

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0171

BETWEEN

LEROY KNIGHTS

CLAIMANT

AND

**THE PERSONAL REPRESENTATIVE OF THE
ESTATE OF WINSTON RICHARD KNIGHTS**

DEFENDANT

Appearances:

Mrs. Rochelle Forde-Duncan for the claimant.

Mr. Emery Robertson Snr for the defendant.

2017: Nov. 9

DECISION

BACKGROUND

- **Henry, J.:** This is an oral application by Mrs. Michelle Knights as the legal representative of the estate of Winston Richard Knights, for a stay of execution of an interlocutory order made after the claimant Leroy Knights had given his evidence in-chief. At that juncture, Mrs. Knights applied for orders compelling the:
 - Registrar of the High Court to produce a case file and certain orders.
 - Attendance of five witnesses including the registrar to give evidence at the
 - Mrs. Coleen MacDonald to produce a court
 - Compliance by a specified time.

[2] That application was dismissed, whereupon Mrs. Knights indicated through learned counsel Mr. Emery Robertson Snr. that she intended to appeal the decision. She also made an oral application for a stay of execution. Mr. Knights resisted the application for a stay. He submitted that Civil Procedure Rules 2000, rules 62.15 and 62.19 mandated that the application be in writing and supported by evidence. He argued that the application for a stay should be denied because it did not satisfy those requirements.

ISSUE

- The issue for the court's consideration is whether a stay of execution should be granted to the legal representative of Winston Richard Knights Estate (i.e. Knights).
- The Court may grant a stay of execution of any order, decision or judgment pending the outcome of an appeal. In exercising its discretion, it must give effect to the overriding objective. It is established that an appeal does not operate as a stay. In this regard, the provisions of CPR 62.19 and also the provisions of rule 30 of the Eastern Caribbean Supreme Court, (St. Vincent and the Grenadines Act,) Court of Appeal Rules Chapter 24 of the Revised Laws of St. Vincent and the Grenadines are the legal authorities for that statement.
- There is no appeal before this court in the instant case, only an indication that the defendant intends to appeal. The rules require that any such appeal be in writing as chronicled in the various relevant rules under CPR 62. The decision against which Mrs. Knight proposes to appeal is an interlocutory order, the definition of which is contained in CPR 62.1 sub-rules (2) and (3).
- The Court of Appeal has repeatedly enunciated the principles that govern the grant of a stay of execution, including in the cases: **Marie Makhoul v Cecily Foster**¹ unreported; a decision out of St. Lucia, **Marguerite Desir v. Sabina James Alcine**², (unreported) which

¹ SLUHC VAP2009/0014

² HCVAP20 11/ 0030

can be retrieved on the website and the more recent decision of the Court of Appeal from the Virgin Islands, **C-Mobile Services Limited v. Technologies Company Limited**³.

- The guiding principles to be distilled from those decisions are as follows: it requires that the court take steps to ensure that its judgments are not rendered valueless. The normal rule is for no stay and if a court is to consider a stay the applicant has to make out a case by evidence which shows special circumstances for granting a stay.
- The Court in those circumstances must 'hold a balance and give full and proper weight to the starting principle', that 'there must be good reasons advanced for depriving a successful litigant from repeating the fruits of a judgment.' These quotations are extracted from the decision written by the Honorable Chief Justice who was at the time Justice of Appeal, in the

decision in the **Marie Makhoul case** and secondly by acting Chief Justice Edwards in the **Marguerite Desir case**.

- The Court must also bear in mind that the mere existence of arguable grounds of appeal is not enough by itself. Is not by itself a good reason. The Court would usually grant a stay if the prospective appellant would face ruin without the stay and if the Court is satisfied that the appeal has some prospect of Where what is before the court is nothing more than a bald assertion that an applicant would be ruined, that is not enough. There is no such assertion in this case, I must say that as an aside.

[10] Evidence establishing or showing that such ruin will take place is necessary. The Court is also required to conduct an evaluation of the evidence in support of the application to determine whether the evidence was full, frank and clear. The Court must determine whether or not there is risk of injustice to one or more parties if it grants or refuses the stay. It must consider if the appeal would be stifled by refusing the stay and it must also be mindful or take into account whether if a stay is granted and the appeal fails what are the chances of the respondent being able to realize the benefits of the order. These are the guiding principles which I will seek to apply in the instant case.

3 BVIHCMAP2014/0017

- In determining whether or not the applicant Mrs. Michelle Knights as legal representative of the estate of Winston Richard Knights has provided evidence, there is a clear resounding answer in the negative. No evidence has been provided by Mrs. Knights in support of the application for a stay of execution. In those circumstances, she has not satisfied one of the mandatory requirements for the grant of a stay.
- By not providing evidence, Mrs. Knights as legal representative of the estate of Winston Richard Knights has also advanced no reasons for depriving Mr. Leroy Knights from the benefits of the order which was made denying her application, referenced previous
- What are the risks to Mrs. Knights as legal representative of Winston Richard Knights, if the stay of execution is denied? There was no evidence. Based on this the Court must look to the pleadings to assess what the issues are as between the parties. Neither party made submissions on this, however in the fixed date claim form Mr. Leroy Knights was seeking in essence an order that he is the owner of certain properties which are currently being occupied by those persons entitled to the estate of Winston Richard Knights.
- In the defence the legal representative of the estate of Winston Richard Knights avers essentially that she as the lawful wife of the deceased Winston Richard Knights' is entitled to the subject property by virtue of an inheritance which passed on to the deceased from his mother Ethel Knights under her Will; and that the subject property was passed to him, that is Winston Richard Knights by virtue of the Will and Mrs. Knights having now been left as the lawful widow of the deceased, she and the children and the other beneficiaries of the estate are entitled to the premises.
- If the application by the estate is refused, for practical purposes Mr. Leroy Knights would have to delay his opportunity to present and establish his claim against the estate of Winston Richard Knights. If by chance he were to be successful, he would also be further denied the opportunity to realize the benefits of that decision pending the outcome of an appeal which Mrs. Knights indicates she intends to prosecute in respect of the order.
- If the stay is granted, then Mr. Leroy Knights, would face initially, the prospect of having to wait several months and more realistically several years to proceed with his claim against the estate of Winston Richard Knights. That delay would ultimately deprive him of the opportunity to establish his claim against the estate, where if he was successful he would be entitled by virtue of an order by the Court (at the end of such a trial) to immediate possession;

or possession of the disputed property within a reasonable period from the date of the judgment.

- It does not escape the Court's attention and notice that grant of the stay of execution would also deny Mrs. Knights as legal representative of Winston Richard Knights' estate an opportunity to establish that Winston Richard Knights' estate is the rightful owner of the subject property.
- Mrs. Knights' position as legal representative of the estate of Winston Richard Knights is that at this juncture, she is hampered in making that claim against Leroy Knights by virtue of the very order which she seeks to appeal against.
- Let me clarify, Mrs. Michelle Knights is saying the Court, by denying her the application to call additional witnesses via subpoena; by denying her an order compelling the registrar and Colleen McDonald to produce the court file in Civil Claim 165 of 1981; she is hampered in successfully prosecuting her ancillary claim against Leroy Knights. So to that extent there is even prejudice on both sides.
- If the stay is refused on the other hand, Mr. Knights and Mrs. Michelle Knights would be able to proceed with their claims and ancillary claims based on the pleadings which are before the court; pleadings which were closed by filing of the trial bundle as long ago, as February 1st 2017, nine months ago.
- That position seems in my estimation to accord with the principle that a successful litigant should not be deprived with the fruits of their litigation. In this case, if the stay is refused Mr. Leroy Knights who happens to be the successful party in respect of the application for the production of the court files and the subpoenas, would be the successful party and he would be able to move ahead and enjoy the benefits of his victory as it relates to that application.
- I have already indicated that Michelle Knights as legal personal representative of the estate of Winston Richard Knights would suffer the singular prejudice of not being able to advance based on her submission that she was not able to call the witnesses.
- Suffice it to say, my evaluation of the respective position of these parties is that Mrs. Knights' assertion and her submission regarding her inability to produce the witnesses and the evidence is largely caused by what the court considers to be either an inadvertent, deliberate or negligent or reckless disregard to case management orders. Disregard of the duties that she had as a party in this case to:
 - diligently prepare her claim;
 - diligently research and provide the evidence; and/or
 - diligently make an early application to the court for assistance to compel the production of the case file, the court orders and I daresay even the witnesses she is now seeking at this late hour to have give evidence.
- In all these circumstances and in balancing the respective interests, it seems to me that a denial of the application for stay of execution is the appropriate, just and more proportionate decision. I say that because in my opinion, based on the principles which govern the grant of a stay of execution, it seems to me that to ask Mr. Leroy Knights to wait for another 12 months, two years, three years before the trial can proceed would be unjust taking into consideration all of the surrounding circumstances that I have just
- Moreover, Mrs. Knights' application for a stay does not satisfy the mandatory requirements of the Civil Procedure Rules or the Court of Appeal Rules; does not satisfy the principles that have been enunciated time and time again not only by the Court of Appeal but by the Privy Council, which guide the Court in deciding whether or not to grant a stay; and for those reasons:

ORDER

- It is ordered:

- The application by the personal representative of the estate of Winston Richard Knights, Mrs. Michelle Knights for a stay of execution is dismissed.

(2) The registrar is directed to provide the legal personal representative of the estate of Winston Richard Knights, Mrs. Michelle Knights and Mr. Leroy Knights on or before 3:00 p.m. on November the 10th 2017, with:

(a) A copy of the audio recording of this oral decision.

(b) A copy of the audio recording of the oral decision made in respect of the application by the defendant for the registrar to produce the case file in Civil claim 165 of 1981.

(c) The audio recording of the application, referenced oral applications and all submissions made by the parties in respect of both applications.

- The registrar is directed as a matter of urgency to make available to the parties the full transcript of all proceedings in this matter which transpired on 9th November, 2017.

Esco L. Henry

High Court Judge

By the Court