SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.13 OF 2007

BETWEEN:

[1] DAVID GOLDGAR
[2] PAUL D. COBURN
[3] CARIBE CANADA LTEE
[4] BETTS REALTY LIMITED
[5] S.P.A.S. LIMITED
[6] FIRST SECURITY BANK OF UTAH

Appellants

and

WYCLIFFE H. BAIRD

Respondent

Before:

The Hon. Mde. Ola Mae Edwards Justice of Appeal [Ag.]

On written submissions of:

Mr. Damian Kelsick of Kelsick, Wilkin and Ferdinand, Solicitors for Appellants
Mr. Terence V. Byron for the Respondent

2007: October 23

JUDGMENT

[1] **EDWARDS J.A. [AG]:** The appellants (defendants) have filed this procedural appeal against the decision of Belle J delivered orally on the 1st June 2007, upon an application made by the respondent (claimant).

[2] The claimants applied for a Notice of Application before the Learned Judge for an

Order striking out certain documents filed by the defendants and extending time for compliance with the case management order of the Master made on the 19th March 2007. In the alternative this application sought an Order validating the filing and service of the witness statements filed by the claimant and Steele Douglas, varying the Master's Case Management Order by increasing the number of witnesses for the claimant from 5 to 8, providing for the filing and service of the additional witness statements, or to provide evidence through the medium of a subpoena. The application was filed on the 24th May 2007.

[3] The Master's Case Management Order required the witness statements of the parties to be exchanged and filed by 11th May 2007. The trial window wasset for June 2007, pre-trial review for 25th May 2007 and the estimated length of trial was 3 days.

[4] The learned judge granted an extension of time to the claimant to file witness statements for himself and Steele Douglas after apparently considering the written submissions and oral arguments of Counsel for the parties. The effect of Belle J's Order was to enable the respondent to file the witness statements of himself and Steele Douglas out of time.

[5] In the absence of any record of the proceedings or order of the Learned Judge, this Court granted leave to appeal on the basis of the supporting affidavit of Counsel, Mr. Damien E.S. Kelsick. He deposed as to the reasoning of the Learned Judge in giving his decision. The order granting leave permitted the respondent to file and serve affidavit in opposition on or before the 10th August 2007. The order further required the parties to jointly request the Registrar of the High Court to request the Judge to provide a minute or memorandum of his decision for assistance of the Court of Appeal if there is a dispute as to the terms or premises of the Judge's Order.

[6] It is necessary to reproduce Mr. Kelsick's account that has not been disputed. He

deposed:

"3. In giving his decision, the Learned Judge appeared to accept that the respondent had not shown a good reason for his failure to file his witness statement in time. He found however that notwithstanding the absence of a good explanation he had jurisdiction to grant the extension on one or more of the following grounds:

(a) The sanction imposed by Rule 29.11 (1) had not arisen because the trial has not yet taken place and therefore relief under Rule 26.8 did not arise,

(b) If the Court awarded costs on this application, that could be a sanction imposed and therefore the respondent would not have been relieved from sanctions; and/or

(c) The Civil Procedure Rules cannot be applied in so strict and/or draconian a manner as to deprive a party of his day in Court in the circumstances of the present case.

4. The Learned Judge further specifically held that the onus of proof was on the applicants to prove that the respondent's failure to comply was intentional and not on the respondent to prove that his failure to comply was not intentional. He consequently held that there was no evidence that the respondent's failure was intentional."

[7] The appellants appealed on the following grounds:

(a) The Learned Judge failed to recognize that the essence of the application before him was an application for relief from sanctions notwithstanding that in form it prayed for extension of time,

(b) The Learned Judge, having held there was no good explanation given by the respondent as to the failure to file the witness statement in time had no discretion to grant relief from sanctions.

(c) The Learned Judge erred in not holding that the respondent had failed to prove that the failure to file the witness statements in time was not intentional and deliberate.

