

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Probate Division**

2013/PRO/npr/FP/00008

IN THE MATTER of the Estate of CARLTON EUGENE LIGHTBOURNE SR.
late of no. 312 Halibut Street in the City of Freeport in the island of Grand Bahama
one of the islands of the Commonwealth of The Bahamas, deceased

AND IN THE MATTER of Section 63 of the Probate and Administration of
Estates Act, 2011

B E T W E E N

CARLTON EUGENE LIGHTBOURNE JR.

Claimant

AND

**EUGENIA TEKERA LIGHTBOURNE
PHILIP ANTHONY LIGHTBOURNE
SAMUEL ROOSEVELT LIGHTBOURNE
DEVIN DINO ALMONDO LIGHTBOURNE**

Defendants

Before: The Honourable Mister Justice Andrew Forbes

Appearances: Tashana Wilson for the Claimant

Osmond Johnson for the First Defendant

Hearing date(s):

RULING

FORBES, J

[1.] This is the Court's decision with reference to the Claimant's application for Leave to Appeal filed on the 23 February, 2026. Supported by the Affidavit of Carlton Eugene Lightbourne filed on the 23 February, 2026, seeking leave to appeal, stay of the 2 February, 2026 Order and costs to be paid by the estate.

[2.] The Courts Order was contained in paragraphs [24.] – [26.] of its ruling (“the Ruling”) and was as follows:

[24.] The Court so orders:

- a. The Claimant is to purchase the home for the amount of \$125,000 payable to the estate.
- b. The Registrar is to execute the relevant Conveyance/transfer documents on behalf of the estate to facilitate the sale.
- c. Further, the repairs of the home in the amount of \$15,802.30 of the purchase price are to be deducted from the purchase price. Representing the costs for the hot water heater repair, plumbing repair, windows and roofing repairs.
- d. The Claimant is to complete this transaction within two (2) months, should the Claimant not complete the transaction and have not obtained permission from the Court for an extension, providing a valid reason. The Court will appoint an independent trustee to oversee the estate and the order made on the 26 January, 2024 be struck.

[25.] Further, The Court sanctions the Claimant for breach of the order of the Court dated the 31 May 2022. As a result of the sanction, any proceeds of the sale of the property is withheld from the Claimant and is to be shared equally amongst the remaining beneficiaries.

[26.] Costs to the Defendant to be taxed not agreed.

INTRODUCTION

[3.] The grounds of appeal are reproduced below:

1. The Learned Judge erred in law in invoking and applying the discretionary case management provision of the Supreme Court, Civil Procedure Rules 2022, rule 26.2 harshly against the Claimant without demonstrating that a lesser sanction would have been inadequate. Further, the judge wrongly evaluated the claimant’s explanation for non-compliance.
2. The Learned Judge failed to give adequate or sufficient reasons why the Claimant’s evidence was rejected. Further the court failed to address material issues that were raised by the affidavit of the Claimant and ruled on all the reliefs sought by the Claimant. The learned judge failed to express why the Claimant's reason for non-compliance was cursory relative to the consequences.
3. The Learned Judge erred in failing to consider, or adequately consider substantial affidavit evidence indicating that the estate was insolvent, and in failing to apply the statutory framework governing the administration of insolvent estates.
4. The Learned Judge misdirected himself in fact by rejecting the Claimant's evidence concerning his financial inability and unemployment without adequate analysis or reasoned assessment and by concluding that the Claimant’s conduct was “slothful”.
5. The Learned Judge's conclusions were against the weight of the evidence before the court (numerous affidavits, history of the matter). The Learned Judge’s conclusions as it relates to cost are against the weighing of the outcome of the case for the parties.

[4.] The Affidavit of Cyril Lightbourne Jr. is summarized below:

- a. That the proceedings in the Supreme Court concerned the administration and distribution of the estate, along with competing applications;
- b. That leave to appeal is required;
- c. That he waited for the written decision to be posted on the Supreme Court website for review of the same;
- d. That having reviewed the ruling, a number of issues raised in his application were not addressed and the ruling on cost in the written decision differed from that of what he heard;

- e. That he believes the appeal has a realistic prospect of success and the issues raised are of general procedural importance to the proper application of case management powers of the CPR;
- f. That the Court is aware of the numerous difficulties that he has suffered during the administration of the estate;
- g. That granting a stay maintains the status quo pending the appeal and creates no prejudice that cannot be compensated in costs; and
- h. That the application is made in good faith and not to create a further delay in having the estate wound up.

SUBMISSIONS

[5.] Respondent laid over written skeleton arguments to the Court; however, both Counsel made oral arguments to the Court which is summarized below.

- a. Counsel for the Claimant argued that the costs order made in the ruling was different from that pronounced in the oral ruling of the Court;
- b. That the application had a strong prospect of success, as the Plaintiff's beneficial interest in the estate was removed;
- c. That there was a discrepancy in the timeline

[6.] The Court read and considered all the arguments of counsel.

Law

[7.] Firstly, the requirement for leave to appeal only applies to interlocutory orders. Section 11(f) of the Court of Appeal Act states:

"11. No appeal shall lie ...,

(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) 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."

[Emphasis added.]

Therefore, a final order does not require leave to appeal.

[8.] When determining what constitutes a final order, the decision of **Peace Holdings v First Caribbean Bank** [2014] 2 BHS J No. 73 is helpful, as it applied the Privy Council ruling of **Salaman v Warner and Others** [1891] 1 QB 734 at 735, the Court of Appeal determined that:

'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 purposes of these

rules it is final. On the other hand, if their decision, if given in 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’.”

[9.] As the matter was not disposed of, the Ruling is interlocutory in nature and thus requires leave to appeal.

[10.] The law concerning leave to appeal is well established. The test to be applied for the consideration for the grant of leave to appeal is stated in **Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments)** [1999] 1 WLR 2 at para 10-11:

“The general test for leave

10. [T]he general rule applied by Court of Appeal, and this is the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are where a case raises questions of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for consideration.

11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave.”

[Emphasis added]

[11.] Further, when examining what is considered an ‘exceptional circumstance’, **Smith v Cosworth Casting Process Limited** (1997) 4 All ER 840 as the principles established are as follows:

(1) The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.

(2) The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarifying.”

[Emphasis added]

[12.] The test is further summarized in the case of **Keod Smith v Coalition to Protect Clifton Bay** SCCivApp. No. 20 of 2017 at paragraph [23] where it is stated the considerations before the Court are:

“whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying”.

[13.] Thus, for leave to be granted, the Court must be satisfied that there is a reasonable chance of success or more plainly an arguable case. Moreover, where there is no reasonable prospect of success the Court may grant leave in exceptional circumstances as a concern of public interest or interpretation of law.

[14.] As an appeal does not automatically operate as a stay of the proceedings pursuant to Rule 12(1) (a) of the Court of Appeal Rules, 2005, the Claimant sought a stay of the decision in this application.

[15.] The Court has the power to stay proceedings pursuant to its case management powers provided for by the CPR. Specifically, Part 26.1 (2) (q) states:

(2) Except where these rules provide otherwise, the Court may —

.

..

(q) stay the whole or part of any proceedings generally or until a specified date or event;

[16.] Further, Part 43.12 gives parties whom a judgment or order has been made, the right to seek a stay of execution of the judgment, order or other relief. Specifically, Part 43.12 states:

Without prejudice to rule 48.1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

[17.] Further, when speaking to the Courts discretionary power to grant a stay, Halsbury's Laws of England 4th Edition, Volume 17 and paragraph 455 states:

The court has an absolute and unfettered discretion as to the granting or refusing of a stay, and as to the terms upon which it will grant it, and will as a rule, only grant a stay if there are special circumstances, which must be deposed to on an affidavit unless the application is made at the hearing.

[18.] The determination to grant a stay is completely at the discretion of the Court. As held in the case of **Linotype-Hell Finance Ltd. v Baker** [1993] 1 WLR 321 at page 323, *Staughton L.J.* opined:

"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."

[19.] A stay will only be granted in special circumstances, so as not to deny the successful Plaintiff of the fruits of his victory (see **Smith v. The Bahamas Real Estate Association** [2015] 2 BHS J No. 8; **Linotype-Hall** *supra*; and **Citibank NA v. McDonald** [2004] BHS J. No. 452).

[20.] Therefore, if there is a risk of great injury of being ruined or injured seriously the Court may exercise its discretion. Further, the court may grant a stay if it is just to do so where there have been matters which occurred since the date of the Judgement.

Analysis

Leave to appeal

[21.] The first consideration of the Court is the likelihood of success of the intended appellant's appeal. The first ground which the applicant intends to proffer is the *harshness* of the Court's use of its discretionary power to sanction a litigant. The first ground ought to be considered with grounds three, four and five as they are relevant to what the Court considered.

[22.] The Court notes that the Order to which the Applicant is in breach was not and unless order; however, there was a specified time for compliance with the order. Therefore, the Court brought an application on its own motion under its case management powers specifically 26.2 of the CPR. The Court identified the orders, informed the parties of its intention to sanction the Applicant should a breach be found and gave the parties 7 days to supply the Court with arguments and evidence.

[23.] The third ground of the Applicant is that the Court did not consider the rules of administration with reference to insolvent estates. However, the general administration of this estate does not fall within the scope of this action. This particular action began as a result of the Applicant seeking permission for the sale of the estate's property. The proceeds, distribution or division thereof, would follow subsequent to the necessary payments pursuant to the statutory framework.

[24.] The third ground, was that the Court did not consider the financial hardship of the Applicant. The Court considered this evidence at paras [6.] and [20.] of its ruling. Therefore, the Court cannot see merit in this ground.

[25.] The final ground related to the discrepancy between the Court's oral pronouncement as to costs and its written decision. Upon review of the record and the submissions of the parties the Court acknowledges this error. It will perfect the order with the corrected decision on costs that they be borne by its own parties. The Court acknowledged this discrepancy and executed the order that reflects that each party should bare their own courts.

[26.] Moreover, the Court notes that the Claimant admits in the affidavits that he did not complied with the orders of the Court and that even after being found to be in breach of the Court Order, the Claimants made no application for relief from sanctions, which could be made at any time. Specifically, Rule 26.8 (2) of the CPR states:

(2) If a party has failed to comply with any of these rules, a direction or any order, any express sanction for non-compliance imposed by the rule, direction or the order has effect

unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.

[27.] Generally where a court considers whether relief from sanctions are appropriate where an order of the court is breached, the Court must consider the seriousness of the breach, the reason for the breach, and consider all the circumstances which would allow the matter to be dealt with justly (see the ruling of *Chief Justice Ian Winder Andrew Smith et al v First Caribbean* 2020/CLE/gen/00662 which applied **Denton v TH White Ltd** [2015] 1 All ER 880.

67. A judge should address an application for relief from sanctions in three stages:

- i) the first stage is to identify and assess the seriousness and significance of the “ failure to comply with any rule, practice direction or court order” which engages rule 26.8(1).
- ii) the second stage is consider why the default occurred, i.e., the reason for the breach.
- iii) the third stage is to consider all the circumstances of the case so as to enable the Court to deal justly with the application. (Denton at para 24).

[28.] At no point in the evidence of the Claimant was it proffered that the order was not breached. Rather, the Claimant gave reasons, specifically impecuniosity and alleged interference with his duties both of which the Court considered and found not to be viable reasons. However, as stated previously, the Claimant had the right to seek relief from sanctions and opted not to, could’ve sought an extension of time prior to the breach but did not. Rather the evidence showed that he moved to evict a beneficiary from an asset she partially owned and after doing so, still has not complied with the order of the Court.

[29.] Generally, where a court exercises any of its discretionary powers, in this instance whether to sanction a party, a court of appellate jurisdiction must take care not to depart from the lower courts finding of facts (see **Bahamas air Holdings Ltd v Messier Dowty Inc.** (2018) UKPC 25) unless the decision is plainly wrong (**Beacon Insurance Company Limited v Maharaja Bookstore Limited** [2014] UKPC 21).

[30.] The second consideration of the Court is whether there is any exceptional circumstances that deem it necessary to grant leave to appeal.

[31.] In this instance, the ruling of the Court was supported by the evidence and the decision of the Court was reduced to writing and the Court considered, in the ruling, the matters that were alleged to not be considered. It is the Court’s view that the appeal would not have a reasonable prospect of success as the law on the use of a Court’s discretionary powers is well established and that there is no exceptional circumstance that is before the Court that would warrant the grant for leave to appeal.

Stay

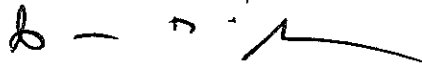
[32.] The Court sees no change in circumstances nor hardship that ought to prevent the execution of the order. Further, during the determination of this application the Claimant proffered the order for execution and submitted a further application based on the 2 February, 2026 pronouncement. Therefore, the Court sees no evidence in support of the stay of execution of this order.

Disposition

[33.] The Court in considering the applicable law and evidence above, denies the application for leave to appeal and the application for stay.

[34.] Each party bears its own costs.

Dated this 31st day of July, A.D. 2026

A handwritten signature in black ink, appearing to read 'A. Forbes', is written over a horizontal line.

The Honorable Justice Andrew Forbes