

TELECONFERENCE

SAINT CHRISTOPHER AND NEVIS

Wednesday, 6th February 2013

APPLICATIONS AND APPEALS

Case Name:

Adam J. Bilzerian

v

[1] Gerald Lou Weiner

[2] Kathleen Ann Weiner

[High Court Civil Appeal No. 32 of 2012]

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Applicant:

Mr. John Tyme, with him, Mr. Paul Bilzerian (father of the applicant Adam Bilzerian – representing the applicant)

Respondent:

Ms. Jean Dyer (Keithley Lake & Associates)

Issues:

Application for stay of execution – Applicant's application for leave to appeal not before the Court

Result / Order:

[Oral delivery]

- 1. The hearing of the application for a stay of execution of the default judgment entered on 4th September 2012, the terms of which were fixed on 27th November 2012 is hereby adjourned pending receipt at headquarters of the Court in Saint Lucia, of the application for leave to appeal filed by the applicant on 21st November 2012 and entitled Civil Appeal No. 28 of 2012.**
- 2. The respondent shall, on or before Friday, 8th February 2013, file and serve further written submissions in respect of the application for stay and the application for leave.**
- 3. The applicant shall be at liberty to file and serve written submissions in response no later than**

Friday, 15th February 2013.

- 4. The costs of today's hearing are reserved.**
- 5. Thereafter, the applications for leave to appeal and a stay will, if practicable, be heard on paper.**

Reason:

The Court was unable to proceed until it had sight of the application for leave to appeal which had been filed by the applicant on 21st November 2012.

Case Name:

**[1] Lemon Grove Company Limited
[2] Adam Bilzerian
v
First Caribbean International Bank (Barbados)
Limited**

[High Court Civil Appeal No. 27 of 2012]

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Applicants:

Mr. John Tyme, with him, Mr. Greg Gilpin-Payne (representing the interests of the first applicant) and Mr. Paul Bilzerian (representing the interests of the second applicant)

Respondent:

**Ms. Kalisia Isaacs, with her, Ms. Charmaine A. Millington
Mr. Peter Irish (representing the interests of the respondent bank)**

Issues:

Application for stay of execution – Whether second applicant a proper party to the proceedings – Whether order being appealed final or interlocutory – Whether leave to appeal required

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The second appellant/applicant is struck from the**

record as a named party to the proceedings, the second appellant/applicant not having been joined in accordance with Part 19 of the Civil Procedure Rules 2000 as a party to the proceedings.

2. The application for stay of execution is dismissed.
3. The notice of appeal filed herein is struck out as a nullity.
4. The applicant shall pay costs to the respondent fixed in the sum of \$2,500.00, to be paid within 21 days of today's date.

Reason:

The order being appealed arose out of an application filed pursuant to section 75 of the Title by Registration Act (Cap. 10.19, Revised Laws of Saint Christopher and Nevis 2002), in respect of foreclosure proceedings. On a review of the provisions of this Act, the Court took the view that the order made by the learned master under section 75, was not an order which brought finality to those proceedings and accordingly, was not a final order in the circumstances. Therefore, since the order did not fall within the exceptions stated in section 33(3)(g) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act (Cap. 3.11, Revised Laws of Saint Christopher and Nevis 2002), the applicant required leave of the court to appeal the order.

No application for permission to appeal was filed by the applicants. Furthermore, even if the notice of appeal was to be treated as an application for permission to appeal (which it was not), given the time limited under the rules of court for applying for permission to appeal, or indeed for the filing of a notice of appeal, this would not have availed the applicant as no extension of time had been sought in either circumstance. Accordingly, the notice of appeal could only have been treated as a nullity (see *Craig Reeves v Platinum Trading Management Limited*, Saint Christopher and Nevis High Court Civil Appeal No. 22 of 2007 (delivered 25th February 2008, unreported) and *Nevis Island Administration v La Copproprete Du Navire J31 et al* (Saint Christopher and Nevis High Court Civil Appeal No. 7 of 2005 – delivered 29th December 2005)).

In relation to the application for a stay, there being no effective application before the Court for permission to appeal, or any valid notice of appeal, there was no basis for granting a stay.