

AUSTRALIA / JUDGMENT

Rahman v Rahman

[2025] NSWCA 126**COURT**

Court of Appeal

DECIDED

05 June 2025

BEFORE

Adamson JA

CASE / FILE NUMBER

2025/202852

Decision under appeal

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Source record**Court of Appeal****Supreme Court****New South Wales****Medium Neutral Citation:** Rahman v Rahman [2025] NSWCA 126**Hearing dates:** 2 June 2025**Date of orders:** 2 June 2025**Decision date:** 05 June 2025**Before:** Adamson JA

Decision:

- (1) Dismiss the applicant's notice of motion filed 27 May 2025.
- (2) Order the applicant to pay the respondent's costs of the notice of motion.
- (3) Grant leave to the applicant to file by 10 June 2025 an amended summons joining the trustees as parties.
- (4) Stand the matter over to the Registrar's call-over for further directions on 11 June 2025.

Catchwords:

APPEALS — leave to appeal — application for stay pending appeal — stay refused — Civil Procedure Act 2005 (NSW), s 67 — Uniform Civil Procedure Rules 2005 (NSW), r 50.7 — lack of utility of stay

CIVIL PROCEDURE — parties — failure to join all necessary parties to proceedings — where trustees were necessary parties

COURTS AND JUDGES — bias — apprehended bias — lack of utility in granting a stay of primary judge's dismissal of application for recusal

Legislation Cited:

Civil Procedure Act 2005 (NSW), s 67
Real Property Act 1900 (NSW), ss 74J, 74K
Supreme Court Act 1970 (NSW), ss 43, 46
Uniform Civil Procedure Rules 2005 (NSW), r 50.7

Cases Cited:	Barakat v Goritsas [2012] NSWCA 8 Michael Hill Jeweller (Australia) Pty Ltd v Gispac Pty Ltd [2024] NSWCA 128
Category:	Procedural rulings
Parties:	Fahmid Rahman (Applicant) Mita Farjina Rahman (Respondent)
Representation:	
Counsel:	Self-represented (Applicant) J Brown (Respondent)
Solicitors:	MIC Lawyers (Applicant) Marsdens Law Group (Respondent)
File Number(s):	2025/202852 Decision under appeal
Court or tribunal:	Supreme Court
Jurisdiction:	Equity – Real Property
Citation:	Rahman v Rahman [2024] NSWSC 1616
Date of Decision:	28 November 2024; 16 December 2024; 18 February 2025; 9 April 2025; 14 May 2025
Before:	Slattery J
File Number(s):	2024/374705 [Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

JUDGMENT

Introduction

On 10 October 2024, Fahmid Rahman, the appellant, commenced proceedings in the Equity Division of this Court (the Court below) against his former partner, Mita Rahman. The proceedings concern, in part, sale of two real properties in Roselands (Property 1 and Property 1A).

The proceedings in the Court below had their genesis in Family Law proceedings in the Federal Circuit and Family Court of Australia (the Family Court) between Mr and Mrs Rahman. On 24 March 2023, the Family Court made orders giving effect to the final property settlement between the parties, including an order appointing Mrs Rahman trustee for the sale of Property 1 and Property 1A. At that time, Mrs Rahman and other family members occupied Property 1 and tenants occupied Property 1A, which was used by the couple as an investment property.

At some point, their daughter, Wafa Rahman (Ms Rahman) entered into a contract to purchase Property 1A from Mrs Rahman, as trustee.

The proceedings in the Court below

It is not necessary to summarise the proceeding in the Court below in detail, nor was such detail evident in the notice of motion before me. It is sufficient for present purposes to note the following (which is principally derived from JusticeLink and *Rahman v Rahman* [2024] NSWSC 1616 (Slattery J)), to which I was referred by Mr Brown, who appeared for Mrs Rahman). The proceedings in the Court below have largely been case managed and heard by Slattery J (the primary judge).

The proceedings in the Court below were commenced on 10 October 2024 when Mr Rahman filed a summons seeking an extension of a caveat pursuant to s 74K of the Real Property Act 1900 (NSW). I infer that an extension was required because Mrs Rahman had served a notice of lapsing of caveat under s 74J of the Real Property Act so that she could sell at least one of the properties. I infer that the caveat referred to the Family Court orders.

On 7 November 2024, the primary judge raised the question whether Mrs Rahman ought be removed as a trustee since the time which had elapsed between the Family Court orders tended to suggest that she did not understand her obligation as trustee to sell the properties in a timely way. Mr Rahman sought to be appointed trustee and said that he could sell both properties within two months. Ultimately, Mrs Rahman agreed to relinquish her position as trustee but only on the basis that independent trustees would be appointed in her stead. Also on that day, the primary judge directed Mrs Rahman to file and serve a cross-claim against the purchaser of Property 1A (who was Ms Rahman). On 13 November 2024, Mrs Rahman filed a cross-claim against Ms Rahman who thereby became a party to the proceedings.

On 28 November 2024, the primary judge dismissed Mr Rahman's application that he recuse himself from hearing the matter further.

On 16 December 2024, the primary judge appointed Andrew Fleming and Stefano Calabretta as trustees for sale of the Roselands properties (the trustees).

On 18 February 2025, the primary judge made an order for possession in favour of the trustees against Mrs Rahman in respect of Property 1A and ordered Mr Rahman to withdraw a caveat over Property 1, in order that the trustees could sell the properties.

On 9 April 2025, the primary judge made orders which included the following:

1. GRANTS liberty to Mr [Fahmid] Rahman to attend the premises [at Property 1A], for the purposes of inspecting, identifying, collecting and removing such property and chattels that remain there that he identifies as his own.
2. ORDERS Mr Rahman to remove all property and chattels from [Property 1A] by no later than 29 April 2025.

3. GRANTS liberty to Mr Rahman to provide a list of personal property and chattels which he claims were in his possession at the time of the Federal Circuit and Family Court of Australia Orders of 23 March 2023 which were not at [Property 1A] at the time of his inspection pursuant to ORDER 1.
4. ORDERS that on and from 30 April 2025, the Trustees are at liberty to dispose of all remaining chattels and personal property left at [Property 1A] with any fees and disbursements incurred in doing so to be deducted from the sale proceeds.
5. NOTES that the Trustees are going to seek an advice from an Agent as to the best method of selling [Property 1A] with a view to maximising the value of the property and will report to the Court and the parties on the next mention date as to their proposal for selling that property.

It would appear that Ms Rahman entered into a contract to purchase Property 1A from Mrs Rahman. In any event, on 14 May 2025, the primary judge noted that if the sale of Property 1A did not settle on 16 May 2025, the trustees were at liberty to issue a notice to complete to Ms Rahman, as the purchaser. I was informed that as Ms Rahman failed to complete, the trustees issued a notice to complete on 16 May 2025 which was due to expire at 2pm on 3 June 2025 (the day after the hearing of the notice of motion).

On 27 May 2025, the primary judge made orders which included the following:

DIRECTS the Trustees to file and serve a Notice of Motion for relief in relation to any alleged conduct of Mr Rahman together with any affidavit material in support by Wednesday, 28 May 2025.

I infer that this direction derives from an allegation by the trustees that Mr Rahman did not comply with the orders made by the primary judge on 9 May 2025.

On 28 May 2025, the primary judge extended the time within which the trustees were to file the notice of motion referred to in the order of 27 May 2025 to 30 May 2025 and listed that motion for hearing before his Honour on 11 June 2025.

The proceedings in this Court

On 27 May 2025, Mr Rahman filed a summons for leave to appeal in this Court. He also filed a notice of motion on that day seeking that orders made by the primary judge on 28 November 2024, 16 December 2024, 18 February 2025, 9 April 2025 and 14 May 2025 be “stay[ed]/set aside, to the extent they adversely affect the appellant and his children and a stay of the entire proceedings until the determination of this appeal or further order of the Court.” These documents were filed on Mr Rahman’s behalf by his solicitor, Muhammad Iqbal Chaudhry, who is the solicitor on the record for Mr Rahman.

The motion came before me, as a single judge, on a referral from the Registrar's list. Mrs Rahman opposed the stay. As a family tragedy had necessitated Mr Chaudhry's absence from Australia, Mr Rahman appeared on his own behalf, as is his entitlement. Mr Rahman has also appeared for himself in the Court below.

A single judge of the Court of Appeal cannot set aside substantive orders made by a primary judge since this requires the Court to be constituted, usually, by three judges: ss 43 and 46 of the Supreme Court Act 1970 (NSW). My powers on the motion are, in the circumstances, limited to granting a stay of orders made by the primary judge.

The powers of this Court to grant a stay pending appeal derive from s 67 of the Civil Procedure Act 2005 (NSW) and r 50.7 of the Uniform Civil Procedure Rules 2005 (NSW). The relevant principles were summarised by Payne JA in *Michael Hill Jeweller (Australia) Pty Ltd v Gispac Pty Ltd* [2024] NSWCA 128 at [5]:

The principles governing the grant of a stay pending an appeal are well-settled, as the parties on this application agreed. They are analogous to those which govern the grant of interlocutory relief before trial: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694-5, *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737; [2002] NSWCA 383 at [18]. A party applying for a stay must show, first, that the appeal raises serious issues for determination by the appellate court; and secondly, that there is a real risk that the appellant will suffer prejudice or damage if the stay is not granted. If an appellant prevails on those two questions, then the Court is to consider the balance of convenience and the competing rights of the parties: *Pamplin v Irwin* [2024] NSWCA 112 at [11] per Leeming JA.

It became apparent in the course of his oral submissions that the matters in respect of which Mr Rahman sought relief in this Court before me on 2 June 2025 concerned:

the order made by the primary judge on 28 November 2024 dismissing Mr Rahman's application that he recuse himself;

the order made by the primary judge on 16 December 2024, appointing trustees for sale of the properties (this occurred over Mr Rahman's objection as he wished to be appointed trustee for sale);

orders made in relation to the properties on 18 February 2025 (see above);

the orders made by the primary judge on 9 April 2025 requiring Mr Rahman to take action to identify and remove his personal property from Property 1A; and

the notation made on 14 May 2025 that if Ms Rahman did not complete the contract for the purchase of Property 1, the trustees were at liberty to serve a notice to complete.

As to (1), Mr Rahman submitted that he did not want the primary judge to continue to hear the matter and supervise the sale of the properties through the trustees. He said that the primary judge interrupted him, had difficulty understanding him (by contrast to other named judges) and did not allow him to explain himself. He said that he endeavoured to deal with this problem by

preparing written submissions but this was not always possible. Furthermore, Mr Rahman took great exception to the circumstance that the primary judge had directed Mrs Rahman to file a cross-claim against Ms Rahman and described as “unacceptable” that a mother be “advised” to sue her daughter.

I understood from Mr Rahman’s submissions that he was under the misapprehension that if I were to stay the primary judge’s dismissal of his application to recuse himself, his Honour would no longer be permitted to hear the matter (the matter is ongoing in the Court below). This is not correct. A stay of the first order would have no effect and therefore ought not be made. I note further that, conventionally, a refusal by a judge to accede to an application for recusal can be relied upon as a ground of appeal with respect to any orders made by that judge. However, generally, no appeal lies from the rejection of a recusal application: see the discussion of the issue generally in *Barakat v Goritsas* [2012] NSWCA 8 (Basten JA).

As to (2) and (3), Mr Rahman appeared to believe that if I were to stay the order appointing Mr Fleming and Mr Calabretta as trustees for sale, it would have the effect that they could not terminate the contract for sale to Ms Rahman if she failed to complete her purchase of the property on 3 June 2025 and, accordingly, she would not be at risk of forfeiting the deposit. Mr Rahman may also believe that if this order is stayed, he will be appointed trustee for sale. Mr Rahman would also like to be in a position to assist Ms Rahman to complete the purchase of Property 1A, notwithstanding that the Family Court orders provide that the funds are not to be distributed until all properties have been sold.

However, there is an insuperable obstacle to the grant of a stay of that order. The trustees are not only proper parties to such an application; they are also necessary parties and they have not been joined to the proceedings in this Court. Thus, the application is not properly constituted and cannot be dealt with unless and until it is.

In any event, there is no warrant for a stay of the order appointing the trustees since they are engaged in selling the properties and it would cause considerable expense and disruption were they to be replaced. The parties are protected by the requirement that the proceeds of the sale of the properties will be put in a fund to be distributed to them in accordance with the orders of the Family Court. The conflict between Mr and Mrs Rahman, which was a significant reason why the primary judge appointed independent trustees for sale, does not show any sign of abating.

As to (4), Mr Brown’s instructions were that issues related to these items of property had arisen in the past but they had been resolved by time, the dates for compliance having already passed. The form of the directions made on 9 April 2025 would tend to suggest that he is correct. Mr Rahman said that the date for Mr Rahman’s compliance was extended until 13 May 2025. However, Mr Rahman indicated that the matter was before the primary judge on 11 June 2025. He reiterated his objections to the primary judge continuing to hear that matter. No basis for a stay has been identified.

As to (5), once again this notation relates to an event which, it was common ground, has already occurred in that the trustees have already served a notice to complete on Ms Rahman. A notation is not an order that can be stayed.

Even aside from his failure to join the trustees to the motion, Mr Rahman cannot succeed on his application for a stay since he has failed to demonstrate the basis on which one could properly be granted.

Orders

For the reasons given above, I made the following orders on 2 June 2025:

Dismiss the applicant's notice of motion filed 27 May 2025.

Order the applicant to pay the respondent's costs of the notice of motion.

Grant leave to the applicant to file by 10 June 2025 an amended summons joining the trustees as parties.

Stand the matter over to the Registrar's call-over for further directions on 11 June 2025.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated:

05 June 2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/1973e81d98f7c8c937c725cb>

CASE PAGE <https://chat.esheria.ai/case-law/australia/rahman-v-rahman-2025>

Prepared on 27 October 2026 · Esheria