JAMAICA

SUPREME COURT CIVIL APPEAL COA2026CV00003

APPLICATION NO COA2026APP00012

BETWEEN	**EDGEHILL HOMES LIMITED**	**APPLICANT**
AND	**NUBIAN-1 CONSTRUCTION LIMITED**	**1st RESPONDENT**
AND	**COMPLETE DEVELOPMENT SOLUTIONS LIMITED**	**2nd RESPONDENT**

Walter Scott KC and Ms De-Andra Butler instructed by Samuda & Johnson for the applicant

Miss Jacqueline Cummings instructed by Archer Cummings & Company for the 1st respondent

John G Graham KC and Miss Peta-Gaye Manderson instructed by John G Graham & Company for the 2nd respondent

27 April and 6 May 2026

Civil procedure – Application for stay of execution of judgment – Whether requirements satisfied

IN CHAMBERS

ORAL JUDGMENT

TIE POWELL JA (AG)

Introduction

[1] This is an application by the appellant ('the applicant') for a stay of execution of the judgment of Batts J ('the learned trial judge'), handed down in the Commercial Division of the Supreme Court on 19 December 2025, pending the determination of the appeal.

Background

[2] In broad terms, as discerned from the judgment, the 1st and 2nd respondents acted as building contractor and project manager, respectively, while the applicant was the developer. The respondents entered into separate contractual arrangements with the applicant under which they were to carry out certain works for the applicant relating to the construction of a housing development, to be carried out on a phased basis. Those works were not completed, and the contracts were terminated by the applicant. The parties differed as to the reasons for that outcome, prompting the respondents to institute proceedings and the applicant to advance a counterclaim. In essence, the respondents contended that the topographical survey provided by the applicant was deficient, requiring a new one to be prepared, and that the results of this had varying implications as regards the work originally agreed upon. It was also contended that the applicant made other changes that further impacted the respondents' execution of their tasks. The applicant, on the other hand, claimed that the respondents' work was tardy and defective.

[3] Judgment was entered in favour of the 1st and 2nd respondents against the applicant, in the sum of US$2,860,663.03 and US$336,584.96, respectively. These amounts comprised money due on certificates and invoices submitted by the respondents, as well as "deferred payments". Interest and costs orders were also awarded. The applicant's counterclaim was dismissed.

[4] The applicant, being dissatisfied with the decision, filed a notice and grounds of appeal and applied for a stay of execution of the learned trial judge's orders pending the determination of the appeal. The appeal challenges several findings of fact and three aspects of the learned trial judge's legal conclusions, namely the interpretation of the term "practical completion" within the context of the arrangement, the finding that the 2nd respondent was entitled to a portion of the deferred payment under the contract, and the conclusion that the applicant's counterclaim had not been established.

The application

[5] The application for a stay of execution was supported by the affidavits of David Morrison, a director of the applicant company and Njeri Hayles, the applicant's attorney-at-law. The grounds advanced in support of the application may be stated succinctly. Firstly, it is contended that the appeal raises strong and arguable grounds with a realistic prospect of success. Secondly, it is asserted that, absent a stay, the applicant would suffer irreparable harm, including financial ruin, the immediate cessation of its business operations, and the suspension of the housing development project. This, it is said, would expose existing homeowners in the incomplete development, as well as purchasers not yet in possession, to potential breaches of contract, loss of deposits, and significant economic loss and mental distress. Thirdly, it is maintained that, should the appeal succeed, there is a real risk that the applicant would be unable to recover the judgment sums from the respondents, given their lack of substantial resources.

[6] The applicant pledged to secure the proceeds of the sale of units in the housing development, up to a maximum of US$300,000.00, with such sums to be paid into an escrow account in the joint names of the parties' attorneys-at-law upon receipt from purchasers, pending the hearing and determination of the appeal.