[8] The findings of law the appellant challenges in the Notice of Appeal are that:

(a) Notwithstanding that the respondent had not given a good explanation for his failure to file the witness statements of himself and Steele Douglas in time, the Court had jurisdiction to grant relief from sanctions under Rule 28.8,

(b) Because the trial date had not arrived yet that the sanction imposed by Rule 29.11(1) had not arisen and therefore there was no need for the respondent to apply for relief from sanctions,

(c) The award of costs is a sanction, which would obviate the need for the respondent to apply for relief from sanctions or from the sanction imposed by Rule 29.11,

(d) The burden of proof was on the appellants to establish the criteria in Rule 26.8(2) that found jurisdiction to grant relief from sanctions;

(e) The Court had an over-riding discretion to grant relief notwithstanding the terms of Rule 26.8.

[9] Regarding the Learned Judge's alleged finding of law at paragraph 8 (a) and 9d) above, this conflicts with Mr. Kelsick's account as to what the judge found at paragraph 3 (a) of his affidavit. Mr. Kelsick deposed that the Judge found that the sanction imposed by Rule 29.11 (1) had not arisen because the trial had not taken place and therefore relief under Rule 26.8 did not arise. At paragraph 4 of his affidavit, Mr. Kelsick stated that the learned judge specifically held that the onus of proof was on the applicants to prove that the respondent's failure to comply was intentional. It is incorrect therefore to allege what is stated at paragraph 8 (a) and (d) above.

[10] Turning to the Grounds of Appeal they raise three (3) primary questions –

(1) Was there a sanction in effect on the 24th May 2007 when the claimant filed his application?

(2) Did the Judge have jurisdiction to extend the time for compliance with the case management order on the claimant's application after the date for exchanging and filing witness statements had passed?

(3) Do the rules require the Court to exercise its powers under CPR 26.8 where there is only an application to extend the time fixed by a case management order for exchanging and filing witness statements, and the application has been filed after the time fixed has passed?

[11] It is well known that this Court will not interfere with the Learned Judge's case management order, unless he is clearly wrong, has misdirected himself in law, has failed to take into account some material matter which he ought to have taken into account, or has taken into account a matter which he ought to have excluded, thereby … "exceeding the generous ambit within which reasonable disagreement is possible."[1]

[12] These questions must be answered so as to determine whether the Learned Judge's reasoning and decision are flawed. The Court must interpret the relevant provisions of the Civil Procedure Rules 2000 relating to Witness Statements, Relief from Sanctions, Variation of Case Management, Timetable and the Court's Case Management Powers in answering these questions.

The Rules

[13] CPR. 29.11 states:

(1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the Court, the witness may not be called unless the Court permits.

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[1] G v G (1985) 2 AER 229 (adopted in Michael Dufour and others v Helenair Civ. App. No. 4 of 1995

(2) The Court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under Rule 26.8.

[14] Learned Counsel, Mr. Byron contended that since it is only if the Court does not give permission that a witness may not be called where the witness statement is late, CPR 29.11 (1) cannot be construed as automatically imposing a sanction. Mr. Byron contended further that the consequence of failing to serve the witness statement within the time specified only arises at the trial of the action; and significantly, the rule does not say that the Court cannot give permission otherwise than at the trial. The words "has a good reason for not previously seeking relief under Rule 26.8" in CPR 29.11 (2)does not state that it is necessary to apply for relief under Rule 26.8 in all cases where a witness statement is late, he argued. Neither does CPR.29.11 state that where no sanction has actually been imposed by a Court Order, such as an "unless order", a sanction automatically arises for lateness. Mr.Byron referred to three (3) English cases that are unhelpful to his position. The reasoning in these judgments does not demonstrate any dependence on or application of the relevant English Rules [**Mealey Horgan Plc v Timonthy Horgan, Hill Samuel Bank Ltd.**[2] ; **Kotia v Dewhirst**[3] ; **Simon Halabi v Fieldmore Holding Ltd. and others**[4] .

[15] In two (2) of these cases the Court permitted witness statements that were not exchanged within the specified time to be served and exchanged at the trial, on the application of the defaulting party for extension of time, in the case of **Mealy Horgan**[5]; and on an application for relief pursuant to Rule 3.8 for permission to serve witness statements, in the case of **Kotia**[6]. In the third case **Simon Halabi**[7], the claimant who was non-compliant, made no application for a time extension.

