IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No.591 of 2022

BETWEEN

CAMILLA YAMASAKI Claimant

and

[1] DEAN REIBER
[2] **REIBER HOLDINGS LTD** Defendants

Appearances:

Ms. Payal B. Ghanwani for the Claimant
Ms. Kristy Lopez for the Respondents

2024: July 18
2025: April 14

DECISION

PRACTICE & PROCEDURE: Stay of Execution pending appeal – Jurisdiction of the High Court – Factors to be considered in granting stay – Rules 53.2 (1) and (2), High Court, Civil Procedure Rules – Rules 16, 17 and 19, Court of Appeal Rules

[1] **Mansoor J:** There are two applications before this court. The claimant filed a notice of application dated 24 April 2024 under rules 53.2 (1) and (2) of the High Court (Civil Procedure) Rules (CPR). The defendants have filed a notice of application dated 17 May 2024 to stay execution of Chabot J's judgment dated 2 January 2024.

Background

[2] The claimant is the former partner of the first defendant. The first defendant is the sole director and shareholder of the second defendant, a company incorporated on the instructions of the first defendant. The dispute related to the ownership and financial contribution to acquire a property described as parcel 4775 (H36) Block 7 in the San Pedro Registration Section ("property"). The property was acquired during their relationship, closer to its end when things were strained. The first

defendant claimed that he purchased the property solely with his funds. The claimant stated that she contributed a portion of the purchase price. Although her contribution was less than that of the first defendant, she claims that they agreed to jointly own the property. These contentions were put to test at the trial before the High Court. Judgment was given on 2 January 2024 and perfected on 12 January 2024. Both applications relate to the judgment by Chabot J ("judge"), by which orders concerning the property were made in favour of the claimant.

[3] The sale agreement was entered into on 23 March 2022. The property is registered in the name of the second defendant. The purchase price of the property was US$ 433,000.00. The claimant alleged that she contributed US$ 101,000.00. The claimant's testimony is that she made payments from two bank accounts on the first defendant's behalf.

[4] The claimant testified that unknown to her the first defendant instructed the closing agent to incorporate the second defendant solely in his name. She claimed to have been in possession of the property from 20 May 2022 to 12 September 2022 and made improvements to it before being dispossessed by the first defendant. The defendants denied that the claimant made any payment or that the first defendant made a representation that she would receive an interest in the property.

A The claimant's notice of application

[5] The claimant's notice of application dated 24 April 2024 seeks the following orders:

> 1. "The Defendants be given ten (10) days from the date of the Order herein to comply with the Judgment Order of the Court made the 2nd day of January 2024, and more specifically to:
>
> 1. Settle or transfer the suit property and the shares in the Second Defendant equally between the Claimant and First Defendant;
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> 2. Make payment of costs in the sum of BZ$63,300.00.
>
> 2. Costs of this Application; and…"

[6] The claimant's application is made as the defendants have failed to satisfy the judgment by transferring the property or the shares as ordered by court. The defendants did not file a response to the claimant's notice of application.

[7] The orders made by the judge on 2 January 2024 are reproduced below:

1. "Ms. Yamasaki is entitled to a joint interest in all that piece or parcel of land legally described being Parcel 4775 (H36), Block 7, situated in the San Pedro Registration Section;

2. Ms. Yamasaki is entitled to a 50% interest in Reiber Holdings Ltd;

3. Reiber Holdings Ltd. holds any and all interest in the Property in trust for Ms. Yamasaki and Mr. Reiber in joint shares and the defendants are estopped from denying such interest;
4. Mr. Reiber holds 50% of the shares in Reiber Holdings Ltd. in trust for Ms. Yamasaki;

5. The Property and the shares in Reiber Holdings Ltd. be settled or transferred equally between Ms. Yamasaki and Mr. Reiber;

6. Ms. Yamasaki is awarded costs on a prescribed basis calculated on 50% of the value of the Property".

[8] The claimant says it has no access to the property which was ordered to be transferred to her in terms of the judgment. The claimant, through its attorney at law, sent letters dated 4 March 2024 to the defendants asking *inter alia* that there be compliance with the judgment. She says the defendants have not responded to the letter. Where a judgment does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done in terms of CPR 53.2(2). The claimant is seeking an order directing the defendants to comply with the judgment within 10 days.

[9] The defendants' application will be initially dealt with although it was filed after the claimant's application, as it seeks a stay of execution of the judgment.

B The defendants' notice of application

[10] On 17 May 2024, the defendants filed a notice of application for a stay of execution of the judgment dated 2 January 2024 until the determination of the appeal.

[11] Rules 16, 17 and 19 of the Court of Appeal rules are relevant in determining the application:

Rule 16

"(1) In any cause or matter pending before the Court a single judge of the Court may upon application make orders for-

(a) giving security for costs to be considered by any appeals;

(b) leave to appeal in forma pauperis;

(c) a stay of execution on any judgment appealed from pending the determination of such appeal;
(d) an injunction restraining the defendant in the action from disposing or parting with the
possession of the subject matter of the appeal pending the determination thereof;
(e) extension of time,
and may hear, determine and make orders on any other interlocutory application.
(c)a stay of execution on any judgment appealed from pending the determination of such appeal;

And may hear, determine and make orders on any other interlocutory application".

(2) Every order made by a single judge of the Court in pursuance of this rule may be discharged or varied by any judges of that Court having power to hear and determine the appeal.

Rule 17 states:

"(1) Applications referred to in rule 16 shall ordinarily be made to a judge of the Court, but, where this may cause undue inconvenience or delay, a judge of the Court below may exercise the powers of a single judge of the Court under that rule.

(2) The Registrar of the Court below shall send to the Chief Registrar one copy of any application made to a judge of the Court below and of the order made thereon.

Rule 19 states:

(1) An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the court below or the Court may order, and no intermediate act or proceeding shall be invalidated so far as the Court may direct."

[12] The claimant's objection is two-fold. Firstly, for want of jurisdiction and secondly that the defendants have not satisfied the elements necessary to be granted a stay of execution.

Jurisdiction

[13] Rule 19 (1) of the Court of Appeal rules provide that an appeal will not operate as a stay of execution of the judgment appealed from unless so ordered by the Court of Appeal or the High Court. The rule has been upheld by several authorities. In

Rodrigues Architects Limited v New Building Society[1], the Caribbean Court of Justice quoted with approval the following passage from the Court of Appeal of Trinidad and Tobago in ***National Stadium Project (Grenada) Corporation v NH International (Caribbean) Limited***:[2]

> "It is trite law that an appeal does not operate as a stay of the judgment or order appealed. The basic rule is that a successful litigant is entitled to enjoy the fruits of its success. The onus therefore lies on the Applicant for a stay to satisfy the Court that, having regard to all the circumstances of the case and the risk of injustice, a stay ought to be imposed."

[14] Rules 16 (1) (c), 17 and 19 of the Court of Appeal Rules provide for the filing of an application for stay of execution of a judgment appealed pending the determination of the appeal. The defendants submit that the court is empowered to grant a stay if an application is granted on an urgent basis and there would be delay if the application is made to the Court of Appeal.

[15] This application was filed on 17 May 2024, about three weeks after the claimant's application for enforcement of the judgment. There is no explanation as to why it took the defendants so long to file the application for stay of execution of judgment dated 2 January 2024; more than 4 ½ months after delivery of judgment.

[16] The claimant submits that the court should dismiss the defendant's application for stay of judgment for lack of jurisdiction as the High Court's jurisdiction is limited to cases where there will be 'undue inconvenience or delay' if the application is made to the Court of Appeal. The claimant submits that the application filed on 17 May 2024 could very well have been heard in the June session of the Court of Appeal commencing 3 June 2024.

[17] In ***Bryant Williams et al v Minister of Youth, Sport and Transport et al***[3], Hondora J, having exhaustively analysed the authorities, concluded that the High Court has an inherent jurisdiction to hear and determine applications for stay of proceedings and that such applications must in the first instance be made to the High Court.

[18] In ***Attorney General v Prosser***[4]***,*** the Attorney General sought a stay of execution of orders pending appeal. Sosa JA held that the Court of Appeal had no jurisdiction

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[1] [2018] CCJ 09 (AJ)
[2] Civil Appeal No 48 of 2011, 28 July 2017 at [10]
[3] Claim No. Civ 134 of 2022 (No.3)
[4] Civil Appeal No.7 of 2006 (8 March 2007)

to hear the application at the time it was made because the Attorney General had not filed his application in the first instance before the judge. Sosa J stated:

> "I have no doubt that it is , and rightly so, a condition for (a) the existence of the jurisdiction of this court (not to mention its single judge) to hear, determine and make orders on an application for a stay of execution and (b) the existence of the like jurisdiction of this court on an application for a stay of proceedings that a judge of the court below should have previously heard and refused such an application".

[19] The common law position concerning an application for a stay was articulated by the Privy Council decision in ***Bibby v Partap***[5], an appeal from the Court of Appeal of Trinidad and Tobago.

> "In the ordinary course an application for a stay should be made to the court of first instance. It is obviously convenient, and it is the usual practice, for the application to be made to the judge whose decision is sought to be appealed, and for the application to be made at the time judgment is given. If the judge refuses a stay as asked, or imposes unacceptable terms, the appellant or would-be appellant may renew his application to the Court of Appeal"

[20] I am satisfied that the Court of Appeal judgment of Sosa J in Attorney General v Prosser continues to be in force. Moreover, the High Court's inherent power to stay the execution of its judgment is unaffected by law in Belize, as underlined in Hondora J's decision in *Bryant Williams v Minister of Youth, Sport and Transport*. This court has the jurisdiction to stay execution of the judgment.

Have the defendants satisfied the requirements for a stay?

[21] In ***Linotype-Hell Finance Ltd. v Baker***[6] the English Court of Appeal stated what was necessary to succeed in a stay of execution application:

> "It seems to me that, if a defendant can say that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success, that is a legitimate ground for granting a stay of execution."

[5] 48 WIR 371, [1996] 1 WLR 1931
[6] [1993] 1 WLR 321

[22] In ***Commissioner of Sales Tax et al v Sanitation Enterprises Ltd***,[7] Sosa JA of the Belize Court of Appeal, in refusing a stay stated:

> "… while the appeal may arguably have some prospect of success, I do not think that the material contained in the affidavit evidence succeeds in showing that the Applicants would stand to be ruined absent a stay … Undue hardship falls short in my opinion of ruin."

[23] In ***George Dueck v Thomas Pound and another***[8], Griffith J stated:

> "The application for the stay of execution has been properly filed as part of the Supreme Court claim and this Court is entitled to entertain the application further to its inherent jurisdiction to stay its own process. It is further found, based upon the decision referred to above, that this inherent jurisdiction is not affected by the fact that a notice of appeal has already been filed".

[24] In ***Dorian Gryffyn v FBS Markets Inc.*** Alexander J stated:

> "The court has wide discretion in deciding the issue of a stay. It must be just to suspend execution of a judgment. A stay will be granted if the applicant would face ruin without the stay and an appeal has some prospect of success. An applicant is required, therefore, to show evidence that some serious risk of irremediable harm exists that will cause it to be ruined if the stay is not granted. In deciding whether or not to exercise its discretion to grant or refuse the stay, the court will look at all the circumstances of the case. Moreover, the evidence in support of a stay needs to be full and frank if the court is to exercise its discretion to suspend execution.
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> Generally, a bald assertion of likely ruin, without evidence, will not attract a stay. It is the applicant who must satisfy the court, by evidence, that without a stay, it will be ruined."[9]

