[2013] JMCA App 37

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 129/2012

APPLICATION NO 266/2012

BEFORE: THE HON MRS JUSTICE HARRIS JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**JAMES WYLIE**	**1ST APPLICANT**
	LORNA WYLIE	**2ND APPLICANT**
	RICHARD WINT	**3RD APPLICANT**
AND	**DAVID WEST**	**1ST RESPONDENT**
	CHRISTOPHER WEST	**2ND RESPONDENT**
	DOUGLAS WEST	**3RD RESPONDENT**
	MARSHALEEN FORSYTHE (NEE HENRIQUES)	**4TH RESPONDENT**
	JEROME SMITH	**5TH RESPONDENT**
	RICHARD SMITH	**6TH RESPONDENT**

Owen Crosbie and Mrs Eileen Crosbie-Salmon instructed by Owen Crosbie & Company for the applicants

Mrs Daniella Gentles-Silvera and Miguel Palmer instructed by Livingston Alexander Levy for the respondents

15, 19 July 2013 and 19 December 2013

HARRIS JA

[1] This is an application by the appellants to discharge or vary an order, made by Morrison JA on 18 December 2012, in which he refused to grant a stay of execution of a judgment, delivered by Lawrence-Beswick J, on 4 October 2012, pending the hearing of the appeal.

[2] The 1st and 2nd applicants had been in possession of lands at Spitzbergen, in the parish of Manchester, registered at Volume 1260 Folio 65, by virtue of a lease, with an option to purchase, which Mr William Arscott entered into with them on 1 March 1988. Mr Arscott died on 6 March 1994. The property was devised to the respondents by Mr Arscott under his will.

[3] On 6 March 1994, the 1st and 2nd applicants delivered to an employee of Mr Arscott a cheque, for $2,500.00, drawn in Mr Arscott's favour. A caveat dated 3 February 1994, was lodged against the title to the property by the 1st and 2nd applicants and on 7 March 1994 the Registrar of Titles issued the notice of the caveat.

[4] On 5 April 1994, the 1st and 2nd applicants wrote to Mrs Sheila Smith, an executrix of Mr Arscott's estate, informing her that they had an agreement with Mr Arscott for a lease of the property with an option to purchase and that they wished to make a payment on the lease. The cheque of $2,500.00 which had been sent earlier was returned by Mrs Smith, through her attorneys-at-law, she having indicated that she was unaware of the reason for the payment.

[5] On 27 June 1994, the 1st and 2nd applicants, through Mr Owen Crosbie, attorney-at-law, wrote to the respondents' attorneys indicating that a caveat had been lodged by his clients and that the cheque which was sent was for arrears of rental. In the letter, Mr Crosbie also stated as follows: "please say if you are willing to accept all arrears of rent and/or the Three Hundred Thousand Dollars ($300,000.00) inclusive of all costs agreed in the aforesaid lease and sale agreement."

[6] On 25 January 1999, the respondents' attorneys-at-law informed Mr Crosbie that an application for probate of Mr Arscott's will was being made, Mr Crosbie having inquired in his letter of 27 June 1994 whether probate had been granted. Probate of Mr Arscott's will was granted on 23 June 1999.

[7] On 16 July 2003, an application to warn the caveat was lodged by the respondents. Following this, a notice, dated 9 October 2003, sent by registered post, addressed to Mr James Wyllie as caveator, in care of Owen S Crosbie & Co, 64 Duke Street, Kingston, was issued by the registrar. In January 2004, the letter was returned for the reason that the address was unknown.

[8] The respondents have been the registered proprietors of the property since 8 September 2005, the date on which the property was transferred to them. On 1 June 2007, a notice, dated 18 May 2007, to quit and deliver up the property within one month, was served on the applicants.

[9] On 3 October 2007, the respondents commenced proceedings for the recovery of possession of the property. On 30 June 2010, the applicants filed an amended

counterclaim for specific performance of the lease agreement. On 30 July 2010 the respondents filed a reply and defence to the counterclaim, under a consent order.

[10] The following judgment was delivered by Lawrence-Beswick J:

> "Judgment for the claimants on the amended claim and counterclaim. As it concerns land at Spitzbergen, Manchester registered at volume 1260 folio 65:
>
> 1) The defendants are restrained and prohibited from constructing or continuing the construction of any building or structure on the land.
>
> 2) The defendants must deliver up possession of the land to the claimants within fourteen (14) days of today.
>
> 3) Costs to the claimants to be agreed or taxed."

[11] In an affidavit by the 2nd applicant, sworn on 8 November 2012, on behalf of herself and the 1st and 3rd applicants, she averred that the following things were on the property: agricultural products planted by them, pig and goat pens, cow pastures, a large water tank, a caretaker's cottage and a water trough built by them. A shop and the farm were their only source of income, she stated, notwithstanding that the income from the shop had been reduced. She further averred that immediate harm would come to them if a stay is not granted while similar detriment would not be experienced by the respondents.

[12] In an affidavit in response sworn by the 1st respondent on 11 December 2012, she stated that the income from the farm and shop are not the applicants' only source

of maintaining a livelihood. They own a commercial building in Spauldings from which a clothing store is operated by them and a part of the building had been rented, she related.

Submissions

[13] Mr Crosbie submitted that the applicants are equitable owners of the property, which had been fraudulently transferred by the respondents. The respondents, he contended, are contingent beneficiaries whose entitlement would only arise if the option to purchase had not been exercised. The incidents of fraud, which he pointed out as occurring, were as follows: Mrs Sheila Smith took the will to the attorneys who issued notices to the applicants' to vacate the property; one of the respondents was the daughter of a member of the firm which represented the respondents; a statement by the respondents' attorneys informing him that they had no instructions about the title, yet they had conduct of the application for probate which would have included the title; the attorneys' failure to have given a positive response to the fact that the applicants indicated that they were prepared to purchase the property; the execution of the transfer by the respondents without any reference therein to the option to purchase; conspiracy on the part of the respondents' attorneys and the registrar to remove the caveat in order to illegally facilitate a transfer of the property; and the refusal of the registrar to recall and cancel the title under section 153 of the Registration of Titles Act, "the Act", the caveat not having being warned.

[14] The learned judge of appeal, he argued, erred in construing section 153 of the Act, which obviously imposed an obligation on the registrar to have recalled the title.

[15] Counsel, citing the case of **Gardener and Others v Lewis** [1998] 1 WLR 1535, submitted that fraud had been properly pleaded.

[16] It was Mrs Gentles Silvera's submission that fraud must be specifically pleaded, in that, there must be a statement containing full particulars of the allegations of fraud and this having not been done by the applicants it was sufficient to refuse the application. The cases of **John Wallingford v The Directors of the Mutual Society and the Official Liquidator** [1880] 5 AC 685, **Dow Lawrance v Lord Norreys and Others** [1890] 15 App Cas 210 and **Three Rivers District Council and Others v Bank of England (No 3)** [2001] 2 All ER 513 were cited to buttress this submission.

[17] Referring to sections 68, 70 and 71 of the Act, counsel submitted that save and except in a case where fraud is established, a registered proprietor assumes immunity against any adverse claim to land. Fraud, within the context of the Act, she argued, means actual fraud and the indefeasibility of the title operates as a bar to an action for recovery of possession of land. The cases of **Assets Co Ltd v Mere Roihi** [1905] AC 176, **Timoll-Uylett v Timoll** (1980) 17 JLR 257 and **Willocks v Wilson** (1993) 30 JLR 297, among others, were cited in support of these submissions.

[18] It was counsel's further submission that none of the issues raised by the applicants is sufficient to satisfy the allegation of fraud to impeach the registered title. The registrar acted in accordance with the practice which was in existence prior to the decision in **Hylton v Pinnock and Others** [2011] JMCA Civ 8. Further, citing **Half**

Moon Bay Ltd v Crown Eagle Hotels Ltd [2002] UKPC 24 to reinforce the principle that a caveat does not constitute an interest in, or, an incumbrance on land, counsel argued that the registrar was at liberty to register the transfer and even if it transpired that a transfer was done in error, in the absence of fraud, an absolute interest is conferred on the transferee.

[19] Counsel also argued that there is no evidence to show that the applicants would be ruined if a stay is not granted as, on one hand, the evidence disclosed that save for the animals on the property, which can be relocated, no real sign of farming was evident. While, on the other hand, the respondents have been deprived of securing any benefit from the property since the death of the testator.

Analysis

[20] It is a well-settled principle that a successful litigant ought not to be deprived of the fruits of his judgment. Despite this, the court may, in the exercise of its discretionary powers grant a stay of execution of a judgment. In an application for a stay of execution, Staughton LJ, in **Linotype-Hell Finance Ltd v Baker** [1992] 4 All ER 887, propounded the test to be one in which an applicant must show that he has a good prospect of success on appeal and that he would be ruined financially if the stay is not granted. In **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065, the test as enunciated by Clarke LJ, is one in which the court carries out a balancing exercise in deciding whether there is a risk of injustice to either party in the grant or refusal of a stay. In **Combi (Singapore) Pte v Sriram and Another** [1999] All ER (D) 149, the order which best serves the interests

of justice was propounded to be the substantial test. It is clear that, in the grant or refusal of a stay, the prospect of success of an appeal and the question of financial ruin are matters to be considered within the context of the interests of justice.

[21] This court has, in several cases, incorporated the **Linotype** test within the approach laid down in **Hammond** and in **Combi** - see **Paymaster (Jamaica) Ltd v Grace Kennedy Remittance Service Ltd and Another** [2011] JMCA App 1; **Watersports Enterprises Limited v Jamaica Grande Ltd & Ors** App No 159/2008, delivered on 4 February 2009; **Reliant Enterprise Communications Limited & Another v Twomey Group and Infochannel Limited** SCCA No 99/2009, Application Nos 144 and 181/2009 delivered 2 December 2009; and **Scotiabank Jamaica Trust and Merchant Bank Limited v National Commercial Bank Jamaica Limited and Jamaica Redevelopment Foundation Inc** [2013] JMCA App 5.

[22] The court will first direct its attention to Mrs Gentles Silvera's submission that the applicants' failure to have expressly pleaded fraud is sufficient to refuse the application. Section 170 of the Judicature (Civil Procedure Code) (now repealed) specifically required that particulars of fraud must be contained in a pleading. As a consequence, the rule that fraud must be expressly pleaded would have had its foundation in section 170. However, rule 8.9 (1), (2), (3) of the Civil Procedure Rules outlines what a claimant should include in his claim. It reads:

> "8.9-(1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.

(2) Such statement must be as short as practicable.

(3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case."

[23] Although this rule does not, as the old rule, expressly state that an allegation of fraud should be specifically pleaded, it would be desirable for claimants, in outlining the statement of all the facts, to plead the allegations of fraud on which they substantially rely. It would have been prudent for the applicants to have specifically pleaded fraud in this case. Despite their omission to do so, that in itself would not be a cause for refusing their application for a stay.

[24] The crucial question, in this application, is whether the applicants have shown that they have a real prospect of success of their appeal. The heart of the applicants' complaints is that the transfer of the property was secured by fraud and that the caveat had not been properly warned.

[25] In the court below, the learned judge, in considering the question as to the warning of the caveat, took into account sections 139 to 143 of the Act relating to caveats. She also gave consideration to the case of **Hylton v Pinnock and Others**, in which the court held that actual service of the notification of a warning of a caveat is required under section 140 of the Act. Thereafter, the learned judge of the court below went on to examine the interests of the caveators against those of the devisees under the will and found that there was no evidence of fraud on the part of the respondents

or anyone and that, there being the absence of evidence of fraud, in light of section 70 of the Act, the certificate of title remained indefeasible.

[26] The learned judge of appeal, after considering Lawrence-Beswick J's findings and conclusion and section 70 of the Act, found that, in keeping with that section, the certificate of title was indefeasible, and the registration of the transfer was proper despite the fact that the caveat had not been properly warned. He said at paragraph [17] of his judgment:

> "[17] There can be no question, it seems to me, that the judge was correct in saying, based on this section, that '[t]he Act holds sacrosanct the endorsement on a registered title except fraud is found' (para. [40], under the rubric 'Indefeasibility of Title'). Several authorities of long standing support this view (see for example, ***Fraser* v *Walker*** [1967] 1 AC 569) and, indeed, I do not understand Mr Crosbie to contend otherwise. Any appearance of circularity in the conclusion that, despite the registration of the transfer in the respondents' favour having been effected without the caveat having been effectively warned, as the judge found, the fact of registration nevertheless rendered their title indefeasible, is in my view completely dispelled by a consideration of the judgment of the Privy Council in ***Half Moon Bay Ltd v Crown Eagle Hotels Ltd (Jamaica)*** [2002] UKPC 24 (a case referred to by Phillips JA in delivering the leading judgment in ***Hylton* v *Pinnock***)."

