

SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2011/030

BETWEEN:

[1] MARGUERITE DESIR
[2] MARGUERITE DESIR (Qua Executrix of the Will of
the late Albertha Bella Butcher)
Appellants/Applicants

and

SABINA JAMES ALCIDE
Respondent

Before:

The Hon. Mde. Ola Mae Edwards	Chief Justice [Ag.]
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal [Ag.]

Appearances:

Mr. Peter Foster and Ms. Diana Thomas, for the Appellants/Applicants
Mr. Dexter Theodore and Mr. Eghan Modeste, for the Respondent

2011: December 12, 14.

Application for stay of execution – Appellants applying for stay of an order affecting persons who are not parties to the claim – Jurisdiction of the Court to grant a stay where there is a third party interest or property claim – Rule 42.12 of the Civil Procedure Rules 2000 – Articles 381-383 of the Code of Civil Procedure, Cap. 243, Revised Laws of Saint Lucia 1957 – Practice and procedure where the legal practitioner in the appellate proceedings is different from the legal practitioner on record at the trial

The appellants appealed the decision of the learned judge in the court below and the applicant, Ms Desir, sought a stay of execution of the order which improbated a duly registered Deed of Sale dated 10th April 2007. The trial judge found that the Deed was purportedly executed by the elderly, sick, deceased Albertha Bella Butcher as vendor (if at all), without independent legal advice. The property consisted of 0.8 hectares of land at

Massade. The purchaser was Commercial Warehouse Limited, a company which was incorporated on 8th January 2007. The applicant, Ms Desir, owns 50% of the shares in this company, while Mrs. Butcher, before her death, owned the other 50%. The Deed was purportedly executed 3 days before Mrs. Butcher died, in the presence of the Notary Royal who was also legal advisor for the company and Ms. Desir. The Deed of Sale was signed on Mrs. Butcher's behalf (as her motor skills were impaired and her handwriting was allegedly illegible) by another Notary Royal practising in the State of St Lucia, in the presence of the Notary Royal acting for the purchaser. The property was purchased for \$644,000.00, though its assessed value by the Inland Revenue Department for the tax year 2005 and its market value, was \$7,442,726.00.

The judge found that: (i) Ms. Desir assumed a dominant and predominant role in the personal business and financial affairs of Mrs. Butcher shortly after her husband, Mr. Butcher, died on 1st November 2005; (ii) the Notary Royal and legal advisor for Ms. Desir and the company, featured prominently in other questioned transactions between Ms. Desir and Mrs. Butcher, from which Ms. Desir benefited handsomely; (iii) from the nature, value and implications of these questioned transactions, Mrs. Butcher did not get any independent legal advice which she clearly needed; and (iv) Mrs. Butcher was incapable of competently engaging or giving her true consent to the matters which she was called on to deal with, without independent legal advice.

The grounds of the stay application included that should execution of the judgment proceed, it will cause ruin to Commercial Warehouse Limited and substantial prejudice to Bank of Saint Lucia Limited for which the appellant Ms. Desir will be held responsible, resulting in serious prejudice to Ms. Desir. The property is mortgaged to Bank of Saint Lucia with a mortgage balance of \$566,225.16 as at 10th December 2011.

Held: refusing the application for stay of execution and awarding costs to the respondent to be agreed, and failing agreement, to be assessed, that:

1. The court's jurisdiction to grant a stay is based upon the principle that justice requires that the court should be able to take steps to ensure that its judgments are not rendered valueless. The essential question for the court is whether there is a risk of injustice to one or both parties if it grants or refuses a stay. Further, the evidence in support of the application for stay of execution should be full, frank and clear. 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 one. The mere existence of arguable grounds of appeal is not, by itself, a good enough reason.

Hammond Suddard Solicitors v Agrichem International Holdings Limited [2001] EWCA 2065 applied; Peggy Huggins and Others v Jozeyl Morris Saint Vincent and the Grenadines HCVAP 2008/009 (delivered 24th February 2009, unreported) followed; Section 15 of the Eastern Caribbean Supreme Court

(Saint Lucia) Act Chap. 2.01, Revised Laws of Saint Lucia 2008 cited; Rule 62.16 of the Civil Procedure Rules 2000 cited.

2. In the absence of any evidence establishing that Commercial Warehouse Limited and the Bank of Saint Lucia have filed any third party interest or property claim in these proceedings or in the court below, the law and rules governing the available redress to third parties who have an interest in property which is the subject of a judgment or order and are not parties to the claim, are to be found in Articles 381-383 of the Code of Civil Procedure, and CPR 42.12.

Articles 381-383 of the Code of Civil Procedure Cap. 243, Revised Laws of Saint Lucia 1957 considered and applied; Rule 42.12 of the Civil Procedure Rules 2000 considered and applied.

3. The inherent jurisdiction of the Court to grant a stay in the circumstances ought not to be invoked because of the existing rules in Articles 381-383 of the Code of Civil Procedure and CPR 42.12, which adequately cover the issue. Having weighed the advantages and disadvantages to both parties and taken into account the applicable principles, and despite an arguable case being made out by the appellants/applicants in their application and amended grounds of appeal, no stay of the order should be made.
4. It is consistent with good practice and the overriding objective of the Civil Procedure Rules 2000 for a new legal practitioner in appellate proceedings to file a notice of acting to facilitate the service of documents, effective case management of interlocutory proceedings at the appellate level, and to ensure that the appeal is dealt with expeditiously.

ORAL JUDGMENT

- [1] EDWARDS, C.J. [AG.]: This is a judgment of the Court. The appellants/applicants,¹ on 30th September 2011, appealed against the decision of Georges J. [Ag.] delivered on 22nd August 2011, after a protracted acrimonious trial lasting 7 days, when he heard the testimony from the respondent's² 8 witnesses and the appellants'/applicants' 9 witnesses. The learned trial judge resolved the credibility issues raised by the witnesses in favour of the respondent,

¹ The defendants in the court below.

² The respondent was the claimant in the court below.

applied the law governing undue influence, and made findings of fact which primarily dominate the complaints raised in the Amended Notice of Appeal. A few of the grounds complain that the judge erred in law.

The Application for Stay of Execution

- [2] We heard the appellant's application for stay of execution filed on 26th October 2011. This application seeks an order that execution of the orders of the Court given in the judgment be stayed pending the determination of this appeal and for the costs of this application to be costs in the appeal.
- [3] This Court has power pursuant to section 15 of the Eastern Caribbean Supreme Court (Saint Lucia) Act³ and Rule 62.16(1)(b) of the Civil Procedure Rules 2000 ("CPR") to stay execution of a judgment pending an appeal. We have particularly borne in mind that our jurisdiction to grant stay is based on the principle that justice requires that the court should be able to take steps to ensure that its judgments are not rendered valueless. The essential question for the court is whether there is a risk of injustice to one or both parties if it grants or refuses a stay; and the evidence in support of the application should be full, frank and clear.⁴ 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 stay. The court must hold a balance and give full and proper weight to the starting principle that there must be a good reason to deprive a successful claimant of the right to enforce her judgment. The mere existence of arguable grounds of appeal is not enough, by itself, a good reason.⁵

³ Chap. 2:01, Revised Laws of Saint Lucia 2008.

⁴ Per Clarke L.J. in *Hammond Suddard Solicitors v Agrichem International Holdings Limited* [2001] EWCA Civ 2065 at paras. 13 and 22.

⁵ See para. 6 of *Peggy Huggins and Others v Jozeyl Morris, Saint Vincent and the Grenadines* HCVAP 2008/009 (delivered 24th February 2009, unreported).

- [4] We also had the benefit of written skeletal arguments from counsel for the parties. However, learned counsel Mr. Foster, at the hearing, informed us that the applicants are really seeking a stay of execution of the order made at paragraph 117 of the learned judge's judgment which improbated a Deed of Sale dated 10th April 2007, registered in the Land Registry as Instrument No. 2849 of 2007 on 22nd May 2007. The trial judge's primary reason for improbating the Deed is that it was purportedly executed by the Vendor Bella Butcher (if at all) without independent legal advice. Noticeably, this Deed of Sale was registered in the Land Registry over 37 days after the death of Mrs. Butcher, who died on 13th April 2007. The property purportedly conveyed under the Deed of Sale consists of 0.8 hectares and is situate in Massade in the Registration Quarter of Gros-Islet known as Block 1257B Parcel No. 6. The purchaser was Commercial Warehouse Limited, which was incorporated on 8th January 2007. The property was purchased for \$644,000.00, though its assessed value by the Inland Revenue Department for the tax year 2005 and its market value was \$7,442,726.00. Commercial Warehouse Limited obtained a loan in the sum of \$881,000.00 from Bank of Saint Lucia on 10th April 2007 and the property Block 1257B Parcel No. 6 was mortgaged as security for payment of the loan.
- [5] The other orders that the learned judge made, relate to 3 bank accounts and other property of the deceased Bella Butcher which the respondent alleged were appropriated by the appellant/applicant Ms. Desir to her own use. The judge found that Ms. Desir exerted undue influence to procure her name on the personal bank accounts and the accounts of companies in the name of or under the control of the deceased Mrs. Butcher at the Bank of Saint Lucia, the RBTT Bank and the Bank of Nova Scotia. He ordered that the appellants/applicants render an account of their dealings with the bank accounts and other property of the deceased and of the income and funds from the same which have come under the appellants'/applicants' hands.

The Pleadings and Findings of the Trial Judge

- [6] The respondent's Amended Statement of Claim⁶ alleged that the impugned Deed of Sale was executed by the deceased Bella Butcher as vendor on 10th April 2007, three days before her death at her Cap Estate residence when she was hypertensive, diabetic and with other debilitating medical conditions, having suffered strokes and heart attacks.
- [7] The pleadings allege that Mrs. Butcher was near death and was then under the complete domination of Ms. Desir and was incapable of alienating her property; alternatively, if she did alienate her property by the Deed of Sale, she did so under the presumed or actual undue influence of Ms. Desir, who by then was her confidante.
- [8] The case for the respondent was stated by the learned trial judge as follows:
- "[11] The deceased who was seriously ill in the last few years of her life eventually became wheelchair bound and vulnerable on account of her medical condition and became even more vulnerable when her husband predeceased her on 1st November 2005. The first defendant, it is pleaded, took advantage of the deceased's vulnerability and manipulated her and caused her to sign documents including a power of attorney dated 22nd November 2005 and bank signature cards which documents the defendant used to get her name onto the deceased's bank accounts and/or to transfer funds from the deceased's bank account or bank accounts in the names of companies under her control to bank accounts in the joint names of the deceased and herself. All of this the court notes was effected three weeks after the deceased's husband's demise during which the deceased also executed her last will and testament appointing the defendant sole executrix and a principal beneficiary and universal residuary legatee and devisee equally with the claimant. Further and in the alternative it is pleaded that the consent of the deceased to appending her signature to those documents was obtained by undue influence of the defendant over the deceased.

⁶ In Claim No. SLUHCv 2007/0486.

"[12] The deceased who had several close relatives including the claimant her lawful niece never intended for the first defendant to become the owner of her various bank accounts or the sole beneficiary of all funds held in bank accounts in the name of the deceased or in the names of companies under the control of the deceased it is alleged.

"[13] ... The first defendant so took advantage of the deceased's vulnerability as to assume complete domination over her and her business and financial affairs Further or alternatively it is pleaded that at the time of the signing of the documents [previously referred to] by the deceased she did not know, appreciate or approve what she was signing.

"[14] At the time of signing those documents the deceased was hypertensive and diabetic [and] had suffered from strokes and heart attacks and also had other debilitating medical conditions and was consequently not then capable of understanding and appreciating the nature and consequences of her actions nor did she have the benefit of independent legal advice it is alleged.

"[15] ... [T]he claimant contends that the entry of the names of the first defendant on the bank accounts of the deceased was achieved by actual or constructive fraud on the part of the defendant Alternatively ... was obtained by undue influence of the defendant over the deceased. Alternatively the claimant contends that at the material time the deceased lacked the necessary capacity to execute the documents which were used to get the first defendant's name on the bank accounts concerned."

[9] The learned trial judge tersely stated what the defence of the appellant/applicant was at paragraphs 16 and 17 of his judgment as follows:

"[16] On the 29th June 2007 the first defendant filed a defence and on 12th December 2007 an amended defence stating in paragraphs 1 and 2 that the claimant was in actual fact just one of several persons whom the deceased cared for at various times as if they were her own children. The court notes that no other names besides the claimant were mentioned or stand out as prominently as the claimant's in this regard.

"[17] Apart from the specific devise of an undivided one-half share of the house situate at Cap Estate which the deceased told the

claimant and others (including the defendant) that the claimant would inherit the first defendant denies (as asserted by the claimant at paragraph 2 of her statement of claim) that the deceased had repeatedly told her (and others) that everything which she (the deceased) owned would upon her death be passed on to the claimant whom she variously referred to as Sabby.”

- [10] In arriving at his conclusions, the learned trial judge found it significant that within a matter of 18 months of the death of the deceased's husband, a substantial portion of the properties, cash assets, and possessions of the deceased Albertha Butcher, fell into the hands of the defendant Ms. Desir in her own persona as well as a principal beneficiary and sole executrix of the last will and testament of the deceased. The learned judge's findings of fact included: (a) that the claimant as a child up to 1981 had lived with Mr. and Mrs. Butcher who regarded her as their daughter they did not have; (b) that Mr. and Mrs. Butcher moved to Texas in 1981, leaving the claimant in the care of Mrs. Butcher's mother and the claimant's biological mother; (c) the claimant migrated to the U.S.A. in 2002 to further her education and was sponsored by Mr. and Mrs. Butcher; the strong bond of filial affection continued to flourish between Mrs. Butcher and the claimant and Mrs. Butcher, who was wheelchair bound, attended the claimant's wedding in New Jersey in 2003, visited the claimant in New Jersey in 2004, and communicated with the claimant by correspondence and telephone calls; (d) that the Butchers owned and managed corporate businesses including the wholesale meat suppliers business Island Foods Limited described by the Bank of Saint Lucia's Gros-Islet General Manager as a lucrative thriving enterprise in 2003; Mrs Butcher also owned a wholesale business Bella Warehouse Holdings Limited; (e) the appellant, Ms. Desir, was employed since 1991 at one of the Banks where the Butchers had bank accounts, and a cordial relationship developed between Mr. Butcher and Ms. Desir from 1994 on his return to Saint Lucia from Texas; (f) Mr. Butcher subsequently introduced Ms. Desir to Mrs. Butcher and Mr. Butcher would seek advice from Ms. Desir about his bank accounts and corporate businesses; (g) that

some time prior to Mr Butcher's death on 1st November 2005, Ms. Desir assumed a dominant and predominant role in the personal business and financial affairs of Mrs. Butcher; (h) that the claimant first heard about Ms. Desir in November 2005 after Mr. Butcher's death when Ms. Desir telephoned the claimant from Saint Lucia and told her that she was handling some matters for Mrs. Butcher; (i) that faced with increasing failing health, no husband, and growing physical incapacity Mrs. Butcher in the company of Ms. Desir, went to the Bank of Saint Lucia on 22nd November 2005 and opened a joint account in their names in order to facilitate Mrs. Butcher's banking business; (j) that same day Mrs Butcher executed her will before executing notaries Leandra Verneuil and Mary Juliana Charles; Ms. Desir was appointed sole executrix, principal beneficiary and residuary legatee and devisee equally with the claimant; (k) in this will, Mrs. Butcher left to the claimant and Ms. Desir equally her shares in Bella Warehouse Holdings Limited; (l) a power of attorney was also executed before the same notary in favour of Ms. Desir that same day; (m) between the date the will was executed and the date of Mrs Butcher's death on 13th April 2007, Bella Warehouse Holdings Limited, which was the largest single revenue earner of Mrs. Butcher, was literally sold "for a song" to Ms. Desir's Company Commercial Warehouse Limited, which was incorporated on 8th January 2007, ostensibly to pay off Bella Warehouse Holdings Limited's outstanding debts when Mrs Butcher's bank account balances were substantially adequate, and other cash earning assets were available for that purpose; (n) in all of these questioned transactions the same Notary Royal who was a friend and legal advisor of Ms. Desir featured prominently and Ms. Desir benefited handsomely; (o) that from the nature, value and implications of these questioned transactions, Mrs. Butcher did not get any independent legal advice which she clearly needed; (p) and Mrs. Butcher was incapable of competently engaging or giving her true consent to the matters which she was called on to deal with without independent legal advice; (q) that the Deed of Sale was signed on her behalf (as her motor skills were impaired and her handwriting was allegedly illegible) by

Shawn Innocent, Notary Royal practising in the State of Saint Lucia, in the presence of Leandra Gabrielle Verneuil, Notary Royal acting for the Purchaser Commercial Warehouse Limited, 3 days before the death of Mrs Butcher.

The Grounds of the Application

- [11] The appellant/applicant complains that the property conveyed under the improbated Deed of Sale, consisting of 4 large commercial warehouses located on about 93,000 square feet of land was validly sold to the company, Commercial Warehouse Limited. The shareholders of this company are Ms. Desir, who owns 50%, and Mrs. Bella Butcher, who prior to her death owned the other 50%. The grounds state that should execution of the judgment proceed this will cause ruin to Commercial Warehouse Limited and substantial prejudice to Bank of Saint Lucia Limited for which the appellant Ms. Desir will be held responsible; resulting in serious prejudice to Ms. Desir. Further, that Ms. Desir, as executrix of the estate of Mrs. Butcher, will be required to proceed with vesting the property and she has not completely administered the estate. Were the appeal to succeed, after the property is vested, Ms. Desir will have considerable difficulty and suffer serious prejudice in relation to her duty to the beneficiaries as executrix of the estate of Mrs Butcher. That Ms. Desir's management of the estate in such acrimonious circumstances would cause prejudice to both parties until the property is sold, unless execution is stayed pending the appeal. That payments of income to the respondent who is resident abroad would be difficult to recover.
- [12] The supporting affidavit evidence of Ms. Desir states that the judgment affects interests of Commercial Warehouse Limited and the Bank of Saint Lucia, even though they are not parties to the claim. Ms. Desir's first affidavit chronicles the expenses, income and business activities of the company and tenders documents to substantiate her assertions of likely prejudice in the event that the order is not stayed and the appeal is successful. The mortgage balance as at 10th December 2011 is \$566,225.16.

[13] The supporting submissions of learned counsel Mr. Foster, focused on the decided cases *Courtesy Taxi Co-operative Society Ltd. v Lucien Joseph*,⁷ *Linotype-Hell Finance Ltd. v Baker*⁸ and *Hammond Suddard Solicitors v Agrichem International Holdings Limited*.⁹ Mr. Foster urged us to look at all of the circumstances of the case in the round as advocated by Joseph-Olivetti J.A. [Ag.] in *Courtesy Taxi*, as there may be circumstances other than financial disaster which would make it unjust to refuse a stay, particularly where the order is not a monetary order. Mr. Foster submitted that the grounds of appeal reveal arguable grounds. He urged the Court to grant stay as the appeal will more than likely be ready for hearing at the next sitting in February 2012 and no injustice will be done to the respondent within the two and half months.

The Opposing Evidence and Submissions

[14] The opposing affidavit of Glenda James Eugene (duly appointed attorney of the respondent) addressed Ms. Desir's evidence that neither Commercial Warehouse Limited nor the Bank of Saint Lucia was a party to the claim. Ms. Eugene's affidavit responded to the relief sought in the application and she also addressed Ms. Desir's failure to account for the sums in the bank accounts of the deceased and the companies under the deceased's control at the time of her death, and the sums of money which she has received from dealings with the deceased's companies. Ms. Desir's second affidavit in reply and Mr. Foster's submissions countered the allegations that she had failed to account. Learned counsel Mr. Theodore submitted that the injustice now weighs heavily against the respondent, and will be amplified if a stay is granted, particularly as the respondent has waited for almost 3 years for the delivery of the judgment.

⁷ Saint Lucia HCVAP 2008/043.

⁸ [1993] 1 W.L.R. 321.

⁹ [2001] EWCA Civ 2065.

[15] Mr. Theodore's submissions surprisingly made "heavy weather" of the fact that the legal representative of the appellant in the appeal which was Peter Foster and Associates, was different from the legal representatives Chong & Co on record for the defendants in the court below. He submitted that in the absence of a Notice of Change of Legal Practitioner or Notice of Appointment of Legal Practitioner as CPR 63.2 and 63.3 require to be filed, the Notice of Appeal was null and void. Mr. Theodore conceded that there was no rule in Part 63 which required that the legal practitioner in the court below should be the same in the Court of Appeal. I note also that Part 63 does not mandate that a notice of appointment of legal practitioner must be filed where a party who has previously been represented by a legal practitioner at the trial of the claim, instructs another legal practitioner to act in appellate proceedings.

[16] Mr. Foster's answer to this was simply and very aptly that the notice of appeal commences a new action. We must draw counsel's attention to Rule 7(1) of our Court of Appeal Rules 1968 which states:

“(1) In all proceedings before the Court, the parties may appear in person or be represented on appeal by any person who is entitled to practise as a barrister in the State in which the appeal arose or is being heard.”

Rule 10, which deals with service of appeal documents, states that all documents required to be served on parties to an action who have not filed an address for service; and on a person not a party to the appeal, must be served by personal service on the party or his authorized agent, or on the person not a party.

[17] It follows therefore, that if a legal practitioner who is on record as the legal representative of a party in the court below informs a process server or notifies the court that he is not the agent for the party in appeal proceedings, then the process server is obligated to personally serve the party. Otherwise, service must be effected only on an agent of the party who incidentally may be a new lawyer appointed by the appellant or respondent for the purposes of the appellate

proceedings. It is however consistent with good practice and the overriding objective of the CPR for a new legal practitioner in appellate proceedings to file a notice of acting to facilitate the service of documents, effective case management of interlocutory proceedings at the appellate level and ensuring that the appeal is dealt with expeditiously. This practice commends itself.

[18] A close look at the 2 affidavits of Ms. Desir concerning the stay of the order improbating the Deed of Sale, confirms that the prejudice that will flow from enforcing the improbation order will impact directly and mainly on the rights of third parties and not directly on Ms. Desir. There is no evidence before us which establishes that Commercial Warehouse Limited and the Bank of Saint Lucia have filed any third party interest or property claim in these proceedings or in the court below. The application for stay calls for our consideration of the law and rules concerning the available redress to third parties who have an interest in property which is the subject of a judgment or order and are not parties to the claim.

[19] Articles 381 to 383¹⁰ of the **Code of Civil Procedure**¹¹ provide as follows:

“381. Any person whose interests are affected by a judgment rendered in a case in which neither he nor persons representing him were made parties, may file an opposition to such judgment.

382. This opposition is formed by means of a petition to the Court, which must contain the grounds of opposition, and proper conclusions, and must be served upon the parties in the cause, or upon the solicitors who represented them, if it is made within a year and a day after judgment. The truth of the allegations contained in the opposition must be sworn to, as in the case of an opposition to annul.

383. The proceedings upon oppositions by third parties are the same as upon ordinary suits. They do not prevent the execution of the judgment unless the Court or Judge order a stay of execution.”

¹⁰ CHAPTER THIRD – Oppositions by Third Parties.

¹¹ Cap. 243, Revised Laws of Saint Lucia 1957.

[20] In addition to this, CPR 42.12 states:

- “(1) If in any claim an order is made which might affect the rights of persons who are not parties to the claim, the court may at any time direct that a copy of any judgment or order be served on any such person.
- (2) Service must be effected in accordance with Part 5 and the court may direct which party is to be responsible for service.
- (3) The copy order must be endorsed with a notice in Form 13.
- (4) The court may dispense with service of the copy order or judgment if it appears impracticable to serve that person.
- (5) Any person so served, or on whom service is dispensed with –
 - (a) is bound by the terms of the judgment or order; and
 - (b) may take part in any proceedings under the judgment or order.
- (6) Notwithstanding paragraph (5), any person to whom that paragraph applies may apply within 28 days to discharge, vary or add to the judgment or order.”

[21] In the absence of any application under CPR 42.12 or petition under Articles 381 to 383, we are not aware of any authority which establishes that a party in the appeal may apply to the Court for a stay of execution of an order which affects the rights of persons who are not parties to the claim. However, the absence of such authority is not by itself a reason for refusing to grant stay. The discretion to refuse or grant stay is unfettered. We are also of the view that the inherent jurisdiction of the Court to grant stay in the existing circumstances ought not to be invoked because of the existing rules in Articles 381-383 of the Code of Civil Procedure and CPR 42.12, which adequately cover the issue. Expressing it eloquently another way, in the words of Lord Dyson in the recent Privy Council Appeal decision *The Attorney General v Universal Projects Limited*,¹² “[t]here is no scope for recourse to the inherent jurisdiction of the court. The territory is occupied by the rules.”

¹² [2011] UKPC 37 at para. 27.

- [22] Having weighed the advantages and disadvantages to both parties and taken into account the applicable principles, we hold that despite an arguable case being made out by the appellants/applicants in their application and amended grounds of appeal, no stay of the order should be made at paragraph 117 of the trial judge's judgment.
- [23] The application for stay of execution is refused with costs to the respondent to be agreed and failing agreement, to be assessed.