[25] In the above case, the application for stay was allowed. The court considered the substantial sum awarded by the judgment, the fact that both parties had no assets in Belize and the respondent's impecuniosity, in reaching its conclusion. The court was concerned whether the applicant would be able to recover the monies from the respondent if the stay is refused and it wins the appeal. The elements necessary

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[7] Civil Appeal No. 36 of 2010
[8] Claim No.409 of 2009 [13 October 2017]
[9] Claim No.42 of 2020 (18 July 2023) Paragraphs 15 & 16

for the grant of a stay was examined by Alexander J in another matter as well, in ***Linda Bowman v Priscilla Herrera***[10]. In that case, the judge refused to exercise her discretion to grant a stay.

[26] In ***Sagis Investment Limited v Radio Krem Limited***[11], Barrow JA of the Belize Court of Appeal stated:

> "As a starting point and in a general way, if a defendant can say that without a stay of execution he will be ruined, that will be a legitimate ground for granting a stay. In relation to a judgment to pay money, it is a ground for granting a stay that the Defendant will be unable to recover the money the judgment requires him to pay if he wins on appeal".

[27] In Sagis, the Court of Appeal referred to the following approach taken by Philips LJ in ***Combi Singapore (Pte) Limited v Sriram***:

> "In my judgment the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the Plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the Plaintiff if a stay is ordered, then a stay should normally be ordered… But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice. The starting point must be that the normal rule as indicated by Order 59, rule 13 is that there is no stay but, where the justice of that approach is in doubt, the answer may well depend upon the perceived strength of the appeal." [12]

[28] The authorities show that a stay of execution is the exception rather than the rule. The burden of making out a case is upon the applicant seeking a stay. In exercising its discretion, the court must take all the circumstances into account. A stay will only be granted if there is some prospect of success and where there is a risk of injustice.

[29] The defendants submit that they would face significant prejudice for the following reasons:

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[10] Claim No.CV 370 of 2020
[11] Civil Appeal No.13 of 2008
[12] [1997] EWCA civ 2164

(a) Transfer of shares of the second defendant and the property to the claimant would require stamp duty payment of USD$35,200.00 each, which the defendants would have to pay.

(b) If successful on appeal, the defendants would need to pay this sum again to transfer the shares and the property back to the defendants. If the shares and property are transferred to the claimant and the claimant disposes of her interest before the appeal is determined, the appeal would be rendered nugatory as the property and shares cannot be recouped from a bona fide purchaser.

(c) If the defendants are successful in appeal, the costs awarded would be reduced from BZ$63,300.00 to BZ$12,500.00 and the defendants will have no means of recovering the costs difference of BZ$50,800.00 from the claimant as she has no other known assets within the jurisdiction and is a citizen of the United States who may return home

[30] The claimant contends that if the stay is granted and the defendants, as the current sole registered owners, sell the property, the claimant would have no recourse against a *bona fide* purchaser to recover the property or the proceeds, especially since the first defendant is not a Belizean citizen and resides out of the jurisdiction, and the second defendant was incorporated solely to hold the property for the first defendant and the claimant, and the company has no other assets.

[31] The defendants submit that the evidence to support the claimant's allegations that she indirectly contributed towards the purchase price of the property is imperfect, an observation that was also made by the judge. The defendants state that despite the weakness in the claimant's testimony, the judge did not believe the evidence of the first defendant. They argue that the judge erred in inferring that the payments were made towards the purchase price of the property satisfying the element of detrimental reliance to establish a common intention constructive trust. The defendants contend that the court failed to consider that the relationship between the claimant and the first defendant was of a short duration of two years from September 2020 to July 2022. They submit that the judge's conclusion that the claimant is entitled to 50% of the property and in the shareholding of the second defendant goes against the principle of fairness.

[32] The findings made by the judge, the defendants say, affected the first defendant's credibility, and the claimant was found to be more credible than the defendant. Consequently, the judge did not believe the testimony of the first defendant that the parties' intention was that both would contribute equally to the purchase of the

property. The defendants have explained inconsistencies in the first defendant's evidence which the judge highlighted in her judgment. The defendants submit that awarding the claimant 50% interest in the property despite her minimal contribution and the short duration of the relationship constitutes unjust enrichment. They contend that it was unreasonable to have awarded the claimant an interest in the property as well as shares in the second defendant. They contend that the judgment is perverse and disproportionate, and that the assessment of evidence was unreasonable and against the weight of evidence.

[33] The judge was presented with the following issues to determine the dispute:

a. Whether the claimant is entitled to an interest in the property and if so, the extent of such interest.

b. Whether the second defendant holds the property in trust for the claimant and the first defendant, and if so, the extent of such interest.

c. If the court determines that the claimant is not entitled to any interest in the property, whether she is entitled to restitution from the defendants.

[34] After analysing the evidence, the judge determined that the claimant proved the existence of a constructive trust in her favor for an equal share of the property and 50% of the shares in the second defendant. The judge proceeded on the basis agreed by the parties instead of apportioning shares of the property based on their financial contributions. In reaching a conclusion, the judge appears to have made an overall assessment of the evidence.

[35] The defendants are unhappy with the factual findings of the judge. As they submit, the judge has believed the claimant's testimony. The first defendant's credibility, it is asserted, has suffered because of certain findings and inferences made by the judge. It is not clear as to the specific findings that are said to be contrary to the weight of evidence. The trial judge, it is pertinent to point out, is the arbiter of facts. An appellate court will not usually interfere with the findings of primary facts of an original court unless those findings are plainly wrong.

[36] In ***Nilon Ltd v Royal Westminster Investments SA***[13]***,*** the Privy Council stated:

> "In appeals from the exercise of a discretion, an appellate court should not interfere with a decision of a lower court which has applied the correct

[13] [2015] UKPC 2, (2015) 86 WIR 285

> principles and which has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the appellate court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion which has been entrusted to the court".

[37] The judge considered the terms of the sale agreement, which was binding on the parties. The agreement referred to the intention of the parties to own the property jointly. The claimant's evidence was she would contribute about $100,000.00 towards purchasing the property, but the ownership would be equal as agreed between the parties. The first defendant argues that this points to unequal ownership. The judge, having looked at the overall evidence, did not agree with that reasoning and held that the parties always intended to jointly own the property although the claimant's financial contribution was much less than the first defendant's contribution to the purchase price.

[38] The judge found that the conduct of the parties and their common intention leading up to the purchase of the property result in a constructive trust in favour of the claimant. The judge refers to the following passages of the English Court of Appeal in ***Oxley v Hiscock***[14]:

> "[68] I have referred, in the immediately preceding paragraphs, to "cases of this nature". By that, I mean cases in which the common features are: (i) the property is bought as a home for a couple who, although not married, intend to live together as man and wife; (ii) each of them makes some financial contribution to the purchase; (iii) the property is purchased in the sole name of one of them; and (iv) there is no express declaration of trust. In those circumstances the first question is whether there is evidence from which to infer a common intention, communicated by each to the other, that each shall have a beneficial share in the property. In many such cases – of which the present is an example – there will have been some discussion between the parties at the time of the purchase which provides the answer to that question. Those are cases within the first of Lord Bridge's categories in Lloyds Bank Plc v Rosset. In other cases – where the evidence is that the matter was not discussed at all – an affirmative answer will readily be inferred from the fact that each has made a financial contribution. Those are cases within Lord Bridge's second category. And, if the answer to the first question is that there was a common intention, communicated to each other, that each should have a beneficial share in the property, then the party who does not become

[14] [2004] EWCA Civ 546; [2004] 3 All ER 703

> the legal owner will be held to have acted to his or her detriment in making a financial contribution to the purchase in reliance on the common intention.
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> [69] In those circumstances, the second question to be answered in cases of this nature is "what is the extent of the parties' respective beneficial interests in the property?" Again, in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this Court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And, in that context, "the whole course of dealing between them in relation to the property" includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home."

[39] From the findings, the judge inferred a common intention that the claimant would have a beneficial share in the property. She concluded there is evidence leading to such an inference from the course of conduct between the parties. The court reached the finding that the first defendant's decision to exclude the claimant was made unilaterally and without the claimant's knowledge. The judge gave reasons for her findings.

[40] The judge observed that the claimant's evidence regarding the purchase of the property is imperfect. But her testimony was enough to convince the court on a balance of probabilities. The court considered the substantial transfers, withdrawals and payments made by the claimant in March and June 2022 and found that these transactions were towards the purchase of the property. The judgment refers to certain WhatsApp messages between the parties that refer to "monies owed" and "percentage". The judge rejected the first defendant's explanation that the messages referred to a loan of US$ 1,000.00 owed to the claimant. The court concluded that the claimant acted to her detriment by making a financial contribution towards the purchase price of the property in reliance of the parties' common intention that she would have a beneficial share of the property.

[41] Having concluded that the claimant has a beneficial share, the judge assessed the parties' respective beneficial interests in the property, having regard to the whole

course of their dealing in relation to the property. The court's finding based on the evidence was that the claimant and the first defendant intended to jointly purchase and own the property. The court held that this was the original intention of the parties until the first defendant's unilateral decision to exclude the claimant from the deal. Chabot J stated[15]:

> Where a constructive trust has been established, the court is not bound to make a mathematical calculation of each parties' financial contribution to determine their respective share in a property. The calculation is made by the court on the basis of what is fair given the whole course of conduct between the parties.8 I find it is fair in the circumstances of this case to declare the Property to be held jointly by Mr. Reiber and Ms. Yamasaki. I find this outcome to be fair based on Mr. Reiber's representations to Ms. Yamasaki, her detrimental reliance on these representations, and the underhandedness of Mr. Reiber's conduct in excluding Ms. Yamasaki from the deal without her knowledge or consent".

[42] The defendants contend that they have prospects of success in the appeal. Having considered their submissions, this is not so easily evident. The court will not embark on making elaborate findings in this proceeding. There must, however, be some prospect of success. The matters the defendants raised regarding the assessment of evidence, the weight given to such evidence and about the credibility of their evidence do not point to a successful appeal.

[43] The transfer of the property and the shares in the second defendant equally between the claimant and first defendant will incur significant costs, which the defendants would be required to bear. The defendants assert that an order directing them to comply with the judgment will cause them ruin.

[44] The defendants submit that the estimated stamp duty for transferring the shares to the claimant is USD$35,200.00 and the estimated stamp duty for transferring the property is USD$35,200.00 based on the purchase price of the property in 2022. The aggregate stamp duty would be $70,400.00. The parties concur that with improvements to the property the value has likely increased with a corresponding increase in the payable stamp duty. In the event the property is re-evaluated by the Lands Department, there could be a further increase in stamp duty. This is apart from the legal costs in executing the transactions ordered by the judge. The defendants point out that if they are successful in appeal, they will then incur more costs in transferring the property and shares back. The court does not agree that

[15] CV 591 of 2022 (2 January 2024), paragraph 17

stamp duty will twice over. A transfer from the present registered owner, the second defendant, to the claimant and the first defendant will suffice to resolve the matter concerning the property. Nevertheless, the defendants' submissions are not entirely without force.

