

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2015/CLE/gen/No.01451

2014/CLE/gen/No.01620

B E T W E E N

JUNKANOO ESTATES LTD

First Claimant

AND

YURI STAROSTENKO

Second Claimant/Applicant

AND

IRINA TSAREVA-STAROSTENKO

Third Claimant/Applicant

AND

UBS (BAHAMAS) LTD (In Voluntary Liquidation)

Defendant/Respondent

(Actions and Counterclaim consolidated by Order of Judge dated 4 November 2015)

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Irina Tsareva Starostenko and Yuri Starostenko,
Applicants/Intended Appellants/Claimants, pro se
Chizelle Cargill of Counsel, Respondent/Defendant

Hearing date: **July 23, 2025**

Civil Procedure and Practice — Reconsideration of judgment — Inherent jurisdiction — Re Barrell jurisdiction — Scope of court's power to revisit perfected orders — Whether allegations of misrepresentation, fresh evidence and intervening events justify substantive reconsideration of a final

ruling — Supreme Court Civil Procedure Rules 2022, Part 42.10 — Slip rule — Distinction between correction of accidental errors and rehearing on the merits.

Civil Procedure and Practice — Leave to appeal — Interlocutory discretionary decisions — Test for grant of leave — Whether proposed appeal has realistic prospects of success — Whether proposed grounds disclose error of law, material factual error, or issue of public importance requiring appellate consideration — Stay pending appeal.

Mortgage — Mortgagee’s power of sale — Court-supervised marketing of mortgaged property — Allegations of fraud, irregularity and oppression — Whether permission to market pending trial improperly interferes with equity of redemption — Circumstances in which court may restrain exercise of mortgagee’s remedies.

The Claimants applied for reconsideration of a ruling dated 4 March 2025 which permitted the Defendant mortgagee to market certain mortgaged property under the supervision of the Court and dismissed related applications for injunctive relief. The Claimants contended that the ruling had been influenced by material misrepresentations, that new facts had arisen following the ruling, including the fixing of a trial date, and that the Court possessed inherent or supplemental jurisdiction to revisit the decision. The Claimants also sought leave to appeal from the oral judgment delivered on 16 December 2024, the ruling of 4 March 2025, and the consequential order entered on 18 March 2025, together with a stay pending appeal. The Defendant opposed both applications, submitting that the reconsideration application constituted an impermissible attempt to reopen a final judgment and that the proposed appeal disclosed neither realistic prospects of success nor any issue warranting appellate intervention.

HELD: *The application for reconsideration, the application for leave to appeal, and the application for a stay pending appeal are dismissed.*

1. Part 42.10 of the Supreme Court Civil Procedure Rules 2022 embodies the “slip rule” and permits the correction of clerical mistakes, accidental omissions, or drafting errors. It does not confer a general jurisdiction to revisit substantive reasoning, reweigh evidence, or rehear issues already determined.
2. The jurisdiction discussed in **Re Barrell Enterprises** is exceptional and does not establish a broad power to reopen perfected judgments merely because a disappointed litigant alleges error, relies on fresh evidence, or points to subsequent developments. Fresh evidence and allegations directed to the correctness of the decision are ordinarily matters for an appellate court.
3. The Claimants’ allegations of material misrepresentation, their reliance on developments occurring after the ruling, and their challenge to the Court’s evaluative conclusions were directed to the substantive merits of the decision and not to any clerical mistake or accidental omission capable of correction under Part 42.10.
4. The fixing of a future trial date did not undermine the legal or factual basis of the ruling permitting supervised marketing of the mortgaged property and did not constitute the type of exceptional circumstance capable of justifying reconsideration of the perfected order.
5. An application for leave to appeal requires the applicant to demonstrate a realistic prospect of success, or that the appeal raises an issue of public importance or a question of law requiring clarification. Mere disagreement with a discretionary balancing exercise or with the judge’s assessment of the evidence is insufficient.
6. The proposed grounds of appeal disclosed no arguable error of law, misapplication of principle, material misunderstanding of the facts, or decision outside the ambit of reasonable judicial discretion. The application sought substantially to relitigate issues already determined by the Court.
7. The authorities concerning restraint of a mortgagee’s power of sale establish that judicial intervention is exceptional and requires properly pleaded and particularised allegations of fraud, irregularity, or oppressive conduct affecting the exercise of the power itself. No such basis was demonstrated in relation to the Court-supervised marketing process authorized by the ruling.
8. The order authorized only marketing of the property under the Court’s supervision and required Court approval before any final sale could occur. The Claimants therefore failed to establish any risk of irreversible prejudice sufficient to justify either leave to appeal or a stay.

RULING

Card-Stubbs J

INTRODUCTION

- [1.] This ruling concerns (i) the Claimants' application, filed on 20 June 2025, for reconsideration of this Court's ruling dated 4 March 2025 and the consequential order entered on 18 March 2025 and (ii) the Claimants' amended application, filed on 30 June 2025, for leave to appeal the oral judgment pronounced on 16 December 2024, this Court's ruling dated 4 March 2025 and the consequential order entered on 18 March 2025. The application for leave also seeks a stay pending appeal.
- [2.] On September 17, 2026, this Court delivered its decisions with reasons to follow. This judgment sets out the decisions as well as the reasons for the decisions.
- [3.] For the reasons set out below, the application for reconsideration of the order is refused.
- [4.] For the reasons set out below, the application for leave to appeal and for a stay pending leave is refused.

BACKGROUND

- [5.] The applications arise from the Court's determination of the Defendant's (UBS's) application for leave to market the Lyford Cay property (the Property), subject of a mortgage between the parties, and the Claimants' related applications concerning possession, entry, and injunctive relief. The Ruling permitted UBS to market the Property subject to the safeguards stated in the Ruling and to the Court's approval of any ultimate sale. It dismissed the related applications of the Claimants (Yuri Starostensko and Irina Starostensko).
- [6.] I have considered the applications, the parties' written submissions, the affidavits and documents to which they referred, and the oral submissions at the hearing.

The Application for Reconsideration

[7.] The Starostenkos' application for reconsideration sets out, in part:

TAKE NOTICE that the Applicants, pursuant to the inherent and supplemental jurisdictions of this Honourable Court to hear and determine an application for reconsideration (the "Application for Reconsideration") of its decision in the Ruling dated 4 March 2025 (the "Ruling"), and to review the same in exceptional circumstances to avoid injustice where strong reasons exist—particularly to correct a clear error most likely arising from:

Material misrepresentations by the Defendant UBS (Bahamas) Ltd (the "Defendant");...

New facts intervening after the Ruling was made... [namely that a trial date has been set for the hearing of the consolidated Action, which]... "changed the circumstance of the absence of trial."

AND TAKE NOTICE that the grounds for this Application are as follows:

1. Exceptional Circumstances: The Ruling was premised on the fact materially incorrect or altered by new developments in the matter, rendering the Ruling amenable under the inherent and supplemental jurisdictions of this Court for reconsideration.
2. Inherent Jurisdiction: This Honourable Court retains jurisdiction to revisit its final orders under its inherent powers and to correct errors arising from changes in the law.
3. Supplemental Jurisdiction: This Honourable Court has the supplemental jurisdiction to hear and determine an application for reconsideration of its previous decision under the *Re Barrell*. The Application for Reconsideration is proper, pursuant to the guidance in Notes to Part 42.10 of the Civil Procedure Rules of the Supreme Court ('CPR').

[8.] The Claimants/Starostenkos submit that the Court has inherent or supplemental jurisdiction, independent of the rule permitting correction of accidental slips or omissions, to revisit the Ruling in exceptional circumstances. They rely principally on **Re Barrell Enterprises, Richard Anthony Hayward and another v Striker Trustees Limited and another** and **Kuwait Airways Corporation v Iraqi Airways Company**. Their principal submission is that the Ruling rests upon material misrepresentations, particularly in the affidavit evidence of Lena Bonaby (affiant for the Defendant), concerning the causes of delay, the number and character of the Claimants' interlocutory applications, the Property's condition and value, and ongoing costs.

[9.] The Claimants further submit that the trial fixture made on April 28, 2025, for November 30, 2026 to December 10, 2026, is a new and material circumstance which displaces the premise that no trial was on the horizon. They submit that the evidence concerning the Property's alleged deterioration was not cogent, that their appraisals demonstrate a materially higher value, and that the proposed marketing has the practical effect of an unconditional sale. They also repeat their contention that the 2015 possession order, the mortgage transaction, and UBS's right to sell remain affected by alleged fraud and by the unresolved consolidated cross-action.

[10.] The Defendant/UBS submits that the reconsideration application is an impermissible attempt to reopen a final, reasoned decision. It submits that Part 42 of the Civil Procedure Rules of the Supreme Court 2022, as amended ('CPR') provides no basis for intervention because no accidental slip or omission is alleged. The Defendant contends that, even assuming a residual inherent jurisdiction, the Claimants have not met the exceptionally high threshold for reopening the Ruling. The Defendant argues that the allegations of fraud, the challenge to the mortgage, the asserted lack of an exercisable power of sale, the evidence about value, and the procedural history were all advanced or available when the Marketing Application was decided. UBS submits that the trial fixture does not alter the central reasons for the Ruling which were the long-unsatisfied judgment debt, the continuing costs, the history of proceedings, and the need for an orderly court-supervised marketing process.

Law and Analysis – Application for Reconsideration

[11.] The Claimants' application is framed as one to reconsider the Court's order.

[12.] The Applicants rely on the CPR Practice Guide notes to Part 42.10, which state:

The Court may reconsider a previous decision under the *Re Barrell* jurisdiction where strong reasons exist: see *Re Barrell Enterprises* [1973] 1 WLR 19 and *Belgravia International Bank & Trust Company Limited Bretton Woods Corporation v Sigma Management Bahamas Ltd. And Frank R. Forbes* SCCiv App. No. 75 of 2021.

[13.] Those notes comment on Part 42, Rule 42.10, which provides:

42.10 Correction of error in judgment or order.

(1) The Court may at any time, without an appeal, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.

(2) A party applying for a correction must give notice to all other parties.

[14.] **Belgravia International Bank & Trust Company Limited Bretton Woods Corporation v Sigma Management Bahamas Ltd. And Frank R. Forbes SCCiv App. No. 75 of 2021** does not assist the Applicants. There, the Court of Appeal considered relief from sanctions and the relationship between inherent jurisdiction, CPR jurisdiction, and judicial discretion. After reviewing the authorities, Sir Michael Barnett P concluded at paragraph 55 that

“inherent jurisdiction is a residual source of powers relied on when rules do not address a situation, and should be exercised only in exceptional cases...”

[15.] At paragraph 61, he added that “inherent jurisdiction has to be subservient to specific statutory rules”.

[16.] The principle in **Re Barrell Enterprises** [1973] 1 WLR 19 is that, once an appeal is heard, it should be reopened only in the most exceptional circumstances. Fresh evidence discovered after a hearing and decision is usually a matter for the appellate court on appeal. The guidance notes to CPR Part 42.10, including the reference to **Belgravia International Bank & Trust Company Limited/Bretton Woods Corporation v Sigma Management Bahamas Ltd and Frank R. Forbes**, cannot be treated as an enlargement of the slip rule into a general rehearing power. The **Re Barrell jurisdiction** requires a distinction between reconsideration before

perfection of an order, correction of an accidental slip, and the setting aside of a perfected judgment for fraud.

[17.] In **Re Barrell Enterprises** [1973] 1 WLR 19, the Court of Appeal considered an attempt to reopen an appeal which had been dismissed after a full hearing, in an instance where the order had not yet been entered. It also considered whether a judge at first instance could set aside an earlier order on the ground of fresh evidence. The Court explained that, once oral judgment has been delivered, the successful party ought, save in the most exceptional circumstances, to be able to assume that it is valid and effective. That reasoning reconciles two interests: (i) the Court's ability, while its order remains unperfected, to avoid giving formal effect to a demonstrably unjust decision; and (ii) the parties' entitlement to certainty, reliance upon judgments, and an end to litigation.

[18.] A court may sometimes correct or clarify a sealed order but generally cannot use that process to change the substantive reasons or outcome after the court has finally decided the matter. In **Richard Anthony Hayward and another v Striker Trustees Limited and another** [2019] 1 BHS J. No. 75, the court expressly relied on the fact that its order was not yet sealed and the court re-issued the judgment after a written ruling for the purpose of making limited corrections to the nature of the role of one of the attorneys. Those changes were presented as clarifying omissions and maintaining consistency, not as a new basis for the decision.

