

MILLION SEVEN HUNDRED AND NINETY-FOUR THOUSAND ONE HUNDRED AND THIRTY-SIX JAMAICAN DOLLARS AND NINETY-FIVE CENTS (\$5,794,136.95) with interest at a rate of 18.87% per annum from July 31, 2012 to July 10, 2023.” (Emphasis as in the original)

[3] Following a trial, the learned judge found, among other things, that (1) the 1st applicant had breached a joint venture agreement between herself and the respondent, Mr Morris Dean, to develop 30 acres of the property, and (2) an equitable mortgage had been created in the respondent’s favour after he had discharged the mortgage of \$5,794,136.95 that was on the property to facilitate the joint venture (a fact not in issue).

[4] Being dissatisfied with the outcome of the trial, the applicants filed their notice and grounds of appeal on 21 August 2023. The significant challenges to the learned judge’s decision concern her finding of the existence of an equitable mortgage in the respondent’s favour, the order for the sale of the entire 104 acres of the property rather than the 30 acres which were to be developed (in circumstances where the mortgage discharged by the respondent was over the whole acreage and to date there has been no subdivision of the property although the development of the property was to have been completed within 12 months of the joint venture agreement), and the interest rate that the learned judge determined was to be charged on the outstanding sum.

[5] Learned counsel for the applicants, Mr Keith Bishop, argued that the applicants were entitled to succeed on their application because they have an appeal with a real chance of success, and the grant of the stay of execution is likely to result in less injustice. Conversely, learned counsel for the respondent, Miss Stephanie Williams, contended that the application ought to be refused because the applicants had failed to show that their appeal has merit, and the balance of justice favoured the refusal of the application.

[6] It is well settled that in deciding whether or not a stay of execution is to be granted, the applicants are required to show that the appeal has a real prospect of success and there is a minimal risk of injustice to one or both parties if the court grants or refuses the

application (see **Peter Hargitay v Ricco Gartmann** [2015] JMCA App 44 at para. [60] and **Dian Watson v Camille Feanny and others** [2020] JMCA App 1 at para. [10]).

[7] An assessment of the grounds of appeal is required to determine if the appeal has a real prospect of success. However, that evaluation ought not to usurp the role of the full court, which will have to make the final determination of the grounds advanced at the hearing of the appeal. Bearing that caution in mind, I find that the issue of merit does not favour the applicants. The learned judge's decision is based primarily on findings of fact, most of which are not really in dispute. In my judgment, the applicants' task of convincing the full court that the learned judge was plainly wrong in arriving at her findings (in keeping with the principles enunciated in **Beacon Insurance Company Limited v Maharaj Bookstores Limited** [2014] UKPC 21) will be particularly difficult.

[8] Therefore, I find that the appeal has no realistic prospect of success. Having so determined, it is unnecessary to consider the balance of injustice except to briefly observe that the evidence shows that the 1st applicant owns another parcel of land measuring in excess of 200 acres, which is mortgage-free and which she is free to develop. On the other hand, the respondent has been waiting for over 11 years to be refunded the money he expended to discharge the mortgage on the property (in order to pursue a joint venture that up until now has failed to materialise) so that he can adequately attend to his medical needs and expenses.

[9] In light of the preceding, I order as follows:

1. The notice of application for court orders, filed on 7 November 2023, for a stay of execution of the order of Palmer-Hamilton J given on 10 July 2023, is refused.
2. Costs of the application to the respondent to be taxed if not agreed.