[27] Section 68 of the Act grants to a registered proprietor an absolute title. Sections 70 and 71 of the Act also accord to a registered proprietor an unimpeachable certificate

of title but impose fraud as the only factor which would affect the title's validity. The latter sections clearly demonstrate that the registration of a certificate of title, unless fraudulently obtained, stands impervious. The sections provide as follows:

> "70. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the *folium* of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:…"

> "71. Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that

any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

[28] In **Gardener and Others v Lewis (Jamaica)**, their Lordships, speaking to the effect of sections 68, 70 and 71 of the Act, had this to say at paragraph 7:

> "7. From these provisions it is clear that as to the legal estate the Certificate of Registration gives to the appellants an absolute title incapable of being challenged on the grounds that someone else has a title paramount to their registered title. The appellants' legal title can only be challenged on the grounds of fraud or prior registered title or, in certain circumstances, on the grounds that land has been included in the title because of a 'wrong description of parcels or boundaries': section 70."

[29] Section 140 of the Act speaks to certain procedure after the lodging of a caveat. It reads:

> "140. Upon the receipt of any caveat under this Act, the Registrar shall notify the same to the person against whose application to be registered as proprietor, or as the case may be, to the proprietor against whose title to deal with the estate or interest such caveat has been lodged, and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he thinks fit, summon the caveator to attend before the Supreme Court, or a Judge in Chambers, to show cause why such caveat should not be removed, and such Court or Judge may, upon proof that such caveator has been summoned, make such order in the premises, either *ex parte* or otherwise, and as to costs as to such Court or Judge may seem fit.
>
> Except in the case of a caveat lodged by or on behalf of a beneficiary under disability claiming under any will or settlement, or by the Registrar, every caveat lodged against

> a proprietor shall be deemed to have lapsed as to the land affected by the transfer or other dealing, upon the expiration of fourteen days after notice given to the caveator that such proprietor has applied for the registration of a transfer or other dealing, unless in the meantime such application has been withdrawn."

[30] Fraud, within the context of the Act, means actual fraud, not constructive or equitable fraud. In **Assets Co Ltd v Mere Roihi**, their Lordships, at page 210, had this to say on the question of fraud, as it relates to a registered title:

> "Sects. 46, 119, 129 and 130 of the Land Transfer Act, 1870, and the corresponding sections of the Act of 1885 (namely, ss. 55, 56, 189, and 190) [these sections are substantially similar to the Registration of Titles Act in relation to the indefeasibility of a certificate of title] appear to their Lordships to shew that by fraud in these Acts is meant actual fraud, i.e. dishonesty of some sort, not what is called constructive or equitable fraud."

[31] In **Fels v Knowles** (1906) 26 NZLR 620, the appellate court of New Zealand, speaking to certain provisions in their Land Transfer Act, which are substantially analogous to the Act, in relation to the indefeasibility of a certificate of title which had not been procured by fraud, said:

> "The cardinal principle of the statute is that the register is everything and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration on the title under which he takes from the registered proprietor, has an indefeasible title against all the world."

[32] In **Registrar of Titles v Ramharrack** SCCA No 80/2002, delivered 29 July 2005, Harrison JA, as he then was, in treating with the question of the indefeasibility of a registered title said:

> "Under the Registration of Titles Act, the registered proprietor of any estate or interest has a valid indefeasible title (subject to some reservations) unless such registration by the proprietor has been tainted by fraud."

[33] From the foregoing authorities, it is unquestionable that the title of a registered proprietor is absolute and can only be disturbed if it is obtained by fraud.

[34] The applicants' general allegations of fraud as outlined by Mr Crosbie in his submissions are misconceived. Arguably, the familial relationship between one of the respondents and an attorney in the firm which represented the respondents is not evidence showing some dishonesty or fraudulent scheme by that respondent and the firm in having the property transferred to the respondents.

