

BARBADOS:

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 1178 of 1995

BETWEEN:

VALDA DOWRICH

SELMAN AUTO RENTALS &

TAXI SERVICES LTD

Appellants

AND

ANDERSON GRIFFITH

Respondent

Before: The Honourable Sir Denys Williams, Chief Justice

2000: January, 13th & 28th.

Mr. M. Goodridge for the Appellants.

Mr. L. Inniss Q.C., in association with Mr. M. Lashley for the Respondent.

DECISION

On June 28, 1999 the plaintiff/respondent Anderson Griffith was awarded judgment in the High Court for \$22,165.00 and costs, subsequently taxed at \$14,449.75, in an action brought against the defendants/appellants Valda Dowrich and Selman's Auto Rentals and Taxi Services Limited. By consent an order was made for a stay of execution of the judgment for six weeks. The defendants filed an appeal on August 5, 1999 and that appeal is pending.

The defendants/appellants applied to the High Court on October 20, 1999 for an extension of the stay but that application was dismissed for want of jurisdiction, the learned Judge ruling that, the matter being on appeal, the application for an extension should have been made to the Court of Appeal.

This is an application to the Court of Appeal for an extension of the stay of execution and it is supported by the affidavit of Mr. Mark Goodridge, the attorney-at-law for the defendants/appellants who deposes, inter alia:-

"4. That by letter dated September 28, 1999 the plaintiff/respondent through his counsel requested the immediate payment of damages and costs pursuant to the said judgment.

5. That the plaintiff/respondent further threatens to levy execution against the defendants/appellants in default of payment of the said damages and costs within 7 days of the date of the said letter.

6. That at the date of the collision the plaintiff/respondent was experiencing serious financial hardship and the defendants/appellants contend and it was being alleged during the trial of the action in the High Court of Justice that the plaintiff/respondent colluded with another party or parties to defraud his insurers as a result thereof.

7. That the defendants/appellants contend and it was alleged during the course of the trial that the plaintiff/respondent colluded to stage an accident involving his motor car and another or other vehicles and as a result thereof the defendants/appellants allege that the plaintiff/respondent was not a trustworthy person.

8. That the defendants/appellants are fearful that unless an order is made by this Honourable Court granting a further stay of execution of the said judgment the plaintiff/respondent will make good on his threat to levy execution against the defendants/appellants.

9. That the defendants/appellants are also fearful that if the plaintiff/respondent makes good his threat to levy execution against the said

defendants/appellants and if the defendants/appellants are successful on their appeal against the said decision or order of the High Court there is no reasonable prospect of the defendants/appellants recovering the moneys obtained by the plaintiff/respondent as a result of the said execution.

10. That in all the circumstances the defendants/appellants have good grounds of appeal and I respectfully ask that this Honourable Court will stay execution upon such judgment pending the hearing, disposal or other determination of the said appeal”.

The affidavit in response is sworn by Mr. Michael Lashley, one of the attorneys-at-law for the plaintiff/respondent in the matter. He deposes, inter alia:-

“4. That the defendants/appellants have shown little or no interest in having the case prosecuted and in fact the second (first?) defendant who could have given evidence as to the manner in which the accident was caused, has never been to court.....

7. That up to the present time the record of appeal has not been settled.

8. That the attorneys-at-law for the plaintiff have requested that the defendants pay the costs and damages without waiting the decision of the Court of Appeal in the matter.

9. That the attorneys-at-law for the plaintiff/respondent have so far not filed any documents to levy on the defendants/appellants' property.

10. That the matters mentioned in the affidavit were all mentioned before the trial judge at the time of trial and the arguments were rejected.

11. That I verily believe that the appeal should have no great chance of success since the Honourable Judge made her findings based on the evidence before the Court preferring the evidence of the plaintiff to that of the defendants.

12. That the plaintiff/respondent fears that if he does not receive the fruits of the victory at the present time there is every likelihood that he will not be able to recover it all”.

The question whether or not to grant or extend a stay is entirely in the discretion of the Court and the starting principle is that a stay or an extension of 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 his judgment. The cases also show that a stay or an extension is likely to be granted (1) where the appeal would otherwise be rendered nugatory or (2) the appellant would suffer loss which could not be compensated in damages or (3) where the special circumstances of the case so require. The cases also show that where the appeal is against an award of damages, the practice is that a stay will normally be granted only where the appellant satisfies the Court that if the damages are paid, there will be no reasonable prospect of his recovering them in the event of the appeal being successful.

The grant of a stay or an extension can in appropriate circumstances be made subject to terms.

Turning to the instant case what is uppermost in the submissions of the defendants/appellants is the real danger that if the amount of \$22,165.00 is paid over to the respondent before the appeal is heard, it would not be recovered if the appeal succeeds. Counsel for the respondent is likewise concerned that if the amount is not paid over to the respondent at this time, the insurance company may not be in a position to pay the amount if and when the appeal fails. He refers to other cases in recent times in which solid and reputable undertakings suddenly ran into difficulty and folded with debts outstanding.

In the circumstances of this case it is my opinion that there should be an extension of the stay until the appeal is heard but that it should be on the following terms:-

(1) the amount taxed as costs to be paid over to the respondent's attorney-at-law subject to an undertaking by them to repay the amount should the judgment of the Court of Appeal require that it be repaid.

(2) the amount of \$22,165 awarded to the respondent be paid by the appellants into Court with a direction to the Registrar to place it in an interest bearing account at the Barbados National Bank, the amount with accrued interest to be paid by the Registrar as required in accordance with the judgment of the Court of Appeal; and

(3) the costs of this application to follow the decision of the Court of Appeal.

Liberty is given to apply.

Chief Justice.