

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2017/0015

BETWEEN:

THERESA PLUMMER

Appellant

and

[1] DENNIS MANGAL
[2] IRMINA LENA EDWIN
[3] TARCISUS ROBINSON STANISLAUS
[4] VIRGINA EVERISTE
[5] ANTHONY FELICIEN

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom
The Hon. Mr. Gerard Farara, QC

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Wauneen Louis-Harris for the Appellant
Ms. Diana Thomas for the first, second and third Respondents
Ms. Alvin St. Clair for the fourth Respondent
Mr. Anthony Felicien in person

2017: May 17.

Interlocutory appeal - Exercise of judge's discretion - Whether judge erred in failing to order stay of execution of the consent order entered into by the parties

ORAL JUDGMENT

- [1] This is a judgment of the Court. The matter before us comes by way of notice of appeal filed on 25th July 2017 in relation to an interlocutory appeal by which the appellant, Ms.

Theresa Plummer is appealing the order of the learned judge in the Court below dated 17th May 2017. That order was made in relation to an application which came before the learned judge by way of notice of application filed on behalf of the appellant on 14th January 2015. In that application, the appellant sought a number of orders the first being a stay of the execution of an order of the court made on 15th October 2014. That order is a consent order entered into by the parties through their respective lawyers. It provides as follows:

- (1) The defendant Theresa Plummer shall pay costs of \$17,000.00 to the first claimant, the second claimant, the third claimant and the first ancillary defendant.
- (2) That the defendant shall pay to the first claimant, the second claimant, the third claimant and the first ancillary defendant the further sum of \$6,767.00 representing reimbursement of the fee paid to the surveyor.
- (3) All sums are to be paid within 3 months
- (4) Penal notice to attach.

[2] That consent order has never been set aside, varied or appealed against and it therefore stands as a binding order of the court. The grounds of appeal are set out in the notice of appeal and the learned judge in the court below in the order made on 17th May 2017 did not grant the application for the stay, as is recited in the last recital to that order. However, she did go on to make certain specific orders with regard to certain matters which are to be done by the parties.

[3] This matter has been the subject of two mediation agreements. The first mediation agreement which is at page 26 of the core bundle was entered into by the parties on 12th June 2012. The specific terms of that first mediation agreement are clearly set out for the benefit of the Court at paragraph 5 of the appellant's skeleton argument. That mediation agreement was the subject of an order of the court that was made on 18th June 2012 by which the court ordered that all further proceedings in this matter are stayed except for the

purpose of carrying into effect the terms of the said agreement. Permission to apply to the Court was granted.

[4] By an order made by the learned master, the parties were required to go back to mediation or to continue the previous mediation and in doing so to seek the assistance or avail themselves of the assistance of the licensed land surveyor, Mr. Rufinus Baptiste ("Mr. Baptiste"). This resulted in a mediation agreement which was signed by the parties and is to be found at page 46 of the core bundle. The salient terms of that mediation agreement are set out at paragraph 9 of the submissions of learned counsel for the appellant. The stated basis for going back to mediation, as set out in the order of the learned master, was that there were certain matters which remained unresolved by the parties. Of significance to this matter is that the mediation agreement states in the first paragraph that, having regard to the order of 20th December 2013, Mr. Baptiste, a licensed land surveyor has made the following suggestions and enumerated therein as items 1-4 are certain matters relating to:

- (i) turning points on the land;
- (ii) incorporation of appropriate drainage on the properties of the respective parties to minimize water run off problems;
- (iii) road access should be left free of impediments all times in order to facilitate ease of use; and
- (iv) Mr. Baptiste's confirmation that he has consulted his 2004 plan to re-establish the position of the right of way.

[5] There is some issue with regard to the efficacy of this second mediation agreement, in that the matters enumerated therein are predicated as suggestions. In this matter, when the application on behalf of the appellant came before the learned judge, the learned judge made certain orders which are set out at pages 1-2 of the core bundle. As previously mentioned, the learned judge did not grant the application for a stay.

[6] We have considered the arguments and submissions made by learned counsel for the

appellant in attempting to convince the Court that the consent order ought to be stayed in all the circumstances of this matter. Having considered these submissions, we are not satisfied that there is any basis upon which this Court can disturb the order of the learned judge refusing the stay. The consent order related to certain aspects of the first mediation agreement. The first paragraph of that order pertained to the payment of costs and the second paragraph related to a reimbursement of fees that were paid to the surveyor. As mentioned previously, this order had not been varied or set aside or even appealed by the appellant in this matter and thus the appellant is bound by the terms of the order. Furthermore, the threshold test that is required for a stay of execution to be granted, which is clearly set out in the authorities, has not been met by the appellant on the affidavit evidence filed in support of the application for a stay which was before the learned judge. Accordingly, this aspect of the appeal is dismissed.

- [7] The appellant also appeals in the notice of appeal against the other paragraphs of the learned judge's order of 17th May 2017. In the round, it seems to us that these orders made by the learned judge was with a view to giving efficacy to the terms of the mediation agreement, and particularly to the second mediation agreement having regard to the questionable nature of that agreement where use of the word "suggestions" was made.
- [8] Having considered each of these limbs of the learned judge's order; and having heard learned counsel for all the parties and their respective submissions; and having had the benefit of the clarification presented to the Court on specific issues by counsel on both sides, particularly references made to various affidavits and documents which form part of the core bundle before this Court, we are not satisfied that this Court ought to disturb any of the orders made by the learned judge and, without condescending into a detailed examination of each and every limb of the order, we are satisfied that the learned judge was quite correct in the orders which she made at paragraph 1-7 in her order of 17th May 2017. Accordingly, the appeal against the order of the learned judge is dismissed.
- [9] On the issue of costs, we have heard the submissions of counsel on both sides. We consider that the appeal having been dismissed, the appellant ought to pay costs in this

matter.

Order

[10] The order of the Court is as follows:

- (1) The appeal is dismissed.
- (2) In relation to the first, second and third respondents in this matter who are represented by Ms. Thomas, we would order the appellant to pay the sum of \$1,500.00.
- (3) In relation to the fourth respondent represented by Mr. St. Clair, we would order the appellant to pay the sum of \$2,000.00.

By the Court

Chief Registrar