

**IN THE SUPREME COURT OF BELIZE, A.D. 2015**

**CLAIM NO. 712 of 2014**

**CHRIS ATKINSON**

**CLAIMANT**

**AND**

**MARCO CARUSO  
PANTHER ESTATES  
DEVELOPMENT LTD.**

**FIRST DEFENDANT  
SECOND DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2015

29<sup>th</sup> October

2<sup>nd</sup> November

Mr. Yohhahseh Cave for the Applicant/First Defendant.

Mr. Andrew Bennett for the Claimant.

**RULING**

1. This is a ruling on an application by the judgment debtor for a stay of execution of a judgment pending appeal. The appeal, though filed, has not yet been listed for hearing. The judgment creditor/respondent was served one day before the scheduled hearing. His Counsel opted to proceed notwithstanding they had had no opportunity to file an affidavit in response.

The court is therefore unaware of what, if any, injustice the judgment creditor would suffer if the stay is granted. Save, perhaps, that he would be denied the regular benefits of any judgment creditor - the immediate use of the funds of his judgment and the ability to gain interest thereon if he so desired.

### **Background**

2. This matter concerns a contract which Chris Atkinson says he entered into with Marco Caruso and Panther Estates Development Ltd. He says Brent Boreland a director of Panther Estates Development Ltd acted at all times as the agent for both the company and Mr. Caruso. Marco Caruso on the other hand claimed no knowledge of the contract and that he did not sign it. He stated that the signature looked like his and may have been placed there by the cut and paste method. He also stated in his witness statement that *"I did not knowingly sign the purported agreement and was unaware of the existence of the said agreement until I was served with the claim filed by the claimant herein."* The subject matter of the contract, 'The Property' was in fact transferred jointly to Mr. Atkinson and Placencia Estates Development LLC (another company of which Mr. Caruso is a director). That transfer was signed by Mr. Caruso and another director of Placencia Estates Development LLC, Brent Boreland.

### **The Grounds**

3. The Applicant's grounds in support of the application are as outlined in the following paragraphs of his affidavit:

*"10. I have been advised by my attorneys and do verily believe that the Court erred in interpreting one aspect of a statement I made in my witness statement as amounting to an admission on my part since in law and in*

*fact it was not an admission and was incapable of bearing the meaning ascribed to it by the Court.*

11. *I have always maintained that I was unaware of the existence of the very agreement itself, not merely the contents and that I had no business dealings or communication with the Claimant, Chris Atkinson.*
13. *I believe that the interpretation of my statement as amounting to an admission directly contradicts all other aspects of my testimony and that of the witness who testified on my behalf and even the later part of the sentence in which the purported admission is supposedly contained.*
14. *I am instructed by my attorneys at Youngs Law Firm and do verily believe that even if given an interpretation that is least favourable to me and most favourable to the Claimant the language of the sentence is ambiguous at best and is incapable of amounting to a positive or unequivocal admission on my part that I signed the purported agreement.*
15. *I am advised by my attorneys and do verily believe that having erred in concluding that I had admitted signing the document the Court resolved the issue of my liability on that basis without examining the veracity of the witnesses or without any regard or sufficient regard to other matters relevant to determining the question of the authenticity of the purported agreement.*
17. *I verily believe that if this application for a stay of execution were to be refused and the claimant be allowed to enforce the judgement granted by this honorable court before the hearing and determination of the Appeal which I filed I would suffer irremediable harm.*
18. *The Claimant has testified in these proceedings that he is ordinarily resident overseas and were I to succeed on the Appeal the monetary judgment which I would have been compelled to pay to him would be difficult or impossible to recover since he is beyond the jurisdiction of this Honourable Court. By contrast were the judgment to be stayed now and later confirmed at the hearing of the Appeal the Claimant may easily*

*recover same against me since I live in Belize and would be easily amenable to the jurisdiction of the Court.*

19. *I am aware that the Claimant owns some unimproved land jointly with Placencia Estates Development LLC. However, given the nature of the ownership, I am advised and do verily believe that the process of recovering the judgment sum would be lengthy and time consuming. In any event, there is no guarantee that the Claimant would have property within the jurisdiction if and when the Court of Appeal were to deem the judgment fit for recover.”*

### **The Law**

4. The court, at Part 26(1)(e) of the **Supreme Court Rules**, is empowered to “(s)tay the whole or part of any proceedings generally or until a specified date or event;” This rule must necessarily be interpreted in accordance with the overriding objective of dealing with cases justly.
5. The case of *Wenden Engineer Service Co. Ltd. v Lee Shing UEY Construction Co. Ltd. HCCT No.90 of 1999* succinctly outlined the principles which ought to guide a court when considering an application for a stay pending appeal as follows:
- (a) *All the circumstances of the case.*
  - (b) *A stay is an **exception** rather than the general rule.*
  - (c) *The party seeking a stay should provide **cogent** evidence that the appeal would be stifled or rendered nugatory unless a stay is granted. There must be a **real** risk of injustice.*
  - (d) *A balance of harm test must be done in which the **likely prejudice** to the successful party must be carefully considered.*

(e) *The court need only take the prospects at appeal into account where strong grounds of appeal or a strong likelihood that the appeal would succeed, exists.*

6. It is also understood that the mere existence of arguable grounds of appeal is not by itself a good enough reason to grant a stay. The Eastern Caribbean Supreme Court case of *Maguerite Desir et al v Sabina James Alcide HCVAP 2011/0030 at para 3* states;

*“the normal rule is for no stay and if a court is to consider a stay, the applicants has to make out a case by evidence which shows special circumstances for granting a stay,”*

### **Discussion**

7. We therefore begin by accepting that a successful litigant ought not to be deprived of the fruits of his judgment. *“This means that enforcement should be allowed to proceed unless in all the circumstances of the case and having regard to the risk of injustice to the parties a stay ought to be imposed.”* **Blackstones Civil Practice 2013 paragraph 71.46.**

8. Through his oral submissions Counsel for the judgment debtor extensively amplified the grounds relating to what he termed a good prospect of success. In my view what he needed to prove was a strong prospect of success. I have considered the grounds. They turn on the narrow issue of whether or not the court was wrong in fact, and therefore wrong in law, in holding that certain words in the applicant's witness statement amounted to an admission. Beyond this he urges that there was not an iota of evidence present to support the court's findings. Although the applicant may have an arguable

case, I do not find it sufficiently strong to suggest that the appeal would succeed.

9. Counsel for the applicant was directed by the court not to address on the issue of any injustice which would be caused as that, to my mind, is strictly evidential. Consideration will now be given to the potential injustice outlined in the applicant's affidavit. The applicant states that after the appeal, it would be difficult for him to recover any sums already paid since the respondent lives abroad. However, the respondent holds property jointly with a company in which the applicant is a director and which counsel in his submissions strenuously urged the court to accept was nothing less than an alter ego. If, on the determination of the appeal, the sums already paid had to be repaid then certainly enforcement would be less difficult than it is in most other civil matters. The fact that the respondent lives abroad makes absolutely no difference.
  
10. The applicant states that the recovery may be lengthy and time consuming. That certainly does not prove that his judgment would be rendered nugatory. He goes on to explain that by the time judgment is given in the Court of Appeal, the respondent may no longer have property in Belize. Not only is that baseless and fanciful, but there are certain other mechanisms which the applicant could call to aid to ensure that the property remains. Moreover, the fact that it is jointly owned as outlined above cannot simply be disregarded.

**Decision**

11. The applicant has stated nothing of his inability to prosecute the appeal if he is made to pay or any other difficulties he would face which would take him over the required threshold. He simply makes the bald assertion that he would suffer irremediable harm. Since his evidence is expected to be full, frank and clear, where the court can find no special circumstance, the stay ought not to be allowed.
  
12. Therefore, having considered the matter in light of the overriding objectives,

**IT IS ORDERED:**

1. The application for a stay of execution pending appeal is refused.
2. The applicant to pay costs to the respondent, such costs to be assessed if not agreed.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**