

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO COA2024CV00058

APPLICATION NO COA2024APP00219

BETWEEN	FEATHERBED FARMS LIMITED	1ST APPELLANT
AND	PATRICIA GORDON	2ND APPELLANT
AND	MERLE BALDWIN	RESPONDENT

**Mrs Sashawah Newby, Mrs Janice Buchanan-McLean and Ms Anika Daley
instructed by the Law Offices of J Buchanan-McLean for the appellants**

Sean Kinghorn instructed by Kinghorn & Kinghorn for the respondent

11 and 27 February 2025

**Civil Procedure – Application for stay of execution – Application for stay of
proceedings in the Supreme Court – Rule 26.1(2)(e) of the Civil Procedure
Rules – Rules 1.7, 2.10(b) and 2.14 of the Court of Appeal Rules**

IN CHAMBERS

ORAL JUDGMENT

V HARRIS JA

[1] In this application, the applicants, Featherbed Farms Limited ('the company') and Mrs Patricia Gordon (who are the 1st and 2nd appellants, respectively, in the appeal), are seeking an order for a stay of execution of the judgment of Brown Beckford J ('the learned trial judge') handed down on 21 March 2024. They also seek a stay of the proceedings in Claim No SU2024IS00005 commenced by Mrs Merle Baldwin ('the respondent') in the Supreme Court against the applicants on 21 May 2024.

[2] The background to this matter would appropriately commence on 7 December 1988, when the company was incorporated to carry on the business of agriculture and

rearing poultry. The two shareholders and directors of the company were the respondent and Mr Joseph Gordon, the husband of Mrs Gordon, who is now deceased. The respondent, an agronomist, provided her technical expertise as she managed operations and served as the company secretary. Mr Gordon, who lived overseas, provided the capital and property on which the business operated. At some point, Mr Gordon relocated to Jamaica and became involved with the management of the company. The business relationship between Mrs Baldwin and Mr Gordon became acrimonious, and around 1994, she ceased her involvement with the company. Mr Gordon continued to operate the company and achieved great success. Upon his death on 22 May 2019, Mrs Gordon, having received a grant of letters of administration on 5 November 2020, continued the company's operation.

[3] In December 2019, the respondent purportedly became aware that she was removed as a director, and whereas she and Mr Gordon were each issued one share in the company at the outset, the remaining 998 shares had since been issued to Mr Gordon. Accordingly, the respondent filed a fixed date claim form in the court below on 21 September 2020, seeking to be reinstated as a director and to restore the company's shareholding to one share each to be held by herself and Mr Gordon.

[4] Following a trial, the learned trial judge ordered:

- "1. Only two of the 1000 shares in [the company] have been lawfully issued.
2. The allotment of 998 shares to Joseph Gordon was invalid.
3. The shareholdings in [the company] remains [sic] as 1000 ordinary shares with 1 ordinary share held by [the respondent], and 1 ordinary share held by the estate of Joseph Gordon.
4. [Patricia Gordon] shall file with the Registrar of Companies a return of allotment and amended annual returns reflecting the rectified shareholdings within 90 days of this Order.

5. The Notice of Rectification shall be given to the Registrar of Companies and the Registry at the Companies Office is to be rectified to reflect the same.

6. The register of members of [the company], be rectified by striking out Nine Hundred and Ninety-Eight (998) shares of the share capital of the Company purportedly held by [Mr Gordon].

7. The [respondent] is to have 75% of the cost of the Claim.

8. The [respondent's] Attorney-at-Law to prepare, file and serve formal Order."

[5] Dissatisfied with the learned trial judge's resolution of the matter, the applicants filed their appeal on 2 May 2024. The application for both the stay of execution and stay of the proceedings in the court below is sought pending the determination of the applicants' appeal against the judgment.

Submissions on behalf of the parties

[6] The applicants' position, as submitted by learned counsel Mrs Sashawah Newby, for seeking the stay of execution and stay of proceedings, is based mainly on the proposition that not only do they have an appeal with some prospect of success, but also, given the risk of irremediable harm to the applicants, it is in the interests of justice that the application be granted.

[7] In support of their application for a stay of execution, the applicants relied upon several cases, including **Paymaster (Jamaica) Limited v Grace Kennedy Remittance Service Limited and Paul Lowe** [2011] JMCA App 1, **William Clarke v Gwenetta Clarke** [2012] JMCA App 2 and **Myrna Douglas and Jacqueline Brown v Easton Douglas** [2017] JMCA App 5. Reliance was placed on **Cable & Wireless Jamaica Limited v Eric Jason Abrahams** [2021] JMCA App 19 in relation to the application for a stay of proceedings.

[8] Learned counsel Mr Kinghorn, for the respondent, submitted that the learned trial judge's decision was based upon findings of fact that were mostly undisputed. Therefore, in the light of cases such as **Industrial Chemical Co (Jamaica) Ltd v Ellis** (1986) 35

WIR 303, **Watt (or Thomas) v Thomas** [1947] AC 484, **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21 and **Kevron Turner and another v Johnica Marshall et al** [2024] JMCA Civ 26, the appellate court will only disturb findings of fact of a judge at first instance if it can be demonstrated that, in arriving at those findings, the judge was plainly wrong. Further, Mr Kinghorn submitted that given the nature of the evidence before the learned trial judge, her decision is unimpeachable.

Law and analysis

Stay of execution

[9] The law on this issue is well-known and settled. Rule 2.10(b) of the Court of Appeal Rules ('CAR') gives a single judge of this court the power to stay the execution of any judgment or order pending the determination of the appeal against that judgment or order. A stay of execution will not be granted unless the appeal has some prospect of success. This court will also consider any risk of injustice to one or other of the parties if it grants or refuses the stay, that is, whether granting or refusing the stay accords with the best interest of justice and is likely to cause the least irremediable harm. This is essentially a balancing exercise (see para. [28] of **William Clarke v Gwenetta Clarke**).

[10] The following dicta of Phillips LJ in **Combi (Singapore) Pte Limited v Ramnath Sriram and Sun Limited FC** [1997] EWCA 2164, which was applied in **Myrna Douglas and Jacqueline Brown v Easton Douglas** (para. [26]) is adopted:

"...the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. This assumes of course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice. The starting point must be that the

normal rule as indicated by Ord 59, r 13 is that there is no stay but, where the justice of that approach is in doubt, the answer may well depend upon the perceived strength of the appeal.”

[11] The question, therefore, is whether it is in the best interest of justice to grant the stay because it would lead to the least irremediable harm (see also **Hammond Suddards Solicitors v Agrichem International Holding Ltd** [2001] EWCA Civ 2065). Applying these principles to the case at bar, notwithstanding the respondent’s entitlement to the fruits of her judgment, a stay of execution will be granted where there is an arguable appeal with some prospect of success, and the justice of the case requires that a stay be granted.

[12] The test to be applied in an application for a stay of execution concerning the justice of the case is as Brooks JA (as he then was) articulated in **Jamaica Public Service Co Ltd v Lethe Estate Limited** [2018] JMCA App 14:

“[4] ...

3. The test as to the justice of the case includes asking whether any of the parties would be likely suffer irremediable harm depending if the stay is granted, or alternatively, if the stay is refused. This question would include considerations such as, whether the appeal would be stifled if the stay is not granted, and whether a successful appeal would be rendered nugatory by a refusal of a stay.”

[13] As already established, in determining the application for a stay of execution, the judge is required to take a provisional view of the likelihood of success of the appeal. In my provisional view, the applicants have an arguable ground of appeal with a real prospect of success. The issue of the delay of well over 20 years before the respondent chose to exercise her rights in the context of a claim seeking the equitable remedy of rectification is exploratory. In particular, the question of whether the learned trial judge applied the correct principles and tests or took into account irrelevant considerations in the determination of the issue of delay where the respondent in her claim sought the equitable remedy of rectification requires ventilation at the appeal.

[14] In Mrs Gordon's affidavit, filed on 22 October 2024 in support of the application, she averred to the prejudice that the company would suffer if a stay of execution is not granted. She indicated that the company's record would be rectified before the hearing of the appeal, and it would be subject to enforcement proceedings, which would deny the applicants the full benefit of their success if the appeal is rendered in their favour. Additionally, the beneficiaries of Mr Gordon's estate would be severely impacted because the number and value of his shares in the company would be substantially reduced. Accordingly, the potential irremediable harm to the applicants far outweighs that to the respondent. In other words, there is a greater risk of injustice to the applicants if the stay is not granted.

Stay of proceedings

[15] This aspect of the application relates to proceedings commenced on 21 May 2024 by the respondent in the court below to wind up the company. As a result, the applicants are seeking an order for those proceedings to be stayed pending the determination of the appeal.

[16] Rule 2.14 of the CAR provides that this court has the powers set out in rule 1.7 of the CAR ("The court's general powers of management") and all powers of the Supreme Court, including those set out in Part 26 of the Civil Procedure Rules ('CPR'). This includes rule 26.1(2)(e) of the CPR, which provides that a judge can stay the whole or part of any proceedings generally or until a specified date or event. Therefore, implicit in rule 2.14 of the CAR is the power of a single judge to make an order to stay any proceedings commenced in the court below. At para. [61] of **Cable & Wireless Jamaica Limited v Eric Jason Abrahams**, McDonald Bishop JA (as she then was) pronounced that a single judge from this court may order a stay of proceedings in the court below pending the determination of the appeal. In such an application, an applicant would be required to establish that they would suffer prejudice if the stay of proceedings is refused.

[17] Mrs Gordon's affidavit referred to the respondent's claim in the Supreme Court filed subsequent to the learned trial judge's decision. As indicated previously, that claim

is seeking, among other things, an order to wind up the company. The date for the first hearing was 14 October 2024 (adjourned to 25 February 2025). The applicants' position is that a successful outcome of the appeal will directly impact those proceedings by, more likely than not, bringing them to an end. However, on the other hand, if the proceedings are not stayed and the claim is successful, the company's life would end before the appeal is heard. This would render the appeal futile, since even if the appeal is successful, the company would cease to exist. Such an outcome is not far-fetched considering that that claim was filed after the applicants had already filed their appeal, signifying the respondent's intention to enforce the judgment irrespective of the impending determination of the appeal.

[18] I also observe that in the respondent's affidavit in response, filed on 17 December 2024, she alleged no actual prejudice that she would suffer if either the stay of execution or proceedings were granted. The only prejudice would be the delay in receiving the fruits of her claim if the appeal fails. In my view, the possible prejudice (and injustice) to the applicants would again far outweigh that of the respondent.

[19] Having considered the affidavit evidence from the parties and conducted the required balancing exercise, I am convinced that in the circumstances of this matter, given the irremediable harm and prejudice that would impact the applicants if their application is refused, the orders that best accord with the interests of justice, is to order both a stay of execution of the judgment of the learned judge and a stay of the proceedings commenced in the court below until the hearing and determination of the appeal. Therefore, it is hereby ordered:

1. The execution of the judgment of Brown Beckford J, given on 21 March 2024, is stayed until the determination of the appeal.
2. The proceedings in Claim No SU2024IS00005 Meryl Baldwin v Featherbed Farms Limited and Patricia Gordon, filed in the Supreme

Court on 21 May 2024, are stayed until the determination of the appeal.

3. Costs to be costs in the appeal.
4. The applicants' attorneys at law are to prepare, file and serve these orders.