

TELECONFERENCE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
Tuesday, 28th June 2016

APPLICATION AND APPEAL

Case Name: **Seth Foster**
v
Ocean Reefs Resorts Limited

[SKBHCVAP2016/0008]

Before: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**

Appearances:

Applicant:	Ms. Dahlia Joseph Rowe, with her, Mr. Ricaldo Caines
Respondent:	Dr. Henry Browne, QC, with him, Ms. Midge Morton and Ms. Anmarieta M. Staines

Issue: **Application for stay of execution**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The decision of Madam Justice Lorraine Williams dated 14th June 2016 in claim no. NEVHCV2014/0001 Ocean Reefs Resorts Limited v Seth Foster is hereby stayed pending the determination of the appeal.**
- 2. Costs shall be costs in the cause.**

Reasons: **The application before the Court was an application for a stay of the order of Williams J, dated 14th June 2016 pending the determination of the appeal. The Court noted that the relevant principles which are applicable on an application for a stay are well known. A stay is the exception, rather than the rule. An applicant seeking a stay should provide cogent evidence. In the exercise of this discretion, the court performs a balancing exercise, in which the likely prejudice to the unsuccessful party must also be considered as well as the likelihood of success of the appeal but only when strong grounds of**

appeal are shown. The court must consider all the circumstances in the case.

The applicant posited that the case falls within the applicable principles for the granting of a stay of execution. Counsel for the applicant in her submissions and skeleton arguments referred to the affidavit of Falanda Adams which counsel claimed contained cogent evidence that the appeal will be rendered nugatory if the application for a stay is not granted and that there would be prejudice to the applicant if the stay was not granted.

Counsel for the applicant also stated that if the applicant is required to comply with the order of Williams J, the applicant would be required to transfer the property to the respondent and the respondent will be able to deal with the property however it pleases, for example, by selling the property or mortgaging the property to a bank. Counsel also argued that that if the applicant

Counsel referred to the agreement for sale of 2006 and time for the completing of the sale being extended and yet the inability to comply, as well as the passage of 10 years which had elapsed between 2006 and 2016, and after a further 5 months the respondent still had not complied by the closing date of 29th April 2016. Counsel also referred to what she deemed as the unilateral action of the judge to extend time and amend terms of the agreement in spite of protests by the parties.

In addition, counsel for the applicant referred to the prejudice to the applicant if the stay is not granted. Counsel stated that the value of the property is \$10 million and that there would be a 10% government stamp duty which amounts to \$1 million which would be payable to the government on a transfer of the property. Counsel submitted that the applicant would be prejudiced by having to pay this this transfer tax if the stay is not granted.

Counsel for the applicant then referred to the last principle of likelihood of success. Counsel argued that there are strong grounds of appeal and the likelihood of success on the appeal is strong.

The Court listened to counsel for the applicant and the

respondent and read the submissions filed. The Court also had regard to the principles to be considered in exercising the discretion to grant a stay and was satisfied that the applicant had met the requirements for the grant of a stay.