operative on a court's exercise of its discretion as to whether to grant a stay pending appeal are well-established.

[16.] The Bank relies on the cases of **Smith v. The Bahamas Real Estate Association [2015] 2 BHS J No. 8** and **Opac Bahamas Ltd. v. Duane Bennett Parnham and Leight Magdalen Parnham 2019/GLE/gen/00127 (unreported)**.

[17.] I note that the case of **Smith v. The Bahamas Real Estate Association [2015] 2 BHS J No. 8** was heard by the Court of Appeal by way of the case **The Bahamas Real Estate Association v George Smith SCCivApp No. 109 of 2015**. The Court of Appeal did not disturb the learned judge's determination on a grant of a stay and restated the considerations to be taken into account when a court exercises that discretion. The Honourable Justice of Appeal Isaacs reiterated the applicable principles for a stay at paragraphs 11 to 12:

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.

[18.] In **Opac Bahamas Ltd. v. Duane Bennett Parnham and Leight Magdalen Parnham 2019/GLE/gen/00127**, Justice Charles, as she then was, considered the principles governing a court's exercise of discretion in granting a stay. At paragraphs 54 to 57, she opined:

54. It is beyond dispute that the court has an inherent jurisdiction to stay further proceedings at any stage and for a wide variety of reasons, including pending an appeal to a superior court. Section 16(3) of the Supreme Court Act expressly preserves the Court's inherent jurisdiction to stay proceedings where it thinks fit to do so.

55. In *Turtle Creek Investments Limited v Daybreak Holdings Limited* (SCCivApp No. 234 of 2018), unreported, 18 December, 2018, our Court of Appeal considered whether to grant a stay of execution pending the outcome of an appeal from a judgment on admissions which apparently included, inter alia, an Order that the appellant pays \$249,159.00 to the respondent in respect of arrears. Jones JA mentioned the relevant principles governing the exercise of the Court's discretion at paragraph 10 of the Ruling:

“10. This court recently considered an appeal against the refusal of application for stay of proceedings after judgment in the Supreme Court. In *Esley Hanna v Bradly Hanna SCCivApp No. 182 of 2017* [Delivered 7 August 2018] in a judgment delivered by Madam Justice Crane-Scott we said at paragraph 11 on page 5:

“Section 12 of the Court of Appeal Act mirrors the provisions of O 59. r. 13 of the former English Rules of the Supreme Court 1965. It is therefore useful to advert to the following 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*:

“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) II 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 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..... 6 “
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.”

56. The relevant principles as stated in *Turtle Creek Investments Limited v Daybreak Holdings Limited* (SCCivApp No. 234 of 2018) are:

- (i) “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”.
- (ii) “But the court is likely to grant a stay where the appeal would otherwise be rendered nugatory ... or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the court”.
- (iii) “The court will grant it [a stay] 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.’”
- (iv) “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 the appellant is prevented from depleting his assets in the meantime, except for any necessary expenditure”.

57. In the *Matter of Contempt of Court of Donna Dorsett-Major* on 3 June 2020 [2020/CLE/gen/0000], this Court expounded similar principles at paragraphs [23] to [28] as follows:

“[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 to 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 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.”

[19.] The law is that a 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. In considering an application for a stay of execution pending appeal, I bear in mind that a court ought not to delay the execution of its judgment and stay what it has already pronounced upon, without good reason. A court ought not to cause a successful party to be delayed in obtaining the benefits of a judgment in its favour, without good reason. I also bear in mind that a court ought to exercise its power to stay execution of a judgment if it is in the interest of justice to do so.

[20.] In this case, the Applicants’ Notice of Application is premised on the grounds that they have a good prospect of success on appeal and that the Respondent will suffer no prejudice if the stay is granted. By skeleton arguments and written submissions, the Applicants seek to support the grounds of appeal and further submit that “to not obtain a stay would put the Defendants at risk of the appeal being nugatory should they succeed on it.”

[21.] The law is that an appeal does not operate as a stay: rule 12(1) Court of Appeal Rules. This therefore means that the mere filing of an appeal is not justification for a stay. That an appeal has a good prospect of success, is not the starting point or the only consideration, as the cases show. However, I will address briefly the grounds put forward by the Applicants, Deal and Deal.

Whether the Applicants have a good prospect of success

[22.] The submissions of Deal and Deal read in part:

1. Though there are multiple reasons for the Defendants appealing the subject Judgment, the central aspect of their appeal and submissions on application for

stay is the general rule that merger of the mortgage debt in a judgment does not prevent the mortgagee from seeking relief under the mortgage where such relief is not res judicata and or the mortgage debt has merged in the judgment only has application within six (6) years after the effective date of enforceability of the judgment in the first action. In other words, if the action under the mortgage is commenced outside of this six (6) year period, as submitted in so many ways during the hearing of the applications for relief under the Originating Summons, it would be in direct conflict with Section 5(3) of the Limitation Act, 1995, which says no action can be brought on a judgment after the expiry of six (6) years from the date the judgment became enforceable. In other words, after the said expiration of six (6) years, this rule or principle of the mortgagee being able to bring action under the mortgage has no application whatsoever, as the commencement of the action would be an action on the judgment and in direct conflict with or in breach of Section 5(3). Also, simply put, no action on the judgment means one cannot go outside of the action in which the judgment was granted to recover the judgment money or any part of it, or to in any way benefit from the existence of the judgment.

