

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 28/2016

APPLICATION NO 151/2017

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE STRAW JA (AG)**

BETWEEN CHARLTON COLLIE APPLICANT

AND CLAUDETTE CROOKS-COLLIE RESPONDENT

Mrs Sashawah Newby for the applicant

**Kevin Williams, Ms Regina Wong and Ms Anna-Kay Brown instructed by
Grant Stewart Phillips & Co for the respondent**

11 and 20 December 2017

BROOKS JA

[1] A judge of the Supreme Court granted judgment in Dr Charlton Collie's favour in a property dispute with Mrs Claudette Crooks-Collie. The learned judge declared that Dr Collie owns a 20 percent interest in property at Plymouth Avenue in the parish of Saint Andrew. Mrs Crooks-Collie is the sole registered proprietor of the property. She acquired it before her marriage to Dr Collie.

[2] The judgment provided as an incidental order for the property to be sold so as to allow Dr Collie to realise his interest, but gave a right to Mrs Crooks-Collie to purchase Dr Collie's interest.

[3] Mrs Crooks-Collie filed an appeal against the judgment. She also applied to this court for a stay of execution of the judgment pending the determination of the appeal. Mrs Crooks-Collie not only wanted to prevent the sale of the property pending the hearing of her appeal, but she also wished the freedom to pledge the title for the property. She wished to borrow money and to grant a mortgage of the property as security for the repayment of the loan. The intended mortgagee is Jamaica National Building Society (hereinafter referred to as "Jamaica National"). Mrs Crooks-Collie planned to on-lend the loan proceeds to a limited liability company for which she is the principal.

[4] A single judge of this court granted her application. The order, made on 21 December 2016, did not only prevent the order for sale from taking effect, but also cleared the way for Mrs Crooks-Collie to treat with the title. A condition of the stay was that Mrs Crooks-Collie should provide to Dr Collie's attorney-at-law, as security for his interest in the property, an irrevocable letter of undertaking by Jamaica National in the sum of \$20,000,000.00. That sum is worth some \$4,000,000.00 less than the current value of his interest in the property.

[5] The learned single judge further ordered that upon being provided with the letter of undertaking, Dr Collie should provide documents to allow for the removal of a caveat that he had lodged against the title for the property.

[6] The learned single judge, on 24 July 2017, made a further order approving the contents of a letter of undertaking that Jamaica National had provided to Dr Collie's attorney-at-law in pursuance of the orders made on 21 December 2016.

[7] Dr Collie has applied to set aside or vary the orders of the learned single judge. Mrs Crooks-Collie has resisted the application.

[8] The approach is, with respect to the learned single judge, wrong in principle. The orders should not have gone beyond the granting of a stay of execution.

[9] The orders made by the learned single judge allowed the property to be put at risk of being lost (for example by sale by the mortgagee), which would put Dr Collie at risk of not having the fruits of his judgment. Mr Williams submitted, on behalf of Mrs Crooks-Collie, that even if there were a sale by the mortgagee, there would be no prejudice to Dr Collie, because the costs that he would incur in the event of a sale of the property would negate the \$4,000,000.00 shortfall in the value of the letter of undertaking.

[10] Mr Williams is not on good ground in this regard. The loss, by virtue of a sale by the mortgagee, would not necessarily be compensated by the letter of undertaking for the following reasons:

- (a) Although approved by the learned single judge, the letter of undertaking given by Jamaica National was entirely nebulous. It gave no basis of the circumstances on which the sum would have been

paid. It certainly did not say that it would be paid on demand.

- (b) The order did not take into account the possibility of any increase in the value of Dr Collie's interest.

[11] There is also the opportunity that Dr Collie would have, of realising almost the entire value of his interest in the property, in the event that Mrs Crooks-Collie acquired his interest. Firstly, there would have been no deductions for transfer tax on the transaction (see section 9 of the Property (Rights of Spouses) Act). Secondly, because Mrs Crooks-Collie is the sole registered proprietor, there would be no documentation required for the transaction that would attract stamp duty.

[12] It is also noted that, in attempting to assess the prejudice to the parties to the appeal, the learned single judge erroneously treated Mrs Crooks-Collie's company's needs as being her needs. It is true that Mrs Crooks-Collie stated, and the learned single judge seemed to have accepted, that the company needed additional finance and that without that assistance its existence would be jeopardised, but there were no particulars or evidence to support those assertions. Such assertions must be supported by evidence and the disclosure should be "full, frank and clear" (see **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065).

[13] The learned single judge seemed to have morphed Mrs Crooks-Collie and her company into a single entity. Her reasons for judgment seemed to suggest that she

took the view that a failure of the company meant that Mrs Crooks-Collie would be ruined. There was no reason proffered to support such an approach.

[14] The learned single judge did not expressly give that reason for granting the orders but no other explanation would warrant the orders for allowing the security being given by Jamaica National and the removal of Dr Collie's caveat. What the learned single judge did say was that Mrs Crooks-Collie should not have the risk of having the premises sold, as that would cause irremediable prejudice to her and there would be a risk of her appeal, if successful, being rendered nugatory.

[15] The situation that would best serve the principles of granting a stay of execution would be a maintaining of the status quo pending appeal. For that reason, there should also be an order specifically preventing Mrs Crooks-Collie from treating with her interest in the property. In that way, Dr Collie would be secure in the judgment, while Mrs Crooks-Collie would not run the risk of her appeal being rendered nugatory.

[16] In his application, Dr Collie asked for costs to be costs in the appeal. His request should be granted.

MCDONALD-BISHOP JA

[17] I have read, in draft, the judgment of my brother Brooks JA. I agree with his reasoning and conclusion and have nothing to add.

STRAW JA (AG)

[18] I too have read the draft judgment of Brooks JA and agree with his reasoning and conclusion. I have nothing to add.

BROOKS JA

ORDER

1. The application to vary the order of the learned single judge is granted.
2. The orders made by the learned single judge, on 21 December 2016, are varied so that:
 - (a) paragraph 1 shall read instead:

"There shall be a stay of execution of the judgment of the Hon Mr Justice Dale Palmer (Ag) pending the hearing and determination of the appeal herein";
 - (b) paragraphs 2, 3 and 4 are deleted;
 - (c) A replacement paragraph 2 shall read:

"Mrs Crooks-Collie is hereby prevented, by herself or her servants or agents, from selling, mortgaging, transferring or otherwise alienating her interest in the property the subject of the appeal herein, pending the hearing and determination of the appeal herein.";
 - (d) All other paragraphs shall be renumbered accordingly.
3. The order made on 24 July 2017, by the learned single judge, is hereby set aside.
4. Costs of this application to be costs in the appeal.