

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**



**SAINT VINCENT AND THE GRENADINES
CLAIM NO. SVGHCV2012/0014
BETWEEN:**

Claude Bascombe Jr.

Claimant

and

Edwin Ballantyne

Aaron Stapleton

Defendants

IN THE MASTERS COURT BEFORE MASTER TAYLOR-ALEXANDER

APPEARANCES: Ms. Sunil Fraser for the Claimant
Mr. Sten Sargeant for the Defendants

DATED: 29th January, 2013

ENTERED:

UPON an application to deemed witness statements filed beyond the prescribed time,
properly filed;

ORDER

- [i] The witness statements of Edwin Ballantyne and Aaron Stapleton filed on the 16th November 2012 be deemed properly filed.
- [ii] Costs to the claimant in the sum of \$1150.00 to be paid in 14 days hereof.
- [iii] Review of the compliance with the case management timetable to take place on the 27th February, 2013.

REASONS FOR DECISION

- [1] This matter came up on an application for witness statements of Aaron Stapleton and Edwin Ballantyne filed by the defendants beyond the time prescribed by the case management timetable, to be deemed properly filed.

- [2] The application was made pursuant to 26.8 of the CPR 2000 and was supported by supplemental affidavit filed on 25th January, 2013.
- [3] The defendants mainly contend that it was their ongoing attempts to investigate with a view to settle the proceedings that resulted in their delay and failure to comply. The defendants were always satisfied that the vehicle that is the subject of these proceedings had been sold and wished to ascertain the sale price of the vehicle. This issue they claim was relevant to the continuation of the proceedings and the real issue in contention ~~is~~ the loss of use claimed. 
- [4] The Claimant in sound, critical opposition directed the court to rule 29.6 which allows for the filing of witness summaries where a party is challenged to file witness statements.
- [5] Additionally, and in so far as the defendants were challenged to find and speak with the third party purchaser of the vehicle, the affidavit of the third party Alonso Parris filed in the proceedings shows that the defendants had in fact spoken to Parris before July 2012, such that there was no delay in locating him as had been submitted was the reason that prevented the filing of witness statements.
- [6] The Court could find no quarrel with the sound, well articulated submissions of the claimant but considered the following in relation to CPR 26.8(3) :-
- (a) The court had earlier determined that the issues between the parties required settlement or otherwise to be properly ventilated before the court, and that to send the defendant handicapped before the court would not facilitate this objective;
 - (b) that the parties had largely complied with the case management timetable and the matter could be set down for trial, without delaying the trial date;
 - (c) that the failure to file witness statements, if the court is to accept the submissions of the claimant which it does appear to have been largely the fault of the legal practitioner not the defendant.
 - (d) and that the interest of justice would be best served by allowing the parties to proceed to trial.

[7] I therefore allow the application to deem the witness statements of Edwin Ballantyne and Aaron Stapleton filed on the 16th of November 2012 to be deemed properly filed with costs to the claimant in the sum of \$1150.00 to be paid within 14 days hereof.

AP

31-01-2013

V. GEORGIS TAYLOR-ALEXANDER

High Court Master