

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2012/CLE/GEN/0932

BETWEEN

WISLEY LUBIN

Applicant/Claimant

AND

TRENCHMASTERS LIMITED

AND

BRANFORD HENFIELD, JR.

AND

BRANFORD HENFIELD, SR.

Respondents/Defendants

Before: The Honourable Justice Camille Darville Gomez

Appearances: Ms Darrell Taylor for the Claimant
Mrs. Genell Sands for the Defendants

Hearing Date:

Civil Procedure — Appeal — Leave to appeal — Principles governing grant of leave — Realistic prospect of success — No novel point of law — Discretionary case management orders

RULING

DARVILLE GOMEZ, J

[1.] By a Notice of Application filed on 17 September, 2025 (the “Notice”) the Applicant sought leave to appeal against my order dated the 28th day of March, 2025 striking out the action and for refusal to grant relief from sanctions. The Applicant sought the following orders:

- (i) Pursuant to section 11(f) of the Court of Appeal Act, Ch. 52 and Rule 27(5) of the Court of Appeal Rules, 2005 that leave be granted to the Applicant to appeal against the whole of the Judgment and Orders of this Honourable Court delivered and made on the 28th day of March, 2025 (the “interlocutory Judgment”), including the order for costs.
- (ii) Pursuant to the inherent jurisdiction of this Honourable Court that there be a stay of execution of the said interlocutory Judgment and orders pending the hearing and final determination of the Applicant’s intended appeal to the Court of Appeal, or further order of this Court.
- (iii) The costs of and occasioned by this Application be costs in the cause of the intended appeal.
- (iv) Such further and other relief as this Honourable Court may deem just and equitable.

[2.] The Applicant set out several grounds for the application including that the proposed appeal has a realistic prospect of success because the decision to dismiss the claim was either plainly erroneous and/or constituted an improper exercise of judicial discretion for the various reasons which were set out in the Notice. Further, that the proposed appeal raises issues of general principle and of public importance which merit authoritative clarification by the Court of Appeal and for a stay of execution in order to preserve the efficacy of the Applicant’s intended appeal and to prevent it, if ultimately successful, from being rendered nugatory.

[3.] It is supported by an Affidavit of the Applicant filed on 18 September, 2025.

[4.] The governing principles are well settled. Leave to appeal will only be granted where the proposed appeal has a realistic, and not fanciful, prospect of success or raises a question of law of general public importance, as established in **Smith v Cosworth Casting Processes Ltd (1997) 4 All ER 840**. The Court of Appeal of The Bahamas has recently reaffirmed this approach in **Carla Anita Cecilia Braynen Turnquest v Water and Sewerage Corporation BS 2024 CA 83** and **Junkanoo Beach Estates Ltd v UBS (Bahamas) Ltd BS 2024 CA 114 at [24]**, emphasizing that leave should not be granted merely to re-argue discretionary case management rulings.

[5.] In **Maria Iglesias Rouco and anor. v Juan Busnadiego and anor. [2021] 1 BHS J. No. 52**, the Supreme Court confirmed the unfettered nature of case management powers given to trial judges and the limited scope of appellate intervention. An appellate court will not interfere with the discretion of a lower court unless the judge has misdirected himself on law, failed to take relevant factors into account, taken into account irrelevant factors, or reached a decision that is plainly wrong. This principle was recently reaffirmed by the Privy Council in **Rubis Bahamas Ltd v Lillian Antionette Russell [2025] UKPC 13**.

[6.] These principles echo the guidance of the English Court of Appeal in **Tanfern Ltd v Cameron-MacDonald [2000] 1 WLR 1311**, where it was held at [21] that permission to appeal

will only be given where the court considers that an appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard.

- [7.] Applying these settled principles to the present case, I am not satisfied that the proposed appeal raises any arguable ground with a realistic prospect of success. The record shows that the Claimant was ordered to undergo an independent medical examination, yet he intentionally disregarded that order. As a result, two trial dates were lost. The reasons advanced for non-compliance were unjustifiable and demonstrated in my view a deliberate refusal to comply with the Court's order.
- [8.] In those circumstances, the strike-out and refusal to grant relief from sanctions was therefore a proper exercise of discretion, consistent with established principles governing relief from sanctions and case management. No novel point of law or issue of general importance arises. The application is, in substance, an attempt to re-litigate discretionary findings, which is not a proper basis for leave.
- [9.] The Applicant also seeks a stay of execution of the strike-out order pending appeal. The principles governing the grant of a stay are well established. A stay will only be granted where necessary to ensure that the appeal, if successful, is not rendered nugatory (**Wilson v Church (No. 2) (1879) 12 Ch.D. 454 at 458**). The Court must balance the risk of injustice to the appellant if a stay is refused against the risk of prejudice to the respondent if a stay is granted.
- [10.] Balancing the respective interests of the parties, I have already concluded that this appeal does not stand a real prospect of success. In those circumstances, I decline to grant a stay. The strike-out order and refusal to grant relief from sanctions was a proper exercise of discretion following deliberate non-compliance, and the Applicant has shown no realistic prospect of success on appeal. A stay would serve no purpose: the proceedings have already been extinguished, and there is nothing left to preserve.
- [11.] I thank the parties for their helpful submissions.
- [12.] For the foregoing reasons, I make the following orders:

IT IS ORDERED that:

1. Leave to appeal is hereby refused.
2. The Application for a stay of execution is refused.
3. Costs of this application shall be paid by the Applicant to the Respondents to be assessed on the papers, if not otherwise agreed.

Dated this ^{20th} day of March, 2026



Justice Camille Darville Gomez