

IN THE GRAND COURT OF THE CAYMAN ISLANDS



G 45 of 2021

BETWEEN

JEREMY BECK

Plaintiff

MV CAYMAN LTD.

Defendant

IN CHAMBERS

Before: Hon Justice Margaret Ramsay-Hale

Heard: 21 December 2021

Draft Circulated: 10 January 2022

Ruling Delivered: 12 January 2022

HEADNOTE

Stay of Execution pending appeal - principles to be applied

RULING

1. By summons dated 13 December 2021, the Defendant, MV Cayman seeks a stay of execution of the judgment of this Court handed down 16 November 2021.

The Factual background

2. An Order for Specific Performance was filed on 19 November 2021, following a final hearing on the Plaintiff's Originating Summons on 9 and 10 June 2021 in which the Court granted the Plaintiff's claim against the Defendant for specific performance of an option agreement made between the parties (the **Option Agreement**).
3. The Option Agreement arose from a property transaction between the parties under which the Plaintiff acquired ten studio units at a resort formerly known as Margaritaville Beach Resort. Under the Option Agreement, the Plaintiff could require the Defendant to repurchase the units in certain circumstances. When certain of those circumstances occurred, the Plaintiff gave notice to the Defendant that he was exercising his right under the Option Agreement to cause the



Defendant to repurchase nine of the units (the Plaintiff having sold one of the units previously). The Defendant did not repurchase the units citing its financial inability to fund this obligation.

4. On 11 March 2021, the Plaintiff commenced proceedings by Originating Summons in which it sought specific performance of the Option Agreement by, among other things, requiring the Defendant to pay US\$2,005,000 as the aggregate purchase price for the nine units. The Defendant defended the proceeding primarily on the grounds that specific performance should be refused because:

- (a) it was impossible for the Defendant to perform the Option Agreement due to its impecuniosity; and
- (b) damages were an adequate remedy.

The Grounds of Appeal

5. The grounds of appeal are, in summary, that:
- (i) The finding of the Court, that it would be difficult but not impossible for the Defendant to repurchase the units, went against the weight of the evidence, and
 - (ii) The Plaintiff's claim for specific performance was, in essence, a claim for money, being the sum for which the Defendant had agreed to repurchase the units from the Plaintiff, and the Court erred in granting specific performance as damages would be an adequate remedy.

The Applicable Principles

6. The principles on which a stay of execution may be granted were recently considered by the Court of Appeal in the matter of *The Deputy Registrar Of The Cayman Islands Government v Day And Another*, 2019 (1) CILR 510. The President said this at para. 15 of the Court's Ruling:

*"By s.19(3) of the **Court of Appeal Act (2011 Revision)**, a stay may be granted for good cause. What amounts to good cause to stay an execution of a judgment has been considered in many cases, a number of which have been drawn to our attention. As the cases make plain, a successful litigant is prima facie entitled to the fruits of his success. There must be good reason for the court to prevent that. In deciding whether or not to impose a stay, the court will consider the grounds of appeal, their likelihood of success and the balance of convenience having regard to the interests of both parties. The overriding feature is the interests of justice in any given case, as the observations of Potter L.J. make plain in the case of *Leicester Circuits Ltd. v. Coates Brothers plc* [(EWCA Civ 474)]."*



7. The Court made the point that the applicant does not need to show the grounds are strong or that there is a strong likelihood of success, but that the grounds are arguable or that there is a real prospect of success on appeal.
8. In *Heriot African Trade Finance Fund Limited v Deutsche Bank (Cayman) Limited*, 2011 (1) CILR 34 Jones J held, *inter alia*, at [22] that the onus is on the applicant to show good cause for the imposition of a stay pending appeal and that the court will consider all the circumstances of the case including whether the appeal would be rendered nugatory if a stay were not granted.
9. The authorities also establish that, on an appeal on a question of fact, leave will be granted where the court drew untenable inferences from primary facts or should have drawn materially different inferences.

Whether Arguable Grounds

10. I have considered both grounds of appeal and concluded that neither have a real prospect of success. The first ground challenges a finding of fact that was open to the Court on the evidence. I am not persuaded that there is a real prospect of success that the Court of Appeal will say the conclusion drawn by me was untenable.
11. The second ground is also an appeal against a finding of fact, that finding being that the Plaintiff would experience hardship if he were required to sell the units on the open market, as willing purchasers would be in short supply, and that he should not therefore be left to his remedy in damages. In his skeleton argument, Mr. Kennedy submits that there was no evidence at the trial about the prospects of any sale. In the course of his oral submissions, he described the units as condos on Seven Mile Beach, suggesting that they could be readily sold. The evidence before the Court was, however, that pursuant to the agreement made between the parties, the Plaintiff's units are essentially hotel rooms in a resort that cannot fill its hotel rooms. That there would not be a ready market for the sale and purchase of hotel rooms in a moribund hotel was a reasonable inference for the Court to draw and I am not persuaded by the Defendant that there is a real prospect that the Court of Appeal would come to a different view.

Balance of Convenience

12. If I am wrong in that, and the Defendant has an arguable case on appeal, I would nonetheless refuse the stay as the balance of convenience is not in its favour.
13. This application was brought on an urgent basis in response to an indication by the Plaintiff that if the sums under the Order were not paid, the Plaintiff would seek to wind up the Company. Mr. Kennedy says such a course would be catastrophic for the Defendant and render the appeal nugatory as, in the event the appeal is successful, the Defendant would have suffered irreparable harm in the period between the presentation and dismissal of the Petition.



14. I accept that widespread knowledge that a company is subject to a creditor's winding up petition can cause that company serious harm but the remedy is, as Mr. Tonner QC submits, for the Defendant to apply for an injunction to restrain the Plaintiff from presenting, advertising or pursuing a winding up Petition.
15. The real issue for consideration is whether, if the Defendant pays the sums due under the Judgment, there is any danger that the judgment sum will be dissipated before the appeal can be heard, thus depriving the Defendant of the fruit of its judgment in the Court of Appeal if it succeeds.
16. Mr. Tonner QC says, and I accept, that the Plaintiff is a man of means and if Defendant pays the sum owed under the sale (Option) agreement and later succeeds in the appeal, the Plaintiff can and will pay the money back. I am assured that no question of hardship to the Defendant arises in those circumstances.
17. The Plaintiff is entitled to the fruits of his judgment. The Defendant's application for a stay of execution pending the appeal is dismissed.

DATED 12 JANUARY 2022.

A handwritten signature in blue ink, appearing to read "Ramsay-Hale J".

Ramsay-Hale J