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[2] 1999 WL 249899
[3] [2000] C.L.Y. 407
[4] [2006] EWHC 1965 (Ch)
[5] See 2 above
[6] See 3 above
[7] See 4 above

The Court made the Order on the application of the (4) interpleader defendants for an Order that Mr. Halabi be debarred from serving his witness statements out of time without the leave of the Court, on the terms that he provides security for the applicant's costs. In all of these cases there was no reference in the judgments to Rule 32.10 of the English Civil Procedure Rules (CPR), which is comparable to our CPR 29.11 (1).

[16] Rule 32.10 of the English CPR states that "if a witness statement or witness summary for use at trial is not served in respect of an intended witness within the time specified by the Court, then the witness may not be called to give oral evidence unless the Court gives permission." There is no provision similar to our CPR 29.11 (2) in the English CPR.

[17] The contention of appellant's Counsel fails to take into account the other relevant provisions of the CPR. The context of CPR 29.11 includes the place that it occupies in relation to other relevant rules as a whole. An isolationist approach to construing the rules defies the ordinary canons of construction. The Court is obligated to ensure that the provisions of the CPR are as far as possible interpreted in a way, which is coherent and consistent. CPR 1.1 and 1.1 (2) mandate that the Court must seek to give effect to the overriding objective when it interprets any rule.

[18] I consider the words in CPR 29.11 to be unambiguous and precise. Adhering to the plain ordinary meaning of the words in CPR 29.11 (1), the result or consequence for failing to serve a witness statement or summary within the time specified by the Court is that the witness may not be called unless the court permits.

[19] The provision in CPR 29.11 (2) makes the Court's grant of permission at the trial, contingent on having a good reason for not previously seeking relief under CPR 26.8. It is CPR 29.11 which directs us to the relief from sanctions rule, thereby

broadcasting the nature of the consequence stated in CPR 29.11(1). CPR 26.8 (1) refers to "an application for relief from any sanction imposed for failure to comply with any rule order or direction. The Oxford Dictionary states that "sanction" means: "1. a threatened penalty for disobeying a law or rule; 2. measures taken by a State to try to force another to do something…"

[20] The drafters of the rules must have intended the stated consequence for breaching the Court Order under CPR 29.11 (1) to be a "threatened penalty" for disobeying the Court Order, or "a measure to try to force" compliance with court orders. CPR 29.11(1) obviously imposes a sanction.

[21] Counsel Mr. Kelsick submitted that Rule 29.11 imposes a sanction immediately upon the expiry of the time limit for filing and serving witness statements. He relied on the observations of the then Barrow J (Ag.) now Barrow J.A. in Kenton Collins on **St. Bernard v Attorney General of Grenada et al**[8] Barrow J (Ag.) as he then was, now Barrow J.A., stated that "Rules 26.7 and 26.8 express the central idea that the fixed sanction for non-compliance will take effect unless there is a prompt application for relief supported by affidavit…"

[22] While I endorse these observation of Barrow J. A. it is important to point out that CPR 26.7 relates to a court order which states the time for doing an act and that order also specifies the consequences; or a rule or direction which specifies the doing of an act and also the consequences. In the case of the witness statements in the instant case, while the Court order specified the time for the exchange and filing of witness statements, it is not the Court Order but CPR 29.11(1) that specifies the consequence or sanction for non-compliance.

[23] However, in my view, the wording of CPR 29.11(1) also admits the construction that the sanction of not being able to call the witness at the trial comes in to effect immediately upon the expiration of the time limit, and continues until it is either

[8] Civ. Case No. 0084 of 1999

lifted pursuant to CPR 26.8 or revoked at the trial where the Court gives permission.

[24] Having regard to the overriding objective, Lord Justice **Peter Gibson in Michael Vinos** v **Marks & Spencers**[9] aptly observed and I agree with him, that: "The language of the rule to be interpreted [in the Civil Procedure Rules] may be so clear and jussive that the Court may not be able to give effect to what it may otherwise consider to be the just way of dealing with the case, though in that context it should not be forgotten that the principal mischief which the Civil Procedure Rules were intended to counter were excessive costs and delays. Justice to the defendant [or claimant] and to the interest of other litigants may require that a claimant [or defendant] who ignores time limits prescribed by the rules forfeits the right to have his claim tried..."

[25] CPR 29.11 in my view is in very clear and imperative terms. The rule does not permit a tortuous construction of its very clear words in order to accommodate a non-compliant claimant or defendant.

