In The Supreme Court of Bermuda

CIVIL JURISDICTION

2015 No: 289

BETWEEN:

HSBC BANK BERMUDA LIMITED
(formerly The Bank of Bermuda Limited)

Plaintiff/
Judgment Creditor

And

MILTON NAPTHALI DOUGLAS

Defendant/
Judgment Debtor

RULING

Dates of Hearing:	Thursday 15 January 2026
Valuation Evidence filed:	Friday 16 January 2026
Defendant's Deadline for Seeking leave to file Reply Valuation Evidence:	Thursday 29 January 2026
Date of Ruling:	Friday 30 January 2026
Plaintiff:	Mr. Dantae Williams (Marshall Diel & Myers Limited)
Defendant:	Mr. Bruce Swan (Bruce Swan and Associates)

Mortgage Action – Enforcement of Judgment - Application for a Stay of Execution - Equitable Relief against Forfeiture –legal principles on the Court's power to grant a stay of execution of an order for possession of mortgaged property- Operation of RSC Order 45/11 and Order 47

SHADE SUBAIR WILLIAMS, J

INTRODUCTION

1. This is a mortgage action commenced by way of an Originating Summons (the "Originating Summons") dated 16 July 2015. The Originating Summons was brought pursuant to Order 88 of the Rules of the Supreme Court ("RSC").

2. The relevant property (the "Property") is located at 32 Hillsdale Estate, Smiths Parish and is said to comprise three separate units which I will refer to as (i) "Lower East Apartment" (ii) "Lower West Apartment" and (iii) "Upper Apartment".

3. Under a Consent Order dated 26 January 2021 the mortgagee Plaintiff, HSBC Bank of Bermuda Limited (the "Bank") was given judgment in respect of (i) a mortgage deed (the "Mortgage Deed" / the "Mortgage") dated 17 September 2002 made between it and the mortgagor Defendant, Mr. Milton Napthali Douglas ("Mr. Douglas") and (ii) a further charge (the "Further Charge") dated 31 October 2003 made between the same parties.

4. The application before this Court was filed as an urgent application with notice to the Plaintiff, who is now a judgment creditor. It concerns the execution of a writ of possession dated 3 December 2025. By an *ex parte* summons dated 13 January 2026 Mr. Douglas seeks to stay enforcement of the writ of possession. On 13 January 2026, by Order of the Deputy Provost Marshal General, a Bailiff was fixed to execute the writ of possession at 11:00am. In support of Mr. Douglas' application, he filed an affidavit in his own name. Of note, that affidavit is dated 12 January 2026.

5. Counsel for both parties appeared before me on 13 January 2026. During that first appearance I issued directions for the filing of a hearing bundle with skeleton arguments and adjourned the substantive hearing of the stay application to 15 January 2026. A temporary stay of enforcement of the writ of possession was also ordered pending this decision of the Court.

6. On 15 January 2026 the application for a stay was argued before me. I am very grateful to Mr. Dantae Williams for having provided this Court with a hearing bundle and written submissions within a particularly narrow and pressured timeframe. That material greatly assisted with my familiarization of the procedural history of this matter.

7. At the close of the hearing, I reserved my decision which I now provide with reasons the articulated further below.

THE EVIDENCE FILED IN SUPPORT OF THE APPLICATION

8. Mr. Douglas, in his affidavit evidence before this Court, proposed to increase his monthly payment sums to $10,600.00 as of 1 April 2026 with a view to fully satisfying the mortgage sums on or prior to April 2028. Since 2024, his monthly obligations have been in the sum of $6000.00.

9. Mr. Douglas pointed to six interim payments, said to be attached as an exhibit[1]. He stated that he "*wish*[es] *to address the outstanding sum with intention and purpose*." He expressed optimism for his ability to satisfy his debt by reference to his plans to upgrade the Property and his ongoing efforts to secure tenants in the two available apartments at an increased rental profit to be approved by the Office of the Rent Commissioner. He stated that he has identified two prospective tenants who have both expressed their interest to occupy the Property and their willingness to do so as a matter of urgency

10. Mr. Douglas submitted evidence before this Court of his monthly pension. In his affidavit he states his pension to be $3000.00 per month. The exhibited pension slip evidences a net and gross sum of $2,863.54.

11. Mr. Douglas also submitted evidence before this Court of his weekly income. In his affidavit he states that to be $600 per week and refers to "*receipts of* …[his] *pay stubs as proof of* ... [his] *salary*". However, the two pay slips produced as exhibits to his affidavit are duplicates. Both pay slips evidence the same payment amount over the same period which shows a significantly lesser sum than that described by Mr. Douglas. For the two-week pay period spanning 15 December to 30 December 2025, it is shown that H&M Service Stations Ltd paid Mr. Douglas a net sum of $421.86.

12. At paragraph [13] of Mr. Douglas' affidavit, he states: "…*I intend to have the outstanding sum of approximately $223,776.08 paid in total within 24 months to comply with the current outstanding arrears*."

13. At paragraphs [17] and [23]-25] Mr. Douglas also said:

[1] None of the exhibits attached to Mr. Douglas affidavit evidenced bank transfers between the two law firms. However, the fact of the payments and the amounts were not in dispute at the hearing before me.

"*…I believe with the increased rent my pension and salary all together I will be in a position to commence payments of the proposed sum f $10,600.00 as of 1st April 2026…*

…

…I believe this is my last opportunity to settle this Mortgage and be able to enjoy the same and eventually vest the property in my children on my death.

…at no time did I or will I intentionally fail or ignore he[sic] obligation to pay the Mortgage arrears. I however accept that due to missed payments by the additional reasonssible [sic] parties the debt has grown due to circumstances beyond my control.

…I am humbly requesting that this honourable court grant me a stay of the eviction for a period of an additional 120 days in which to complete my renovations and to have the unit assessed and fully rented and I will be able to address my arrears in an efficient and productive manner."

THE EVIDENCE FILED IN OPPOSITION TO THE APPLICATION

14. The Bank initially filed an unsworn[2] affidavit authored by its Credit Recovery Manager, Ms. Lavonne Brown. On 15 January 2026, Ms. Brown's sworn affidavit was filed with the Court. Much of the relevant factual background is told by Ms. Brown and the documents exhibited to the affidavit, most of which is unchallenged by Mr. Douglas' evidence.

15. Among the documents exhibited is the Mortgage Deed. It is stated in the Mortgage Deed that the principal sum borrowed was BD$300,000.00. The interest rate was set at the variable base rate (being 4.5% on 17 September 2002) plus 2.75% per annum. The Mortgage Deed also provided for a payment term of twenty (20 years) (i.e. 240 months) and monthly payment sums of $2,371.00 as at the Due Date (being 17 October 2002), subject to variation.

16. On the Further Charge, the principal sum was recorded to be $293,003.89 and the additional loan agreed was for the sum of $160,000.00. The "Aggregate Principal Sum", (being the aggregate of the additional loan and the principal as at 31 October 2003) was $453,003.89. The interest rate under the Further Charge was set at the variable base rate (being 4.25% on 31 October 2003) plus 3% per annum. The Further Charge also provided for a payment term of twenty-five (25 years) and new monthly payment sums of $3,274.00 as at the "Due Date" (being 17 December 2003), subject to variation.

17. The Bank accepts that from November 2003 to November 2010, Mr. Douglas satisfied his monthly payment obligations required under the Mortgage and Further Charge. Ms. Brown produced an 8 April 2025 letter (the "MDM letter") penned by Marshall Diel & Myers Limited ("MDM"). The MDM letter is addressed to Mr. Douglas and states that after November 2010

[2] In a 13 January 2026 cover letter to the Court, Mr. Williams of Marshall Diel & Myers undertook to file sworn copies.