[19.] Rule 42.10 CPR deals with what is often called "the slip rule". Permissible corrections include clerical slips, accidental omissions, drafting errors, or clarification of what the court already decided. It is not a gateway to revising the judge's substantive reasoning to support a different result, or to introducing a new ground to vary the court's decision, or to changing parties' rights after the order is sealed.

[20.] In this case, the consequential order has been entered. The Starostenkos advance substantive allegations of misrepresentation and rely upon developments after the Ruling. They expressly disclaim reliance on an accidental slip or omission and seek substantive reversal of the Ruling, using the guidance notes to Rule 42.10 CPR to invoke the court's supplemental jurisdiction.

[21.] In this case, the **Re Barrell jurisdiction** cannot be utilized to entertain substantive reconsideration of the ruling dated March 4, 2025. In **Re Barrell**

Enterprises, the court accepted that an action may be brought to set aside a judgment obtained by fraud. That recognition must not be confused with its discussion of reopening an unperfected order. The court in *Re Barrell Enterprises*, also considered that fresh evidence is not a reason for reopening an order or a decision and that fresh evidence is to be addressed by way of appeal. In delivering the judgment of the court, Lord Justice Russell opined at page 8:

It is clearly not permissible for a party to ask for a further hearing merely because he has thought of a possible ground of appeal that he originally overlooked. The discovery of fresh evidence has never been suggested as a ground for reopening the argument before the Court of Appeal. If fresh evidence comes to light, of such a character as to call for further consideration of the issues, the right way to deal with the situation is by applying for leave to appeal to the House of Lords: See *Murphy v. Stone-Wall work* (1961) 1 -Weekly Law Reports, 'cage 1023...

[22.] **Re Barrell Enterprises** does not establish a general power to rehear a concluded case whenever a disappointed litigant alleges error or produces further material or cites “intervening facts” that occur subsequent to the ruling. Nor, in my view, are such matters to be addressed by “reconsideration” or the correction of an error under Rule 42.10 CPR.

CONCLUSION – Application for Reconsideration

[23.] Accordingly, the application for reconsideration is dismissed.

The Application for Leave to appeal and a Stay pending Appeal

[24.] The Application for leave contains three grounds of appeal elaborated there in (‘as set out in Schedule B annexed to the Proposed Notice of Appeal Motion’). The grounds are:

Ground 1: Error of law in the exercise of discretion

Ground 2: The learned judge’s discretion was vitiated by material misrepresentations and erroneous factual findings

Ground 3: New intervening facts demonstrate the decision's
foundational error

[25.] The Claimants/Starostenkos submit that the proposed appeal has realistic prospects of success because the Court erred in the exercise of its discretion; made material factual errors; and failed properly to apply equitable principles governing the exercise of a mortgagee's power of sale. They rely on **Macleod v Jones**, **Major v Citibank, N.A.**, **Citibank, N.A. v Major**, and **Thompson v Bahamas Mortgage Corp.** They contend that their relationship with the Defendant/UBS was not an ordinary mortgage relationship, and that the Court should have protected their equity of redemption and prevented oppressive conduct pending trial.

[26.] The Claimants also contend that the Ruling wrongly attributed delay to them, overstated the number of pending applications, and accepted unsupported evidence of deterioration and declining value. They submit that the loss of the family home could not adequately be remedied in damages and that a stay is necessary so that a successful appeal is not rendered nugatory.

[27.] The Defendant/UBS submits that leave must be refused under the test applied in **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another**, adopting **Smith v Cosworth Casting Processes Ltd**, viz, the proposed appeal must have a realistic prospect of success, or raise an issue which ought in the public interest to be examined by the appellate court or requires clarification of the law. UBS submits that the proposed appeal does neither. It says that the validity of the mortgage, default, and the existence of an exercisable power of sale have already been determined and cannot be relitigated in this interlocutory application.

