

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA & BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2012/0608

GINGER VILLA INCORPORATED

Claimant

and

CARIBBEAN DEVELOPMENTS (Antigua) LIMITED

Defendant

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. C. Debra Burnette with Ms. Stacy Ann Osbourne - Saunders of counsel for the claimant

Ms. Leslie- Ann Brissett George of counsel for defendant

2014: January 13, 31;

REASONS FOR DECISION

- [1] **ACTIE, M. [Ag.]:** The defendant by notice of application with affidavit in support filed on 6th January 2014, applied to the court for an extension of time to file written submissions. The matter came up for determination where I refused the application and to provide written reasons for my decision, which I now do.

Background

- [2] The claimant by notice of application filed on 15th October 2012, applied for a declaration pursuant to CPR Part 9.7 that the court ought not to exercise its jurisdiction in the matter. The application came up for determination on 11th October 2013, where the Master directed the parties to file and exchange

submissions on or before 4th November 2013, and adjourned the matter to 3rd December 2013.

- [3] On 29th November 2013, the applicant/claimant applied for an extension of time to file its submissions and to deem the submissions filed on 29th November 2013, to be properly filed. The Master by Order dated 3rd December 2013, granted the claimants' application and made the following Order:

"ORDER

"UPON THIS MATTER coming up for hearing of an application of the claimant for extension of time to file witness statements filed on 29th November 2013 and the application of the Defendant filed on 15th October 2012;

AND UPON HEARING Counsel for the claimant who advises that the application was remitted for hearing to the Master by the Court of Appeal;

AND the Defendant indicating that she was only recently retained in the matter and would wish to have the opportunity to file submissions;

IT IS HEREBY ORDERED THAT

1. The application filed on 29th November 2013 is granted as per approved draft order on file.
2. The defendant is to file and serve submissions in relation to the application filed on 15th October 2012 on or before 17th December 2013.
3. The application will come for determination on the 13th January 2014 whether or not submissions of the defendant have been filed.
4. Defendant to have carriage of the Order".

- [4] The defendant failed to file the submissions as directed by the Learned Master. By notice of application with affidavit in support filed on 8th January 2014, the defendant applied for an extension of time to file submissions, to deem the submissions filed on the even date properly filed pursuant to CPR 26.1 and relief from sanctions pursuant to CPR 26.8. Counsel also filed a notice of acting on the even date.

- [5] The claimant by letter dated 10th January 2014 opposed the defendant's application for an extension of time.

THE LAW

- [6] The granting of an extension of time is an element of discretion to be exercised in keeping with the overriding objective in dealing with cases justly and expeditiously. The Rule governing extension of time exists in Rule 26.1(2)(k) of the **Civil Procedure Rules 2000** ("CPR 2000") which states:

"26.1(2) Except where the 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."

- [7] The Rule is silent on the criteria to be taken into account by the court in exercising its discretion in granting the extension of time for compliance with any rule or practice direction. The court in such circumstance is guided by the overriding objective of the rules to enable the court to deal with cases justly and expeditiously. Rule 1.2 states the court must seek to give effect to the overriding objective when it (a) - exercises any discretion given to it by the Rules; or (b) interprets any rule."

- [8] Sir Denis Byron CJ in **John Cecil Rose v Anne Marie Uralis Rose**¹, on an application for an extension of time said;

"Granting the extension of time is a discretionary power of the Court which will be exercised in favour of the applicant for good and substantial reasons. The matters which the court will consider in the exercise of its discretion (1) the length of the delay; (2) the reasons for the delay; (3) the chances of success if the extension is granted and (4) the degree of prejudice if the Application is granted' .

¹ Saint Lucia Civil Appeal No. 19 of 2003 (delivered 22ndSeptember 2003, unreported).

[9] Her Ladyship, the Honorable Madame Justice Pereira as she then was in **Carleen Pemberton v Mark Brantley**², states:

“that the discretionary power, although a very broad one, cannot be exercised in a vacuum or on a whim, but must be exercised judicially in accordance with well-established principles. Overall, in the exercise of the discretion the court must seek to give effect to the overriding objective which is to ensure that justice is done as between the parties. At paragraph 13 she states that much depends on the nature of the failure, the consequential effect, weighing the prejudice, and of course the length of the delay, and whether there is any good reason for it which makes it excusable. This is by no means an exhaustive list of all the factors which may have to be considered in the exercise”.

[10] The principles enunciated in **Rose v Rose** and **Carleen Pemberton** were also adopted by Edwards JA in the case of **C.O. Williams Construction (St. Lucia) Limited v Inter-Island Dredging Co. Ltd.**³

Analysis

[11] The Order of the Master directed the defendant to file its submissions on 17th December 2013. The application for the extension of time was filed on 7th January 2014, 21 days after the date ordered by the Learned Master. The applicant in the affidavit in support deposed that the reason for non-compliance was due to the fact that counsel was only retained and instructed on 30th December 2013, and had not properly brought herself on the record in accordance with Rule 63. The applicant further states that the inability to prepare the submissions after the deadline date had passed was due to the intervening court holidays and office closure.

[12] I find the reasons given by the defendant untenable. Firstly the Learned Master in granting the extension to file submissions took the fact that counsel had recently been retained into consideration when she states in the preamble to the Order; “**AND** the Defendant indicating that she was only recently retained in the matter

² Saint Christopher and Nevis HCVAP2011/009 (delivered 14th October 2011, unreported).

³ Saint Lucia Civil Appeal No. HCVAP2011/017(delivered) 19th March 2012

and would wish to have the opportunity to file submissions". Secondly, the defendant counsel placed herself on the record on 3rd December 2013 and the Master accepted counsel as representing the defendant when she ordered counsel to have carriage of the order. To date counsel has not filed the order as was directed by the Learned Master which shows a pattern of delays and non-compliance by the defendant. The defendant was directed to serve the submissions on 17th December 2013 in advance of the Christmas holidays which goes against the excuse that the closure of the office after the holidays contributed to the delay.

- [13] The defendant has not convinced the court that it should exercise its discretion in favor of granting the defendant an extension of time. The order of the Learned Master stated that the application would be determined whether or not submissions of the defendant had been filed and will proceed accordingly.

ORDER

- [14] For the foregoing reasons the application of the defendant for an extension of time to file submissions and for relief from sanctions is refused.

Agnes Actie
Master [Ag.]