

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

**COMMON LAW AND EQUITY DIVISION**

**2017/CLE/gen/1424**

**BETWEEN**

**NATHALIE PARKS**

**AND**

**LASHAWN PARKS**

**(Court Appointed Personal Representatives in the Estate of Livingstone  
Richard Parks, who was the Administrator of the Estate of the Late,  
Lavard Ashley Parks)**

**Claimants**

**AND**

**BAF FINANCIAL INSURANCE (BAHAMAS) LTD.**

**Defendant**

**Before: Her Ladyship The Honourable Madam Senior Justice  
Deborah Fraser**

**Appearances: Mr. Lessiah Rolle for the Claimants  
Ms. Glenda Roker for the Defendant**

**Judgment Date: 09 May 2024**

**Stay of Execution – Overriding Objective – Part 1 of the Supreme Court Civil  
Procedure Rules, 2022 - Representative Parties - Part 21 of the Supreme Court  
Civil Procedure Rules, 2022 - Proceedings against Estate of Deceased**

**RULING**

1. This is an application brought by the Claimants, Nathalie Parks and Lashawn Parks (“**Claimants**”) seeking: (i) a stay of the Order of this Court made on 01 December 2023; (ii) permission to pursue the sale of property situated at Lot No. 17 Ambri Close Subdivision Sandilands Subdivision Allotment in the Eastern District in the Island of New Providence, The Bahamas, which said piece parcel

or lot of land has such position shape boundaries marks and dimensions as are shown on a diagram or plan attached to the Indenture of Conveyance dated 26 November 2007 made between Huey L. Ambrister Sr., of the one part and Selwyan McKenzie and Rosalie McKenzie of the other part and recorded at the Registrar General's Department in Volume 11463 at pages 472 to 484 and coloured Pink thereon ("**Property**") so as to save additional expenses against the estate of Lavard Ashley Parks ("**Estate**"); and (iii) an order that costs due and owing to BAF Financial Insurance (Bahamas) Ltd ("**BAF**") be paid upon Closing.

### **Background**

2. On 21 October 2015, Letters of Administration in the Estate of Lavard Ashley Parks ("**Deceased**") was granted to Livingstone Parks in respect of the Deceased's half share in the Property.
3. On 01 December 2017 Livingstone Parks filed a Specially indorsed Writ of Summons against BAF, inter alia, for breach of contract in relation to a mortgage entered into by the Deceased and his wife. By an Amended Specially indorsed Writ of Summons filed 11 July 2018, Colina Insurance Limited was added as a party to the action as a second defendant. For completeness, Colina Insurance Limited was removed from the Action (by order of the court) on 21 November 2018.
4. On 04 October 2019 in the matter of Livingstone Parks (Administrator of the Estate of the Late Lavard Ashley Parks) v BAF Financial (Bahamas) Ltd and Colina Insurance Limited – 2017/CLE/gen/1424 ("**Action**"), the court struck out the Plaintiff's Specially Indorsed Writ of Summons and Amended Specially Indorsed Writ of Summons and awarded Costs in the sum of \$15,000.00 to BAF ("**Striking Out Order**").
5. On 20 October 2020 the court made a subsequent order in the Action directing that the Plaintiff pay BAF's Costs of \$15,000.000 on or before 30 November 2019 and \$1,000.00 representing costs for an application made by BAF (to fix a date for payment of costs from the Striking Out Order) on or before 30 November 2020 ("**Second Order**" and collectively, "**Orders**").
6. On 15 September 2021, Livingstone Parks died.
7. On 13 March 2023 in the same Action, this Court issued an Order removing Livingstone Parks from the Action and adding the Claimants (in place of Livingstone Parks) to the Action.
8. On 28 March 2023, BAF filed a Notice of Application seeking, *inter alia*, sale of the Property to satisfy the Orders.
9. Thereafter, on 28 June 2023, Nathalie Parks made application for Letters of Administration in the Estate of the late Livingstone Parks, but learned that BAF's

counsel entered a caveat on 29 June 2023 in respect of the administration of the estate of Livingstone Parks.

10. On 17 August 2023, BAF filed an Amended Notice of Application seeking, *inter alia*, pursuant to the overriding objective of the Supreme Court Civil Procedure Rules, 2022 (“CPR”) that the Property be sold in order to satisfy the Orders.

11. By Order dated 01 December 2023, this Court ordered as follows::

*“1. BAF Financial & Insurance (Bahamas) Ltd, the Defendant be and is hereby permitted to effect the sale of the freehold property situated at Lot No. 17 Armbride Close Subdivision, situated in the Eastern District of New Providence, The Bahamas by Public Auction or Private Sale.*

*2. The proceeds of the sale less the expenses incurred and associated thereon shall be disbursed as follows:*

*1) Fifty percent (50%) is to be paid to the Estate of Radel Sharma Parks pursuant to the terms of the Consent Order made on 30 September 2019 before Her Ladyship [the Honourable Madam Justice] Indra Charles (as she then was) in Supreme Court Action 2019/CLE/gen/00350 and Consent Order made on 11<sup>th</sup> February, 2021 before Her Ladyship [the Honourable Madam Justice] Indra Charles (as she then was) in Supreme Court Action 2019/CLE/gen/000350;*

*2) Fifty percent (50%) is to be paid to the Claimants subject to the satisfaction of the Order pronounced on 20<sup>th</sup> October 2020 in this cause by Her Ladyship [the Honourable Madam Justice] Indra Charles (as she then was) in favour of the Defendant and subject to the satisfaction of the Order pronounced by Her Ladyship [the Honourable Madam Justice] Indra Charles (as she then was) in favour of the Defendant and subject to the satisfaction of the Consent Order made on 11<sup>th</sup> February, 2021 pronounced by Her Ladyship [the Honourable Madam Justice] Indra Charles (as she then was) in Supreme Court Action 2019/CLE/gen/000350; and*

*3) The Claimants and the Defendant shall agree reasonable costs of and occasioned by this application and failure of the parties to agree the said costs, the same will be affixed by the Court.”*

12. The Claimants then filed a Certificate of Urgency requesting that the 01 December 2023 order be stayed in order to prevent the loss of a potential sale of the Property and to affect a sale to satisfy the Orders.

### **Issue**

13. The Court must determine whether: (i) given the circumstances, the Claimants should be permitted to sell the Property instead of BAF? (ii) a stay of execution of the 01 December 2023 order ought to be granted?

## Evidence

14. On 04 December 2023, the Claimants filed an Affidavit in Support of their application (“**Claimants’ Affidavit**”) which states that: (i) title of the Property is vested in the Claimants, Renold Hanna and Florence Gibson in their capacity as administrators of the Estate of Radel Sharma Parks; (ii) on 30 September 2019, the Court issued an order in the matter of Mr. Reynolds Hanna & Ms. Florence Gibson (in the capacity of Administrator[s] of the Estate of Radel Sharma Parks, deceased) and Livingstone Parks (in the capacity as Administrator of the Estate of Lavard Ashley Parkes) 2019/CLE/gen/00350, that provided, *inter alia*, at paragraph 6 that: “*Lot No. 17 Ambri Close shall be advertised for sale subject to the consent of the parties and all costs incurred in advertising, selling and or incidental to the advertisement and selling of the said property be shared equally between the Plaintiffs and the Defendant*” (a copy of the order is exhibited to the affidavit); (iii) On 11 February 2021 the court issued an Order in the aforementioned matter that provided, *inter alia*, that the Property be advertised for sale and all costs incurred in advertising, selling and/or incidental to the advertising and sale of the Property be deducted from the purchase price (a copy of the order is exhibited to the affidavit – Consent Order); and (iv) a history of the matter to date.
15. Further, the Claimants’ Affidavit provides that: (i) the Claimants secured the signature of Billy Exantus (“**Intended Purchaser**”) who wishes to purchase the subject property for \$205,000.00. The Claimants and the Intended Purchaser have signed the Agreement for Sale, however, Renold Hanna and Florence Gibson have refused to sign same (the Agreement for Sale is exhibited); (ii) the Claimants request an order: (a) authorizing the Registrar of the Supreme Court to execute a Conveyance of the Property on behalf of Renold Hanna and Florence Gibson; (b) staying its Order given 01 December 2023 pending sale of the Property; (c) determining the sum due and owing to Davis and Co as costs in the matter herein and same be paid immediately upon closing; (d) authorize the realtor fees and legal fees be paid immediately upon closing; and (e) authorize the Intended Purchaser to pay 50% of the balance of the proceeds of the sale to each L Rolle & Associates, attorneys for the Claimants and CHB Chambers, attorneys for Renold Hanna and Florence Gibson, to be held in escrow pending the Court determination of the accounting of the parties per both said Orders in the aforementioned action.
16. The Claimants also filed the Supplemental Affidavit of Lashawn Parks on 13 December 2023 which provides that: (i) by letter dated 11 December 2023 from BAF to Mr. Lessiah Rolle (counsel for the Claimants), BAF agreed the stay of the order of 01 December 2023 on the basis that the Claimants and other interested parties effect a sale within 60 days of the fully executed agreement for sale and

subject to an undertaking to pay all legal costs of and occasioned by the proceedings.