Mr. Douglas began to default on the mortgage payments, making sporadic and inconsistent payments to the Bank. These payment shortfalls led to the Bank's commencement of proceedings on or around 15 July 2015 (the "2015 proceedings") for an order for possession of the Property and payment of the total amount due under the Mortgage and Further Charge.

18. Ms. Brown stated that when these proceedings began, the total amount due to the Bank was $380,803.09. It is explained in the MDM letter that the 2015 proceedings were suspended by the Bank in good faith and in a final attempt to allow Mr. Douglas to retain possession of the Mortgaged Property. She explained that since which, the Bank entered into multiple concessionary agreements with Mr. Douglas, including:

    (i) A concessionary payment plan from March 2017 to April 2020 at 0% interest (the "first payment plan").

    (ii) A further concessionary payment plan from October to December 2020 (the "second payment plan").

    (iii) A further concessionary payment plan from June/July 2021 to 1 October 2021 (the "third payment plan")

19. The first payment plan is said to have taken the form of an Amended Facility Letter. The Amended Facility Letter was not produced as an exhibit but is described in the MDM letter as an offer of a 0% concession rate with principal-only payments in the sum of $3,508.88 per month commencing 31 May 2017. The first payment plan was set to expire after a term of 169 months, ending on 30 April 2020. Thereafter, Mr. Douglas' monthly obligations were to revert to the market rate consisting of principal and interest payments totaling $5,365.46 per month.

20. On account of Mr. Douglas' inability to maintain the market rate payments, in October 2020 the Bank extended the second payment plan to Mr. Douglas, pending the restructuring plan. During that period, the Bank agreed to accept monthly payments from Mr. Douglas in the sum of $4,100.00 per month. The second payment plan expired on 1 February 2021. Thereafter, the interest rate increased to a base rate of 3.5%, resulting in an increase in Mr. Douglas' monthly obligations such that he was expected to pay monthly sums of BD$5,237.57. The Bank accepts that Mr. Douglas did not default on the second payment plan.

21. The third payment plan is said to have been sent via email dated 24 June 2021 to Smith & Co law firm who was then representing Mr. Douglas. In the MDM letter it states:

"*You maintained the Second Concession Payment [the second payment plan] as agreed and at the end of the concession period, you were presented with (via email to Smith & Co dated 24*

June 2021) with a proposed payment plan which would have allowed you to pay further reduced amounts culminating in the full market rate being paid by 1 October 2021. You maintained the payments as agreed and entered into discussions with the Bank regarding the restructuring of the Mortgage Facility. However, you were unable to maintain the payments necessary to proceed with the restructure at that time.

"*Subsequently, you attended meetings with the Bank at out office on 17 February 2022, 31 August 2022, 12 July 2023 and 2 May 2024, wherein the Bank addressed your inconsistent payment history and discussed potential concessionary payments and restructures of the Mortgage Facility. Regrettably, these discussions proved ineffective as the Bank is no longer able to proceed with a restructure of the Mortgage Facility due to your inability to maintain the monthly payments required for a restructure in the amount of BD$6,000.00 per month and your non-compliance with the Bank's numerous requests for documentation required to proceed with a restructure*…"

22. What is puzzling to me, chronology-wise, is the omission of any mention in the MDM letter and Ms. Brown's evidence about the 26 January 2021 judgment which was entered by consent between the parties. That Order was made by Hargun CJ (as he then was) for the following:

    (i) Payment of the principal sum of BD$472,022.17

    (ii) Interest at the contractual rate of the Mortgagee's base rate plus 3% per annum (BD$80,040.14 as at 14 December 2020)

    (iii) Enforcement of the mortgage and the further charge

    (iv) Possession of the mortgaged property

23. That being the case, the more relevant history, for the purpose of the application before me, turns on the post-judgment payments. In 2024 Mr. Douglas' monthly payment obligation to the Bank was set at $6000.00. The documents evidencing this restructuring of the mortgage (which would particularise the interest and principal portions payable from the BD$6000.00 sum) are not before this Court but were not the subject of any controversy between the parties.

24. Ms. Brown's evidence referred to a "*persistent pattern of shortfalls in payments from October 2024 onwards*." The MDM letter states that Mr. Douglas was delinquent on the following monthly payments which were supposed to be made in the sum of $6000.00:

    (i) October 2024: a shortfall by BD$1,400.00

(ii) December 2024: a shortfall by BD$3,000.00

(iii) January 2025: a shortfall by BD$3,000.00

(iv) February 2025: a shortfall by BD$3,000.00

(v) March 2025: a shortfall by BD$3,000.00

(vi) April 2025: a shortfall by BD$3,000.00

25. In summary, Ms. Brown reported that the total outstanding indebtedness, as of April 2025, was $486,239.81. Of that sum, there were arrears in the amount of $168,892.99.

26. During the hearing before me, the parties agreed on the following payment shortfalls between May 2025 and January 2026:

(i) May 2025: a shortfall by BD$3,000.00

(ii) June 2025: a shortfall by BD$3,000.00

(iii) July 2025: a shortfall by BD$3,000.00

(iv) August 2025: a shortfall by BD$1,000.00

(v) November 2025: a shortfall by BD$3,000.00

(vi) December 2025: a shortfall by BD$3,000.00

(vii) January 2026: a shortfall by BD$3,000.00

27. On the Bank's calculations, the total debt amount owed to it, as at 13 January 2026, is $519,839.56. Of that total debt, the outstanding principal sum is $142,304.50 and the outstanding interest sum is $74,335.20.

The Valuation Report:

28. In the Second Affidavit of Ms. Brown, she produced, on the direction of this Court, a valuation report from Bermuda Valuers and Appraisers ("the Valuation Report" / the "Report") as to the

market value of the Property. The Valuation Report was prepared by Ms. Suzanne Stones MRICS R. Surv., a chartered valuation surveyor and registered professional surveyor. The report was checked and countersigned by Mr. Steve Bowie BSc MRICS RSurv. on 25 July 2025.

29. In the Executive Summary portion of the Report, Ms. Stones confirms that she has no knowledge of any conflicts of interest as defined in the RICS Valuation Standards and the RICS Rules of conduct. She also states that she has been practicing in Bermuda since February 2009 and has the necessary experience and skills to carry out the appraisal she performed.

30. As to Ms. Stone's opinion on the market value of the Property, she stated that the value of the Property on 10 July 2025 would be in the region of $675,000.00 "*in its current condition and assuming full vacant possession could be offered and the property were free of any onerous charges or encumbrances*" [see paragraph 12 of the Valuation Report].

THE LAW

31. The Court's statutory powers to grant a stay of execution in mortgage cases are governed by RSC Order 45/11 and RSC Order 47. I begin with the latter when addressing the statutory framework further below. Beyond these procedural rules encased by secondary legislation, the Court is also empowered by its inherent jurisdiction to grant an adjournment and its equitable jurisdiction to grant relief from forfeiture. That was clearly the position taken by the Court of Appeal in *Denise Trew v Molly White and Stephen White* [2025] CA Bda 21 Civ (15 August 2025) and by Kawaley CJ (now the President of the Court of Appeal) in *Clarien Bank Ltd v Da Costa and Vieira* [2017] SC (Bda) 48 Civ (13 June 2017).

32. Each of these sources of law are summarised further below.

RSC Order 47:

33. RSC Order 47 provides:

47/1 Power to stay execution by writs of fieri facias

1 (1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution—

(a) that there are special circumstances which render it in-expedient to enforce the judgment or order, or

(b) that the applicant is unable from any cause to pay the money.

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicants' inability to pay, disclosing his income, the nature and value of any property, whether real or personal, of his and the amount of any other liabilities of his.

(4) The summons and a copy of the supporting affidavit must, not less than four clear days before the return day, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

34. As recognized by the Court of Appeal in *Denise Trew v Molly White and Stephen White*, by which this Court is bound, RSC Order 47 applies to money judgments, not to possession of property orders. So, in a mortgage action the Court's jurisdiction to grant a stay under RSC Order 47 is limited to Court Orders which concern repayment of the money arrears owed by the mortgagor. In *Denise Trew v Molly White and Stephen White*, sitting as an Acting Justice of Appeal delivering the judgment of the Court, I found that the power assigned to a Court under this rule is the power to stay any form of execution of a money judgment by which a writ of *fieri facias* was issued.

35. Mr. Williams correctly submitted that in seeking a stay of execution, it has been well established that the onus is on the applicant to show that there are "special circumstances" or a good reason" which render it inexpedient to enforce judgment. He cited my earlier decision in *Island Construction v Phillips and Phillips* [2019] Bda LR 92, where I previously explained the meaning of "special circumstances" as follows [23]:

"*Special circumstances simply means outside of ordinary circumstances. This means that the ordinary position, at which one starts, is that a stay will not be ordered. However, where there are special circumstances which give rise to a good reason for imposing a stay, as a matter of common sense, a stay of enforcement should be ordered. To state the obvious, this will vary and depend on the facts of each case. The Court must strike the right balance between the creditor's rights to closure and collection of the judgment goods and debtor's rights and realistic ability to be reimbursed for the payment wrongly awarded, if successful on appeal*."

36. The above passage was quoted with approval by the Court of Appeal in *Denise Trew v Molly White and Stephen White.*

RSC Order 45/11:

37. A summary of the law on the Court's powers to grant a stay in a mortgage action also requires reference to its statutory powers under RSC Order 45/11 which provides:

"*45/11 Matters occurring after judgment: stay of execution, etc.*
11 Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just."

38. The Court of Appeal In *LAEP Investments Ltd v Emerging Markets Special Solutions 3 Ltd* [2015] Bda LR 38 was previously concerned with the question of the Court's jurisdiction to stay a possession order under RSC O. 45/11. It applied the same construction as the English High Court did in *London Permanent Benefit Building Society v De Baer*. In *LAEP Investments Ltd v Emerging Markets Special Solutions 3 Ltd*, Bell JA stated:

"*10. RSC Order 45 rule 11 provides that a party against whom an order has been made may apply to the Court for a stay of execution of that order 'on the ground of matters which occurred since the date of the ... order'. Accordingly, the Court has power to grant a stay of execution of any judgment or order made, in the event of some relevant subsequent event. As the judge pointed out in paragraph 17 of the Ruling, this means that the facts must be such as would or might have prevented the judgment or order being made, or would or might have led to a stay of execution, if the matters in question had already occurred at the date of the judgment or order.*
...
32. While the judge correctly identified the basis upon which an application for a stay might be made, in paragraphs 16 and 17 of the Ruling, we have no doubt that he fell into error by considering the principles applicable to the grant of a stay in the context of applications for a stay following judgment, pending the outcome of an appeal. …"

39. What may be taken from Bell JA's statement on RSC Order 45/11 is that the section cannot be relied on as a means of advancing a mortgagor's plea for a stay, unless (i) the grounds relied on entail one or more events which arose after the grant of judgment and (ii) the event(s) is/are of such significance that the Court finds that judgment may not have been granted had that

information been made known to the Court prior to its entering of judgment against the mortgagor.

The Court's Inherent Jurisdiction to grant an Adjournment

40. In *Clarien Bank Ltd v Da Costa and Vieira* the parties consented to a temporary stay to enable the judgment debtors an opportunity to discharge the mortgage debt in full. By the end of the agreed stay period, the debt remained outstanding, so the plaintiffs issued a writ of possession. The indebted mortgagor, however, filed an *ex-parte* application for a stay of execution. On the strength of an assurance that financing would be obtained within seven days, Kawaley CJ granted a stay of the possession order for the corresponding period. At the end of that further 7-day period, the mortgagors sought another stay, having failed to pay the outstanding sums as promised. However, the mortgagee bank objected, submitting that the Court had no jurisdiction to stay the possession order against its will.

41. Kawaley CJ found that the Court's jurisdiction to impose a stay of a possession order was very limited in scope. He held [7]:

"*7. I accept the submission of the Plaintiff's counsel that* ***the scope of the jurisdiction possessed by this Court to adjourn an application for a possession order and, by extension, to grant a stay of execution in relation to a possession order already obtained, absent the mortgagee's consent, is very limited indeed*** [my emphasis]. *As Russell J stated in Birmingham Citizens Permanent Building Society v Caunt ELR [1962] 1 Ch 883 at 912;*

"… in my judgment, where (as here) the legal mortgagee under an instalment mortgage under which by reason of default the whole money has become payable, is entitled to possession, ***the court has no jurisdiction to decline the order or to adjourn the hearing whether on terms of keeping up payments or paying arrears, if the mortgagee cannot be persuaded to agree to this course***. ***To this the sole exception is that the application may be adjourned for a short time to afford to the mortgagor a chance of paying off the mortgage in full*** [my emphasis] *or otherwise satisfying him; but this should not be done if there is no reasonable prospect of this occurring. When I say the sole exception, I do not, of course, intend to exclude adjournments which in the ordinary course of procedure may be desirable in circumstances such as temporary inability of a party to attend, and so forth."*"

42. Kawaley CJ's employment of the words "very limited" to measure the scope of power given to a Court to interfere with a mortgagee's right to enforcement is consistent with the Court of Appeal's reference in *Denise Trew v Molly White and Stephen White* to the statutory power of sale given to a mortgagee under section 30 of the Conveyancing Act 1983. The right to exercise that power, conferred by the Legislature, is necessarily an implied term in all mortgage

agreements, save for cases where a contrary intention is expressly stated in the mortgage agreement between the parties. (See also Ground J (as he then was) in *BDC Limited v Brown and Brown* [1994] Bda LR 35.)

43. In summary, the Court's inherent powers to stay or adjourn the granting or execution of a possession order is reserved solely for indebted mortgagors who need only a very short period of time to pay off the entire debt. Otherwise, ordinary short adjournments may be granted in cases where, for example, it is reasonably necessary to accommodate a party's inability to appear or proceed for a particular hearing.

The Court's equitable jurisdiction to grant relief from forfeiture

44. The Court's equitable jurisdiction to grant relief from forfeiture applies where forfeiture arises as a penalty for a breach of a covenant. In such cases, the forfeiture claim is not the primary object of the parties' transaction but stands as security against a default on a contractual obligation to make payment. So, this form of relief is sought by a delinquent mortgagor who seeks a further opportunity to satisfy the debt and to recover his/her secured property.

45. The leading authority binding this Court on its equitable jurisdiction to grant relief from forfeiture is the Privy Council's decision in *Cukurova v Alfa Telecom* [2013] UKPC 20 where the Judicial Board described relief from forfeiture as worthy of consideration "*on its own terms as a possible freestanding remedy*" [para 82]. *Cukurova v Alfa Telecom*, was an appeal from a case which originated with the first instance decision of Bannister J sitting in the Eastern Caribbean Supreme Court as the Superior Court of Record in the British Virgin Islands (the "BVI"). While the BVI case was not a mortgage action it was decided by the Privy Council on the same equitable doctrine of relief from forfeiture with which I am presently concerned.

46. In *Cukurova v Alfa Telecom* the Privy Council referred to the below passage from Wilberforce LJ in *Shiloh Spinners Ltd v Harding* [1973] AC 691, 722 as the "*classic statement of principle*". The quoted passage from Wilberforce LJ in *Shiloh Spinners Ltd v Harding* is as follows [722]:

"*"There cannot be any doubt that from the earliest times courts of equity have asserted the right to relieve against the forfeiture of property. The jurisdiction has not been confined to any particular type of case. The commonest instances concerned mortgages, giving rise to the equity of redemption, and leases, which commonly contained re-entry clauses; but other instances are found in relation to copyholds, or where the forfeiture was in the nature of a penalty. Although the principle is well established, there has undoubtedly been some fluctuation of authority as to the self-limitation to be imposed or accepted on this power. There has not been much difficulty as regards two heads of jurisdiction. First, where it is possible to state that the object of the transaction and of the insertion of the right to forfeit is essentially*

to secure the payment of money, equity has been willing to relieve on terms that the payment is made with interest, if appropriate and also costs (Peachy v. Duke of Somerset (1721) 1 Stra 447 and cases there cited). Yet even this head of relief has not been uncontested…" (emphasis added)."

47. The question as to whether it is 'appropriate' to grant this form of equitable relief was also addressed at para [723G] of the House of Lords' judgment in *Cukurova v Alfa Telecom* where Wilberforce LJ explained:

"I would fully endorse this: it remains true today that equity expects men to carry out their bargains and will not let them buy their way out by uncovenanted payment. But it is consistent with these principles that we should reaffirm the right of courts of equity in appropriate and limited cases to relieve from forfeiture for breach of covenant or condition where the primary object of the bargain is to secure a stated result which can effectively be attained when the matter comes before the court, and where the forfeiture provision is added by way of security for the production of that result. The word 'appropriate' involves consideration of the conduct of the applicant for relief, in particular whether his default was wilful, of the gravity of the breaches, and of the disparity between the value of the property of which forfeiture is claimed as compared with the damage caused by the breach."

48. Persuaded by this analysis of the term 'appropriate' in the context of an equitable mortgage, the Bermuda Court of Appeal in *Denise Trew v Molly White and Stephen White* endorsed the following three factors as relevant to the appropriateness of an order for equitable relief from forfeiture:

(i) Whether the mortgagor's default was wilful;

(ii) The gravity of the mortgagor's default; and

(iii) The disparity between the value of the property of which forfeiture is claimed as compared to the value of the arrears and money sums owed as a result of the mortgagor's default.

Summary Statement on the Law: Stay of Enforcement of a Possession Order

49. So, what is the overall effect of the Court's equitable jurisdiction in mortgage actions? It is this: save for exceptional circumstances where, for example, the debt stands to be paid off entirely in short order, the Court will not deprive a mortgagee of its right to obtain and or

enforce a possession order. When I say 'short order' that does not apply to an ambitious or even aggressive payment plan on the debt owed, nor does it apply to a mortgagor who may possibly find access to refinancing on an unknown date in the future. The exception applies to mortgagors who are able to demonstrate to the Court that it is reasonably probable that the debt (interest included) will be fully discharged in what can be described as an objectively short period of time. Necessarily, the Court will have regard to the gravity of the mortgagor's default and the disparity between the value of the property to be forfeited and the value of the outstanding monies owed. As this relief from forfeiture is grounded in the Court's equitable jurisdiction, the mortgagor is expected to come to the Court with clean hands, meaning the default must not be shown to have been carried out wilfully.

50. The position in equity, outlined above, cannot be undermined by the Court's exercise of its inherent jurisdictional powers to grant an adjournment. As explained further above, the Court's ordinary powers to adjourn are not so far-reaching so as to alienate a mortgagee of its contractual and statutory rights under section 31 of the Conveyancing Act 1983 to seek and enforce a possession order.

51. Where a stay is brought under RSC Order 45/11, a mortgagor must establish, only with regard to the post-judgment facts, that the Court would never have made the possession order had it known of the events or matters which subsequently unfolded. As for RSC Order 47, a Court has no power to grant a stay against enforcement of a writ of possession. Order 47 applies only to money judgments enforceable by a writ of *fieri facias*, and a stay may only be granted in exceptional circumstances as explained by this Court in *Island Construction v Phillips and Phillips* and approved by the Court of Appeal in *Denise Trew v Molly White and Stephen White.*

