

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Claim No. 2024/CLE/gen/00024

Between

DAVID PUGH

AND

LISA PUGH

AND

DEVRON PUGH

Plaintiffs

AND

MERONACER E. ROLLE MORLEY

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr Rouschard Martin for the Claimants  
Mr. Brian Dorsett for the Defendant

Hearing Date: 19 November, 2025

*Civil Procedure- Appeal— Stay of Execution — Jurisdiction — Functus Officio — Residual Jurisdiction*

**DECISION**

**Darville Gomez, J**

**Background**

- [1.] This action arose out of a Rent to Own Contract executed in August, 2014 among the three Plaintiffs and the Defendant for the purchase of property situate at Lot No. 2 Romer Street in Fox Hill, Nassau for \$135,000. The property was subject to a mortgage with First Caribbean

International Bank however, this was not referred to in the said Contract. The Plaintiffs alleged that they acted to their detriment in their payment of about \$100,000 in accordance with the said agreement, in addition to the improvements they made to the property. Therefore, they claim that they have acquired an equitable interest in the property. The Defendant counterclaimed for the arrears of the rent.

[2.] In a written Judgment (the “Judgment”) I found inter alia, (i) that the Plaintiffs had not proven that they acquired an equitable or any interest whatsoever in the subject property; (ii) that the Plaintiffs owed the Defendant rent in the sum of \$44,950 for the period 2018 to October, 2023; (iii) delivery up of possession of the subject property to the Defendant within sixty (60) days subject to the payment by the Plaintiffs of rent of \$2,600 for the period November 13, 2023 – January 12, 2024 and (iv) costs to be assessed unless agreed by the parties. The Defendant’s had applied for summary judgment which was unsuccessful, therefore, I awarded those costs to the Plaintiffs to be paid by the Defendant which I later assessed at \$3,600. I awarded the Defendant costs of the action to be paid by the Plaintiffs which I later assessed at \$16,000.

[3.] Later, on the 12 March, 2024 upon application by the Plaintiffs I granted a stay of the Judgment on the following conditions:

- (i) Payment of \$2,6000 by 12<sup>th</sup> March, 2024;
- (ii) Payment of \$1,300 by 15<sup>th</sup> March, 2024;
- (iii) Further rental payments of \$1,300 to be paid by the 28<sup>th</sup> of every month;
- (iv) Costs of \$800 to the Defendant by a date to be agreed between the parties;
- (v) Failure to comply with any of these conditions by the Plaintiffs will render the stay nugatory.

[4.] The Defendant by a Notice of Application filed on 10 October, 2025 sought pursuant to the Overriding Objective of the Civil Procedure Rules 2022 and under the inherent jurisdiction of the Court for an Order Lifting the Stay granted in these proceedings to the Plaintiffs on or about the 12 March, 2024.

“2. The grounds of the application are as follows:

- a. The Plaintiffs filed a Notice of Appeal Motion in the Court of Appeal on December 22, 2023 appealing the decision of the Learned Judge, Madam Justice Camille Darville-Gomez,
- b. The Court granted the stay of proviso that the plaintiffs would pay the monthly sum of \$1,300.00 to the Defendant representing the Mortgage payments until the appeal was adjudicated.

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- c. The Plaintiffs missed several of the monthly payments and are currently in arrears more than \$1,900.00.
- d. Additionally, the Plaintiffs have done nothing to adjudicate the Appeal since settling the record on the 26<sup>th</sup> February, 2024.

3. The Defendant will rely on the contents of the Affidavit of Mr. Wellington Olander filed herein which will be used at the hearing of the application.

4. The Claimants are seeking:

- i) An order for the stay of Execution to be lifted.
- ii) The Defendant be at Liberty to enforce the Judgment entered by this Honourable Court
- iii) Costs for the Application”

[5.] It was supported by an affidavit of Wellington Olander on 22 October, 2025, who had this to say:

- “3. This Honourable Court rendered a Judgment in favor of the Defendant on or about the 13<sup>th</sup> day of November, 2023.
- 4. The Plaintiffs appealed the said Judgment by filing a notice of Appeal Motion on or about the 22<sup>nd</sup> day of December, 2023.
- 5. A Summons to settle the Record was sealed on the 5<sup>th</sup> January, 224 returnable on the 2th January, 2024 and heard on January 24<sup>th</sup> and 26<sup>th</sup> February, 2024 before the Deputy Registrar of the Court of Appeal. Attached hereto and marked “WEO-1” is a copy of the Summons to settle the Record.
- 6. My Chambers received the order from the Summons to settle the Record sometime in late February, 2025. Attached hereto and marked as “WEO-2” is a copy of the Order.
- 7. Since having received the Order relative to settling of the Record, my Chambers have not received anything relative to the Appeal in the Court of Appeal or from Martin Global, Counsel for the plaintiffs indicating that the Appeal is being processed or moved along.
- 8. More than one year has passed and Counsel for the Appellants/Plaintiffs have not made any efforts to have the appeal listed for Hearing.
- 9. Enquiries were made by my Chambers to Mr. Edmund Turner, Registrar of the Court of Appeal by Letter dated July 11, 2025 for an update on the status of the outstanding appeal. Attached hereto and marked as “WEO-3” is a copy of the said Letter.
- 10. After more than one month had passed and there being no formal response from the Registrar, or his office, Mr. Brian M. Dorsett called the Court of Appeal and spoke with

the Registrar's Secretary who advised that while the Bond was paid by the Appellants/Plaintiffs, the Affidavit of Compliance was not filed.

11. I am advised and do verily believe that the Affidavit of Compliance is a mandatory document that must be filed before any appeal is set down for Hearing.
12. I do not believe that this is an oversight, as Counsel for the Appellants/Plaintiffs is a senior Lawyer with at least 20 years call.
13. Additionally, the Plaintiffs have consistently made the payments late, which automatically attracted a late fee penalty.
14. I am advised and do verily believe that this issue was raised by Mr. Dorsett and Mr. Martin sometime in July 2025 and Mr. Martin promised that further payments would be made on or before the 28<sup>th</sup> of each month.
15. The payments continue to be received after the due date, thus attracting a late fee and to date the account is in arrears at least \$3,200.00.
16. The Plaintiffs made 2 payments (July 1, and August 29, 2025) in the amount of \$1,000.00 thus creating a shortfall of \$600.00. To date the outstanding has not been received.
17. There appears to have been no payment for the months of June and September of 2025, thus leaving an outstanding balance of \$3,200.00. Attached hereto and marked as "WEO-4" is a copy of the receipts written to the Pughs for the year 2025.
18. In the premise, we are seeking an order for the removal of the Stay of Execution to enable the Defendant to take possession of the subject property.

[6.] The Plaintiffs have not filed an affidavit in response but instead submitted, by way of preliminary objection, that the court became *functus officio* once the stay was granted and that, following the filing of the appeal in the Court of Appeal, jurisdiction over the application to lift the stay lies exclusively with that court.

### **Law, Discussion and Analysis**

[7.] While the issue before the Court is not whether a stay ought to be granted in the proceedings, it is a useful starting point to address the authority upon which the Court granted the stay of its judgment in March, 2024.

[8.] Rule 12(1)(a) of the Court of Appeal Rules makes it clear that the filing of an appeal does not operate as an automatic stay of execution, and that an application for a stay may be made either to the Supreme Court or to the Court of Appeal. It provides:

“(1) Except so far as the court below or the court may otherwise direct:

(a) *An appeal shall not operate as a stay of execution or of proceedings under the decision of the court below.*”

[9.] The power of the Supreme Court to grant a stay of proceedings is contained in various provisions including section 16(3) of the Supreme Court Act which 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, either of its own motion or on the application of any person whether or not a party to the proceedings.”*

[10.] Similarly, Rule 26.1(2)(q) of the Supreme Court (Civil Procedure) Rules, 2022 provides for the Court’s general case management powers which include the ability of the Court to:

*“Stay the whole or part of any proceedings generally or until a specified date or event.”*

[11.] Section 29 of the Court of Appeal Rules provides:

*“In any cause or matter pending before the court, a single judge of the court may, upon application, make an order -*

(a) *fixing security for costs, whether or not upon application to review a decision of the Registrar made under paragraph 13(1)(b)(ii);*

(b) *for the issue of a certificate that any point of law involved in an appeal is one of general public importance;*

(c) *for a stay of execution on any judgment appealed from pending the determination of such appeal;*

(d) *for an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal, pending the determination thereof;*

(e) *for an extension of time; and*

(f) *on any other interlocutory application.*

(2) *Every order made by a single judge of the court in pursuance of this rule may be discharged or varied by the court.*