17. The Claimants filed another Affidavit in Support on 18 December 2023 (“**Second Affidavit in Support**”) which provides that: (i) On 24 August 2023 the Claimants’ attorneys wrote to BAF’s attorney requesting the caveat be removed; and (ii) a sale affected by the Claimants and the other half owners will save them expenses and be the most just process, given the circumstances.

### BAF’s Evidence

18. BAF did not provide filed affidavits in relation to this application, but stated, in its submissions, that it relies on the Affidavit of E. Andrews Edwards filed on 13 January 2023 and the Second Affidavit of E. Andrew Edwards filed 22 August, 2023. In essence, the first E. Andrews Edwards Affidavit states that BAF’s counsel made application to have the Claimants joined to the Action to pursue enforcement of the Orders, as Mr. Livingstone Parks died and to have the Property sold in order to satisfy the Orders.
19. In relation to the second affidavit, it provides that BAF’s counsel was in communication with counsel for Mr. Reynold Hanna and Ms. Florence Gibson (the Administrators of the Estate of Radel Sharma Parks) in relation to the Consent Order and that BAF does not seek to deprive them of their one half interest in the Property – it merely seeks to recover all sums due and owing as against the one half interest in the Property less expenses associated with the sale from the Claimants.

### Discussion and Analysis

#### (i) Given the circumstances, whether the Claimants should be permitted to sell the Property instead of BAF?

20. In relation to whether to the Court should permit the Claimants to sell the Property instead of BAF, the Claimants’ counsel drew the Court’s attention to **Rule 1.1 of the Supreme Court Civil Procedure Rules, 2022 (“CPR”)** which provides:

*“1.1 The Overriding Objective.*

*(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.*

*(2) Dealing justly with a case includes, so far as is practicable:*

*(a) ensuring that the parties are on an equal footing;*

*(b) saving expense...*

21. He further submits that, with the overriding objective in mind, the Court may exercise its powers permitted under **Rule 21.7(3) of the CPR** authorizing the Claimants to execute a conveyance of the Property without an application. For full context, I will provide the entirety of **Rule 21.7 of the CPR**. It reads:

*“21.7 Proceedings against estate of deceased person.*

*(1) If in any proceedings it appears that a deceased person was interested in the proceedings then, but the deceased person has no personal representatives, the Court may make an order appointing someone to represent the deceased person’s estate for the purpose of the proceedings.*

*(2) A person may be appointed as a representative if that person —*

*(a) can fairly and competently conduct proceedings on behalf of the estate of the dead person; and*

*(b) has no interest adverse to that of the estate of the deceased person.*

**(3) The Court may make such an order on or without an application.**

*(4) Until the Court has appointed someone to represent the deceased person’s estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.*

*(5) A decision in proceedings in which the Court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person’s estate (emphasis added).”*

22. I interpret this rule as granting the Court power to appoint an individual to pursue proceedings before the Supreme Court where the initial litigant passes away and there is no named personal representative to pursue/defend the action on behalf of the deceased. I have already appointed the Claimants to act on behalf of Livingstone Parks in the proceedings. Accordingly, I fail to see the relevance of the rule to this application.

23. As BAF’s counsel correctly submits, my order only empowered the Claimants to act in relation to these proceedings. My order was not a grant of representation. Further, as BAF’s counsel raises and the evidence confirms, the Claimants are not the only persons with authority to sell the Property. This may indeed effect/delay the completion of any pending sale of the Property.

24. By virtue of **Rule 26.1(2)(v) of the CPR**, the Court is, however, imbued with wide powers to grant any order in managing a case, once in furtherance of the overriding objective. The rule provides:

*“26.1 Court’s general powers of management.*

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

*(v) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective...*”

25. Bearing in mind the overriding objective, I am not minded to permit a Registrar of the Supreme to execute a conveyance as requested by the Claimants. At this juncture, significant time has elapsed which permitted the Claimants to satisfy the outstanding judgment and there was sufficient opportunity for the parties to negotiate any potential settlement. The fact that this application is before me suggests that no settlement has been agreed and the Orders remain outstanding.

26. Furthermore, as BAF’s counsel submits, there may be parties who are not parties or privy to this action whose inheritance may directly be impacted if I were to grant the relief the Claimants seek. In my view, I believe it is more favorable to all parties that a neutral third party be left to handle the sale of the Property. In furtherance of the overriding objective, I believe it best that I do not vary my order and leave it as is, thus permitting BAF to carry out the sale of the Property.

