

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL COA2024CV00056

APPLICATION NO COA2024APP00144

BETWEEN	A & A LIME HALL DEVELOPMENT COMPANY LIMITED	APPLICANT
AND	MB DEVELOPMENT & INVESTMENTS LIMITED	RESPONDENT

Ms Arlene Gaynor appearing in person and unrepresented for the appellant

Miss Shanique Scott instructed by Bishop & Partners for the respondent

16 and 22 July 2024

IN CHAMBERS

G FRASER JA (AG)

[1] This is an application for a stay of the proceedings relative to claim no SU2022CD00044 between A & A Lime Hall Development Company Limited ('the applicant') and MB Development & Investments Limited ('the respondent') filed in the Commercial Division of the Supreme Court. The applicant, on 9 May 2024, applied for an order of summary judgment, which was heard and refused by Jackson-Haisley J ('the learned judge') on 16 November 2023, with an attendant costs order made against the applicant. The learned judge also made case management conference orders and scheduled timelines for the execution of said orders. The application made to the learned judge, for leave to appeal her decision, was refused.

[2] Aggrieved by the orders of the learned judge, the applicant sought the leave of this court to file an appeal and an extension of time within which to file said appeal. The orders sought were granted on 10 April 2024. The applicant erroneously perceived that

the subsequent filing of its notice of appeal on 24 April 2024, operated as an automatic stay of proceedings, which it did not. The claim, before the Supreme Court, therefore, continued with events such as the case management conference and the pre-trial review ensuing, as was scheduled by the learned judge. The applicant did not participate in any of those events, nor in any further proceedings in the Supreme Court, despite an order made by Batts J on 29 May 2024 that “unless the [applicant] complied with the case management conference orders by 14 June 2024, its defence shall stand struck out and judgment entered accordingly” (‘the unless order’).

[3] The applicant did not comply with the unless order, claiming it had no knowledge that the order had been made. Consequent upon the failure of the applicant to take action, the unless order accrued and the respondent proceeded to obtain a default judgment in its favour. The respondent vehemently opposed this application for a stay of proceedings, citing several bases, including that a single judge of appeal has no jurisdiction to grant such an application and further that the applicant’s conduct amounts to an abuse of the court’s process.

[4] Similar issues arose for resolution in the decision of **Cable & Wireless Jamaica Limited v Eric Abraham** [2021] JMCA App 19, where the respondent had contended that a single judge of appeal did not have jurisdiction to entertain an application for a stay of proceedings. The single judge of appeal agreed and declined jurisdiction and additionally ordered costs in favour of the respondent. The extensive interrogation and exploration of the relevant law and the ultimate reasoning of the court in that case, has rendered the debate before me otiose. Undoubtedly, a single judge of appeal has jurisdiction to hear and determine an application for a stay of proceedings in the Supreme Court. In particular, I find the enunciations of McDonald-Bishop JA (as she then was) in paras. [50], [58] and [59] to be instructive, where she said:

“[50] In my view, the single judge, evidently, overlooked rule 2.9 of the CAR and, at the same time, ascribed a narrow construction to the words ‘any other procedural application’, in rule 2.10(1)(e). That led him to opine that the rule ‘does

not seem to apply to proceedings in the court below'. In my view, the phraseology '[a]ny other procedural application', used in that rule, takes its colour and meaning from the preceding provisions, which include applications for, among other things, stay of execution and injunction pending appeal. The fact that the words 'any other' are used to modify 'procedural applications' in rule 2.10(1)(e), following the preceding sub-rules, tends to show that the matters listed in the preceding sub-rules are, themselves, procedural applications. It also conveys the Rules Committee's intention that the matters expressly listed must not be taken as being exhaustive of the types of procedural applications that may be considered by a single judge. So, in effect, the rule has provided for a single judge to exercise jurisdiction over all those listed matters and 'any other' such applications unless there is an enactment to the contrary.

[58] There is, therefore, no discernible need for this court to interpret the rules in a way that would constrict the exercise of the jurisdiction and power of the court through and by a single judge in interlocutory matters.

[59] Indeed, this necessity to give a more generous interpretation to rule 2.10(1)(e) of the CAR, than the single judge was prepared to do, does not only accord with the evident intendment of Parliament (in the JRCA) that the jurisdiction of the court in interlocutory matters can be exercised through a single judge, but also the intendment of the Rules Committee. In this regard, attention is directed to rule 2.10(3) of the CAR, which gives the court the power to vary or discharge any order made by a single judge in a procedural application. This is an important safeguard provided for in rule 2.10 for the court to have and maintain oversight responsibilities over the decisions of a single judge. The single judge's decision is always amenable to the review of the court. There is thus a viable procedural mechanism, within the court itself, to provide relief for litigants concerning the exercise of its jurisdiction by a single judge in interlocutory or procedural matters."

[5] Having resolved the issue of jurisdiction in the applicant's favour, it only remains now for me to determine whether proceedings can be stayed in a case where default

judgment has been obtained by the respondent herein. So what does a stay of proceedings entail?

[6] In the **Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd and Northern Industrial and Garage Co (Jamaica)** [1991] 4 All E R 65 at page 70 Lord Oliver Of Aylmerton, speaking on behalf of the Judicial Committee of the Privy Council, defined a stay of proceedings as, "...an order which puts a stop to the further conduct of proceedings in court or before a tribunal at the stage which they have reached, the object being to avoid the hearing or trial taking place".

[7] Implicit in that definition is that the proceeding to be stayed is extant or still in existence. I find support for my conclusion in the decision of **Robert Rainford v His Excellency the Most Honourable Sir Patrick Allen and others** [2014] JMCA App 26. The decision concerned an application for a stay of execution or stay of proceedings relative to declarations made by a judge of the Supreme Court. McIntosh JA stated that the making of declaratory orders by the judge below, in that case, meant that no proceedings were pending or remaining in that court, so there were no proceedings amenable to a stay in this court. The application was accordingly refused.

[8] Is claim no SU2022CD00044 between A & A Lime Hall Development Company Limited and MB Development & Investments Limited still subsisting? I am prepared to say yes. A default judgment, although a thing of value in the hands of the respondent, was not a determination of the claim on its merit. Further, there is jurisdiction for a judge of the Supreme Court to set aside a default judgment, of course on good grounds being advanced by an applicant.

[9] I am inclined to grant the application sought for reasons including but not limited to the following:

- (a) The applicant has secured from this court, permission to appeal the order of Jackson-Haisley J on the basis that the applicant has a good chance of success on appeal.

(b) If the stay of proceedings is not granted the order granting leave to appeal might be rendered nugatory, if the respondent proceeds to enforce the default judgment.

(c) The granting of the stay of proceedings will not result in any irreparable harm to the respondents.

[10] Accordingly, the application, filed on 17 June 2024, is granted in the following terms:

1. All proceedings in the Supreme Court in claim no SU2022CD00044 between **MB Development and Investments Limited v A & A Lime Hall Development Company Limited**, are stayed pending the hearing and outcome of the appeal.
2. The costs of this application be the applicant's to be agreed or taxed.