

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2008/009

BETWEEN:

[1] PEGGY HUGGINS
[2] ASHLEY HUGGINS
[3] ABDUL HUGGINS

Appellants

and

JOZEYL MORRIS

Respondent

Before:

The Hon. Mde. Ola Mae Edwards

Justice of Appeal

Appearances:

Mr. Olim J. B. Dennie for the Appellant

Mr. Jaundy Martin for the Respondent/Claimant

2009: February 24.

REASONS FOR DECISION

[1] **EDWARDS, J.A.:** On 30th April 2008, Thom J delivered judgment in claim No. 165 of 2006. She entered judgment for the Respondent/Claimant and ordered an injunction restraining the appellants/defendants from constructing any building on the land described in Deed No. 4204 of 2003. The appellants were also ordered to deliver up possession of the said property to the respondent by 31st December 2008, and pay costs in the sum of \$14, 000.00 to the respondent.

[2] The appellants filed a Notice of Appeal on 11th June 2008. On 17th December 2008, the appellants filed a Notice of Application for Stay of Execution of the

Judgment of Thom J with supporting affidavit of Peggy Huggins sworn 16th December 2008.

[3] Following on the directions given by a single judge of the court on 20th January 2009, the respondent filed a Notice of Opposition on 17th February 2009, along with an affidavit in opposition to the application for stay. The bases of the opposition are:

- (a) that the appeal which has no reasonable prospects of success is against the findings of fact of the trial judge; and
- (b) it is impracticable to remove the injunctive order prohibiting construction which is of a permanent nature on the land, as this will interfere with the status quo that existed before trial and which should continue until final determination of the appeal.

[4] The appellants' learned counsel, Mr. Dennie, has transmitted to this court a copy of his filed written submissions, which address the factual findings that are the subject of the appeal while arguing that the appeal has a reasonable prospect of success.

[5] The proviso to section 18 of the **Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act** Chapter 18¹ states that:

"(a) nothing in this act shall disable the High Court or the Court of Appeal, if it thinks fit so to do, from directing a stay of proceedings in any cause or matter pending before it; and (b) any person, whether a party or not to any such cause or matter who would formerly have been entitled to apply to any court to restrain the prosecution there of ... may apply to the High Court or to the Court of Appeal, as the case may be, ... for a stay of proceedings in the cause or matter, either generally, or so far as may be necessary for the purposes of justice."

The essential question for the court is therefore whether there is a risk of injustice to one or both parties if it grants or refuses a stay; and the evidence in support of the application for a stay needs to be full, frank and clear.²

¹ Laws of Saint Vincent and the Grenadines Revised Edition 1990 Vol. 1

² Per Clarke LJ in *Hammond Suddards Solicitors v Agrichem International Holdings Ltd.* [2002] EWCA Civ 2065 at paragraphs 13 and 22.

- [6] The normal rule is for no stay and if a court is to consider a stay a case has to be made out.³ The court must hold a balance and give full and proper weight to the starting principle that there must be good reason to deprive a successful claimant of the right to enforce her judgment and the mere existence of an arguable ground of appeal is not by itself such a reason.⁴
- [7] The modern authority on the circumstances in which a court will exercise its discretion on the granting of a stay of execution was settled in the case **Linotype-Hell Finance Ltd. v Baker**.⁵ There Staughton LJ said that a stay could be granted if the appellant would face ruin without the stay, provided the appeal had some prospect of success.
- [8] The factors normally taken into account are such matters as whether, if the judgment is enforced pending appeal and an appeal is successful, there will be good prospects of recovering any money, payment of which has been enforced under the judgment pending appeal, and likewise, questions of timing; how soon the appeal is going to be heard and how long the matters have remained outstanding and matters of that sort.⁶
- [9] The type of evidence that should be in an affidavit in support of an application for stay which may move the court to grant the application was addressed by Lord Justice Hobhouse in **Winchester Cigarette Machinery Ltd v Michael Payne and another**⁷ He said at page 11 that:

“...it has been recognized that it is relevant that the Appellant might be unable to recover from the Respondent the sum awarded in the event of the judgment being set aside on appeal. It is also relevant that without a stay he will be ruined, ... The Appellant must show some special

³ Thomas LJ in *Haydock Finance Ltd. v Louis Transport Equipment Consultants Ltd* [2005] EWCA Civ 450 at paragraph 5

⁴ Lord Justice Ralph Gibson in *Winchester Cigarette Machinery Ltd v Michael John Payne and another* (unreported judgment) (QBD) No. FC393/6788/C Royal Court of Justice, 10th December 1993, at pages 6-11

⁵ [1993] 1 WLR, 321; [1992] 4 ALL ER 877. See also *Attorney General v Bernard Coard et al.* Civil Appeal No. 10 of 2004 Per Gordon J. A. (Ag) delivered 26/4/04 at para 9; *Carlisle Bay Limited and F.E.B.C. (Antigua Ltd. Civ. APP. No. 13 of 2003* delivered 10/5/04, Per Saunders C.J. (Ag.) at para 10

⁶ Lord Justice Ralph Gibson in *Winchester Cigarette Machinery Ltd v Michael John Payne and another* at pages 6 to 11

⁷ See footnote 4

circumstances which take the case out of the ordinary so that the ordinary rule should not apply and a stay be granted. If showing that such circumstances exist involves making good factual submissions, the facts have to be made good evidence.”

[10] The supporting affidavit of the appellant, Peggy Huggins, recites the chronology of events leading up to the filing of the appeal, explains that the record of appeal has not been filed yet because the notes of evidence have not been prepared, and states that she is confident that the Court of Appeal will favourably consider the appeal in this matter. The affidavit is void of any factual circumstances showing that the appellants will be ruined if a stay is not granted. In other words, no special circumstances have been shown to exist that would cause me to grant a stay of execution in this case.

[11] I therefore dismiss this application with costs \$800.00 to the respondent.

Ola Mae Edwards
Justice of Appeal