Discussion and analysis

The law

[7] Rule 2.10(1)(b) of the Court of Appeal Rules, 2002 confers jurisdiction on a single judge of the court to grant a stay of execution of a judgment or order pending the determination of an appeal. The principles governing the exercise of that discretion are well established. The court's central concern is whether the grant of a stay is consistent with the interests of justice. In **Coast to Coast Quarries Limited et al v Caliston Graham** [2025] JMCA App 12, McDonald-Bishop P explained, at para. [6], that this inquiry is generally approached by reference to two principal questions:

(i) whether the underlying appeal has some merit; and

(ii) whether the grant of a stay is the order that is likely to produce less injustice between the parties.

The merits of the appeal

[8] Given that there is a pending appeal, I am mindful of the need to refrain from delving into the evidence or commenting on its strength. The concern at this stage is whether there is some merit to the appeal, or, as stated by Morrison JA (as he then was) in **Calvin Green v Wynlee Trading Ltd** [2010] JMCA App 3, whether the appeal is "completely unarguable".

[9] My assessment in this regard is made without the benefit of the pleadings in the court below, including the claim and counterclaim, the notes of evidence, or the exhibits, including the contracts governing the parties' relationship.

[10] Mr Scott KC relied on the written submissions filed on behalf of the applicant, which advanced several arguments said to establish the merit of the appeal, but concentrated his oral submissions on the grounds he deemed the strongest, namely, the issue of 'practical completion' and the learned trial judge's treatment of the counterclaim. Not surprisingly, the respondents challenged each ground of appeal, arguing that the appeal was without merit.

[11] Having considered the various arguments, I will limit my observations to the submission concerning the learned trial judge's treatment of the counterclaim, which, in my view, discloses some merit and requires minimal engagement with the evidence.

[12] On behalf of the applicant, it was argued that, having adopted an assessment in the round, the learned trial judge determined that the 2nd respondent was entitled to 80% of the deferred payment, given the several mutual departures from the project scope and budget. Likewise, as it relates to the 1st respondent, a similar award was made for the retention amount, taking into account any defects and incomplete work at the time of termination. Mr Scott contended that such apportionment supports the argument that the counterclaim ought to have succeeded, at least to the extent of 20%. It was

further contended that the learned trial judge failed to address the counterclaim in the context of this apportionment.

[13] On the face of it, it is a tenable argument that the learned trial judge's findings were indicative of some measure of responsibility on the part of the respondents, which arguably called for corresponding consideration in relation to the counterclaim. I am, therefore, unable to conclude that this issue is "completely unarguable".

[14] Having so found, I will proceed to the second limb of the analysis in determining whether a stay of execution of judgment should be granted, as it relates to balancing the risk of injustice.

The risk of injustice

The assertion of irreparable harm and financial ruin

[15] The application asserts that the applicant would suffer irreparable harm and financial ruin if a stay were not granted. In support, Mr Morrison deposed, in an affidavit filed on 15 January 2026, that the applicant lacks the means to pay the substantial judgment sum. He explained that the applicant has two sources of income: proceeds from the sale of houses in the development and money from a line of credit with a Canadian company, Morrison Financial Mortgage Corporation ('MFM'). Mr Morrison heads this company. He contends that the applicant owes MFM far in excess of its net realisable assets. He also claims that the amount owed to this company is secured by a registered debenture and that the company retains a floating charge over all the applicant's assets, thereby maintaining priority over other debts.

[16] Mr Morrison presented audited financial statements, which he described as being for the year ended 31 December 2021. The document exhibited, however, indicated that it related to the "Year ended November 30, 2021". Mr Morrison states that the debt to MFM, as set out therein, is US$55,531,338.00, and is to be repaid from the proceeds of the sale of the completed housing units. The security for the line of credit includes a registered debenture over the applicant's fixed and floating assets and a registered

mortgage and charge over the project lands. Mr Morrison also referred to an internal trial-balance financial statement for the year ended 31 December 2024, and purported to exhibit it.

