

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2017 – 04669**

**Between**

**DINDIAL'S HARDWARE LIMITED**

**Claimant**

**And**

**TERESA DE SILVA**

**Defendant**

Before the Honourable Mr Justice Ronnie Boodoosingh

**Appearances:**

Mr Terrence Bharath and Ms Esther Gaston instructed by Mr Reza Ramjohn for the Claimant

Mr Seenath Jairam SC leading Ms Saira Lakhan instructed by Ms Shanta Jairam for the Defendant

**Date: 9 June 2020**

1. The defendant has asked this court to grant a stay of its judgment pending the determination of the appeal. In deciding whether to grant a stay the court must ordinarily consider whether there is a good prospect of success of the appeal; whether any special circumstances justify the grant of a stay. In this case of relevance is if there is a risk that the party will not be repaid the judgment sum if the appeal is successful. All of these principles lead to the court making an assessment of the likely injustice to the respective parties.
  
2. I have considered the submissions of both parties filed electronically.
  
3. The trial or fact finding judge is not in the best position to evaluate the chances of success of an appeal. The court is not to be placed in the position of second guessing its findings or judgment. The court's findings are the court's findings and the unsuccessful party is entitled to mount a challenge to the findings of the court, including the weight given to particular aspects of the evidence. Such arguments are better and more appropriately addressed to the appeal court. Similarly, if the trial judge has misconstrued or misapplied the law, it is for the appellate court to say so and for an appellate judge to make an evaluation of the prospects of success related to the merit of the appeal. The appeal court can come

to a view, even if preliminary, about the prospects of success of the appeal.

4. The first instance court must essentially concern itself here with whether injustice would be meted out to the parties if a stay is granted or not and for what period would be appropriate for the stay to be granted.
  
5. The defendant's submissions have not addressed whether there are other circumstances which are exceptional in nature for this court to grant a stay pending the determination of any appeal. There is nothing before me to conclude that the successful party will not be able to repay the judgment sum if the defendant is successful on an appeal. I have noted that the claimant paid the money to the defendant. The defendant must have been put on notice from early that the claimant was seeking recovery. This was plain from the correspondence of the claimant's attorneys early on. In such circumstances prudence may have dictated that caution should have been applied at that time. Some time has passed since then pending the determination of this claim. The claimant remains out of pocket as it is.
  
6. The most that this court can do, based on what is before me, is to grant a stay to facilitate an appeal of the decision and to allow the claimant to file an application for a stay before the appeal court. Given that the present Practice Direction applies until 15 June 2020, I will grant a stay

of the judgment until 15 July 2020, which will allow sufficient time for any proceedings on appeal to be engaged.

7. The order is a stay of execution of the judgment is granted until 15 July 2020.

*Ronnie Boodoosingh* (E-signed)

Ronnie Boodoosingh

Judge