

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 598 OF 2023 (No. 4)

BETWEEN:

[1] JENNIFER GARCIA

[2] BUGI HOLDINGS BELIZE LIMITED

Claimants

and

[1] BEELINE BELIZE LIMITED

Defendant

Appearances:

Mr. Rene Montero for the Claimants

Ms. Naima Barrow for the Defendant

2026: June 29;

October 8.

Catchwords:

Application for stay of execution

JUDGMENT

Background

- [1] **Nabie, J.:** The defendant has applied to this Court pursuant to rule 19 of the Court of Appeal Rules, rule 60.3 of the Civil Procedure Rules, 2025 and the inherent jurisdiction of the Court for a stay of execution. Specifically, the defendant wishes that:
- i. Execution upon the Orders of the Court made on the 30th March 2026 and perfected on the 28th April 2026 be stayed until the hearing of the Appeal filed herein.
 - ii. Costs of the application be costs in the appeal.
- [2] On the 30th March 2026 the Court gave judgment for the Claimant in amount of US \$445,836.35, together with the interest thereon.
- [3] The defendant has filed a notice of appeal against the Court's order on the 13th April 2026.
- [4] At the time of the application, the Court of Appeal was in recess and did not reconvene until June 2026. The appeal is not likely to commence before October 2026.

Applicant's Grounds

- [5] The grounds for the application brought by the defendant are as follows:
- i. The judgment creditor, i.e. the claimants, wrongfully lodged a caution on Parcel 4017, Block 36, Placencia North Registration Section belonging to the defendant during the course of these proceedings.
 - ii. The caution remained in place until 8th April 2026, after the Registrar was ordered by the Court to remove same.
 - iii. The caution has exposed the defendant to a claim (High Court Claim No. 123 of 2026) for, inter alia, the payment of US\$ 690,630.05 and damages for breach of the contract for sale.

- iv. The defendant will, after the expiration of the requisite notice period given to the Public Authorities, be filing an ancillary claim against the claimants for damages and an indemnity and/or contribution.
- v. The claimants are by virtue of the section 134 of the Registered Lands Act, Laws of Belize liable to pay damages to the Application for the wrongful lodgement and maintenance of a caution.
- vi. Without a stay of execution and if execution is carried into effect, the defendant will suffer exceptional hardship.
- vii. The defendant has a real prospect of success in his appeal as set out in the affidavit supporting this application and as appears from the notice of appeal.
- viii. The first claimant is ordinarily resident in the United States with no real assets in Belize.
- ix. The second claimant, while a Belize Company is an alter ego of the first claimant and has no real assets in Belize.
- x. There are no reciprocal enforcement of judgment arrangements between Belize and the United States of America.

Claimants' Notice of Objection

[6] The claimants contend that the defendant has failed to establish, by cogent evidence, that:

- i. the appeal has a real prospect of success; or
- ii. in the absence of a stay, the defendant will suffer ruin or irreparable harm, or the appeal will be rendered nugatory; alternatively, that the balance of justice favours granting a stay, having regard to the risk of irreparable harm to each party.

[7] The claimants therefore oppose the grant of a stay on the following grounds:

- i. The defendant's four grounds of appeal substantially repeat arguments that were fully canvassed at trial and rejected by the learned trial judge for the

reasons set out in her written judgment, including her findings on the statements and documents adduced at trial and the demeanour of the witnesses.

