

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

CIVIL APPEAL NO. 101 OF 2017

BETWEEN:

1. THE NEW BUILDING SOCIETY LIMITED
2. TRUST COMPANY (GUYANA) LIMITED
3. EXECUTOR OF THE ESTATE OF AHMAD KHAN, DECEASED
4. SEEPAUL NARINE
5. NIZAM MOHAMED

Appellants/ Applicants/ Respondents

-and-

MAURICE ARJOON

Respondent/ Respondent/ Applicant

JUSTICE RISHI PERSAUD JA (IN CHAMBERS)

**APPEARANCES:**

Mr. A. Chase SC for the Appellant/ Applicant

Mr. S. Datadin with Mr. G. Hira for the Respondent/ Respondent

**RULING**

Generally in considering an application for a stay the court has an unimpeded discretion to grant or refuse such stay. The discretion must be considered judicially and not in an erratic manner. In the exercise of its discretion, the competing rights of the parties must be borne in mind. The lack of due consideration of one or the other renders the exercise of that discretion, improper.

A winning party has a right to the fruits of his judgment and the court will not make a practice at the instance of an unsuccessful litigant of depriving a successful one of the fruits of his judgment pending the hearing and determination of the appeal. See Annot Lyle (1886) 11 P.D 144.

- (1) The principles that lead to a grant of a stay are well settled and further general discussions in relation thereto is unwarranted for our present purposes.

This court notes that the order of his honour, the Notice of Appeal, and the Notice of Intention to vary the sum awarded are not attached to these

proceedings. This is most unsatisfactory and Counsel is urged to desist from this "practice". All documents necessary to aid the court in its consideration of the issues before it must be attached and referred to. In addition, the record of proceedings below and the decision of his honour is not yet available. This court is left substantially to its own devices in its' consideration of this application.

I have perused the various Affidavits and submissions laid over. I must say at the outset that the Affidavit in Support of the Summons for a stay is, unacceptably bare in its content.

- (i) No merits of the appeal and prospects of success is established on the Affidavit in Support. Further, no prospects of ruination or "issue" in that regard arises thereon. See Toolsie Persaud v. A.G. C.A No. 48/03. See too Scotland District Association v. A.G (1996) 53 W.I.R 66 at 71. However from a perusal of the Notice of Appeal secured by this court from the records kept in the Registry, it is apparent that a sum was awarded under Termination of Employment and Severance Pay Act (T.E.S.P.A) as severance pay in addition to pension entitlement. This to my mind spawns an arguable ground with prospects of success specifically in that regard.
- (2) Again, no exceptional circumstance is established in the application which warrants a stay of the entire order appealed against. See CHPA v. Stockfeeds Ltd. C.A No. 32/2005 and Vaswani Trading v. Savalakh Co. (1972) 12 S.C.R 77.
- (3) Notwithstanding, the deficiencies pointed out, and having regard to the circumstances of this case, the overall balancing of the competing interests of the parties here, is paramount. I am satisfied that the Respondent has established his ability to repay only that lump sum awarded as "pension benefits" in the event that it is found that the learned trial judge was incorrect in his award.
- (4) The Respondent's failing health and the need for medical attention is noted though not established with any degree of particularity. His age and the time consuming process of litigation is also noted. Though not necessarily an established criteria "ruination of sorts" seems nested at his mortgaged door step.

In the circumstances the stay sought is refused in relation to that lump sum of \$59,033,281 described as the "pension amount" in the order of his honour dated the 20<sup>th</sup> July, 2017.

It is unclear from that order of Court exactly what the lump sum of \$20,249,520 represents and its breakdown. It is most likely a sum representing


severance benefits. As stated earlier this award may attract serious contention. The award of this sum is stayed pending the hearing and determination of this appeal.

In addition all other awards referred to as reduced monthly pension payments and interest on the "pension amount" is also stayed pending the hearing and determination of this appeal, except costs.

This is thought prudent as it may be beyond the Respondent's ability to repay those sums in the event that the court finds that his honour was incorrect in making the award that he did.

As a consequence of this ruling it is further ordered that the Respondent do not further encumber charge, alienate, sell or otherwise dispose of the property situate at Lot numbered 1 portion of Block "AA" Eccles, more fully described in Transport Number 320 of 1997; pending the hearing and determination of the appeal.

No order as to costs.

  
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**RISHI PERSAUD**  
Justice of Appeal

Dated this 20<sup>th</sup> day of December, 2017