[28.] UBS further submits that **Macleod v Jones** and **Major v Citibank, N.A.**, **Citibank, N.A. v Major**, cases relied upon by the Claimants, are distinguishable because no fiduciary, solicitor-client, employment, advisory, or other special relationship has been established. It submits that the transaction was an arm's-length commercial lending and mortgage arrangement.

[29.] As to the stay, UBS relies on **Bimini Blue Coalition Limited v Christie and Citibank, N.A. v McDonald**, and submits that the Claimants have neither a good arguable appeal nor clear evidence of serious injustice or nugatory prejudice. It emphasizes that the Ruling permits marketing only and that any ultimate sale remains subject to Court approval.

Law and Analysis – Application for Leave to appeal and a stay pending appeal

[30.] In considering the application for leave to appeal, I bear in mind the guidance of the Court of Appeal in the case of **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another** [2022] 2 BHS J. No. 160 where the Court reaffirmed the settled threshold applicable to applications of this kind. The question is whether the proposed appeal has realistic prospects of success, or alternatively whether it raises an issue which, in the public interest, ought to be examined by the appellate court, or whether the law requires clarification. That test is not satisfied by a merely arguable complaint, nor by dissatisfaction with the evaluative conclusions of the judge below.

[31.] Where, as here, the proposed appeal challenges an interlocutory case-management or discretionary decision, the threshold is approached with particular caution, since appellate courts are slow to interfere with such decisions absent a recognisable error of principle. **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another** further makes clear that, in order to succeed in challenging the exercise of a judicial discretion, an applicant must show more than that another judge might have reached a different view. The applicant must demonstrate that the discretion was exercised under a mistake of law, in disregard of principle, under a misapprehension as to the facts, or by taking into account irrelevant matters, failing to take into account relevant matters, failing to exercise the discretion at all, or arriving at a conclusion outside the generous ambit within which reasonable disagreement is possible.

[32.] Leave is not granted so that an unsuccessful party may reargue the merits in the hope that the appellate court will prefer a different discretionary balance. It is granted only where there is a realistic basis for concluding that the impugned decision may properly be said to have fallen into error.

[33.] The Claimants' cite both **Major v Citibank, N.A.** [1996] BHS J. No. 66, and **Citibank, N.A. v Major** [2001] BHS J. No. 6; BS 2001 CA 1 and commend the case of **Macleod v Jones**, as a basis for granting leave.

[34.] In **Citibank v Major**, the issue raised was whether Citibank could be restrained from enforcing its mortgage security after the borrower defaulted. The trial judge had granted the borrower an injunction preventing Citibank from

exercising its power of sale or foreclosing on his home while his wrongful-dismissal lawsuit against the bank proceeded. Citibank appealed that interlocutory injunction. The Court of Appeal held that there was no proper basis to restrain the bank. The Court determined that the employment claim did not amount to a defence or set-off against the mortgage debt, and the borrower had not raised a valid challenge to the mortgage or to Citibank's exercise of its power of sale. Allowing the appeal, the Court of Appeal held that Citibank was entitled to enforce its mortgage security, and the injunction restraining its power of sale was set aside.

[35.] In delivering the decision of the court, Ganpatsingh, J.A. opined:

It is pellucidly clear therefore that there could be no power in the court to vary contractual rights or to deny one party the benefit of the remedies which flow from the default of the mortgagor. The mortgagee in such an event is entitled not only to possession, but as well the mortgage moneys which become presently payable as a lump sum and no longer by installments. The mortgagor in order to get relief must necessarily raise an action on the mortgage transaction itself.

....

One of the peculiar conclusions of the Judge in the instant case was to the effect that to restrain the sale at that stage would, if the mortgagee were successful, only postpone that which it would be able to do at a later date, and to allow a sale to proceed could do irreparable damage to the respondent in his action for wrongful dismissal. These propositions of course, without genuine challenge to the mortgage transaction itself, or the validity of the exercise of the mortgagee's power, have no support in principle. There could be no comfort in the obiter of Hardie Boys, J. in Clarke's case (Sup) who was of opinion, relying on renowned text writers, that the court did have an inherent jurisdiction, in a proper case to restrain both the improper, and in certain circumstances, any harsh and oppressive exercise of a mortgagee's power of sale, but the pleadings he noted, for the purpose of restraining the sale, must clearly disclose the fraud or irregularity in respect of which relief is sought.

.....

Now there is a general, though not an inflexible rule of practice, that the court will not interfere to deprive a mortgagee of the benefit of his security, in the absence of fraud or irregularity, and a departure from the practice would normally attract the equitable principle, that the mortgagor pay into court the amount outstanding or claimed or otherwise secure the mortgagee. This rule of paying in was itself not an inflexible one in the nature of a condition. Whether it applied or not depended on the nature of the fraud or irregularity. The court's duty in every instance was to do equity between the parties.

In the case of *Macleod v. Jones* (1883) 24 Ch D 234 the parties were solicitor and client which circumstance gave rise to a fiduciary relationship. The former acting for his client, bought up securities charged on the client's properties. The client having changed solicitor, he threatened to exercise his power of sale unless payment of what was due to him was guaranteed, yet refused to render any account showing what sum was really due, in order that the client may know what the mortgagee had a right to call upon the client to pay in order to prevent the sale. A restraining order was made, as it could not be determined whether a power of sale had validly arisen. Nevertheless the client was required to pay into court such sum, to cover the amount actually advanced, as the security was an hazardous one.

[36.] In **Citibank, N.A. v Major**, Ganpatsingh J.A. recognized an inherent jurisdiction, in a proper case, to restrain an improper and, in certain circumstances, harsh and oppressive exercise of a mortgagee's power of sale but emphasized that the pleadings seeking restraint must clearly disclose the fraud or irregularity in respect of which relief is sought.

[37.] I consider that some key legal holdings of that decision, as are applicable here, are:

- i. A mortgagee's contractual remedies cannot be suspended merely because enforcement is harsh. Once default made the full mortgage debt due, the bank was entitled to possession and to exercise its power of sale. The court could not rewrite the parties' bargain or deprive the bank of the benefit of its security.
- ii. Injunctions against a mortgagee require a genuine mortgage-related dispute. Relief may be available where there is a serious issue concerning, for example, the validity of the mortgage, fraud, irregularity in exercising the power of sale, an unconscionable bargain, or interference with the right to redeem.
- iii. Judicial discretion in equity is constrained by legal principle. The appellate court held that discretion cannot be used to craft relief unsupported by a threatened infringement of legal or equitable rights.

[38.] Judicial restraint of the mortgagee's exercise of its power of sale is said to be a discretion utilized as one of exceptional intervention and not a general discretion to postpone enforcement because the mortgagor has an unresolved counterclaim, disputes the indebtedness, or will suffer hardship upon sale. The Court's equitable jurisdiction in that context is a narrow supervisory power directed to the lawful and proper exercise of the power of sale. It is invoked where the pleaded fraud, irregularity, or oppressive conduct taints the proposed exercise or sale process itself. It does not authorize the Court to substitute its own preferred

timetable for an otherwise lawful enforcement merely because delay would benefit the mortgagor. The existence of a special relationship may be relevant to whether the proposed exercise is oppressive, but its assertion does not automatically suspend the mortgagee's rights.

[39.] Additionally, the grounds relied upon to invoke the Court's discretion must be apparent in the pleadings and must therefore be clearly pleaded and particularized. A party seeking restraint must identify the conduct complained of, the persons alleged to be responsible, the material circumstances, and the connection between that conduct and the proposed exercise of the power of sale.

[40.] Where fraud is alleged, the material facts said to constitute dishonesty must be stated. It is not sufficient to merely append the description "fraudulent". Likewise, an allegation of oppression must disclose what makes the manner of enforcement oppressive, rather than merely identify the hardship ordinarily attendant upon enforcement. Particularization serves both to define the issue for the Court and to afford the mortgagee a fair opportunity to answer it. Adequate pleading is necessary but not sufficient: the application must also be supported by evidence warranting the restraint sought.

[41.] It is my view that there exists in this case no special relationship analogous to the solicitor-client relationship in *Macleod*. Nor do the Claimants' challenges to the underlying transaction and the procurement of the 2015 order, by themselves, demonstrate that the present court-supervised marketing process is tainted. Those challenges must be determined through the appropriate proceedings; they are not resolved adversely to the Claimants merely by refusing restraint here.

[42.] I have also considered the specific complaints about the appraisals, maintenance, choice of agent, and advertisement. It is my determination that the matters advanced by the Claimants/Applicants do not establish that permission to market facilitates a fraudulent, irregular, or oppressive sale process. The invitation for unconditional offers remains subject to contract and Court approval and is not authority to complete an unconditional sale at any price. The Claimants retain the opportunity to raise properly supported objections to a proposed sale when approval is sought. Court supervision is not a licence for misconduct, and demonstrated misconduct would require consideration. The Claimants have shown no error in law or failure to apply an applicable equitable principle.

[43.] The challenges to the findings on delay, applications, value, condition, and costs amount to a disagreement with the Court's weighing of the evidence. The Ruling did not treat the number of applications as a mechanical or exclusive determinant. It considered the broader chronology and the effect of repeated applications and appeals on the prospect of final resolution. Even if the Claimants' preferred characterisation of some applications were accepted, it would not demonstrate that the Court acted on a material factual error or that the resulting discretionary assessment was plainly wrong.

[44.] **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another** also emphasizes the practical significance of the interlocutory setting. The Court of Appeal expressly observed that appeals from interlocutory case-management decisions commonly raise additional considerations, including whether the point is sufficiently significant to justify the cost and delay of an appeal, whether the procedural consequences of an appeal would outweigh the significance of the interlocutory issue, and whether the point can more conveniently be determined at or after trial. Those considerations are especially pertinent in a case such as the present, where the challenged ruling concerns case management in a long-running dispute and where the proposed grounds substantially seek to revisit evaluative findings as to process, fairness, and the proper management of the proceedings.

[45.] Applying those principles here, I am not satisfied that the Claimants' proposed appeal crosses the requisite threshold. Here, the Court does not minimize the personal significance of the Property or the Claimants' concern that its loss might impair their position at trial. The order permits supervised marketing, with any ultimate sale requiring Court approval. The Claimants' complaints, as advanced in writing and orally, largely invite an appellate court to substitute a different assessment of the same procedural history, the same competing allegations, and the same balancing exercise that fell for determination before this Court. Even taken at their highest, the proposed grounds do not disclose a realistic basis for concluding that the Court acted under a mistake of law, disregarded principle, misapprehended the relevant facts in any material way, or reached a conclusion outside the ambit of reasonable discretionary judgment. Nor do they identify any issue of public importance or unresolved question of law that would justify the grant of leave notwithstanding the absence of realistic prospects of success.

[46.] The leave jurisdiction serves an important filtering function. As the Court of Appeal noted in **Maria Iglesias Rouco and another v Juan Sanchez**

Busnadio and another, hopeless or purely tactical interlocutory appeals should not be encouraged, particularly where they risk generating satellite litigation and further delay in the progress of the substantive matter. In my judgment, the present application falls on the wrong side of that line.

CONCLUSION – Application for Leave to appeal and a stay pending appeal

[47.] For the foregoing reasons, leave to appeal is accordingly refused.

[48.] In light of the refusal of leave, the application for a stay must fail. In any event, the Claimants have not shown that a stay is necessary to avoid serious injustice or that an appeal would be rendered nugatory. The authorization is for marketing under the Court's supervision; it does not authorize an unnotified or unapproved final sale. Those features materially reduce the claimed risk of irreversible prejudice. Conversely, a further stay would prolong the restraint on UBS's enforcement of a judgment debt that has remained unpaid since 2015 and would prolong the expenses associated with the Property.

COSTS

[49.] Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Claimants shall pay the costs of the Defendant to be assessed if not agreed.

ORDER

[50.] The ORDER and directions of this Court are as follows:

- 1) The Claimants' application for reconsideration of the Ruling dated March 4, 2025 is dismissed.

- 2) The Claimants' application for leave to appeal from the oral judgment of December 16, 2024, the Ruling dated March 4, 2025, and the consequential order entered on March 18, 2025 is dismissed.
- 3) The application for a stay pending appeal is dismissed.
- 4) The Claimants shall pay The Defendant's costs of these applications, to be assessed if not agreed.

Dated this 16th day of October 2026.

Hon. Madam Justice Carla D. Card-Stubbs

Justice of the Supreme Court