[35] The necessity for the respondents to have mentioned the option to purchase in the instrument of transfer would not have arisen. The respondents were the devisees under Mr Arscott's will and were entitled to have a transfer of the property upon the grant of probate of the will without making any reference to the option.

[36] The issuing of a notice by the attorneys on behalf of the respondents for the applicants to deliver up possession of the property would have been clearly within the rights of the respondents, they being entitled to the lands and the applicants being in breach of the covenant to pay the requisite rent.

[37] The respondents' attorneys, having informed Mr Crosbie that they did not have instructions relating to the property but were in the process of having the will admitted to probate, could not possibly attract any adverse inference. The fact that they were given instructions to make an application for probate does not mean that such instructions would have included matters relating to any other aspect of the property. It is obvious that the attorneys could only speak to matters which they were instructed to undertake and the applicants' attorney was so informed.

[38] It could be argued that the failure of the respondents' attorneys to respond to the applicants' letter signifying their interest in purchasing the property could not be regarded as implying a sinister motive on the part of the attorneys for the respondents. Lawrence-Beswick J found that there was no valid option to purchase the property. Even if the option was valid the legal personal representatives of Mr Arscott's estate would not have been under any obligation to honour it.

[39] Mr Crosbie's contention that there was conspiracy to effect the transfer, the caveat not having been warned, is unfounded. It is clear that at the time of the issuance of the notice warning the caveat under section 140 of the Act, the prevailing practice was to send the notice to the caveator by registered post to his or her address for service. The notice was sent by registered post to the 1st applicant in care of Mr Crosbie at the Duke Street address. On this issue, the learned judge of appeal had this to say at paragraph [21] of his judgment:

> "In the case of the Registrar, it is clear that her initial conclusion that the caveat had been duly warned in

> accordance with the relevant provisions of the Act was based on what was, up to the time of the decision of this court in **Hylton v Pinnock**, the settled practice in the Office of Titles. In that case, in which the notice to the caveator was issued on 23 September 2008, the Registrar confirmed that that practice was duly followed, 'by giving a notice to the caveator by posting a registered letter to the caveator's address for service', and allowing seven business days for the 'ordinary course of post' (see the judgment of Phillips JA, at paras [10] and [11]. In the instant case, in which notice dated 9 October 2003 was dispatched by registered post to the caveator at the address given for service in the caveat, and due allowance was given by the Registrar for the ordinary course of post before the caveat was recorded (on 19 November 2003) as having lapsed, it is clear that the Registrar acted in accordance with what would at that time have been the usual practice of the Office of Titles. In these circumstances, it appears to me to be impossible to maintain that fraud of any kind can be discerned in the conduct of the Registrar in having effected the transfer of the property to the respondents on 8 September 2005. Looked at this way, it is clear that nothing at all turns on whether the Registrar, at the time she gave evidence in chief before the judge between 30 May and 2 June 2011 (that is, nearly eight years later), was unaware (as could well have been the case) that this court had decided on 1 April 2011 that the previously settled practice of her office in relation to service of notice to caveators was not in accordance with section 140 of the Act."

[40] We are fully in agreement with these findings of the learned judge of appeal. It is clear that the registrar acted in accordance with the practice which existed prior to the decision in **Hylton v Pinnock and Others**. The notice of the warning of the caveat was issued on 9 October 2003 and it is likely that it would have been dispatched soon after that date. Although the letter conveying the notice returned

unclaimed, the transfer was not registered until September 2005. The requisite 14 days period for the warning would have long expired prior to the registration of the transfer. It would not be unreasonable to infer that, before registering the transfer, the registrar had been satisfied that the requisite period for the warning of the caveat had long passed notwithstanding that the caveator had not been notified. Arguably, no fraud or dishonesty could be ascribed to the registrar in these circumstances.

