

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0030

BETWEEN

ADMENIA HECTOR

of Cedars, Union Estate in the State of Saint Vincent and the Grenadines
(by her duly appointed Attorney on Record

JANNETTA CYNTHIA TOBY of Cedars, Union Estate)

CLAIMANT/APPLICANT

AND

ANNESHA RICHARDS

of Cedars

RESPONDENT/DEFENDANT

Appearances:

Mr. Emery Robertson Snr. and Ms. Samantha Robertson for the applicant/claimant.
Ms. Rochelle Forde for the respondent/defendant.

2020: May 4
Jul. 1

DECISION

BACKGROUND

- [1] **Henry, J.:** This is an application for leave to appeal a decision denying an interim injunction. The parties own adjoining parcels of land at Union Estate in Saint Vincent and the Grenadines. Ms. Admenia Hector claimed that she has occupied her portion since 2000. Ms. Richards started construction of a building on her land sometime later. They each claim to own approximately 243

sq. ft. of land which connects with their common boundary ('the disputed property'). During the construction, Ms. Richards broke down a wall located on the disputed property.

- [2] Mrs. Hector filed a claim in trespass against Ms. Richards and applied for an interlocutory injunction to prevent her from occupying the disputed property and directing her to rebuild the wall. That application was dismissed. Ms. Hector now seeks leave to appeal that decision and a stay of the order. She submitted among other things that the Court misdirected itself on the law by failing to consider that the parties agreed that there was a serious issue to be tried; by failing to consider the balance of convenience and by failing to preserve the *status quo*.
- [3] Ms. Richards filed no written submissions. For the reasons outlined below, the application for leave to appeal is dismissed.

ISSUE

- [4] The issues are whether Admenia Hector should be granted leave to appeal and whether a stay of the Court's order should be granted.

ANALYSIS

Issue 1 - Should Admenia Hector be granted leave to appeal?

- [5] Ms. Hector filed her notice of application¹ exactly 14 days after the decision against which she is desirous of appealing, the deadline² by which such an application must be made. By further submissions filed on 19th May 2020, she contended that she had reviewed the provisions of 'section 32 (2) (g) (i) and was fortified in her view that she did not need to apply for leave to appeal. She quoted the provision to which she referred as follows:

'32 (2) (g) without the leave of the judge or of the Court of Appeal, from any interlocutory judgment or any interlocutory order given or made by a Judge except the following:
(ii) where an injunction or the appointment of a receiver is granted or refused'³.

¹ On 20th April 2020.

² As stipulated in CPR 62.2 (1).

³ This is a paragraph from the West Indies Associated Supreme Court Act, as discussed later in this decision.

- [6] Ms. Hector submitted that the foregoing paragraph (g) equates to both a statutory and constitutional right. She argued that she has an unfettered right of appeal. She submitted further ‘... based on the **Owens Bank Ltd v Cauche and Others** 1989 (sic) 34 WIR pg 224 that Your Ladyship should follow the guidance stated therein and make the appropriate orders.’ I interpret this submission to be an application by Ms. Hector to withdraw her application for leave to appeal.
- [7] In the **Owens Bank Ltd. Case**, the Board ruled that section 31 (2) of the **West Indies Associated Supreme Court Act**⁴ was the leading provision as between it and section 28. The Law Lords held that the latter (28) must ‘give way’ to the former. Section 31 (2) (g) clearly provides a right of appeal to a party whose application for an interim injunction is refused. This applies to Ms. Hector. In the premises, her present application for leave to appeal is redundant and is therefore dismissed. I turn now to consider the application for a stay.

Issue 2 - Should a stay of the Court’s order be granted?

- [8] The Court may grant a stay of execution of any decision pending the outcome of an appeal. An appeal must be filed within 42 days of the date of delivery of the decision appealed against.⁵ Forty-two days would have elapsed on May 19th, 2020. Ms. Hector has not provided any information or documentation to demonstrate that she has filed an appeal from the impugned decision. The Court has no information that such appeal has been filed.
- [9] The Court must apply well-established legal principles when considering an application for a stay of execution. In this regard, a stay of execution is granted in exceptional cases and only where the prospects of success on appeal are realistic and not fanciful. There is no automatic right to a stay pending appeal. The Court must consider all the circumstances of the case. It will also apply the balance of harm test and take into account the likely prejudice to the successful party. The Court

⁴ No. 8 of 1970; renamed Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

⁵ See Civil Procedure Rules 2000 (“CPR”) 62.5(1) (c).

must remain cognizant that the successful party should not be deprived of the fruits of her success except for good reason. Furthermore, the applicant for a stay must 'provide cogent evidence that his appeal will be stifled or rendered nugatory unless a stay is granted.'⁶

[10] Ms. Hector claimed 'The relief sought is for a stay to be granted until the hearing of this matter ...'. Her application was supported by affidavit of Jannetta Cynthia Toby⁷. Ms. Toby averred that the proposed grounds of appeal will show that she has a realistic prospect of success. She attested further that she has been advised by her solicitor that the court ought to grant a stay of the oral decision because she believes the case involves 'serious issues of law both of equity and the common law and that the balance of convenience in maintaining the "status quo" ought to be exercised in her favour.

[11] Ms. Hector has advanced no other evidence. She has failed to supply cogent evidence that her appeal will be stifled or rendered nugatory unless a stay is granted. In the absence of such evidence, she has failed to meet one of the requirements for a stay. Her application for a stay is therefore denied.

Costs

[12] The general rule is that a successful party is entitled to her costs.⁸ The court may in appropriate cases make no order as to costs.⁸ Ms. Richards filed no submissions in response to the instant application and took no action in the proceedings in relation to the application. Accordingly, no basis exists for a costs order against Ms. Hector. None is made.

ORDER

[13] It is accordingly ordered:

1. Admenia Hector's application for leave to appeal is dismissed.

⁶ C-Mobile Services Limited v Huawei Technologies Co. Limited BVIHCP2014/0017 (delivered on 2nd October 2014), Per Blenman JA.

⁷ Filed on 20th April 2020.

⁸ CPR 64.6.

2. Admenia Hector's application for a stay of execution of the court's order dated April 6th, 2020 is dismissed.
3. No order as to costs.

[14] The slight delay in delivery of this decision was unavoidable and is regretted. It was attributable wholly to lack of necessary equipment and facilities at the relevant times. The parties' patience is appreciated.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar