

**The Republic of Trinidad and Tobago**

**IN THE COURT OF APPEAL**

**Civil Appeal No. S036 of 2020  
Claim No. CV2015-03011**

**Between**

**NATASHA PETERS**

**Appellant**

**And**

**MCLEOD RICHARDSON**

**Respondent**

**BEFORE THE HONOURABLE MR. JUSTICE NOLAN BERAUX J.A.**

**Date of delivery: February 20, 2020**

**APPEARANCES:**

**Mr. E. Roopnarine instructed by Ms. C. Dean Attorneys-at-law for the Appellant  
Mr. M. Khan instructed by Ms. K. Khan Attorneys-at-law for the Respondent**

**RULING**

- (1) The appellant applied for three orders:
  - (i) An order staying the decision of Dean-Armorer J (as she then was) of

18<sup>th</sup> December 2019 until the determination of her appeal or until further order.

- (ii) An order preserving the status quo of the property until the hearing and determination of the appeal.
  - (iii) An order that the appeal be deemed urgent and that it be expedited.
- (2) The subject of the substantive appeal is a consent order. That appeal turns on the interpretation of the consent order for its true effect. The parties had entered into a consent order for the sale of the parcel of land which the appellant occupies. Dean-Armourer J concluded that the order was clear and unambiguous and granted leave to the respondent/claimant to issue a writ of possession in respect of the lands the appellant occupies as a statutory tenant.

**Stay of execution/preservation of status quo**

- (3) In **Civil Appeal No. 48 of 2011, National Stadium Project (Grenada) Corporation v. NH International (Caribbean) Ltd**, Weekes JA framed the test for the grant of stay as whether the appeal has good prospects of success and “additionally” whether there are any special circumstances which would justify exceptionally the grant of a stay. In support she relied on the decision of de la Bastide CJ in **Emmanuel Romain v WASA CA. Civ. 24/1997**.
- (4) The use of the word “additionally” by Weekes JA raises the question of whether this test is conjunctive or disjunctive. I have no doubt that it is disjunctive and that one goes on to consider special circumstances only if the question of “good prospects of success” is answered in the negative.
- (5) In **Emmanuel Romain**, de la Bastide CJ opined “...[t]hat there are really two matters to be considered in relation to a stay of execution pending appeal.

*The first is what are the prospects of the appeal succeeding? ... The other question is whether there are any special circumstances which would justify exceptionally the grant of a stay."*

- (6) In ruling on the first question de la Bastide CJ observed that *"[I]n the result, while I am not saying that the appeal is a hopeless one, my view is that its prospects of success are not so good as to take it out of the ordinary run of appeals to which the general rule applies, that is, that an appeal does not operate automatically as stay of execution."*
- (7) It would seem to me that the use of the word 'exceptionally' and the suggestion that a good prospect of success is capable of taking an appeal "out of the ordinary run of appeals to which the general rule applies" implies that the test is indeed disjunctive. A good prospect of success entitles an applicant to a stay. However, in special circumstances, in the absence of a good prospect of success, the applicant can by way of exception obtain a stay of execution.
- (8) Therefore, the applicant:
- (i) Must show a good prospect of success; OR
  - (ii) Must show special circumstances which would justify, exceptionally, the grant of a stay.
- (9) However, this is not the end of the matter. After the court considers that there is a good prospect of success or that there are special circumstances, the court must then consider the balance of justice. Part 64.16 of the **Civil Proceedings Rules 1998 (as amended)** provides that that an appeal does not automatically operate as a stay of execution. The essential question is whether there is a risk of injustice to either party if it grants or refuses a stay.

In this case we do not get to the point since on either the “prospects of success” or the “special circumstances” test the applicant fails.

*(i) Likelihood of success*

(10) The application for a stay of execution requires me to examine the consent order and assess, however preliminarily, the judge’s decision in respect of it. As to the prospects of success Mr. Roopnarine submitted that the consent order did not make provision for the parties not agreeing a purchase price and the trial judge failed to consider that it was only when a purchase price was agreed upon that the parties could rely on the default clause (clause vi). I do not agree with the submission. It is plain from the consent order that the purchase price of the property would be the value placed on the property by the valuator and that both parties agreed to be bound by that value. The consent order provided that upon receipt of the valuation the parties were to execute an agreement for sale on terms clearly set out in the consent order. This could only have been on the basis that the valuation brought back by the valuator would constitute the purchase price. Clause (vi) then states that in default of the defendant entering into the agreement for sale, she was required to vacate.

(11) It is true that the consent order never said “*in default of the parties agreeing a purchase price ...*”. But in my judgment this is because the consent order was clear. The purchase price would be whatever valuation the valuator put on the property and which the parties agreed to accept. I therefore agree with the trial judge that the terms of the consent order are clear. In my judgment the appellant has little or no chance of succeeding in this appeal.

(12) In any event, the balance of justice rests with the respondent. In construing

the balance of justice, Weekes JA in **National Stadium** weighed the risk of injustice to both the applicant and the respondent and observed that “being deprived of the fruits of his litigation without good reason is prejudicial to a respondent.” On the facts of this case I am of the opinion that it is in fact the respondent who will suffer the greatest risk of injustice if a stay of execution is granted.

(ii) *Special Circumstances*

(13) As to the existence of special circumstances, the appellant pleads homelessness if called upon to vacate. But that is not a basis on which the court finds special circumstances. Homelessness might be a harsh result of the order for possession but without more, it does not constitute special circumstances, especially in a case in which the true owner is entitled to possession and ought not to be deprived of the fruits of his judgment. The application of the stay is therefore dismissed.

**Expediting the appeal**

(14) I do not consider that the appellant has made out any case as to why the appeal should be given priority over other appeals in the queue which are awaiting their day in court. There was nothing in the affidavit in support which justifies the bringing forward of the appeal. The fact is that there are many litigants who are just as anxiously awaiting a hearing date for their appeals and whose circumstances are no different from the appellant’s. The appellant has put nothing by way of evidence to justify the expediting of the appeal. The application to expedite the appeal is, therefore, refused.

(15) I shall grant a stay of execution for the purposes of allowing the appellant to

make an application to the full court. A stay of execution for 90 days is hereby granted:

- (i) Pending an appeal to the full court.
- (ii) To permit the appellant to vacate the property.

(16) The appellant to pay the respondent's costs of the application assessed in the sum of four thousand two hundred dollars (\$4,200.00).

/s/ Nolan Breaux  
Justice of Appeal