[17] The applicant bears the burden of proving its assertion that execution of the judgment would lead to irreparable harm and financial ruin. The audited financial statements relating to the year 2021, presented in support of its contention, are dated. No explanation has been provided for the failure to present audited financial statements for the subsequent years to the court. This omission is curious, given that the debenture on which the applicant relies requires it to have audited financial statements prepared "…for and at the end of the financial year then ended…" "..so as to give a true and fair view of the financial condition of the [applicant] company…".

[18] With reference to the internal trial balance referred to and purportedly exhibited by Mr Morrison, the document in fact exhibited is headed "Gates of Edgehill Balance Sheet as at 11/30/2023". The foot of the document indicates that it was printed on "06/13/2024", and therefore prior to 31 December 2024, which is the date ascribed to the document by Mr Morrison. Apart from the obvious incongruity that the document exhibited does not correspond with the period described by Mr Morrison, it is also unaudited.

[19] The applicant sought to substantiate its assertions of irreparable harm and financial ruin by reliance on the applicant's financial statements, which disclose its indebtedness to MFM. The authority of **Signtex Limited v Dean Martin** [2024] JMCA App 21 is helpful in underscoring the need for contemporaneous evidence of the financial position of an entity claiming impecuniosity at the time of the application. That authority also indicates the importance of the applicant presenting evidence that will enable the court to have a full appreciation of the true state of the company's affairs. For the reasons earlier articulated, the evidence relied upon by the applicant is deficient and, therefore, does not support the purpose for which it is advanced. As a result, the court remains without a clear picture of the applicant's true financial position.

[20] Also, on the face of it, the doubt raised by Mr Wayne Gadishaw, director of the 1st respondent, in his affidavit filed on 21 April 2026, as regards the alleged debt owed by the applicant to the financial company exceeding its net realisable assets, is a reasonable one, as it is indeed questionable whether a financial company would lend beyond the scope of the borrower's ability to repay.

[21] Mr Gadishaw's affidavit also asserts, based on research conducted at the National Land Agency regarding the number of houses in the housing development in issue which were transferred to third parties and the sale price of these units, that the applicant has, to date, collected approximately US$16,002,813.50 in proceeds from May 2020 to October 2025. This has not been challenged by the applicant. An examination of this information reveals that most of these transactions occurred primarily between 2022 and 2025. The proceeds of those sales are not accounted for in any audited financial statements presented to the court, as there are no audited accounts for that period.

[22] Accordingly, on the totality of the evidence, the applicant has failed to establish its assertion of financial ruin. Beyond the financial statements, which are deficient for the reasons already identified, no further evidence of substance was adduced. Mr Morrison's assertion that the judgment sum is substantial and beyond the applicant's means is, therefore, unsupported by any cogent evidence.

[23] The applicant also asserts that execution of the judgment would inevitably result in the failure of the housing development project and, ultimately, the collapse of the applicant. Mr Morrison's evidence is that, for phase 1 of the development, the houses under construction are valued at US$12,470,000.00, "net of the cost to complete".

[24] In contrast, the affidavit of Njeri Hayles, filed on 24 April 2026 in support of the application, presents different information. The affidavit records that, based on information provided by Mr Morrison, the value of the houses in the phase 1 development is estimated at US$9,480,000.00. Ms Hayles deposes that this estimate is calculated on the premise that 40 units remain to be conveyed and that, applying an assumed sale

price of US$312,000.00 per unit, gross proceeds of US$12,480,000.00 would be realised, from which an estimated cost of completion of approximately US$3,000,000.00 is deducted.

[25] The evidence is internally inconsistent. Mr Morrison's valuation purports to account for the cost of completion, yet it differs significantly from the figure advanced by Ms Hayles. Even allowing for possible imprecision in the use of the expression "net of cost to complete", a discrepancy between the valuations remains. In addition to this concern, there is a dearth of information that would aid in the court's analysis of the applicant's assertion in this regard. For instance, no basis is provided for the estimated cost of completing phase 1, nor is there any indication of when it is scheduled to be completed. Such material would have assisted the court in assessing the applicant's assertion.