2. The present action, or the action in which the relief under the mortgage is sought, and in which the 27th. October Judgment was made, was commenced more than six years after the effective date of enforcement of the Judgment in the 2011 action.
3. The following assertions are reasonable and acceptable:
 - 1) The 27th. October Judgment does not consider and rule on the above submissions in respect of Section 5(3) of the Limitation Act.
 - 2) The present action was commenced more than six (6) years after the effective enforcement date of the Judgment in the 2011 action.
 - 3) The relief sought under the mortgage have the principal aim of paying off the Judgment money/debt and is rooted in the Judgment debt. The fact is that it is an action on the judgment cannot be denied.
 - 4) The aim of Section 5(3) is to limit or curtail further litigation outside of the action in which the judgment has been obtained after the said expiry of six (6) years in so far as trying to recover the judgment money or any part of it or in any way benefiting from the judgment through a fresh action.
 - 5) It was always open to the Bank, RBC, to commence the present action within the six (3) year period allowed by Section 5(3).
 - 6) There is no money owing under the mortgage and none can be claimed under it, as found by Her Ladyship. This and the other points about the aim of the relief sought under the mortgage is all about paying off the Judgment debt. It is clearly related to the judgment debt. The action comes into direct conflict with Section 5(3) in that the application for the relief sought is outside of the Judgment action and is an action on or rooted in the Judgment and for the purpose of benefiting from the Judgment. Without the existence of the Judgment there will be no need for the action and it would never come into existence.
 - 7) The appointment of a receiver and order for sale of the land has the very same purpose of paying off the judgment debt and are thus all rooted in the Judgment. As inferred already, without the existence of the Judgment, there is no need for the appointment of a receiver and the sale of the land. However framed, an action rooted in or related to the Judgment boils down to an action on the judgment, or in respect of it.

- 8) The Court in its first ruling made it clear that the Bank had the right to make it full application before the Court under the principle that a bank in the circumstances had a right to seek relief permitted under the mortgage. Having been allowed to make the present application and not to have its right of access to the Court be in any way stifled, as was the aim of the Court, that Bank made it's [sic] application. The application is tantamount to the hearing of the relief sought under the Originating Summons and brings an end to the trial of the Originating Summons. The Court granted the relief sought under the Originating Summons, except for the mortgage money claimed.

[23.] The grounds as set out in the Notice of Application are:

- i) The Intended Appellants have a good prospect of success in their appeal as are shown below in the grounds of the Intended Appeal:

- a) The Judgment is wrong in that the Court did not consider the effect of Section 5(3) of the Limitation Act and the Judgment is in violation of such Section. The Learned Judge in the Court below erred in law and in fact in that she entertained and or granted relief in a fresh action on the judgment, contrary to the said Section 5(3) of the Limitation Act, 1995; and on the wrongful application of the principle that a mortgagee's right to bring action under the terms of a mortgage is not affected or curtailed by the doctrine of merger.

- b) The Learned Judge in the Court below erred in law and in fact in that she failed to recognise or apply or properly apply the provisions of the Conveyancing and Law of Property Act and the general law relative to the appointment of a receiver and the sale of land by a mortgagee.

- c) The Learned Judge erred in law and in fact in that she failed to recognise and or stipulate in her said decision or order that the amount of the money to be collected by any means or process cannot exceed the judgment debt and is limited and or controlled by such debt.

- d) The Learned Judge erred in law and in fact in that she delivered the said decision or order without the same being based on or rooted in evidence or sufficient evidence.

(ii) The Respondent will suffer no prejudice as a consequence of stay of execution.

[24.] Ground (a)

Much of the contention of Deal and Deal centers in the reasoning that the present action was commenced after judgment had been rendered more than six years ago. They argue that every other remedy takes root in that judgment and is a means of paying off that judgment. They contend that the Limitations Act prevents the Bank from enforcing the judgment debt after the expiry of 6 years.

[25.] It is my determination that the grounds on this point are misconceived. The judgment under appeal does not concern the enforcement of a judgment debt and therefore Section 5(3) of the Limitation Act is inapplicable. The Originating Summons in this matter does not seek an enforcement of a judgment debt. Additionally, that the Bank could not seek further monetary damages in this action was a decision made by this Court in a previous ruling.

[26.] The Court also ruled that the Bank has an option of remedies which may be pursued in this action. The remedies follow the breach of the contract between the parties. The argument that the remedies (for example, sale and appointment of receiver) are for the purpose of executing the judgment debt is, to my mind, misconceived. The Bank has a right to pursue different remedies to enforce their entitlement under the contract. A judgment is one means of enforcing the entitlement. The other remedies do not exist to execute the judgment debt but are separate means of enforcing the contractual entitlement or, posed differently, separate remedies available for addressing the contractual breach.

[27.] Ground (b)

I note that the current action was for the grant of the remedies sought and not an action concerning the exercise of the remedies. At paragraph 35 of the written ruling, this Court found that section 21 of the Conveyancing and Law of Property Act allowed the Bank to pursue it several remedies.

[28.] Ground (c)

This ground also seems premised on the position that the remedy is for the purpose of executing the judgment debt which, to my mind, is a flawed position for the reasons given above. In any event, this was not an issue in the case and goes to the duty, obligations and powers of the Bank. Those duties, obligations and powers are remedy-specific. For example, a party may recoup reasonable costs on the exercise of a power of sale although such costs may not have been incurred, and would therefore not be recoverable, on the exercise of an alternative remedy.

[29.] Ground (d)

At paragraphs 39 to 40 of the written ruling, the Court considered the evidence of the Bank on its claim. The Court considered the evidence offered by Deal and Deal and found that the evidence of the Bank as to the obligation and contractual breaches were uncontradicted. It was on this basis that this Court determined that the Bank was entitled to the relief sought.

[30.] To my mind, there is no merit in any of the grounds set out and none of the grounds demonstrates a reasonable prospect of success.

Other grounds advanced for a stay

[31.] I turn now to the other grounds advanced for a stay, namely, that the Respondent will suffer no prejudice if the stay is granted and that the refusal of a stay would render the appeal nugatory.

[32.] A court must be satisfied by evidence that refusal of a stay would render the appeal nugatory and that the risk of injustice is to the Applicant or that the Respondent will suffer no prejudice. The onus is on the Applicant who makes such an assertion, to provide evidence of same. In this case, no such evidence has been laid before me.

[33.] The Affidavit of Nukeeba Cooper, filed in support of the application, seeks to assert that the Applicants have a good prospect of success. The Affidavit does not address how and why the refusal of a stay would “put the Defendants at risk of the appeal being nugatory” nor does it address why it is that the “Respondent will suffer no prejudice if the stay is granted.” These are bald assertions without more. There are no factual or legal arguments made on behalf of Deal and Deal in this regard. The onus is on an Applicant applying for a stay to demonstrate that it is in the interest of justice that the Applicant should be afforded the protection from imminent execution of a judgment. It is not sufficient for the Applicant to make a declaration or submission without more.

[34.] There is always the risk that enforcement of a judgment will cause inconvenience or temporary disruption. There is no evidence before me that enforcement of vacant possession in this instance is likely to cause substantial and irreparable harm. There is no evidence before me that restoration of possession would be impossible or that dispossession in this case is not remediable in damages. It may be that if a Defendant is successful on appeal, the outcome is easily remediable even if there is no stay: **The Bahamas Real Estate Association v George Smith**. There is no “automatic stay” on the allegation of a party.

[35.] In this case, there is no evidence before me of a good reason to impose a stay. The order of the Court is for the Defendants to deliver up vacant possession of the premises on November 28, 2025. The process of sale and the appointment of a Receiver/Manager are to be done under court supervision and by application. It seems to me that if the appeal is successful, possession can be returned to Deal and Deal and

prior to any court-approved sale. There is nothing to suggest that any displacement from the premises could not be compensated in damages. I do not find in this case, that the failure to order a stay would render the appeal nugatory.

[36.] A court must consider the risks of injustice to both parties. If a stay is granted, the Respondent would be deprived of vacant possession of the property as a preliminary step to the appointment of a receiver and a sale of the property. This is a case where the breach of the contract is uncontradicted. I ask myself whether it is in the interest of justice to grant a stay. I find that it is not. There is no evidence and argument before me as to why delaying this step and thereby delaying the Respondent's execution of its judgment would cause the Respondent no prejudice.

[37.] In this case, I have before me no good reason for departing from the starting principle which is that the successful party should not be deprived of the fruits of the judgment in its favour.

[38.] For the foregoing reasons, the application for a stay is refused.

COSTS

[39.] The Defendants/Applicants have been unsuccessful on this application. The Claimant/Respondent has successfully resisted the Application. The general rule is that the unsuccessful party should pay the costs of the successful party. Taking into account the provisions of Part 71, CPR and in particular the provisions of Rule 71.6, I find no reason to depart from the general rule. Therefore, in this matter, Deal and Deal shall pay the Bank's costs, to be assessed if not agreed.

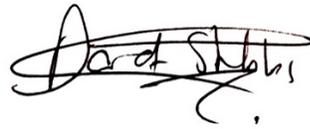
ORDER

[40.] The order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The Application for leave to appeal and for a stay pending appeal is refused.
2. The Defendants/Applicants shall pay the Claimant's/Respondent's costs of and occasioned by this application, such costs to be assessed if not agreed.

Dated this 1st day of December 2025.

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

Carla D. Card-Stubbs, J
Justice