

NOTES OF PROCEEDINGS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2009 HCV 4777

IN CHAMBERS

BETWEEN	TERRYON WALSH	CLAIMANT/APPLICANT
AND	CAPITAL SOLUTIONS LTD.	1 ST DEFENDANT/RESPONDENT
AND	THE ADMINISTRATOR GENERAL	2 ND DEFENDANT/RESPONDENT
AND	KARLENE BISNOTT	3 RD DEFENDANT/RESPONDENT

Ms. Oswald James and Mr. Leighton Miller instructed by James & Co. for
Claimant/Applicant.

Mr. Christopher Dunkley instructed by Phillipson Partners for Defendant/Respondent.

Miss Maria Gayle for The Administrator General

Applicant in person

Miss Vennicia Scott representing the 1st Defendant

Heard: 30th December 2009

CORAM: BROOKS, J.

Application for Stay of Execution Pending Appeal

Mr. Dunkley

Reads Application.

All the defendants have a right to appeal. We have 14 days in which to appeal.
Brought before the vacation judge and it is our application that a stay be granted pending
appeal. Have not had sufficient time to file appeal and wish time.

There is other evidence that we hope to bring to the attention of the court by way of liberty to apply.

Court:

Liberty to apply is not for that purpose, that is the function of an appeal with an application to adduce fresh evidence.

Mr. Dunkley

Ask that court finds that no sufficient time provided.

Refers to affidavit of Miss Walsh and submits that nothing supports the urgency of the matter.

Mr. James

No affidavit of service filed because of discussions between the parties. 1st Defendant's attorney not completely frank with the court – not taken by surprise.

The purported notice of application.

Liberty to apply was in respect of the accounting.

Application for stay is dealt with by rule 42.13.

The purported grounds put forward by the 1st Defendant manifestly fail to meet the criteria.

The failure is fatal to the application.

In Answer to Court:

The court does have an inherent power to control its process.

Submission continues:

Reads from paragraph 5 of Written Submissions.

“The general rule...

Reads paragraph 6.

Reads paragraph 7.

There need be no notice but out of an abundance of caution Defendant was informed.

Reads paragraph 8.

The court has not varied the time for compliance.

Reads paragraphs 9, 10, 11.

Reads D on page 3.

1st Defendant cannot seek to say that this is not a deposit or that other conditions apply to the deposit without disclosing those conditions.

Court not rehearing case. Don't wish to rehash the details of what was before the judge.

The 1st Defendant agrees that it was holding a deposit in a certain way. Now says that there are conditions.

Court – There is no evidence to that effect.

Mr. James:

In the circumstances, it is just that the order be granted and the 1st Defendant's application be dismissed.

The applicant's written submissions stress the 1st Respondent's disinterested position and the efforts of the Claimant.

Ms. Gayle:

Only served with the application yesterday evening.

Due to the short service did not have time to put forward any information.

Have conduct of Mr. Bisnott's estate.

Present at the time when order was made.

Accept that the order of Brown, J. would mean that the proceeds of the account would go to Miss Walsh. If an appeal were successful the monies would go to the Administrator General on behalf of the estate.

Still awaiting instructions as to whether to appeal.

Mr. Dunkley

Application by applicant for payment within 2 days.

If court not inclined to stay execution then ask for additional time.

Accept that no evidence has been filed to support it.

The original evidence did not seek to go beyond the claimant's application.

Liberty to apply was appropriate relief.

RULING DELIVERED AS AN ORAL JUDGMENT

BROOKS, J.

The application is curious indeed. The applicant holds a deposit, ostensibly for its customer Gladstone Bisnott. Mr. Bisnott has died. This court has ordered that Miss Terryon Walsh is a joint holder of the account.

The First Defendant does not purport to have any beneficial interest in the deposit yet it seeks to appeal the order and asks for a stay of execution pending appeal. The grounds on which it seeks to appeal include that there was activity on the account which is at odds with the order made by the learned judge.

An examination of what it placed before the judge, however, shows that it is an inderpleader and was only bringing to the court's attention a competing claim. That claim was from Jade Property Development & Construction Ltd. and/or Worldwise Investments Ltd. and/or Worldwise Partners Ltd.

Despite the fact that this matter has been brought to the attention of all the Defendants since at least the 23rd September 2009 (when they were all before the court) none of these other potential competitors have sought to be joined as parties to the claim.

The 2nd Defendant, representing Mr. Bisnott's estate has not yet decided if it will appeal. It is also curious that counsel representing the Administrator General took that approach considering that, despite the fact that it did not seek to put any evidence before the court to challenge the Claimant's assertions.

Mrs. Bisnott the 3rd Defendant has no objection to the Claimant's claim.

In short Miss Scott's affidavit for the 1st Defendant has provided no credible evidence for any failure to place relevant information before the learned trial judge which supports the ground on which the 1st Defendant seeks to challenge the judgment.

There is nothing in the provision for Liberty to Apply to prevent the 1st Defendant making immediate payment to the claimant. Nothing has been said to indicate that if the judgment were executed it would render the appeal nugatory. Further, the 1st Defendant does not adduce any evidence to allow for the application of rule 42.13 of the Civil Procedure Rules 2002. In my view, there is no basis on which to stay execution of the judgment.

1 Application of 1st Defendant dated 28/12/09 is refused.

2 Costs to the Claimant to be taxed if not agreed

Application for Compliance with the Courts orders.

Whereas it is accepted that whatever terms and conditions govern the contract between the financial institution and its customer concerning this deposit would affect Miss Walsh in the same manner that it affected Mr. Bisnott, there is no evidence which has been put forward to support any restriction on her withdrawing the funds in the account and closing it if she wishes.

In the circumstances I have not been provided with any reason for the 1st Defendant not being able to immediately comply with the Court's Order.

1. The time for service of the application filed herein on 23/12/2009 is abridged and the application is deemed properly served.
2. Order in terms of paragraphs a & b of the Notice of Application for Court Orders filed herein on 23.12.09
3. Costs to the Claimant to be taxed if not agreed.
4. Leave to appeal refused.