Analysis and Decision

52. The Defendant fails on his application for a stay under RSC Order 47. As stated further above, Order 47 does not apply to writs of possession. As for the prospect of a stay against Hargun CJ's Order in respect of payment of the monies owed, there are no exceptional circumstances to justify a stay under this statutory footing. In this case, the stay is not sought pending a meritorious appeal. Further, there is no evidence before this Court to suggest that the mortgagor falls outside of the common category of mortgagors who merely, although sincerely and desperately, seek another opportunity to address their debt by way of further installments, albeit with increased interim sums.
53. Mr. Douglas also fails on his application for a stay under RSC Order 45/11. There are no relevant post-possession order events which would lead me to reasonably conclude that the possession order may not have been made had the Court been aware of the events or matters as they subsequently unfolded.

54. Turning to the Court's equitable powers, I find that this is not an appropriate case to grant relief from forfeiture. The total sum of Mr. Douglas' debt owing to the Bank, as at 13 January 2026, is $519,839.56. Of that total sum, the outstanding principal sum is $142,304.50 and the outstanding sum owed in respect of interest is $74,335.20. The unchallenged evidence before this Court is that the Property was valued at $675,000.00 as of 10 July 2025.

55. Between 2021 and 2025 three separate writs of possession were issued. The first writ of possession is dated 17 November 2021. The second writ of possession is dated 25 March 2025. The third and final writ of possession, with which this Court is concerned, is dated 3 December 2025.

56. Prior to the issuance of the third writ of possession, a Consent Order dated 29 July 2025, stayed the enforcement of the second writ of possession in respect of the Lower East Apartment. That Order of Stay was fixed to expire on 30 September 2025 as a means of allowing an "Interested Party" residing in the Lower East Apartment sufficient time to vacate the property. The 29 July 2025 Order was followed by a 3 October 2025 Consent Order which extended the period of stay of enforcement in respect of the Lower East Apartment until 31 October 2025. By Consent Order dated 24 October 2025, the stay was further extended to 30 November 2025, by which time the Interested Party indeed vacated the premises. The Judgment Creditor submits that the stay period given to the Interested Party operated as a *de facto* stay period to the benefit of Mr. Douglas because the Plaintiff necessarily refrained from enforcing its judgment against him during that period. The Plaintiff's case is that during this period, Mr. Douglas failed to take any meaningful steps to remedy his default or satisfy the debt. At paragraph [10] of Ms. Brown's affidavit evidence, she said:

"*The Application dated the day before the scheduled eviction (but electronically filed on the morning of the eviction) is a transparent attempt to further delay the inevitable. The Defendant's affidavit in support of the Application contains proposals that are not credible in light of the history of this matter*."

57. Casting doubt on the reliability of Mr. Douglas' proposal to increase the monthly payments to $10,600.00 per month commencing 1 April 2026, Ms. Brown pointed out that the proposal is unsupported by any concrete evidence and is inconsistent with Mr. Douglas' established pattern of default. At paragraph [11] of her affidavit, she said; "*Further, the mathematics of this proposal is simply incorrect, in any event. The Defendant would be required to make monthly payments of $11,149.49 immediately to satisfy the outstanding mortgage prior to the Defendant's 68th birthday, 2 June 2030*."

58. In my judgment, despite Mr. Douglas' ambitious plans and likely genuine belief in his ability to settle the mortgage in approximately two years from now, the law does not permit me to

hold the Bank hostage to the possibility of his success, having regard to his history of breaches on his payment obligations and the extent of the debt now owed. Considering both Mr. Douglas' financial position and the valuation evidence before the Court, it is plainly the case that the only lawful order to be made by this Court is to decline the plea for a stay of the enforcement of the possession order.

59. For all of the reasons stated above, I refuse the Defendant's application for a stay of enforcement.

Costs

60. Subject to either party filing a Form 31 TC within 14 days to be heard on the issue of costs, I make no order as to costs on a preliminary assessment of the Bank's contractual entitlement to have its legal costs paid out of the proceeds of the sale of the Property.

Dated this 30th day of January 2026

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT