

COMMONWEALTH OF THE BAHAMAS  
IN THE COURT OF APPEAL  
SCCivApp & CAIS No. 176 of 2010

Barbara Pintard Bastian

and

Kennedy Bastian

Intended Appellants/Applicants

and

Family Guardian Insurance Company Limited

Intended Respondent

(Stay)

Before: The Hon Mr Justice Conteh, JA

Ms Clarita Lockhart, with Ms Iris Donaldson, Counsel  
for Intended Appellants/Applicants  
Ms Leif Farquharson, with Ms Gianna Soles, Counsel  
for Intended Respondent

30 March 2011

The oral judgment of the court was delivered by  
Conteh, JA:

This is the decision of the court.

I am troubled by this application where the intended appellants, who are the applicants before me for time to appeal out of time against the order of Mr. Justice Turner granting possession to the intended respondents of property which the applicants were mortgagors. From the submissions I have had, I am troubled by the fact that a central and key player in all of this, in terms of attending with the necessary dispatch to the affairs of the applicants, would have been their counsel who represented them before Mr. Justice Turner.

The applicants claim that, as a result of not being informed properly or adequately, they did not appreciate the nature of the case for possession made against them or the orders made.

These are grave matters which I bear in mind in granting leave to the applicants to appeal out of time, bearing in mind that the property in question is their matrimonial home and principal residence, and if, as they claim (which I am not in a position to judge at the present time), that there were omissions or commissions by their former attorney resulting in their being out of time to appeal the order of possession, I think it is only fair that they be

given time to appeal out of time. Of course, in the end it will all come out in the wash.

Mr. Farquharson has raised strenuous objection to the grant of leave, principally based on the fact that the applicants were represented in the court below by counsel. This is the feature of this application that troubles me, especially when I am alerted to the fact that the very counsel for the applicants swore an affidavit in opposition to the applicants in this matter. That affidavit contains matters which could be adduced without reference to their former attorney being a witness against them.

Delay, of course, is a relative matter and, on an application for leave to appeal, the length of the delay is one of the factors to be taken into account. In this case, it is some seven weeks after the order was made. However, given the role allegedly played by the former counsel for the applicants in contributing to or causing this delay, I am minded to grant them leave to appeal.

Mr. Farquharson also places emphasis on the prospect of the grounds of appeal succeeding. This, of course, is a matter which a court hearing an application for leave should bear in mind; unless, on their face, the proposed grounds are so tenuous or unsustainable would this weigh against the application for the grant of leave. I do not think this is the case in the instant application.

For all these reasons, I grant leave to the applicants to appeal out of time. I grant 14 days within which the applicants may file a Notice of Appeal.

Consequently, the order is stayed until the determination of the appeal.

There shall be no costs in this matter of the application.

Dated this 30th day of March, 2011

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CONTEH JA