



IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

G 63 of 2019

BETWEEN

CHRIS STEPHEN CONOLLY

Plaintiff/
Defendant by Counterclaim

AND

KADIE SHANDI R EBANKS

Defendant/
Plaintiff by Counterclaim

IN CHAMBERS

Appearances: Mr Chris Conolly, in person
Ms Amelia Fosuhene of Bradys for Ms Ebanks

Before: Hon. Margaret Ramsay-Hale, Chief Justice

Heard: 7 and 9 June 2023

Reasons Delivered: 14 June 2023

HEADNOTE

Civil procedure - Application for stay of execution pending appeal - Approach to be followed.

REASONS FOR DECISION

Introduction

1. In a judgment delivered on 17 December 2021, I dismissed the Plaintiff's claim for specific performance of an agreement for the sale and purchase of land made between the Plaintiff, Mr.

Chris Conolly, and the Defendant, Ms Kadie Ebanks on the 15 April 2016 and entered judgment for Ms Ebanks on the counterclaim and made a declaration that the contract was rescinded. I ordered that Mr. Conolly pay Ms Ebanks' costs of the claim and of the counterclaim.

2. By summons dated 30 December 2022, Mr. Conolly applied for a stay of execution of the judgment pending appeal. The application, which predictably did not comply with the Rules, was dismissed by the Court on 9 June 2023 for reasons which I promised to put in writing.
3. I say predictably because the procedural history of this matter has been marked by Mr. Conolly's persistent failure to follow the Rules. It has been complicated by the fact that Mr. Conolly is a litigant in person who has been, to all intents and purposes, 'represented' throughout these proceedings by his wife, Joanne. Mrs. Conolly, who has a master's degree in law, has undertaken the preparation and filing of all process and supporting affidavits where required in this matter rather than instructing an attorney. The Court had often to remind itself that it was Mr. Conolly and not Mrs. Conolly who was the Plaintiff in the proceedings in the circumstances where only Mrs. Conolly had any dealings with the Defendant, Ms Ebanks, and only Mrs. Conolly could give relevant evidence with respect to Mr. Conolly's claim for specific performance of the agreement for sale.
4. Mrs. Conolly's conduct in these proceedings, and indeed her decision to draft the agreement for the sale and purchase of the land at the heart of this dispute, brings to mind the adage that a little knowledge is a dangerous thing.

The Chronology

5. These proceedings were commenced on 25 April 2019 by way of an *ex parte* Originating Summons seeking an order for specific performance of a sale agreement made between Mr. Conolly and Ms Ebanks. A summons was then issued on 7 February 2020 by Mr. and Mrs. Conolly seeking the same relief. This summons was served on Ms Ebanks who duly attended Court on the 20 March 2020. Mr. and Mrs. Mr. Conolly did not attend, and the matter was adjourned *sine die*.
6. Ms Ebanks filed a Defence and Counterclaim in October 2020. The matter was set down for a Directions Hearing where the Court indicated that the matter would be continued as if begun by

Writ. Mr. Conolly then filed a Reply to the Defence and Counterclaim. The matter was heard on divers days in February, March and April 2021.

7. A draft of the judgment was circulated to the parties on 12 November 2021. Mrs. Conolly made certain comments on the draft. Her comments were reviewed and discussed with her in Open Court on the date of the handing down. The Court ordered that the time for any appeal run from the date of delivery of the perfected and sealed judgment of the Court. The perfected judgment was circulated to the parties by email on 2 December 2021.
8. On the 6 December 2021 Mrs. Conolly filed a Notice of Appeal against the judgment of the Court. The Notice was not in proper form and after certain guidance was given by the Civil Registry, Mrs. Conolly filed a further Notice of Appeal on 8 December 2021.
9. Mrs. Conolly served the Notice on Ms Ebanks on 18 December 2021 through Ms Fosuhene who represented Ms Ebanks at trial. No memorandum of the grounds of appeal was ever filed or served and no further steps were taken by Mr. Conolly to progress the appeal.
10. On 1 March 2022, Ms Fosuhene filed the Formal Order requiring Mr. Conolly to remove all his property from Ms. Ebanks' land within 30 days. On 11 March 2022, Mrs. Conolly applied to the Court for a copy of the recording of the hearing. On 24 March 2022, Mrs. Conolly filed a document which was intended to be an application for a stay of execution of the judgment pending appeal. The document was entitled "*Motion Notice*" and was filed in the appeal (Civ App 31/2021) instead of in the Grand Court, in breach of the Rules that the party appealing a judgment should apply for a stay first to the trial Judge. The matter came on for hearing before me on 1 April 2022. As the application was not in proper form and no order could be made upon it, I invited Mr. and Mrs. Conolly to file and serve a new application and return to Court on 25 April 2022.
11. On 11 April 2022, Mrs. Conolly sought to file a new application in purported compliance with the 1 April Order. The document, which was supported by Affidavit, stated it was an Order rather than a Summons. The Civil Registry advised Mrs. Conolly the document was not in the form prescribed by the Rules and provided her with a template for making the application by Summons. The fixture for 25 April was vacated.

12. Although Mrs. Conolly stated during the hearing that she filed the new application for a stay on 17 May 2022, the Civil Registry was unable to find any record of any documents being filed. A summons dated 17 May 2022 was finally filed on 30 December 2022 supported by an affidavit sworn by Mr. Conolly which alleged that Ms Ebanks was trying to sell the land despite the extant appeal and in breach of a direction by this Court that the *status quo* be maintained.

The Application

13. That summons came on for hearing on 7 June 2023, some 19 months after the judgment of this Court was delivered. It emerged in the course of the hearing that no appeal was on foot as the Notice of Appeal was **not served** on Ms Ebanks **within 14 days** of the judgment as required by section 19(1) of the **Court of Appeal Act**.
14. Rather than dismissing the application forthwith as the appeal was out of time, the Court decided it would consider the reasons for the delay and the merits of the grounds of appeal disclosed in the Notice of Appeal, and, if it were warranted, the Court would adjourn the application and ask Ms Ebanks to maintain the *status quo*, as it has in the past, to allow Mr. Conolly to make an application to extend time for his appeal.
15. The Court invited Ms Fosuhene to consider such grounds as appeared, from a generous reading of the Notice of Appeal, to have been pleaded and to return on Friday to make submissions on their merits.
16. The matter was then adjourned to 9 June 2023 and a forthwith order for costs, summarily assessed by the Court, was made against Mr. Conolly.
17. At the resumed hearing on 9 June 2023, the grounds of appeal were considered, and the Court heard Ms Fosuhene's submissions on the same. What could be gleaned from the Notice of Appeal was that the issue in the appeal would be whether the Court, having made an order rescinding the contract, erred in not making consequential orders so as to achieve restitution *in integrum*. Mr. Conolly contends that rescission requires the parties to be restored to their pre-contractual position and that the Court erred in not making orders consequential upon the judgment that Ms Ebanks repay the monies paid to her by Mr. Conolly under the agreement and the monies spent by him on

the improvement of the land as well as some amount representing the increase in the value of the land to which Mr. Conolly's investment in the land contributed.

18. Ms Fosuhene submitted that the Notice of Appeal raised no arguable ground of appeal in the circumstances where the Court did not order the contract rescinded in law but rather declared the contract rescinded pursuant to clause 9 of the parties' agreement which defined rescission and made provision for what would happen in the event.
19. It is helpful to set out the terms of that clause here:

"Rescission Upon Default by the Purchaser

... in the event that the Purchaser shall fail to make payment as and when it falls due under this Agreement...the vendor may elect at the vendor's option without prejudice to any other remedy) by giving 28 days written notice requiring the Purchaser to pay up all arrears or to complete in the terms hereof and (if such arrears are not so paid in full or such completion has not occurred before expiry of the said 28 days) the vendor shall then be able to keep absolutely any repayments to this loan paid by the Purchaser hereunder, as liquidated damages (which the Purchaser hereby acknowledge [sic] and agree [sic] to be a fair and reasonable estimate of the loss and damage thereby caused by the Vendor and not a penalty.) Any building on the property will also be forfeit as default by the purchaser and in the event of such election, this Agreement shall forthwith be terminated and no party hereto shall have any further rights of action or claim of any nature against the other party hereto respecting this Agreement."

20. The contract thus provided for rescission in the sense of termination of the contract at the election of the vendor if there was a default in payment and provided for the vendor to keep all payments and all structures built on the land in the event.

Decision

21. The approach to applications to stay execution of judgments is conveniently summarised in the 1999 volume of the Supreme Court Practice at 59/13/2 at pp 1076/70:

"An appeal does not operate as a stay on the order appealed against, except to the

extent that the court below, or the Court of Appeal ... otherwise directs. ... If an appellant wishes to have a stay of execution, he must make express application for one ... 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.114 at 116, CA; Monk v Bartram [1891] 1 QB 346) ... The question whether to grant a stay is entirely in the discretion of the court (Becker v Earl's Court Ltd (1911) 33 SJ 206; The Ratata [1897] P 118 at 132; A-G v Emerson (1889) 24 QBD 56 at 58, 59) and the court will grant it where the special circumstances of the case so require ..."

22. The authorities are clear that the discretion is to be exercised so as to avoid injustice and to ensure that the appeal, if successful, is not rendered nugatory: see *Wilson v Church (No. 2)* (1879) 12 Ch D 454.
23. The authorities are also clear that a party claiming that the appeal, if successful, may be rendered nugatory, must show good reason why a stay should be granted. The mere existence of an appeal - and in this case there is no appeal - is not enough.
24. In considering whether good reason had been shown, I considered first the explanations given for the delay in progressing the appeal and in making this application. I accept that Mr. Conolly, as a litigant in person, might not understand the Rules, but the delay in this matter could not be excused on the basis of ignorance. It was apparent from the chronology that the delay was deliberate, and that Mr. Conolly only took a step in the matter if Ms Ebanks took a step. So, by way of example, the application for a stay was not made until the Formal Order was filed. Similarly, the renewed application for a stay, in proper form, was not filed until December 2022 when Mr. Conolly discovered that Ms Ebanks was showing the land with a view to selling it.
25. I also considered the merits of the grounds of appeal. In my view, the grounds had little prospect of success given the terms of clause 9 of the parties' agreement and the absence of any challenge to the Court's construction of that clause.
26. Even if I were wrong in that, and there was some merit in the grounds, Mr. Conolly did not explain how his appeal would be rendered nugatory if a stay of execution were not granted. In other words,

he did not explain how allowing Ms Ebanks to regain possession of her land would defeat a decision of the Court of Appeal that he was entitled to an award of money.

27. No good reason having been shown why a stay should be granted, I dismissed the application.
28. The costs of this application are to be paid by Mr. Conolly, such costs to be taxed if not agreed.

DATED THE 14 June 2023



Hon. Margaret Ramsay Hale
Chief Justice