

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 26/2018

APPLICATION NO 54/2018

BETWEEN	JAMAICA PUBLIC SERVICE CO LTD	APPLICANT
AND	LETHE ESTATE LIMITED	RESPONDENT

B St Michael Hylton QC, Mrs Symone Mayhew and Ms Rochelle Johnson instructed by Symone M Mayhew and Co for the applicant

Hugh Small QC and Weiden Daley instructed by Hart Muirhead Fatta for the respondent

12 June 2018

IN CHAMBERS

BROOKS JA

[1] In this application the Jamaica Public Service Company Limited (JPS) seeks an order for the stay of execution of a judgment of Simmons J, which was handed down on 23 February 2018. The stay is sought pending the determination of JPS' appeal against the judgment. In that judgment Simmons J awarded damages to Lethe Estate Limited (Lethe) against JPS for trespass to Lethe's land. The award is for a significant amount of money; \$58,150,000.00 in general damages and \$191,500.00 in special damages.

[2] JPS' reason for seeking the stay of execution is mainly that there is a risk that, at the end of what it expects to be a successful appeal, Lethe will be unable to repay that money if execution of the judgment were not stayed. It bases its concern on an admission by Lethe's Director and Chief Executive Officer, Rev Francis Tulloch, that Lethe has incurred so much expense, especially in relation to this litigation, that it is in financial ruin. Rev Tulloch states this both in the court below, at paragraph 171 of his witness statement, and in this court, at paragraph 9 of his affidavit in opposition to this application.

[3] Mr Small QC, on behalf of Lethe, stressed that Lethe is entitled to the fruits of its judgment and that, not only is there no evidence that Lethe is indebted, but that it has valuable assets in the form of the land, which is the subject of the litigation. There is as a result, he submitted, no risk that JPS will have a pyrrhic victory if it is successful on appeal.

[4] The law on the point is now well settled:—

1. The judgment creditor is entitled to the fruits of its judgment.
2. The court will however stay execution of the judgment if:
 - (a) the judgment debtor has an arguable appeal with some prospect of success, and

(b) the justice of the case requires that a stay be granted.

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.

[5] The leading case on the point is **Hammond Suddard Solicitors v Argichem International Holdings Ltd** [2001] EWCA Civ 2065. A comprehensive review of the relevant principles was conducted in this court by Lawrence-Beswick JA (Ag) in **Caribbean Cement Company Ltd v Freight Management Limited** [2013] JMCA App 29. Although there was an application to vary her decision the challenge was not in respect of the issue of the stay of execution (see [2015] JMCA App 1).

[6] The relevant circumstances in the present case are:

- (1) Lethe has a judgment in its favour.
- (2) Lethe needs money.

- (3) JPS has sufficient money to satisfy the debt, but is worried that if it is successful on appeal, it will not be able to recover its money.
- (4) Although Lethe has financial problems, it owns significant holdings of land which clearly are valued in multiples of the judgment sum.
- (5) But liquidation of lands is not necessarily easy or desirable, and there is a risk of sale pending the outcome of the appeal.

[7] JPS has arguable grounds of appeal with real prospects of success. The issue of whether Lethe's "conscience" is bound, bearing in mind Mr Small's admission to this court that Rev Tulloch was, and is, Lethe's "functioning mind", is worth exploration.

[8] The best way to satisfy the concerns of both JPS and Lethe, is to order a payment of some money, but to ensure that there is security for the repayment of that money if needs be. It has to be a meaningful sum, but not the entire judgment sum.

[9] The orders, therefore, are:

1. The judgment of Simmons J handed down on 23 February 2018 is stayed pending the outcome of the appeal on the following conditions:

- (a) The applicant pays to the respondent the sum of \$20,000,000.00 on or before 30 June 2018.
- (b) The respondent is restrained by itself or by its servants or agents, or otherwise, from selling charging, leasing or otherwise parting with its interest in the lands comprised in certificates of title registered at Volume 1283 Folio 504 and Volume 1283 Folio 505 of the register book of titles.
- (c) Upon payment of the sum, the applicant may lodge a caveat against these titles pending the outcome of the appeal.
- (d) Both parties should have liberty to apply.

2. Costs to be costs in the appeal.