[26] Another relevant and important rule is CPR 27.8 which deals with the variation of case management timetable. CPR 27.8 (3) provides that a party seeking to vary a date fixed by a case management order which creates no sanction for the exchanging and filing of witness statements, without the agreement of the other parties, must apply to the Court, and the general rule is that the party must do so before the date.

[27] CPR 27. 8 (4) states that a party who applies after the fixed time limit has expired must apply for-

"(a) an extension of time; and
(b) relief from sanctions to which the party has become subject under these rules or any court order."

[9] [2001] 3 All ER 784

[28] CPR 27.8(4) should put to rest the contention or perception that there is no provision in the rules for a party in the respondent's position to make an application for relief from sanctions.

[29] The learned judge fell into error in my respectful view when he found that because the trial date had not arrived yet the sanction imposed by Rule 29.11 (1) had not arisen and there was no need for the respondent to apply for relief from sanctions.

The Courts Power To Extend Time and Grant Relief From Sanctions

[30] Counsel for respondent contends that only an application for extension of time was necessary. Counsel for the appellants countered that the respondent ought to have applied for relief from sanctions promptly after the deadline for filing witness statements had passed.

[31] In Ferdinand **Frampton v Ian Pinard et al**[10] the Court advisedly stated while considering an application for an extension of time to apply for leave to appeal, that "…there are rules that govern the grant of an extension of time. The court cannot grant an extension of time purely as a matter of discretion. The court can only do so in accordance with the rules that are laid down. Not even in a case of the utmost public importance can the court overlook the rules because in a particular case the court thinks it fair or reasonable or appropriate or just to do so. The rules must be seen as establishing criteria that are definitive as to what is fair and reasonable and appropriate and just."

[32] The Learned Judge in the instant appeal found that he had jurisdiction to grant the extension of time requested by the respondent on grounds including that the Civil Procedure Rules cannot be applied in so strict and/or draconian a manner as to deprive the respondent of his day in court. This ground has no legitimate place in the judge's exercise of discretion, having regard to the mandatory requirements laid down by the specific relevant rules in my humble and respectful opinion.

[10] Civ. App. No. 15 of 2005

[33] The appellants complain that the judge wrongly found that the court had an over-arching discretion to grant relief on the application for extension of time despite CPR 26.8.

[34] CPR 26.8 states-

> "(1) an application for relief from sanction imposed for a failure to comply with any rule, order or direction must be-
>
> (a) made promptly; and
> (b) supported by evidence on affidavit
>
> (2) The Court may grant relief only if it is satisfied that-
>
> (a) the failure to comply was not intentional;
> (b) there is a good explanation for the failure; and
> (c) the party in default has generally complied with all other, rules practice directions, orders and directions
>
> (3) In considering whether to grant relief, the Court must have regard to:
>
> (a) the effect which the granting of relief or not would have on each party
> (b) the interests of the administration of justice;
> (c) whether the failure to comply has been or can be remedied within a reasonable time;
> (d) whether the failure to comply was due to the party or the party's legal practitioner; and
> (e) whether the trial date or any likely trial date can still be met if relief is granted."

[35] The companion rule with CPR 26.8 that governed the respondent's application is CPR 27.8 (4) previously reproduced at paragraph 27 above. The overriding discretion to grant relief on the application for extension of time must be anchored to the rules as Barrow J.A. pointed out. There are 2 rules which could ground the judge's discretion; CPR 26.1 (2) (k) and CPR 26.2 (1).

[36] CPR 26.1(1) states that-

"The list of powers in this rule is in addition to any powers given to the court by

any rule, practice directions or any enactment. CPR 26.1(2) (k) states that –

"Except where these rules provide otherwise, the Court may-

(k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed.

[37] The Court can act on its own initiative when exercising its general case management powers. CPR 26.2(1) states that-

"Except where a rule or other enactment provides otherwise, the Court may exercise its powers on an application or of its own initiative."CPR 11.6(1) also gives the Court general power to dispense with an application in writing.

[38] The words in CPR 26.1 (2) (k) and 26.2 (1) are clear. Applying ordinary grammatical construction to these provisions, the words "except where these rules provide otherwise" in CPR 26.1(2) k, and "except where a rule or other enactment provides otherwise" in CPR 26.2 (1) cut down the general case management powers given by CPR 26.1 (2) k and CPR 26.2 (1) .

[39] In **Vinos**[11], the English Court of Appeal was faced with a question of construction of the Civil Procedure Rules as the present appeal has presented. The Court in **Vinos** had to determine whether it had the power to extend time for service of a claim form if the claimant only applied after the period provided for in rule 7.6(2) of the English CPR, had expired, and the conditions in Rule 7.6 (3) were inapplicable. It is the principle that is being extracted from **Vinos** as to how rule 3.1(2) (a), which is similar to our CPR 26.1 (2) (k) should be construed where there is a specific rule setting out in detail what the non-compliant party must do if that party wants an extension of time, and the circumstances in which the Court may exercise the discretion.

[11] See 9 above

[40] The Judge in the reviewing Court below in **Vinos**, held that the Court had no discretion to consider whether to extend time. He noted that the English Rule 3.1(2) (a) {equivalent to our CPR 26.1 (2) (k)} empowers the Court to extend time for compliance with any rule even if any application for extension is made after the time for compliance has expired; but that power is expressed to apply "except where these rules provide otherwise." He found that Rule 7.6 (3) does provide otherwise in that it prescribes the only circumstances in which the Court is able to extend the period for serving the claim form if the application is made after the period for service has expired. It is worth noting what the reviewing Judge said:

> i. "It is accepted by the defence that if the Court had a discretion the Court would only realistically exercise it in favour of the claimant, because it is not suggested for a moment that any prejudice has arisen or that any other considerations would apply to say that any kind of injustice would done to the defendant… In this matter I find myself distinctly unhappy as to the correct approach. The instinct that one has is to say, "no harm is done, let the action proceed so that the appropriate person, that is the defendant's insurers, can meet the claimant's apparently justified claim for compensation. But on the other hand it does seem to me that where "the rules have specifically provided for failure to serve a claim form within a set time and provided two, and only two circumstances under which extensions can be given that it would be wrong to ignore those. It seems to me, therefore, that I am persuaded that a rigid interpretation is called for, and that accordingly the district judge was right in the decision which he made."[12]

[41] The Court of Appeal in **Vinos** endorsed the reviewing judge's conclusions, stating that they were essentially correct for the reasons which he gave. May L.J. said:

> i. "The discretionary power in the rules to extend time periods- Rule 3.1(2)(a)- does not apply, because of the introductory words. The general words of Rule 3.10 cannot extend to enable the court to do what Rule 7.6(3) specifically forbids nor extend time when the specific provision of the rules, which enables extensions of time specifically, does not extend to making this extension of time… Interpretation to achieve the overriding objectives does not enable the court to say that provisions, which are quite plain, mean what

[12] Michael Vinos v Marks & Spencer [2001] 3 All ER 784

> they do not mean, nor the plain meaning should be ignored. It would be erroneous to say that, because Mr. Vinos' case is a deserving case, the rules must be interpreted to accommodate his particular case."[13]

[42] Gibson L.J. said at paragraphs 27-28. "A principle of construction is that general words do not derogate from specific words where there is an unqualified specific provision, a general provision is not to be taken to override that specific provision… Rule 7.6 is a specific sub-code dealing with the extension of time in all cases where time limits in Rule 7.5 have not been or are likely not to be met…It is plain that the general power in paragraph 3.1(2)(a) to extend time cannot override Rule 7.6 nor in my judgment could the general power in Rule 3.10 to remedy a failure to comply with a rule be pressed into service to perform the like function of, in effect, extending time. Even though Rule 3.10 differs from Rule 3.1(2) in not having wording to the effect of "except where the rules provide otherwise." That is too slight an indication to make Rule 3.10 override the unambiguous and restrictive conditions of Rule 7.6(3). I reach that conclusion on the wording of the Civil Procedure Rules alone."

[43] The specific provisions under our rules which govern the extension of time in all cases where the time limit to serve witness statement under a Court Order has expired, and the claimant or defendant wishes to have a variation of the case management timetable in the absence of an agreement by the parties are CPR 27.8(4) and CPR 26.8. CPR 27.8(4) sets out what the claimant or defendant must do in order to obtain an extension of time: he/she must apply for an extension of time AND also make an application for relief from sanctions. The rules do not seem to specifically set any criteria for dealing with applications for extension of time, where the court order or the rules do not provide a sanction, and the date sought to be varied is not governed by CPR 27.8(1) and (2) save that the Court must seek to give effect to the overriding objective when exercising its discretion under the rules.