[41] Mr Crosbie's argument that the caveat having not been warned, the registrar ought to have recalled the title in obedience to section 153 of the Act, lacks merit. The section reads:

> "In case it shall appear to the satisfaction of the Registrar that any certificate of title or instrument has been issued in error, or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error on any certificate of title or instrument, or that any certificate, instrument, entry or endorsement, has been fraudulently or wrongfully obtained, or that any certificate or instrument is fraudulently or wrongfully retained, he may by writing require the person to whom such document has been so issued, or by whom it has been so obtained or is retained, to deliver up the same for the purpose of being cancelled or corrected, or given to the proper party, as the case may require; and in case such person shall refuse or neglect to comply with such requisition, the Registrar may apply to a Judge to issue a summons for such person to appear before the Supreme Court or a Judge, and show cause why such certificate or instrument should not be delivered up for the purpose aforesaid, and if such person, when served with such summons, shall refuse or neglect to attend before such Court or a Judge thereof, at the time therein appointed, it shall be lawful for a Judge to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the Supreme Court or a Judge for examination."

[42] The learned judge of appeal, in addressing section 153 within the context of Mr Crosbie's complaint, said at paragraph [24] of his judgment:

> "24 This section empowers the Registrar to recall a certificate of title for the purpose of its cancellation, correction or delivery to the proper party, in cases in which it appears to her that the certificate has been issued in error, or contains any misdescription of land or boundaries, or that any certificate, instrument, entry or endorsement has been fraudulently or wrongfully obtained or retained. On the evidence accepted by the learned trial judge, the section has absolutely no application to this and cannot therefore avail the Wyllies."

[43] We cannot say that the learned judge of appeal was wrong. It could be argued that his findings and conclusion are unassailable. Arguably, the recall and cancellation of the certificate of title, in this case, would only be relevant if there was evidence that it had been fraudulently obtained.

[44] The learned judge of appeal concluded that none of the sweeping, general allegations of fraud could have displaced the respondents' registered title. We entirely agree with his conclusion. It is clear that none of the issues raised by the applicants support their challenge to the respondents' certificate of title. Clearly, the appeal has no prospect of success. As far as the question of the ruination of the applicants is concerned, if a stay is not granted, there is evidence that they are not without resources from which they can obtain a livelihood, which are independent of the farm and the shop. The respondents' certificate of title is unassailable. They are entitled to

enjoy the benefit of the lands which have been bequeathed to them and the interests of justice undoubtedly demand that they ought not to be deprived of the right so to do.

[45] At the hearing of this application, Mr Crosbie brought to the court's attention an affidavit of Mr Miguel Palmer, the fourth paragraph of which states that a Writ of Possession for the recovery of possession of the lands was given to Mr Pitter, the bailiff for Manchester, who executed it. Mr Crosbie's complaint is that the execution was bad. The writ, he contended, was issued to the bailiff of Kingston but executed by Mr Pitter, the bailiff of Manchester. Mr Pitter, he argued, having carried out the execution, committed trespass and the writ, not having been issued to him, he was obliged to have declined jurisdiction. There is nothing to show that Mr Pitter had committed trespass in his execution of the writ. Section 17 (1) of the Judicature (Supreme Court) Act empowers a bailiff, who has been appointed to any parish, to execute a writ issued out of the Supreme Court. The section reads:

> "17 - (1) The Bailiffs for the Resident Magistrates' Courts appointed under the Judicature (Resident Magistrates) Act shall in addition to the duties now devolving upon them be Bailiffs for the Supreme Court and shall by themselves or deputies execute the process of the Supreme Court and shall serve all writs, documents or process issuing out of the Supreme Court entrusted to them for service and shall perform such duties in relation thereto and in such manner as may be prescribed by rules of court made in the manner prescribed by this Act."

[46] It is clear, from the foregoing, that every bailiff is an officer of the Supreme Court and is entitled to execute processes issued out of that court. Although the writ was addressed to the bailiff of Kingston, this would not have prevented Mr Pitter from

executing that process. Mr Pitter carried out a role which he was legally entitled to perform and in so doing, he was acting as a bailiff of the Supreme Court and not a bailiff of the Resident Magistrates' Courts. Accordingly, it was perfectly permissible for him to have executed the writ.

[47] There is no prospect of the applicants successfully challenging the judgment of the learned judge on the appeal. Additionally they have not shown that they would suffer ruination if they fail to obtain a stay. Further, the Writ of Possession has been executed. In all the circumstances, a stay ought not to be granted.

[48] The applications to discharge the order of the single judge and for a stay of execution are refused. Costs are awarded to the respondents to be agreed or taxed.