*(3) An application made under paragraph (1) shall be made by way of summons and shall be supported by affidavit, a copy of which shall be served with the summons.*

*(4) Where an application is made by summons, an order may be made adjourning the hearing into open court.*

*(5) Where an application made by summons is heard by the court, it shall be treated as if it were a motion, and it shall be heard in open court.*

[my emphasis added]

- [12.] In the instant action, the Plaintiffs obtained a conditional stay of execution from this Court on 12 March 2024. The Defendant now seeks to have that stay lifted, alleging non-compliance with the conditions imposed. The Plaintiffs, however, raise a preliminary objection. They contend that once this Court granted the stay, it became *functus officio*, and that jurisdiction over any application to lift the stay lies exclusively with the Court of Appeal following the filing of the appeal.
- [13.] The issue for determination, therefore, is whether this Court retains jurisdiction to revisit the stay notwithstanding the appeal having been filed, or whether such jurisdiction now rests solely with the appellate court.
- [14.] Counsel for the Claimant, while not citing authority, submitted that the Court became *functus officio* upon granting the stay in March 2024. On that basis, he argued that this Court lacks jurisdiction to lift the stay now sought by the Defendant, and that the proper forum for such an application is the Court of Appeal.
- [15.] The doctrine of *functus officio* establishes that once a court has delivered its final judgment, it has exhausted its jurisdiction over the merits of the matter. Nevertheless, the common law recognizes that a court may retain a limited residual jurisdiction in certain circumstances. In **Junkanoo Estates Ltd v UBS (Bahamas) Ltd SCCivApp No. 24 of 2018**, the Court of Appeal discussed *functus officio* and acknowledged that courts may retain residual jurisdiction in limited circumstances, particularly to ensure justice and prevent abuse of process. This residual power allows a court to revisit interlocutory matters even after a final order, where necessary to give effect to its own rulings. Likewise, the Court of Appeal in hearing the criminal appeal, **Daniel Coakley v R SCCrApp No. 15 of 2017** determined that there exists a narrow residual jurisdiction to act in exceptional circumstances, for example, where a material irregularity or real injustice would otherwise result. These authorities support the proposition that a court is not entirely stripped of power once *functus officio* applies; rather, it retains a limited supervisory or corrective jurisdiction.

[16.] Justice of Appeal Madame Maureen Crane-Scott in **Junkanoo Estates Ltd. v UBS (Bahamas) Ltd.** had this to say:

*“57. We observed that while Mr. Turnquest was correct that a Court of Appeal which has finally disposed of an appeal before it become functus officio, we do not accept his submission that this Court is devoid of any authority to deal any further with the appellate matter, save for any application for leave to appeal to the Privy Council.”*

*58. The latter submission clearly overlooks this Court’s undoubted residual jurisdiction as an intermediate appellate court which may be invoked in exceptional circumstances, to avoid real injustice. In that regard, Mrs Starostenko was obviously on good ground when she referred us to the England Wales case of *Taylor v Lawrence* and the two Bahamian authorities (*Smith and Maycock*) where the jurisdiction had been invoked.*

*59. That said, what was very clear to us, however, was that this Court’s residual jurisdiction is in turn linked to a discretion which (as Woolf, CJ explained in *Taylor v Lawrence*) enables us to confine the use of that exceptional power only to those cases in which it is appropriate for it to be exercised.”*

[17.] Against this backdrop, it is clear that the present application does not fall within the narrow category of exceptional circumstances contemplated by the authorities. No material irregularity or risk of real injustice arises that would justify invoking residual jurisdiction.

[18.] While I acknowledge that a theoretical discretion exists to revisit interlocutory orders, in my judgment the proper construction of the Court of Appeal Rules is that once an appeal has been filed, jurisdiction over stays of execution passes exclusively to the Court of Appeal. Having granted the stay in March 2024, this Court is *functus officio*, viz., no longer retains authority over that order, and any application to lift or vary it must be made to the appellate court.

[19.] For these reasons, I uphold the Plaintiffs’ preliminary objection and dismiss the Defendant’s application to discharge the stay for want of jurisdiction.

[20.] I award costs to the Plaintiffs, which I assess at \$750, noting that they filed no evidence and relied solely on brief oral submissions without reference to authorities.

Dated 11<sup>th</sup> day of February, 2026



Camille Darville Gomez  
Justice