[13] Same as 12 above

[44] It is manifest that CPR 27.8(4) and CPR 26.8 are rules, which "provide otherwise" under CPR 26.1(2)(k) and CPR 26.2(1). The court's general power in CPR 26.1(2)k and 26.2(1) to extend time or to exercise its own initiative in the absence of an application from a party is apparently circumscribed by CPR 27.8(4) and CPR26.8(2) and (3), and cannot override these provisions in my view. CPR 27.8(4) and CPR 26.8(2) provide the only circumstances in which the court is able to extend time where a party finds him/herself in the position of the respondent, and the court cannot legitimately ignore this.

[45] In **Nevis Island Administration v La Copproprete Du Navire**[14] that the appellants also relied on, guidance was given as to how CPR 26.8 should be approached. Barrow J.A. said:

> [17] "There are mandatory conditions imposed by this rule. It is stated in sub- rule (1) that the application must be made promptly and it must be supported by an affidavit. The application, in this case, satisfies both these requirements. In sub-rule (2) a strict fetter is imposed upon the court's discretion- the court may grant relief **only** if it is satisfied that the failure to comply was not intentional, that there is a good explanation for the failure and the party in default has generally been compliant. This means that the court must conduct an examination of the evidence before it (normally the applicant's affidavit) to decide if that evidence satisfies the court that the failure to comply was not intentional, that there is good explanation for the failure and the applicant has been generally compliant…
>
> [19] The applicants did not address even one of the three conditions that must be satisfied. The rule is uncompromising so that the Court is prohibited from exercising its discretion to grant relief from sanctions if these conditions are not satisfied…the failure of the applicants to comply with the requirements of the rule puts the applicants in a hopeless position…"

[46] It is a legitimate criticism that the Learned Judge wrongly found that he had an

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[14] Civ. App. No. 7 of 2005

overriding discretion to grant relief on an application for extension of time in the peculiar circumstances despite the terms of CPR 26.8. The Judge had no power to do so in my view since the specific relevant rules restricted him from acting on his own initiative in the absence of an application for relief from sanction, or from disposing of the requirement for such an application to be in writing.

[47] The application that was before the Judge was not an application for relief from sanctions, therefore the CPR 26.8 criteria would not apply. Were the Learned Judge to have treated the application as an application for extension of time he would have been in breach of CPR 26.2(1) and CPR 26.8(1).

[48] In these circumstances the conclusion seems to be unavoidable that the appeal should be allowed on ground (B), since the Learned Judge had no discretion to grant relief from sanctions on the application of respondent or extend time for compliance of the case management order without an application for relief from sanction made pursuant to CPR 27.8(4) and CPR 26.8(1). Accordingly this Court should interfere with the Learned Judge's case management order.

[49] I note that the witness statements have now all been served, and that the Learned Judge held a Pre-trial Review Conference on the 29th June 2007 and set a trial window for November to December 2007. In the premises I will allow the appeal, set aside the order of Belle J, exercise the Court's statutory powers to make such order as the High Court ought to have made and such further order as the nature of the case may require. The appellant has apparently abandoned ground (b) since there were no submissions for this ground.

[50] The Order that the High Court ought to have made on the application was to dismiss it with costs to the appellants. The nature of the case requires that an order be made on terms for the respondent to make the applications required by CPR 27.8(4).

[51] Accordingly I make the following order-

1. The appeal is allowed and the order of the Learned Judge made on the 1st June 2007 extending the time for compliance with the Master's Order by the respondent is set aside.
2. The application of the respondent/claimant for extension of time filed on the 24th May 2007 is dismissed with costs to the appellants/defendants.
3. Unless the parties agree retroactively to the variation of the date in the master's case management order for the filing and exchange of the witness statements of claimant and Steele Douglas, pursuant to CPR 27.8(b), the respondent must make the required application pursuant to CPR 27.8(4) before the trial date, failing which he is deemed to have no good reason for not previously seeking relief under rule 26.8.
4. The respondent to pay costs to the appellants both here and in the court below which I would fix cumulatively as $2500.00.

Ola Mae Edwards
Justice of Appeal [Ag.]