

amount of the cheque and sued Miss Laing for the amount due. Miss Laing counterclaimed. By judgment delivered in the Supreme Court, Jackson Haisley J (‘the learned judge’) ruled in favour of NCB. Miss Laing filed a notice and grounds of appeal on 21 April 2026, while NCB filed a counter notice of appeal on 29 April 2026.

[2] This is an application by the applicant for a stay of execution of the learned judge’s judgment handed down on 25 March 2026 in the following terms:

- “1. Judgment on the Claim is for the [respondent] against the [applicant].
2. Damages awarded in the sum of US\$286,400.00 or in the alternative the Jamaican Dollar equivalent using the Bank of Jamaica average selling rate for the US dollar applicable on the date of payment.
3. Interest on such damages at a rate of 3% per annum from the date of judgment to the date of payment.
4. The [applicant’s] Counterclaim fails. Judgment on the Counterclaim is for the [respondent].
5. Costs to the [respondent] to be agreed or taxed.”

[3] A single judge of this court is empowered to determine this application pursuant to rule 2.10 of the Court of Appeal Rules.

[4] The principles applicable to an application for a stay of execution are well trodden. First, there must be an appeal with some prospect of success. Once that is satisfied, the court must then assess the circumstances in the particular case to determine what order best accords with the interests of justice (see, **Jamaica Public Service Company Limited v Rosemarie Samuels** [2021] JMCA App 15 paras. [19]-[23]).

Appeal with prospects of success

[5] Mrs Minott-Phillips KC submitted that NCB opposes the application for the stay. King’s Counsel contended that the appeal has no real prospects of success, as, among other things, the issue of a returned cheque is covered by an express clause in the contract between NCB and Miss Laing.

[6] I agree with counsel for the applicant that the proposed appeal plainly satisfies the first limb of the applicable test for the grant of a stay. The appeal is neither fanciful nor hopeless.

[7] I adopt para. 22 of the applicant's submissions. I agree that the appeal raises substantial and arguable questions of law concerning the proper allocation of risk in the banker-customer relationship, the proper construction of the contractual terms governing that relationship, the scope of any duty of diligence owed by a customer to a bank, and the application of ordinary principles of causation. Further, the issues raised on this appeal are of jurisprudential novelty and importance, warranting full debate by the Court of Appeal. I am, therefore, satisfied that the appeal is arguable and meets the first threshold requirement for the grant of a stay.

[8] The court now has to determine whether the grant or refusal of the application best accords with the interests of justice.

Risk of injustice

[9] After reviewing various authorities on this matter, the court may consider several questions to determine where the greater risk of injustice lies. Questions such as:

- a. Is there a risk of irreparable harm to NCB if a stay is ordered but no similar detriment to Miss Laing if it is not? If this is so, no stay should be ordered.
- b. Is there a risk of irreparable harm to Miss Laing if a stay is not ordered, but no similar detriment to NCB if a stay is ordered? If yes, a stay should be ordered.
- c. If a stay is refused, what are the risks of the appeal being stifled?
- d. If a stay is granted and the appeal fails, what are the risks that NCB will be unable to enforce the judgment?
- e. If a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of Miss Laing being able to recover any monies paid from NCB?

[10] When there is a risk of harm to either party, the court must weigh the options carefully to determine which one is less likely to cause injustice.

[11] Before a court can properly grant a stay, it must have a complete understanding of the applicant's affairs. Merely making assertions is not enough. Convincing evidence must be presented showing that there is a genuine risk of injustice if enforcement proceeds while the appeal is pending.

[12] There should be a balance between the right to enforce a judgment and the prospects of success of Miss Laing if there is a good arguable appeal.

[13] I have noted the case law shared by King's Counsel for NCB indicating that costs awarded are not considered the fruits of judgment but instead recompense for costs to be paid or which have already been paid, and, without special circumstances, these should be enforced (see **Carmen Farrell et al v Lascelle Reid et al** [2012] JMCA App 16).

Discussion

[14] I have reviewed the affidavit evidence provided by Miss Laing, who is a practising attorney-at-law and a sole practitioner. There is no affidavit evidence from NCB.

[15] On behalf of Miss Laing, Miss Scott has submitted that the balance of justice falls decisively in favour of granting a stay due to the real risk of prejudice to Miss Laing. These risks include the fact that enforcement of the judgment, in a context where her liquid and real assets cannot meet the judgment sum, would cripple her livelihood and her legal practice, and could even lead to insolvency proceedings. Counsel argues that, in contrast, the prejudice to NCB is slight, as if a stay is granted, NCB only suffers a deferral of recovery, and interest on the judgment will compensate for this.

[16] Mrs Minott-Phillips submitted, among other things, that if a stay is granted, it should be on the basis that Miss Laing pays a substantial portion of the judgment debt of US\$286,400.00 by a specified date (31 October 2026), with a provision that those funds

be held in escrow. King's Counsel emphasised that although the judgment was due to be paid immediately, Miss Laing had not approached NCB seeking an arrangement for payment. Nevertheless, King's Counsel stated that NCB has exercised restraint to allow Miss Laing the space and time to do so.

[17] King's Counsel argued that Miss Laing had not provided enough information to persuade the court to deviate from the default position that there should not be a stay. King's Counsel emphasised that Miss Laing has stated that she might be ruined, not that she will be ruined, if the judgment is enforced. It was also submitted that Miss Laing would have no trouble recovering any monies paid to NCB if she pays the judgment now. Furthermore, King's Counsel pointed out that orders 1 and 4 of the learned judge's judgment, which are declaratory in nature, are not subject to a stay.

[18] I agree with Miss Scott's submissions, on behalf of Miss Laing, that the balance of justice lies in favour of granting a stay. If the judgment of US\$286,400.00 (approximately \$45,537,600.00 at an exchange rate of J\$159.00 to US\$1.00) were to be enforced against Miss Laing at this time, there is a clear risk of injustice to Miss Laing, who, it appears to the court, has provided sufficient information relating to her living expenses, accounts, real and liquid assets, and her liabilities. NCB will mainly suffer a delay in payment, which, I agree, can be remedied by Miss Laing paying interest. There is a risk that Miss Laing may suffer irremediable harm if a stay is not ordered, but no similar detriment to NCB. There is also a risk that the appeal may be stifled if Miss Laing is not granted a stay, as enforcement is likely to impact her ability to earn a livelihood and pursue the appeal. There is no issue that NCB could repay the judgment sum if Miss Laing were to pay it now. However, on the evidence before this court, she is clearly unable to do so.

[19] While it is arguable that if the appeal fails, there is no guarantee that Miss Laing will be able to pay the judgment sum to NCB, it would certainly be in Miss Laing's best interest, were that to occur, to make an arrangement to pay, instead of facing insolvency, which would remove her livelihood.

[20] I, however, agree with Mrs Minott-Phillips that a conditional stay serves the interests of justice in these specific circumstances. This is because both the bank and Miss Laing have been negatively impacted by a forgery for which neither party is directly responsible. It is not appropriate to require Miss Laing to pay a large sum, as this would negate the intended relief of the grant of the stay. Instead, there ought to be the payment of a sum reflecting the fact that both sides have suffered loss and incurred expenses due to an illegal act not attributable to them.

[21] On the issue of costs, if the order for costs is not stayed, this could also negate the relief that the stay is to provide.

[22] In weighing the justice of this difficult matter and the material provided in the affidavit evidence, in my view, Miss Laing ought to pay \$5,000,000.00 by 30 October 2026, and the attorneys-at-law for NCB, Myers, Fletcher and Gordon, should hold these funds in escrow pending the determination of the appeal or further order of this court.

[23] I, therefore, make the following orders:

- i. Orders 2, 3, and 5 of the judgment of Jackson Haisley J, dated 25 March 2026, are hereby stayed pending the determination of the appeal or further order of this court.
- ii. The stay of these orders is granted on condition that the applicant pays \$5,000,000.00 to Myers, Fletcher & Gordon, the attorneys-at-law for NCB, on or before 30 October 2026, such funds to be held in escrow.
- iii. Costs of this application to be costs in the appeal.