

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO SKBHCV2012/0154

BETWEEN:

[1] GERALD LOU WEINER

[2] KATHLEEN ANN WEINER

Claimants

and

ADAM BILZERIAN

Defendant

Appearances:

Mr. Paul Bilzerian attorney of fact for the Applicant

Mr. D. Michael Bourne for the Respondents

2017: October 16; November 7

DECISION

Introductory

- [1] **LANNS, J:** [Ag]: The applicant Adam Bilzerian has moved the court for a stay of proceedings pursuant to CPR 26.1 (1) (q). In summary, the grounds of the application are that (1) the Court of Appeal has granted leave to appeal two orders being the orders made by a High Court Judge dated 29th November 2016 and 6th December 2016 refusing to grant an adjournment of the trial of claim No SKBHCV 2012/0154 which was scheduled for trial on the 6th December 2016; (2) the parties have filed final submissions with respect to the appeal and are awaiting a decision of the Court of Appeal: (3) It would be a waste of judicial resources to proceed any further in the High Court until the Court of Appeal issues its decisions.

ORDER

[2] **UPON READING** the application for a stay of this case pending disposition of consolidated appeals No SKBHCVAP2016/0019 and No SKB HCVAP2016/0021, between Adam Bilzerian v Gerald Lou Weiner and Kathleen Weiner, originally filed on 7th March 2017, which application was amended and filed on 3rd October 2017; together with supporting affidavit of Paul Bilzerian filed on 3rd October 2017;

AND UPON CONSIDERING the affidavit in opposition of the respondents filed on 30th June 2017 and submissions in opposition, exhibits and legal authorities filed on 26th July 2017, and served on the applicant on the 27th July 2017;

AND WHEREAS the applicant has failed to comply with the direction of the court requiring the parties to file and exchange skeletal submissions together with authorities by the 26th July 2017;

AND WHEREAS counsel for the respondents has indicated that notwithstanding that the applicant has filed an amended application at the last minute on 3rd October 2017, he will be content to rely on the submissions of the respondents filed on 26th July 2017, as they apply with equal force to the amended application filed by the applicant on 3rd October 2017;

AND UPON HEARING the oral submissions of Mr Paul Bilzerian, attorney of fact for the applicant, and Mr D. Michal Bourne for the respondents, augmenting and amplifying his written submissions,

IT IS HEREBY ORDERED that the application for a stay of proceedings is denied for the following reasons:

1. The court is of the view that its jurisdiction in this matter has been spent and it is functus officio as the trial (in which the applicant participated) has concluded, and the learned judge reserved the decision.
2. The application by the respondent for a stay of proceedings, if granted, will have the effect of preempting the decision of the learned trial judge, and will effectively bar the court from rendering its decision in the case.

3. The applicant, having engaged the jurisdiction of the Court of Appeal by virtue of his application for leave to appeal the decisions of Ward J. QC, refusing to grant an adjournment of the trial, ought to have brought his application for a stay before the Court of Appeal, upon him being granted leave to appeal. The Court of Appeal is better placed to determine whether a serious issue arises on the Notice of Appeal; whether the applicant has arguable grounds of appeal; or whether the applicant has a good chance of succeeding on the appeal.

[3] In the event that I am found to be wrong in my view that the High Court's jurisdiction in the matter has been spent; that I have no jurisdiction to entertain the application,

I ORDER that the application for a stay of proceedings is denied for the following reasons

1. **AFTER HAVING** perused the applicant's application, the grounds advanced, the affidavits in support of and in opposition to the application; **AND HAVING READ** the submissions of the respondents, (augmented by oral submissions of Mr Bourne) in which the respondents relied primarily on the decision of Blenman J.A. in **C-Mobile Services v Huawei Technologies Company Limited**, BVIHCMP2014/0017, paragraph 30; **AND HAVING HEARD** the oral submissions of Mr Paul Bilzerian, positing, among other things that if the stay is not granted, and a decision is rendered, then it may bring about another appeal;

THE COURT is not of the view that the applicant has tendered any evidence whatsoever to show that he will suffer irreparable harm if the stay is not granted. Indeed, the court is of the view that if a stay is granted, it will likely be prejudicial to the respondents, who initiated their claim since 2012, alleging an agreement made between the parties in April 2010, and asserting that the respondents owe them a debt of roughly one million United States Dollars. In the opinion of the court, a stay will further prolong the matter through the court system,

2. Regarding the prospects of success on appeal, **AFTER HAVING PERUSED** the applicant's application, the grounds advanced, the affidavits in support of and in opposition to the Defendants' application; **AND HAVING READ** the submissions in opposition of the

respondents, **AND AFTER HAVING HEARD** the oral submissions of Counsel for both parties, **AND TAKING INTO ACCOUNT** all the circumstances as a whole, I am not of the view that the chances of success on appeal are impressive. On the contrary, I am of the considered opinion that the chances of success are nil.

3. I prefer and accept the written and oral submissions of the respondents in preference to the oral submissions of the applicant.
- [4] The respondents are awarded costs of this application in the sum of \$1000.00 be paid within 14 days of receipt of a signed copy of this decision.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar