

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

**CCJ Appeal No CV 006 of 2013
GY Civil Appeal No. 45 of 2012**

BETWEEN

ROSEMARIE RAMDEHOL

APPLICANT

AND

HAIMWANT RAMDEHOL

RESPONDENT

Before The Honourables

**Mr Justice R Nelson
Mr Justice J Wit
Mr Justice D Hayton**

Appearances

Mr Sanjeev J Datadin and Ms Jamela Ali for the Applicant

Mr Khemraj Ramjattan for the Respondent

JUDGMENT

of

Justices Nelson, Wit and Hayton

Delivered by

The Honourable Mr Justice Nelson

on the 24th day of July 2013

- [1] The parties to this application were formerly man and wife, and partners in a successful auto sales business. As former partners in life and in business they have been embroiled in a lengthy matrimonial property settlement.

- [2] The *fons et origo* of the present application is an order of Rishi Persaud J in the High Court on June 11, 2012. Rishi Persaud J ordered the Applicant to pay the Respondent US\$262,500 or the Guyanese equivalent “as agreed to be paid to him by virtue of Agreement concerning division of property of 12 September 2007.” The learned judge granted a stay of execution for six weeks.
- [3] On July 23, 2012 the Applicant filed an appeal in the Court of Appeal challenging the orders of Rishi Persaud J made on June 11, 2012.
- [4] Upon the expiration of the six-week stay granted in the High Court, the Applicant on July 24, 2012 approached the Judge in Chambers in the Court of Appeal by summons for a stay of execution of the orders made by Rishi Persaud J on June 11, 2012 until the hearing and determination of the Appeal filed on July 23, 2012. (hereinafter referred to as “the substantive appeal.”)
- [5] On September 14, 2012 the Judge in Chambers, Roy JA, treating the application as a fresh application for a stay of execution pending appeal made the following order:
- “IT IS HEREBY ORDERED** that there be a stay of execution of the Orders made by the Honourable Mr. Justice R. Persaud on the 11th day of June, 2012 until the hearing and determination of the substantive appeal herein **SAVE AND EXCEPT** that with respect to the sum of \$8,000,000.00 (Eight Million Dollars) there shall be a stay of execution for a period of six (6) months from the date hereof.”
- [6] Notwithstanding the grant of the stay of execution and the limited stay of six months as to \$8,000,000.00 the Applicant on September 28, 2012 applied to the Full Bench for an order discharging or varying the order of Roy JA “refusing a partial stay of execution of the judgment of the Honourable Justice Rishi Persaud dated the 11th June, 2012 with respect to the sum of \$8,000,000.00 (eight million dollars) to be paid within six months from the date of the said order.”

- [7] It seems that the Applicant did not want the order of Roy JA discharged. Rather, the Applicant wanted the order varied so that the limited stay as to \$8,000,000.00 could be extended until the hearing of the substantive appeal.
- [8] The Full Bench of the Court of Appeal quite properly held that a stay of execution had been granted in respect of the \$8,000,000.00 albeit only for six months.
- [9] The only ground for complaint was as to the quantum and duration of the limited stay as to \$8,000,000.00. Since these considerations were matters within the jurisdiction of the single judge in chambers, the Court of Appeal could find no error of law or wrongful exercise of discretion by the learned judge, and dismissed the motion with costs on June 25, 2012.
- [10] Such is the background to the application dated June 28, 2012 to this Court for special leave to appeal against the decision of the Full Bench of the Court of Appeal dated June 25, 2012.
- [11] The application for special leave invites this Court to treat the application as the hearing of the appeal and issue, *inter alia*, the following order:
- “An Order restraining the execution of the judgment for the payment of \$8,000,000 (eight million dollars) which is part of the subject of Civil Appeal No. 45 of 2012 against the judgment of the Honourable Justice Rishi Persaud made in Commercial Court on the 11th June, 2012 in High Court Action Numbered 63/CD of 2010 until the hearing and determination of this Application for special leave or until further Order of this Court.”
- [12] Again, there was no evidence of execution being about to be levied, so the prayer is misconceived. The Applicant really seeks to have the quantum and duration of the limited stay granted by Roy JA reviewed. In other words, the Applicant invites this Court to review on an interlocutory appeal the exercise of a discretion as to the amount and duration of the stay granted by both Roy JA and the Court of

Appeal, an extremely onerous task before a court that does not on applications of this kind exercise its own discretion.

- [13] Counsel for the Applicant contended in support of the application that the figure of \$8,000,000.00 in the order of Roy JA was a figure which emanated from the Applicant in the course of settlement negotiations. The figure was disclosed to Roy JA as a sum for which the entire matter would have been settled. Therefore, so the argument ran, privilege attached to the statement supplied to the judge. It is difficult to see how a statement supplied to a judge as a possible settlement figure could attract privilege as a communication between opposing parties in settlement negotiations. Further, in deciding to limit the stay of execution of the judgment, the learned judge may have taken several factors into account including the length of time it would take for the appeal to be heard. Indeed, if Roy JA regarded the statement of the Applicant as an admission of liability, he would merely have granted the stay of execution as to the remainder of the judgment on the undertaking of the Applicant to pay \$8,000,000.00 to the Respondent.
- [14] In any event, it cannot be said that the amount of the judgment not subject to a stay is a disproportionate fraction of the sum of US\$262,500.00 which Rishi Persaud J ordered the Applicant to pay. Accordingly, the Applicant has not identified any wrongful exercise of the judge's discretion. Even if this Court disagreed with the quantum, where the amount is within the tolerable margin of discretion allowed to the judge in the application, this Court would not interfere as to the quantum or duration of the stay.
- [15] Counsel for the Applicant contended principally that the Applicant had a good arguable appeal and that the Respondent in an affidavit filed on August 16, 2012 had disclosed that he was in "dire financial straits" with the result that there was no reasonable probability that the Applicant would recover any sum paid if the appeal was successful.

- [16] Until Staughton LJ decided *Linotype-Hell Finance Ltd. v Baker*¹ a stay of execution pending appeal was granted only where the applicant satisfied the court that if damages and costs were paid, there was no reasonable probability of getting them back if the appeal succeeded: see *Atkins v Great Western Railway*². We agree with Staughton LJ that that test is too restrictive and that a stay may also be granted if the applicant persuaded the court that without a stay of execution, he or she would be ruined and that the appeal had some prospect of success. To achieve the necessary degree of persuasion, the applicant would have to present credible financial evidence to the court.
- [17] In this case, the Applicant in a witness statement dated August 31, 2010 in the High Court proceedings, averred that as a result of negotiations with the Respondent the parties agreed, *inter alia*, that the Applicant should pay the Respondent “the cash sum of \$25,000,000”. This evidence suggests that the Applicant could not be ruined if the sum of \$8,000,000.00 became payable pending the appeal. Accordingly, it is not thought that the Applicant would suffer any injustice if enforcement proceedings were allowed to take place pending appeal.
- [18] It must be remembered that the proposed appeal is interlocutory and that the Court will intervene under section 8 of the CCJ Act only where it is necessary to avert a miscarriage of justice or to correct an egregious error of law.
- [19] Sitting as a court of review, this Court can find no error of law in the decision of the Court of Appeal or of Roy JA, who on the fresh application for a stay made on appeal granted a stay of execution pending the hearing of the substantive appeal save as to \$8,000,000.00 on the expiry of six months.

¹ [1992] 4 All ER 887.

² (1886) 2 TLR 400.

Conclusion

In the result, the application for special leave to appeal is dismissed with costs.

/s/ R F Nelson

The Hon Mr Justice Nelson

/s/ D Hayton

The Hon Mr Justice Hayton

/s/ J Wit

The Hon Mr Justice Wit