[45] There are risks for consideration when a stay application is before the court. While the defendants urge that an execution of the judgment would result in its ruin due to the transactional costs referred to above, the claimant contends that non-compliance of the judgment entails the risk of the property being transferred to a third party, and this would be to its detriment. No evidence has been placed in this proceeding of other assets belonging to the parties in Belize. Each party has its concerns; the claimant based on the judgment, the fruits of which are yet to be enjoyed, the defendants in the hope that the appeal would reverse the adverse orders made on 2 January 2024. The fundamental position is that a stay of a judgment will not happen merely on the filing of an appeal. An applicant seeking a stay must be able to show that there is a likelihood of ruin if a stay is not granted. It must be shown that the denial of a stay, when the overall circumstances are considered, will result in a denial of justice. The test of ruin has not been satisfied. At the very least the defendants could have shown haste in stopping the execution of the judgment. They did not do so as one facing likely ruin. The judgment was given on 2 January 2024. The application for stay was filed on 17 May 2024, much after the claimant made a move for enforcement.

Costs

[46] The judge exercised her discretion and awarded the claimant, "costs on a prescribed basis calculated on 50% of the value of the property".

[47] The judge, the defendants contend, did not assess the value of the claimant's claim in accordance with rule 64.5(2)(b)(iii) or 64.6(1)(a) of the CPR, and, therefore, had no jurisdiction to assess the value of the claim in the sum of USD$433,000.00.

[48] The defendants submit that if they succeed in appealing the costs award, it would be reduced to $12,500.00, which is a difference of $50,800.00.

[49] The claimant has not made a clear response to the defendants' contention except in saying that it was the defendants that sought prescribed costs in the sum of BZ$88,300 based on the full property value.

[50] **Rule 64.5** of the CPR states:

"(1) The general rule is that where Rule 64.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (5) of this Rule.

(2) In determining such costs, the "value" of the claim is to be decided –
(a) in the case of a claimant, by the amount agreed or ordered to be paid; or

(b) in the case of a defendant –

(i) by the amount claimed by the claimant in his claim form; or

(ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or

(iii) if the claim is not for a monetary sum, it is to be treated as a claim for $50,000 unless the court makes an order under Rule 64.6(1)(a)".

[51] **Rule 64.6(1)(a)** states:

(1) A party may apply to the court at a case management –

(a) to determine the value to be placed on a case which has no monetary value; or

(b) where the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.

[52] The claimant submits that her claim is for 50% of the property valued at US$ 433,000.00 (BZ$ 866,000.00), and the prescribed cost should be BZ $63,000.00.

[53] The defendants submit that the discretion was wrongly exercised. The defendants contend that in terms of rule 64.5 (2) (b) (iii), the claimant's claim ought to have been treated as a claim for $50,000.00, as the claim is not for a monetary sum.

[54] There is merit in this contention. The subject matter of the claim is land. It is not a claim for money. The parties have not drawn the court's attention to the determination of the value of the property for calculation of the prescribed costs.

[55] The court stays the trial judge's award of costs to the claimant.

Conclusion

[56] It is not for this court to decide the merits of the appeal filed by the defendants. But to succeed in their application to stay execution of the judgment, some degree of prospects of success must be shown. That burden rests on the defendants. They have not been able to show that the findings and inferences of the trial judge are not likely to be sustained in appeal. The court does not perceive a real risk of injustice to the defendants. Chabot J's judgment dated 2 January 2024 deals with the evidence extensively. The defendants have not shown that findings based on the evidence are misplaced. For these reasons, the court has decided to grant paragraph 1.1 (i) of the claimant's application subject to the variation below. The defendants may have an arguable point concerning order (6) of the judgment, which awards the claimant costs on a prescribed basis calculated on 50% of the value of the property. Paragraph 1.1(ii) of the claimant's application is declined. The defendant's application is declined except for (6) of the judgment dated 2 January 2024.

ORDER

A. The defendants' application for a stay of execution of the judgment dated 2 January 2024 is declined except for (6) of the judgment on costs.

B. Paragraph 1.1 (i) of the claimant's application is allowed subject to the variation to 14 days instead of 10 days to comply with the judgment dated 2 January 2024.

C. Paragraph 1.1 (ii) of the claimant's application is declined.

D. The defendants are to pay the claimant's costs as assessed if not agreed.

M. Javed Mansoor
Judge