- ii. The defendant has not demonstrated that the appeal has a real prospect of success or disclosed any sufficiently arguable basis for granting a stay.
- iii. The defendant has not established that it will suffer ruin or irremediable harm, or that the appeal will be rendered nugatory, if execution is permitted to proceed.
- iv. The defendant's reliance on the caution and High Court Claim No. 123 of 2026 is misplaced. That claim, which was brought by a third party, remains unproven and unliquidated, and is wholly distinct from the judgment under enforcement in these proceedings.
- v. Any prospective claim by the defendant does not constitute a defence to enforcement and cannot properly be treated as an established set-off or counterclaim.
- vi. At trial, the second claimant adduced evidence that it holds assets in Belize.
- vii. The fact that the first claimant resides outside Belize does not, without more, establish impecuniosity or an inability to pay.
- viii. Any claim that the second claimant is an alter ego of the first is unsubstantiated.
- ix. The order exhibited by the defendant in relation to the caution was directed to the Registrar of Lands, not to the claimants. It therefore provides no basis for imposing liability in damages on the claimants.
- x. The prejudice to the claimants is both real and immediate. They have been deprived of the use of their money since 2021: the 40% deposit of US\$216,000.00 was paid in November 2021; monthly instalments were paid from November 2022 to August 2023; and the claimants substantially improved the property, thereby increasing its value.
- xi. The balance of justice weighs against granting a stay because a stay would compound, rather than alleviate, the prejudice and injustice already suffered by the claimants.

Evidence of the Parties

[8] The defendant's evidence in support of the Notice of Application is identical to the grounds of the application as espoused above. The defendant produces the affidavit of Chad Spaman, sworn to and filed on 5th May 2026 who is one of its directors. By virtue of his affidavit, the defendant has tendered into evidence the following documentary evidence:

- i. The notice of appeal filed on the 13th April 2026.
- ii. Court order dated 11th and 18th March, 2026 directing the removal of the caution upon Parcel 4017, Block 36, Placencia North Registration Section.
- iii. A copy of Claim Form and Statement of Claim in the matter of High Court Claim No. 123 of 2026 between Andrew Joseph Kay and Ors v. Chad Thomas Spaman and Beeline Belize Limited.
- iv. A copy of the Notice made pursuant to Public Authorities Protection Notice-s.3 Public Authorities Protection Act dated 21st April 2026.

[9] In support of its Notice of Opposition, the claimants filed the affidavit of Jennifer Garcia on 27th May 2026. The claimants' evidence can be summarised as follows:

- i. They contend that the defendant has failed to identify through the Notice of Appeal or otherwise any error of law or principle on the part of the Learned Trial Judge which gives rise to an appeal with a real prospect of success. The claimants contest that the defendant seeks to reargue their case before the Court of Appeal.
- ii. They dispute that the defendant will suffer exceptional hardship if the stay is not granted. Since, according to them, the defendant is financially viable and an actively operating entity.
- iii. They argue that any alleged claim made by the defendant in Claim No. 123 of 2026 is wholly separate and apart from this claim and cannot be used as justification for a stay of execution of the judgment handed down in this instant claim.

- iv. The first claimant admits that she ordinarily resides outside of Belize but she however states that the second claimant is a duly incorporated Belize company. The claimants dispute that the second claimant is the alter ego of the first claimant, they argue that such an assertion is not supported by evidence. The claimants relies on an affidavit dated 27th May 2025, wherein it was stated that the second claimant is the proprietor of a boat valued at BZ\$120,000.00.
- v. The claimants further assert that a stay of execution would be prejudicial to them. The granting of the stay would deprive them of the fruits of the judgment in their period for a further period of at least two (2) years. In contrast, the claimants argue that the defendant has failed to show any concrete prejudice to them which may flow from the execution of the judgment. As such the first claimant deposes that the balance of justice plainly favours the second claimant and herself.

[10] The defendant replied to the evidence of the claimants by affidavit of Chad Spaman filed on the 4th June 2026. In that affidavit the defendant contends:

- i. The uncontradicted evidence in the trial of these proceedings were that:
 - (a) For approximately one year there were repeated request by the defendant for the claimants to execute the formal sale and purchase agreement governing the transaction. Despite this, the claimants refused and/or failed to execute the agreement.
 - (b) The defendant thereafter issued a formal notice providing the claimants thirty (30) days within which to execute the agreement, failing which the property would be repossessed and the transaction treats as terminated. The claimants failed to execute the agreement.
 - (c) On 30th March 2026 the court gave judgment for the claimants in these proceedings and ordered that the defendant pay the amount of US\$445,836.35 together with interest thereon.

- ii. There was only one request for the payment of the sum of \$1500.00 in costs which was made on the 14th May 2026. A request, which according to the defendant, came after the defendant filed its Notice of Appeal and also wrote to the claimants requesting a voluntary stay of execution.
- iii. The appeal has some prospect of success which requirement generally refers to a threshold which is lower than a real prospect of success but still requires a realistic, as opposed to a fanciful chance of success.
- iv. The allegation that the defendant has attempted to dissipate his assets in an attempt to avoid payment of the judgment debt is not only untrue and unfounded but contradicted by the claimants' own evidence
- v. There was a judicial finding made on the 18th March 2026, which has not been appealed which has found that the claimants were not entitled to the caution lodged.
- vi. The second claimant has only shown proof of ownership of a boat valued at BZ\$120,000.00, which according to the defendant is real in the sense that it is not a fixed asset and is less than 10% of the value of the claim i.e. Claim NO. 123 of 2026.

[11] The defendant has since instituted against the claimants through the proceedings filed, which bears the Claim No. 123 of 2026, in an ancillary claim.

Discussion

[12] During oral submissions before me, parties have referred to this Court to the legal principles which govern the granting of a stay of execution. This Court is of the view that the factors to be considered are clearly set out in the Senior Courts (**Civil Procedure**) Rules, 2025 and the Rules of the Court of Appeal.

[13] **Rule 19(1) of the Rules of the Court of Appeal** and part 60.3 of the **Senior Courts (Civil Procedure) Rules (CPR)** state that an appeal does not operate as a stay of execution of the judgment appealed from unless so ordered by the Court of Appeal or High Court. This rule is a codification of the common law as espoused in the decision of the Court of Appeal of Trinidad and Tobago in the matter of **National**

Stadium Project (Grenada) Corporation v NH International (Caribbean)Limited

Civil Appeal No. 48 of 2011 at paragraph 10. In that case, Justice of Appeal Jones (as she then was) posited:

“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 is 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] The Court in its inherent jurisdiction, retains a discretion in the grant of a stay, as iterated in the English Court of Appeal decision of **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] All ER (D) 258 (Dec) para 22.

“Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?”

- [15] In this jurisdiction the test for granting a stay of execution is that the applicant must prove that he/she has:

- i. a real and substantial prospect of success on appeal and;
- ii. that, in the absence of a stay, the Defendant will suffer ruin or that the appeal will be rendered nugatory; or, alternatively, that the balance of justice positively favors the imposition of a stay having regard to the risk of irreparable harm to each party.

- [16] **BMW AG & Another v Commissioners for HM Revenue & Customs** [2008] EWCA Civ. 1028:

“The starting point is that the ordinary principle, long established, is that a successful litigant is entitled to receive the fruits of his success, and the launching of an appeal by his opponent does not operate to stay his entitlement. Nor indeed is the contrary suggested. That starting point is,

however, by no means also the finishing point, because it is also equally well-established that the court has an unfettered discretion to order a stay of the order under appeal if the justice of the case demands it. In a case in which the question of the ordering of a stay arises, the role of the court is to make the order that best accords with the interests of justice. Where there is a risk of harm to one party or the other, whichever order is made, the court has to balance the alternatives and made a decision as to the course which is likely to occasion the least injustice. In Leicester Circuits Ltd v Coates Brothers plc [2002] EWCA Civ. 474, Potter LJ said at paragraph 13:

‘The proper approach is to make the order which best accords with the interests of justice. Where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives to decide which is less likely to cause injustice. The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal.’”

- [17] Counsel on both sides submitted extensively, in oral submissions on the authority of **Rodrigues Architects Limited v. New Building Society Limited** [2018] CCJ 09 (AJ). This decision provides extensive learning as to how a Court ought to approach an application for a stay of execution of a money judgment. In the decision delivered by Mr. Justice Hayton, the following guidance was given:

“[22] A stay of execution is the exception rather than the rule and the onus is firmly on the applicant to make out the case for a stay, which required the court to answer the essential question, whether in all the circumstances, there is a risk of injustice to one or other of the parties if grants or refuses a stay.

[23] To answer this question, the first issue is whether the applicant for a stay can satisfy the court that the applicant’s appeal has a good prospect of success If not, no stay should be granted. Judges must be alert to tactical appeals of defendants trying to avoid paying out for the years it may well take before their appeal is heard....

[24] The second issue is can the defendant establish he would be ruined or his appeal otherwise stifled if forced to pay out the judgment sum immediately, instead of after an unsuccessful appeal? If not prima facie a stay should not be granted unless an affirmative answer is given as to the third issue. The onus is on the defendant to provide full, frank and clean details of his financial position.

[25] the third issue is can the defendant establish that there is no reasonable probability that the claimant will be in a position to repay the monies paid to him by the defendant to satisfy the money judgment if the defendant's appeal succeeds? If the defendant can affirmatively establish that no such probability exists, prima facie a stay should be granted. The onus is on the defendant to produce a measure of evidence of the claimant's financial weakness sufficient to make it necessary for rebuttal by the claimant who has easily available personal knowledge of the claimant's own financial position. If the claimant's financial position is sound, then no stay should be granted. Moreover, a stay should not be granted only upon terms whereby the claimant's assets of corresponding value are frozen, not to be encumbered or disposed of in anyway without leave of the court, unless the claimant consents or the claimant's connection with the jurisdiction is tenuous or his circumstances particularly precarious. In the case of a company claimant in a weak financial position, it may be that no stay should be granted if a director or shareholder is prepared to guarantee any repayment needed to be made by the company if the defendant's appeal succeeds, and the defendant cannot show that there is no reasonable probability that such guarantor will be able to pay the guaranteed amount.

[26] A fourth issue that may arise is what are the risks that the claimant will be unable to enforce the judgment if a stay is granted and the defendant's appeal fails? Here it may be that the just solution is for the defendant to pay the judgment sum into court to await the outcome of the defendant's appeal, assuming that such payment would not stifle the appeal and that payment to the claimant (rather than into court) might well lead to the monies being irrecoverable by the defendant from the claimant. This, however, ought to be a last resort so that the claimant if possible, can have the monies available for entrepreneurial or investment opportunities.

[27] One must always bear in mind the words of Jones JA in National Stadium Project, "at the end of the day, however, it is for the applicant to satisfy the court that it is unjust in the circumstances for the respondent to enjoy the fruits of its success pending the determination of the appeal."

[18] In the case at bar, this Court, has addressed its mind to the following issues:

- i. Whether the defendant has proven that there is a real prospect of success of their appeal
- ii. Whether the defendant, will suffer ruin or that the appeal will be rendered nugatory; or
- iii. Whether the balance of justice positively favors the imposition of a stay having regard to the risk of irremediable harm to each party.

Real Prospect of Success

- [19] The defendant raises several grounds in its application for a stay of execution of the order made on the 30th March, 2026 and perfected on the 28th April 2026.
- [20] Firstly, it is submitted by the defendant that the claimants wrongfully lodged a caution on Parcel 4017, Block 36, Placentia North Registration Section. The caution remained in place until 8th April 2026, after the Registrar was ordered by the Court to remove same. It is therefore alleged that by the defendant that the caution has exposed it to a claim (High Court Claim No. 123 of 2026) for, inter alia, the payment of US\$ 690,630,005 and damages for breach of the contract for sale. The claimants have since been added as ancillary defendants to that case.
- [21] The defendant therefore seeks a stay of execution of the order in this claim in order to avoid its inability to recover any damages which may be payable in Claim No. 123 of 2026.
- [22] This Court rejects this ground as a sufficient basis for granting a stay. Claim No. 123 of 2026 is a separate proceeding brought by third parties; the liability alleged there remains unproven and the amount claimed remains unliquidated. The defendant's ancillary claim against the claimants is likewise only prospective and has not resulted in any judgment, admitted liability, or presently enforceable right of set-off. The Court cannot therefore treat a contingent claim in separate proceedings as equivalent to payment, security, or satisfaction of the subsisting money judgment in this claim. To do so would permit an allegation that has not yet been adjudicated to postpone the successful claimants' ordinary entitlement to enforce their judgment. Consistently with **National Stadium Project, BMW AG and Rodrigues Architects Limited**, the relevant inquiry is whether enforcement of the judgment under appeal creates a demonstrated risk of injustice, not whether the judgment debtor may later establish a claim arising from different facts. The application must accordingly be assessed by reference to:
- i. The prospects of success of the appeal filed; and

- ii. Any ruin the defendant may suffer and/or whether its appeal would be rendered nugatory; or
- iii. The balance of justice

[23] The authorities require the Court to consider those matters cumulatively and, in the circumstances, actually proved. The starting point is that an appeal does not suspend the successful party's entitlement to the fruits of judgment. A stay is therefore exceptional, and the burden remains throughout on the defendant to show, by cogent evidence, that immediate enforcement would create a greater risk of injustice than temporary non-enforcement. The discretion is not exercised merely because an appeal has been filed, because the judgment sum is substantial, or because enforcement may cause ordinary commercial inconvenience. The Court must instead identify a real risk that the appeal will be stifled or rendered nugatory, or that recovery from the claimants would probably be unavailable if the appeal succeeds and must then choose the course least likely to cause irremediable injustice.

[24] Against that framework, the defendant cannot rely on the possibility of succeeding in Claim No. 123 of 2026 as a reason to hinder enforcement of the judgment presently before the Court. The pleadings in that claim establish only that allegations have been made; they do not establish liability, causation, quantum, or an immediately available cross-demand. Nor does the order directing the Registrar of Lands to remove the caution, without more, determine that the claimants are liable to the defendant in damages. Any entitlement under section 134 of the Registered Land Act, and any claim for indemnity or contribution, must be proved in the proceedings in which those issues properly arise. Until then, those matters are contingent and cannot displace the presumption in favour of enforcement. I therefore reject them as independent grounds for a stay.

[25] This Court must nevertheless examine the defendant's prospects of success on the appeal from the judgment of 30 March 2026. That assessment is necessarily provisional. The Court is not rehearing the claim, deciding the appeal, or determining whether each ground will ultimately succeed; it asks only whether the identified grounds disclose a realistic, as opposed to fanciful, prospect of disturbing the judgment. The claimants submit that the defendant merely repeats issues fully argued and determined at trial. Repetition alone, however, is not conclusive if the notice of appeal identifies an arguable error of law, principle, or evaluative approach. The Notice of Appeal challenges the legal effect attributed to the "subject to contract" communications, the use made of the parties' conduct, statutory compliance, part performance, and the basis for aggravated and exemplary damages. Those challenges concern the legal framework applied to the facts found at trial and are therefore capable of appellate examination. The defendant relies on the following grounds:

- i. The learned trial judge misdirected herself and erred in law in failing to give any or any proper consideration or weight to the significance of the uncontested evidence that negotiations were "subject to contract".
- ii. The learned trial judge erred in law and misdirected herself in relying on the defendant's conduct (accepting payments and allowing possession) to override the "subject to contract" principle.
- iii. The learned trial judge erred in law and misdirected herself in holding that the combination of WhatsApp exchange, a reservation receipt and subsequent conduct constituted a "memorandum or note" sufficient to satisfy the requirements of section 40 of the Registered Lands Act.
- iv. The learned trial judge erred in law and misdirected herself in relying on the doctrine of part performance despite the absence of the contemplated formal written contract signed "by the party to be charged."
- v. The learned trial judge erred in law and misdirected herself in awarding aggravated and exemplary damages given the commercial nature of the dispute and the lack of a formal contract.

[26] The applicable threshold is a real, not fanciful, prospect of success: **Swain v Hillman [2001] 1 All ER 91**. On the material before the Court, I do not accept the claimants' submission that the proposed appeal is merely bound to fail. The "subject to contract" grounds raise an arguable question as to whether this court gave proper legal effect to that qualification when assessing the parties' communications and subsequent conduct. The statutory-writing and part-performance grounds similarly raise an arguable question as to whether the combination of the WhatsApp exchanges, reservation receipt, payments, possession and improvements was legally sufficient, and whether the doctrine relied upon was available notwithstanding the absence of the contemplated formal instrument. The damages ground is also analytically distinct: even if liability is upheld, the appellate court may separately examine whether the evidential and legal bases justified aggravated and exemplary damages in a commercial dispute. These are not findings that the trial judgment was wrong, nor do they permit this Court to substitute an appellate determination for its own judgment. They mean only that the identified issues are sufficiently arguable to cross the threshold applicable on a stay application. Whether the findings were plainly wrong, and what consequence follows from any error, are matters for the Court of Appeal: **Attorney General of Trinidad and Tobago v. Miguel Regis** Civ Appeal No. 79 of 2011 at [11].

[27] Accordingly, I find that there are real prospects of success on the defendant's appeal.

Would the defendant suffer ruin? or Would the appeal be rendered nugatory?

[28] The decision in **Rodrigues Architects Limited** is instructive. At this stage of the inquiry, the defendant must establish by full, frank and cogent evidence that immediate payment of the judgment debt would ruin it, stifle its ability to prosecute the appeal, or otherwise render a successful appeal nugatory. The relevant prejudice must exceed the ordinary financial and commercial

consequences of satisfying a money judgment. It is therefore insufficient merely to assert that the judgment sum is substantial or that payment would cause hardship; the Court must be placed in a position to assess the defendant's assets, liabilities, liquidity, income, access to credit and the practical cost of pursuing the appeal.

[29] The evidence before me does not meet that standard. The defendant's evidence amounts to a general assertion that enforcement would cause hardship. It has produced no bank statements, management accounts, audited financial statements, cash-flow projections, schedules of assets and liabilities, evidence of existing indebtedness, or evidence concerning its ability to borrow or realise assets. Nor has it quantified the effect that payment would have on its operations or identified how enforcement would prevent it from funding and pursuing the appeal. The pending third-party claim and the proposed ancillary claim do not fill that evidential gap, because they establish neither a present liability nor the defendant's present inability to meet the judgment debt.

[30] I am therefore not satisfied that the defendant has discharged its burden on the second issue. The Court cannot infer ruin, stifling of the appeal, or exceptional hardship from the size of the award alone. Applying **Rodrigues Architects Limited**, the failure to provide full, frank and clear details of the defendant's financial position weighs strongly against a stay. That conclusion is not, however, the end of the inquiry because the Court must still consider whether the defendant has affirmatively established the third issue: that there is no reasonable probability of recovering the judgment monies from the claimants if the appeal succeeds, or that the balance of justice otherwise positively favours a stay.

Balance of Justice

[31] The third issue identified in **Rodrigues Architects Limited** is whether the defendant has established that there is no reasonable probability that the claimants will be able to repay monies received in satisfaction of the judgment

if the appeal succeeds. This is not determined by speculation or by placing the burden on the successful parties to prove their solvency from the outset. The defendant must first adduce a sufficient measure of evidence of financial weakness or practical irrecoverability to call for an answer. That inquiry forms part of the wider balance required by **Hammond Suddard, BMW AG and National Stadium Project**, the Court must compare the likely prejudice under each course and adopt the one least likely to produce irremediable injustice.

[32] The claimants remain presumptively entitled to the fruits of their judgment, notwithstanding the Court's finding that the appeal has real prospects of success. That finding is relevant but not decisive. The Court must examine whether payment now would expose the defendant to a real and demonstrated risk that the funds could not be recovered following a successful appeal and must weigh that risk against the prejudice to the claimants if enforcement is withheld. The burden remains on the defendant to establish more than a theoretical difficulty in recovery.

[33] The first claimant admittedly resides in the United States, and there is no reciprocal enforcement arrangement between Belize and the United States. Although, counsel for the claimant referred the court to an Act called the Uniform Foreign Country Money Judgments Recognition Act. It is difficult to place reliance as, counsel did not go further than reference to that Act, which he submitted was not a federal law. Those matters create a legitimate practical concern because recovery abroad may involve additional proceedings, expense and delay. They do not, however, establish that repayment is improbable. Foreign residence is not equivalent to impecuniosity, and the absence of a reciprocal regime does not establish that a judgment or restitutionary order could not be pursued by other lawful means. There is no evidence before the Court of the first claimant's insolvency, dissipation of assets, refusal to honour court orders, or any intended disposition of the judgment proceeds so as to defeat recovery.

- [34] The second claimant is a company incorporated in Belize and therefore has an established connection with the jurisdiction. The claimants have produced evidence that it owns a boat valued at BZ\$120,000.00. That asset is substantially less than the judgment sum and, as movable property, may not by itself provide complete security for repayment. Nevertheless, it is positive evidence of an asset within the jurisdiction and contradicts the assertion that the second claimant has no assets in Belize. The defendant has produced no evidence that the asset is encumbered, is being dissipated, or is otherwise unavailable, and its allegation that the second claimant is merely the alter ego of the first claimant remains unsupported.
- [35] The judgment exceeds US\$445,836.35, and the disparity between that sum and the only specifically identified Belizean asset warrants careful consideration. Even so, **Rodrigues Architects Limited** requires the defendant to establish that there is no reasonable probability of repayment, not merely that recovery may be inconvenient or that locally identified assets do not equal the judgment debt.
- [36] The defendant has provided no evidence of the claimants' overall financial position, and does not have to, since the claimant should be aware of its own financial position. Although no evidence was led by the defendant that the judgment proceeds would be removed or dissipated, the Court has noted that the claimant has not gone beyond the proof of ownership of one asset to prove its ability to repay should the appeal be successful.
- [37] Although, there is no evidence from which the Court could conclude that repayment would probably be impossible. This court is not satisfied that the evidential threshold is one of impossibility.
- [38] This Court is called upon to weigh, on the one hand, the defendant's arguable appeal and the potential difficulty of recovering a substantial payment and, on the other, the claimants' established right to enforce a judgment representing

monies paid from 2021 onward, together with interest, after having been deprived of the use of those funds for several years.

[39] The defendant has not proved that payment would ruin it or stifle the appeal and has not established that there is no reasonable probability that the claimants could make repayment if required. By contrast, a stay would continue to deprive the claimants of the fruits of their judgment for the duration of the appeal on the basis of risks that remain largely speculative.

[40] The existence of real prospects of success is therefore insufficient, without the necessary evidence on hardship or irrecoverability, to wholly displace the ordinary rule. Applying **National Stadium Project, Hammond Suddard, BMW AG and Rodrigues Architects Limited**, I find that the balance of justice does not lie squarely in favour of a stay of the entire judgment sum. As such, this Court orders that there be a stay of execution of 50% of the judgment sum. The defendant's application for a stay of execution pending appeal is accordingly allowed in part. Each party to bear its own costs.

Mme. Justice Nadine Nabie
High Court Judge
Belize Judiciary