**(ii) Whether a stay of execution of the 01 December 2023 order ought to be granted?**

27. The Court’s power to stay the execution of an order/judgment is found at **Rule 43.12 of the Supreme Court Civil Procedure Rules, 2022 (“CPR”)**, which reads:

*“43.12 Matters occurring after judgment: stay of execution, etc.*

*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.”*

28. This Court provided the relevant law in relation to a Stay of Execution application in the case of **The Committee to Restore NYMOX Shareholder Value, Inc (CRNSV) et al v Paul Averbach et al - 2023/COM/com/00057**. There I made the following pronouncements:

*“35. A case which provides useful guidance on the applicable principles in a stay application (as the Claimants’ counsel relied on) is Cheryl Hamersmith-Stewart v Cromwell Trust Company Ltd et al BS 2022 SC 83 (“Cromwell Trust”). There, Charles Snr J (as she then was) made the following pronouncements:*

*“16 In In the Matter of the Contempt of Donna Dorsett-Major on 3 June 2020 2020/CLE/gen/0000, Ruling delivered on 8 December*

2020, this Court dealt with the applicable principles on stay pending appeal. For present purposes, I merely reiterate them as set out fully in Donna Dorsett-Major at paras 23 to 28:

[23] The starting point is 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 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.”**

[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. **This requires evidence and not bare assertions.**

[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...**”*

*[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...(emphasis added).”***

*36. Our Court of Appeal also addressed relevant principles to a stay application in the case of Esley Hanna and Eonlee Hanna v Brady Hanna SCCivApp No. 182 of 2017 (“Esley Hanna”). There, Crane-Scott J.A. opined:*

*“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,”**...the Court will grant it where the special circumstances of the case so require.....*

*“... **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** (emphasis added).”*

37. For clarity and the avoidance of doubt, Winder J (as he then was) in *Agatha Griffin v Jarvis Nathan McIntosh BS 2020 SC 43* (“Griffin”) opined that:

**“The law relative to a stay of execution was set out by the Bahamas Court of Appeal in *Esley Hanna et al v Brady Hanna SCCivApp No. 182 of 2017*. Although dealing with the issue of a stay pending appeal the discussion is nonetheless relevant to the instant matter (emphasis added).”**

29. I adopt the same reasoning from that decision and, despite this case not concerning a stay pending appeal, apply such principles to this application. In relation to the instant case, I believe that justice would best be served by not permitting any stay of execution. The Claimants have not evidenced any potential financial ruin, nor is there any pending appeal applicable to the current matter.
30. Furthermore, based on the facts and evidence before me, I do not believe justice requires a departure from permitting a successful litigant from enjoying the fruits of the litigation. Whereas, based on the affidavit evidence, I acknowledge that a potential buyer has been found, there is no guarantee that this individual will proceed with the sale. Not only that, but there appears to be a disagreement amongst the parties who are to execute the conveyance to transfer title to the Property and there is evidence that the Claimants do not have a grant of representation of the estate required to sell the Property. I acknowledge that BAF’s counsel entered a caveat on the application for the grant of representation. I will not presume to know the reason for doing so. What is patently clear, however, is that additional hurdles have arisen that make the sale of the Property by the Claimants more difficult.
31. In addition, the Claimants have approached the Court seeking an order that they be permitted to sell the Property and request that a Registrar execute a conveyance in place of persons who appear opposed to the purported sale with the Intended Purchaser, but I am not persuaded that this would be the best method of executing a sale. As my order reads, BAF is the entity empowered to sell the Property in order to satisfy the Orders with residual proceeds from the sale being given to the Claimants. I see no reason to depart from this order.
32. I must reiterate what was observed in both **Esley Hanna v Bradly Hanna SCCivApp - No. 182 of 2017** and **Turtle Creek Investments Ltd v Daybreak Holdings Ltd - SCCivApp No. 234 of 2018**: “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”.
33. Given the present circumstances and the evidence provided, in my view, no good reasons have been proffered by the Claimants that would compel the Court to grant the stay they seek. BAF has waited some time to reap the fruits of their

labour and has been quite lenient with the Claimants. I will not delay the matter any longer for a potential sale by the Claimants. I will leave it squarely in the hands of BAF to have the Property sold in accordance with the 01 December 2023 order.

**Conclusion**

1. Based on the present law, circumstances and the evidence before me, I am not prepared to grant the relief sought by the Claimants. Accordingly, the Claimants' application is dismissed.
2. My 01 December 2023 order remains as is.
3. The Claimants shall pay the costs of BAF for this application, fixed at \$1000.00.

**Senior Justice Deborah Fraser**

**Dated this 09 day of May 2024**