[26] Regarding the lots in phases 2 and 3, Mr Morrison values them at US$9,300,000.00, while Ms Hayles values them at US$8,928,000.00. Apart from the obvious difference in the values stated, no detail is provided to assess the applicant's assertion about the impact of the execution of the judgment on this aspect of the development. It would have been helpful to know, for instance, whether prospective purchasers have made deposits and, if so, the extent of those deposits. Further, given the absence of audited financial statements for the years 2022 to 2025, the approximately US$16,002,813.50 collected from the sale of units in phase 1 (as alleged by Mr Gadishaw and not challenged by the applicant) has not been accounted for to aid any analysis. As such, the contention that the execution of the judgment would invariably lead to the failure of the housing development project and ultimately the collapse of the applicant has not been substantiated.

[27] It is apparent that the evidence bearing on the applicant's financial position is deficient, and its reliability is somewhat questionable. There were peculiar occurrences between the applicant and MFM, including the extent of the loan in relation to the applicant's apparent asset base, with the former significantly exceeding the latter; the applicant's failure to produce audited financial statements as required under the

debenture; and the steps taken to secure priority for the debt owed to MFM over other obligations. While these matters may be explained by Mr Morrison's role in both entities, they form part of the context in which the financial information is to be considered, particularly in the absence of up-to-date financial material.

[28] On the evidence, the applicant has failed to establish that it would suffer irreparable harm or financial ruin in the absence of a stay of execution of the judgment.

Whether the applicant could recover from the respondents in the event of a successful appeal

[29] Mr Morrison asserts that it is his belief, based on his knowledge of the respondents' business operations as not being capital intensive, that the respondents would be unable to repay the judgment sum if the appeal succeeds. He believes, based on his understanding of their circumstances from past dealings, that "neither company owns real estate or significant fixed assets [in Jamaica]". He, therefore, is of the view that if the judgment sums are dissipated, the applicant would be left with a paper judgment if successful on appeal. Additionally, he asserts that the respondents have not claimed that they will suffer financial ruin if the sums are not paid.

[30] The difficulty with this aspect of Mr Morrison's evidence is that no detail is given of the past dealings on which he relies, and so no foundation is laid for his belief that the respondents do not own real estate or significant fixed assets in Jamaica. A bald assertion, without more, has been laid at the feet of the court. The applicant has not fulfilled its burden of proving its allegation.

[31] Whilst Mr Gadishaw asserted that the applicant's failure to pay its debt adversely affected its business operations, necessitating continued payment to workers and incurring bank charges and interest, his evidence provides no support for the assertion. Similarly, although Mr Paul Williams, managing director of the 2nd respondent, indicated that the sums owed by the applicant negatively impacted its financial position and

impaired its ability to secure bonds for projects, his evidence likewise contains no material that gives credence to the applicant's claim.

[32] I am of the view that the applicant has failed to prove that, if payment were made on the judgment and the applicant were eventually successful at the conclusion of the appeal, it would be unable to recover the judgment sums from the respondents.

The balance of injustice

[33] The respondents have a judgment for money owed to them since 2019. Each respondent has outlined the hardship occasioned by the continued non-payment and the prejudice sustained as a result. During the trial, the applicant admitted owing the 2nd respondent the sum of US$69,096.77. This money remains unpaid. In all the circumstances, having regard to the position of the respondents, and the inadequacies in the evidence presented by the applicant in support of this application, I am of the view that the balance of injustice favours a refusal of the stay.

Disposition

[34] In the circumstances, the application for a stay of the execution of the judgment pending the determination of the appeal is refused. Costs are awarded to the respondents, to be taxed if not agreed.

Order

1. The application for a stay of execution of the judgment of Batts J dated 19 December 2025, pending the determination of the appeal, is refused.

2. Costs of the application to the respondents, to be taxed if not agreed.

3. The applicant's attorney-at-law is to prepare, file and serve the order herein. Kingston 10