

NOTICE OF INTERLOCUTORY APPLICATIONS TO THE COURT

BETWEEN

Junkanoo Estates Ltd

First Appellant

Yuri Starostenko

Second Appellant

Irina Tsareva-Starostenko

Third Appellant

AND

UBS (Bahamas) Ltd (In Voluntary Liquidation)

Respondent

TAKE NOTICE that the Court of Appeal will be moved so soon as the Second and Third Appellants Pro Se can be heard in open court on behalf of the above-named Appellants and their following applications can be determined by the Court as duly constituted for the purpose under of the Court of Appeal Act 1964 s 7:

(1) for orders:

- (a) pursuant to Rule 29 (2) of the Court of Appeal Rules 2005, that the Order made on 2 February 2018 by a single judge of the Court (Hon. Sir Michael Barnett, JA) be discharged or varied by the Court pursuant to Rule 9(1)(b) of the Court of Appeal Rules 2005, by extending the period, specified in the said Order, in which the Appellants must vacate the property; and
- (b) for a stay of execution on the Supreme Court Order for possession (Summary Judgment Order) pending the determination of the Appeal;

(2) for a judicial pronouncement of law regarding the constitutional right of access to the courts, the availability of full or partial remission of the fees and the statutory scheme of remission in relation to the decision of the Registrar (Mrs. Sharada D. Ferguson) made on 31 January 2018;

(3) for leave of the Court to rely upon all grounds of appeal specified in the Schedule to the Appellants' Notice of Appeal Motion filed on 1 February 2018;

(4) for the issue of a certificate that the following points of law are ones of general public importance in relation to:

- (a) a duty to the Court, which overrides any obligations which a Counsel may have;
- (b) a fundamental principle in equity expressed in the maxim: he who comes to equity must come with clean hands contained in the Judgment delivered on 14 December 2017 by the Honourable Mr. Justice Isaacs, JA, on appeal in the case of *Smith and another v. Dean* - [2014] 1 BHS J. No. 13;
- (c) the availability of summary procedure in an action or claim for the possession of land which is a dwelling house;
- (d) the construction of references to an action or claim for the possession of land as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to be possession thereof;
- (e) fundamental issues of principle pertaining to the exercise of judicial discretion granting injunctive relief against a mortgagee within the body of equitable principles established to do justice in preserving or protecting in a mortgage action the mortgagor's equity of redemption, notwithstanding the latter is in default of his obligations under the deed of mortgage, without prejudicing the security of the mortgagee on the property charged, including but not limited to (i) where circumstances arose out of or result from provisions in a contract, of which the mortgagee took advantage, which could give rise to a special relationship beyond that of mortgagor/mortgagee; (ii) where the mortgagor shows as a matter of law, that his rights whether legal or equitable, were being improperly threatened and where there is a claim that the terms of the mortgage had been informally varied and that it would be harsh and oppressive for the mortgagee to insist on its rights; (iii) where there is a valid complaint that the attempt by the mortgagee to exercise its remedies under the mortgage was not only unreasonable but unconscionable, having regard to all circumstances of the case and it would be oppressive and an improper use of the mortgagee's power and right to take possession.

Dated this.....¹⁴.....day of February 2018.

The Second (Defendant) Appellant acting in person for the above-named (Defendants) Appellants.

COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp Supreme Court Civil Appeal Side

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SccAppCais No.0024/2018



Yuri Starostenko

5 Clifton Bay Drive, Lyford Cay
New Providence, The Bahamas
Second Appellant acting in person