

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2017/CLE/gen/00763**

**BETWEEN**

**AGATHA GRIFFIN**

Plaintiff

**AND**

**JARVIS NATHAN MCINTOSH**

Defendant

**Before Hon. Ian R. Winder**

**Appearances: Christina Galanos for the Plaintiff  
Wilver Deleveaux for the Defendant**

**6 March 2020**

**RULING**

## WINDER J

On 6 March 2020 I dismissed the defendant's application for a stay of execution and promised to put my reasons for so doing in writing. I briefly do so now.

1. The plaintiff has applied for a stay of my decision dated 13 January 2020. The Order sought would stay the decision pending the determination of a new action recently brought by the defendant in 2020/Pro/cpr/0007. The Summons seeks relief as follows:

*The Order granted to the plaintiff Agatha Griffin that the defendant Jarvis (Gervais) Nathan McIntosh vacate the property in the Estate of Charles Fowler late of 338 Yellow Elder Gardens of New Providence The Bahamas within 60 days be stayed until a decision in Action 2020/PRO/NPR/CPR/0007 is determined.*

2. In this new action 2020/Pro/cpr/0007, the defendant seeks the following relief:-

- (1) *That decision of the Learned Judge made on January 13, 2020 for the plaintiff to vacate the premises on 338 Yellow Elder Gardens be stayed until a determination is made in this matter;*
- (2) *An order that the purported Will of Charles Fowler purportedly dated 9 May 2012 be deemed invalid and null and void;*
- (3) *An Order that the Grant of Probate in the Estate of Charles Fowler late of 338 Yellow Gardens of New Providence The Bahamas in action 2016/PRO/npr/00367 and granted to the Plaintiff Agatha Griffin on September 23 2016 be revoke by reason of obliteration in the Will of Charles Fowler;*
- (4) *That the Administration of all the real property and personal estate and effects of the said Testator Charles Fowler by Agatha Griffin be set aside and held null and void.*
- (5) *That any property real and/or personal taken in possession by the said Agatha Griffin be restored to the Estate of the deceased.*
- (6) *An Order/injunction that the defendant and/or her servants or agents be prevented from entering, interfering and or trespassing on the said Lot 338 and from erecting any structure in the said lot no 338 until the disposing of this matter; and*
- (7) *That any such interest of the Defendant is invalid, null and void.*

3. The law relative to a stay of execution was set out by the Bahamas Court of Appeal in ***Esley Hanna et al v Brady Hanna SCCivApp No. 182 of 2017***. Although dealing with the issue of a stay pending appeal the discussion is nonetheless relevant to the instant matter. At paragraph 11 and 12 of the decision, **Crane-Scott JA**, giving the decision of the Court, stated as follows:

11. *Section 12 of the Court of Appeal Act mirrors the provisions of O 59. r. 13 of the former English Rules of the Supreme Court 1965. It is therefore useful to advert to the following portions of Practice Note 59/13/1 found at pages 1076- 1077 of Volume 1 of The 1999 Edition of The English Supreme Court Practice:*

*“Stay of execution or of proceedings pending appeal*

*...Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not “make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled,” pending an appeal (The Annot Lyle (1886) 11 P.D. 114, p.116, C.A.; Monk v. Bartram [1891] 1 Q. B. 346); and this applies not merely to execution but to the prosecution of proceedings under the judgment or order appealed from - for example, inquiries (Shaw v. Holland [1900] 2 Ch. 305) or an account of profits in a passing-off action (Coleman & Co. v. Smith & Co. Ltd. [1911] 2 Ch. 572) or the trial of issues of fact under a judgment on a preliminary question of law (Re Palmer’s Trade Mark (1883) 22 Ch. D. 88). But the court is likely to grant a stay where the appeal would otherwise be rendered nugatory (Wilson v. Church (No.2) (1879) 12 Ch. D. 454, pp. 458, 459, C.A.), or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the court. (Becker v. Earl’s Court Ltd. (1911) 56 S.J. 206; The Retata [1897] P. 118, p. 132; Att.-Gen. v. Emerson (1889) 24 Q.B.D. 56, pp. 58, 59) and the Court will grant it where the special circumstances of the case so require.....*

*“Where the appeal is against an award of damages, the long established practice is that a stay will normally be granted only where the appellant satisfies the court that, if the damages are paid, then there will be no reasonable prospect of his recovering them in the event of the appeal succeeding (Atkins v. G.W. Ry. (1886) 2 T.L.R. 400, following Barker v. Lavery (1885) 14 Q.B.D. 769 C.A.;.....Nowadays the court may be prepared (provided that the appeal has sufficient merit) to grant a stay, even where that test is*

*not satisfied, if enforcement of the money judgment under appeal would result in the appellant's house being sold or his business being closed down. But if such a stay is granted the court should impose terms which (so far as possible) ensure that the respondent is paid without delay, if the appeal fails, and that appellant is prevented from depleting his assets in the meantime, except for any and necessary expenditure. This approach was endorsed in Linotype-Hell Finance Ltd v. Baker [1992] 4 All E.R. 87 (Straughton L.J., sitting as a single Lord Justice). It was also endorsed in Winchester Cigarette Machinery Ltd v. Payne (No. 2) (1993) The Times, December 15, but the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour. The Court also emphasized that indications in past cases do not fetter the scope of the Court's discretion."*  
[Emphasis ours]

12. *In the light of the foregoing principles and recognizing that the respondent on this appeal is not to be deprived of the fruits of the judgment which he obtained in the court below unless the special circumstances of the case so require, we return to consider whether the appellants have convinced us that there are good reasons for the grant of a stay of execution pending the determination of the substantive appeal.*

4. In this case, it is clear that the absence of a stay would not render a successful application in the new action nugatory. Any relief sought, if obtained, (notwithstanding the defendant's locus standi to pursue such a claim is uncertain) would not enable the defendant to obtain title to the property as he is not an heir of Fowler. The voiding of the Will is not a matter which could inure any benefit to the defendant, but to Fowler's heirs.
5. There is therefore no risk to the defendant if he does not obtain a stay. In the circumstances I dismissed the Summons.

Dated the 22<sup>nd</sup> day of April 2020

Ian R. Winder

Justice