EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(Civil)

CLAIM NO. BVIHCV 2011/0087

Between:

GLADYS SCATLIFFE
(Widow and intended personal Representative of the Estate of Jacinto Scatliffe)
Claimant/Respondent

and

THE BVI HEALTH SERVICES AUTHORITY
Defendant/Applicant

Appearances:
Mrs. Patricia Archibald-Bowers for the Claimant/Respondent
Mr. David Harby for the Defendant/Applicant

2015: June 1st

JUDGMENT

[1] **ELLIS, J:** On 18th February 2015, the Defendant filed a Request for Entry of Judgment seeking entry of judgment against the Claimant together with costs to be assessed for breach of the following unless orders made by the Court at the pre-trial review hearing on 28 October 2014 in the presence of the Claimant and her legal representative:

1. The parties are to file an agreed statement of the issues, facts and law by 1 November 2014. If such statement cannot be agreed, then each party is required to file their own statement;
2. The parties are to lodge and exchange skeleton arguments by 18 November 2014;

3. Trial bundles are to be filed ten days before trial.

[2] The Applicant was at pains to point out that the Claimant and her legal practitioner were present at the hearing during which the unless orders were made.[1] Counsel for the Applicant submitted that the Claimant has failed to comply with each of the above orders and as such, the Claimant's statement of case is automatically struck-out pursuant to CPR Part 26.4(7). He requested that judgment be entered on the basis of these facts pursuant to CPR rule 26.5(4) (iii). Counsel also asked that the Claimant be ordered to pay the Defendant's costs to be assessed where not agreed.

[3] In addition to this Request for Entry of Judgment, the Defendant also filed a Notice of Application on 26th January 2015, in which it seeks the following relief:

1. An order that the Claimant's statement of case be struck out pursuant to CPR part 26.4; or
2. An order for Summary Judgment.

[4] The stated grounds of the Application are as follows:

1. That the Claimant has failed to comply with the terms of the Court's unless Orders dated 28th October 2014.
2. The Claimant has no real prospects of successfully proceeding with her claim on the issue of quantum of damages.
3. The Claimant has failed to make a prompt application for relief from sanction pursuant to CPR Part 26.8 to provide a good explanation for the failure to comply with the order of 28th October 2014.
4. The Claimant has generally failed to comply with the other relevant rules, practice and directions, orders and directions throughout these proceedings.

[5] This Application is supported by the Affidavit of Fiona Forbes filed on 26th January 2015, in which she chronicles the procedural defaults of the Claimant in this matter. Ms Forbes

[1] Pursuant to CPR rule 26.5(4) (ii) Counsel certified that the unless orders have been brought to the attention of the Claimant

avers that the Claimant has either failed to comply with Court orders or has been persistently late in her adherence to the timetable for trial set by the Court. By way of example, she states that on 21 May 2012, the Court ordered both Parties to file and serve witness statements by 18 July 2012. The Claimant's witness statements were not served on the Defendant until 17 August 2012, more than four weeks after the date ordered.

[6] Further, she stated that despite the Court's Order of 21 May 2012 requiring both Parties to provide standard disclosure by 17 June 2012, the Claimant failed to provide any disclosure until 21 June 2012, some three days after standard disclosure was required to be made. Counsel for the Defendant submitted that disclosure was incomplete as it manifestly failed to show the basis of the Claimant's case on quantum.

[7] Ms Forbes' evidence is that the Defendant thereafter made several unsuccessful attempts to obtain disclosure from the Claimant as to the basis of her claim beginning on 29 June 2012 when the Defendant filed and served a Request for Further Information. The Request sought full and detailed particulars of all facts and matters relied on in support of the claims for general and special damages. However, upon review of the Claimant's disclosure, it was apparent that the Claimant had yet again failed to comply with her duty to provide standard disclosure as the evidence disclosed failed to provide any evidence to support a claim for loss of support and the Claimant failed to disclose (1) the medical report of Dr Randell Nuschke (and any subsequent Report).

[8] Counsel for the Defendant submitted that as a result of the defective disclosure the basis of the dependency claim remains entirely unclear as no information has been provided in respect of the Deceased's annual income or salary, which is absolutely essential for the calculation of a dependency claim.

[9] It is apparent that on 21 June 2012, the Defendant again wrote to the Claimant requesting standard disclosure of: (1) documentation pertaining to the net salary of the Deceased at the time of his death; (2) the medical report and curriculum vitae of Dr Nuschke; and (3) copies of all documents listed in their list of documents on the basis of an undertaking to

meet the reasonable administration costs associated with copying the same – despite this request and the terms of the subsequent order dated 21 July 2012, documents were not served on the Defendant until 6 September 2012 and even then, disclosure remained incomplete.

[10] As a result, the Defendant was compelled to apply for an order for specific disclosure against the Claimant and by Order dated 19 July 2012 the Claimant was directed *inter alia* to provide specific disclosure of all "documents relating to the monthly and annual income or salary of the Deceased net of tax and social security contributions at the time of this death, including without limitation to payroll statements, business accounts, tax returns and so on". The Claimant thereafter provided a supplemental List of Documents together with the documents disclosed therein comprising: tax payer's receipts; account statements in the name of the Deceased and his son; account statements in the name of 3J's Trucking Service; and certain letters from the Deceased's previous employers and social security. After reviewing the documents, it became apparent that the Claimant had failed to disclose evidence of the Deceased's net annual income or salary prior to his death which is absolutely essential to allow for the calculation of the dependency claim.

[11] Ms Forbes goes on to state that on 19 July 2012, the Claimant served the supplemental medical report of Dr Nuschke dated 13 March 2012. This report was never included in any List of Documents filed. In response, the Defendant filed the medical report of Professor Martin Brown, a medical expert in the field of neurology and neurosurgery. The Defendant submits that unlike Dr Nuschke who is not a neurologist and therefore is unqualified to properly address the issues of life expectancy and prognosis, Professor Brown is properly qualified to speak to issues such as life expectancy and prognosis of stroke victims.

[12] No further disclosure or medical report was filed by the Claimant despite having ample opportunity to do so. As a result, on 23 September 2013, the Court ordered *inter alia* that unless the Claimant disclosed on or before 31 October 2013 a medical report of either Dr. Orlando D Smith or Dr Kedrick Pickering to contradict the evidence of life expectancy and

pain, suffering and loss of amenities outline in Professor Brown's medical report, it would proceed to assess damages on the documents so far filed in the proceedings.

[13] The Claimant failed to comply with this order. Nevertheless, at the pre-trial review hearing on 28 October 2014, the Claimant was given one last opportunity to provide full disclosure. At that hearing, the Court ordered that:

(a) Disclosure to be completed by both parties by 6 November 2015; no undisclosed documents could be relied on at trial;

(b) The parties are to file an agreed statement of the issues, facts and law by 1 November 2014. If such statement cannot be agreed, then each party is required to file their own statement;

(c) The parties are to lodge and exchange skeleton arguments by 18 November 2012;

(d) Open addresses at trial are waived and closing arguments are to be rendered immediately after trial of the matter;

(e) The Claimant is at liberty to call two witnesses;

(f) The Defendant is at liberty to call three witnesses;

(g) All witnesses are to attend cross-examination;

(h) The Defendant's witnesses, Professor Brown and Dr. Sures, are at liberty to give evidence via video-link;

(i) The costs of the successful party are to be assessed with particular regard to the conduct of the parties during the course of the litigation;

(j) Trial bundles are to be filed ten days before trial;

(k) Trial is to take place in open court; and

(l) The matter shall be listed for trial between December 2014 and February 2015 on a date to be advised by the Registrar and with a time estimate of two days.

[14] The Court emphasised that each of the foregoing directions were in nature of an unless order.

[15] Counsel for the Defendant submitted that the cumulative effect of the Claimant's continuous failure to comply with the Court orders amounts to a manifest abuse of process. The Claimant has wasted the time and resources of the Defendant and the Court.

[16] Counsel for the Defendant submitted that due to her failure to comply with the Court's orders the basis of the Claimant's valuation continues to elude the Defendant who is prejudiced by the Claimant's failure to provide full and fair notice of her case on quantum.

[17] Counsel for the Defendant submitted that in light of these contumelious breaches, the Claimant cannot rely on the evidence of any expert witness and therefore has no basis to challenge the evidence of the Defendant's expert, Professor Brown. The Claimant cannot successfully sustain her claim for damages and is estopped from disclosing and relying on any additional evidence at trial for this purpose. In the circumstances, these proceedings should not be allowed to trial and the claim should be struck out.

[18] During the course of his submissions, Counsel referred the Court to a legal opinion from Kate Beattie, a clinical negligence counsel who was instructed to provide an advice on quantum on as near an independent basis as possible. In her first advice, Ms Beattie suggested that as a consequence of the Claimant's defective pleading she considered it unlikely that the Claimant would receive an award of damages from the Court at all (see paragraph 4(h) at page 5 of Exhibit FF5). And when she was asked to provide a further advice on the basis of a finding that the Claimant had correctly pleaded her case, her conclusion, at paragraph 54 (page 29 of Exhibit FF5), gives the following breakdown:

(a) General damages: US$7,000;

(b) Dependency claim for one year: US$11,250;

(c) Funeral expenses (to be advised on receipt of any proof from the Claimant – the Defendant avers that the Claimant is out of time for providing further evidence pursuant to the Order of the Court dated 28 October 2014 and as such this element of the Claim in any event falls away); and

(d) Interest.

[19] The Defendant invites the Court to either find that the Claimant's case is in any event defective for the reasons set out in Ms Beattie's first advice and to award summary judgment to the Defendant or render judgment on quantum in the sum set out in Ms Beattie's second opinion for general damages and dependency only, that is - $ 18,250.00. He also submitted that due to the poor prosecution of the Claimant's case, the Claimant should not be awarded interest on the damages.

COURT'S ANALYSIS AND CONCLUSIONS

[20] In dealing with the Defendant's first application before the Court, it is important to consider the scope and remit of the unless orders issued by the Court at the hearing of 28th October 2014. Generally, unless orders are normally used where a party has repeatedly failed to comply with rules of court or court orders and the Court determines that this non-compliance must cease.[2]

[21] An unless order is an order which directs a party to perform some process requirements by a certain date and specifies the consequences of default. The particular consequences may vary according to the circumstances. Thus, an unless order may direct that unless a party files an expert report by a certain time, the party will not be allowed to rely on expert evidence. Alternatively, it may direct that unless a party gives disclosure by a certain time, the party's statement of case would be struck out. The latter direction is exceptional and is generally made in serious cases of contumelious failure to comply with court orders. This approach is no doubt based on the general reluctance of courts to decide a case on procedural grounds rather than on its real merits.

[22] It follows that the precise terms of the relevant unless order would be critical in determining the prescribed sanctions. As neither of the Parties in this matter has seen fit to ensure that the Court's order of the 28th October 2014 was perfected, it falls to the Court to review the text of transcript of that hearing. In doing so, it became readily apparent that while the

[2] Hytec Information Systems Ltd v Coventry City Council [1997] 1 W.L.R. 1666 at 16767

Court expressed serious concern about the way in which the Claimant has chosen to conduct this litigation and the flagrant breaches not only of the rules of court but previous court orders.

At page 48 of the Transcript, the following exchange is recorded:

The Court: Mr. Harby, I have heard you, but I am going to order the disclosure of those documents. I am going to order the disclosure of those documents. I am going to order one more extension for the filing of disclosure and I want that disclosure done within 7 days. Any document that is not disclosed within 7 days, the parties are not entitled to rely on them at the point of trial.

At page 53:

The Court: Insofar as disclosure is concerned, all documents to be used by either party to the trial are to be exchanged within seven days to today's date. I am extending time for that to the 6th of November 2014.

No other documents are to be admissible at trial.

In other words, the Claimant and the Defendant are not at liberty to rely on any documents that has been disclosed by the 6th of November 2014.

No other documents are to be admissible at trial.

In other words, the Claimant and the Defendant are not at liberty to rely on any document that has not been disclosed by the 6th of November.

And at page 56:

Now, I am sufficiently concerned about this matter, that all of these orders that I have prescribed here in terms of the timeframe, I want it made very clear that they are unless orders. If either party fails to comply with the order, you are not at liberty to rely on the relevant documents whether or not it be disclosure, skeleton or otherwise.

[23] It follows that the specific sanctions which were prescribed in the Court's order did not include a direction that the Claimant's statement of case would be struck out automatically or at all. The clear intimation was that the Claimant would not be at liberty to rely on any documents filed or exchanged outside the time prescribed by the Court. In the premises, the Claimant's application or request for entry of judgment is not maintainable and is dismissed.

Application to Strike Out

[24] Turning now to the second application before the Court which is two-pronged. First, the Applicant seeks and order that the statement of case be struck off pursuant to CPR Part 26.4. This rule provides as follows:

> 26.4 (1) **If a party has failed to comply with any of these rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".**
>
> (2)Such an application may be made without notice but must be supported by evidence on affidavit which –
>
> (a) contains a certificate that the other party is in default;
> (b) identifies the rule or order which has not been complied with; and
> (c) states the nature of the breach.
>
> (3)The court office must refer any such application immediately to a judge, master or registrar who may –
>
> (a) grant the application;
> (b) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment; or
> (c) seek the views of the other party.
>
> (4) If an appointment is fixed the court must give 7 days notice of the date, time and place of the appointment to all parties.
>
> (5) An "unless order" must identify the breach and require the party in default to remedy the default by a specified date.

(6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.

(7) **If the defaulting party fails to comply with the terms of any "unless order" made by the court that party's statement of case shall be struck out.**

(8) Rule 26.9 (general power of the court to rectify matters where there has been a procedural error) shall not apply.

[25] Under the Civil Procedure Rules, a court has ample power to strike out a claim in appropriate circumstances. Part 26. 4 is just one of the enabling provisions. The power is also to be found in Part 26.3 which provides that the Court may strike out a statement of case if it appears to the Court that there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings and in Part 26.2 (2) (w) which provides that the court may take any step or make any order for the purpose of managing the case and furthering the overriding objective or under a court's inherent jurisdiction.

[26] The Court has considered the history of the matter and the submissions of Counsel. While the Court cannot underscore enough the persistent and remarkable default of the Claimant in this litigation, it is critical in this Court's view that the relevant applications follow a clear and unambiguous acceptance of liability on the part of the Defendant. Indeed, judgment was entered for the Claimant in the matter as far back as 5th November 2012. So that the only extant issue before the Court remains the assessment of damages.

[27] In these circumstances, the Court is obliged to consider whether it is possible to strike out the case in circumstances where judgment on liability is no longer in issue. Although neither side was able to put before the Court any useful authority on this issue, it is apparent that there is relevant and recent precedent which could provide guidance. In **Purdy v Cambran,**[3] the claimant who had been involved in a road traffic accident in

[3] [2000] C.P. Rep. 67

December 1989 for which the defendant admitted liability, appealed against the striking out of his claim for personal injuries. An interlocutory judgment had been entered in the claimant's favour in September 1994 and an order made for the assessment of damages. Subsequently, considerable delays ensued during which the claimant's advisors obtained a number of medical reports in which differences of opinion were expressed as to the likelihood of him returning to work. The defendant's primary witness, an expert witness, had died in August 1998 before the matter had proceeded to trial. A judge striking out the claim had held it an abuse of the process on the grounds of delay, emanating in part from the claimant's attempts at obtaining a more favourable medical report, which had resulted in serious prejudice to the defendant.

[28] In dismissing the appeal, the English Court of Appeal held that the trial judge had taken into consideration the overriding objective of Part 1 r.1.1(2) of the 1998 Rules that the court deal with cases fairly and promptly had exercised his discretion justly in striking out P's claim. A period of 10 years had passed since the accident which had given rise to P's injuries, and it was no longer possible as a consequence of that delay to have a fair trial of the issues. The claimant's primary witness had died before the proceedings had gone to trial and the court felt that it would be unfair to substitute another witness at such a late stage. In circumstances where there had been such a delay, the judge had a wide discretion in the course of his case management capacity to strike out any claim if appropriate.

[29] It follows that notwithstanding the stage at which this application has been brought (judgment on liability having been entered in 2012), the Court does have the power to strike out the Claimant's action, thus depriving her of her damages, where the court determines that the particular circumstances of the case warrant it. And in exercising the power to strike out a claim, it is clear that the Court must have regard to the overriding objective. May LJ in **Purdy v Cambran** stated the position in the following way**:**

> "The Civil Procedure Rules are a new procedural code with an overriding objective enabling the court to deal with cases justly in accordance with

considerations which include those to be found in rule 1.1(2). One element expressly included in rule 1.1(2) as guiding the court towards dealing with cases justly is that the court should ensure, so far as is practical, that cases are dealt with expeditiously and fairly. Delay is, and always has been, the enemy of justice. The court has to seek to give effect to the overriding objective when it exercises any powers given to it by the rules. This applies to applications to strike out a claim."

[30] The Court is guided by this dictum. The gravamen of the overriding objective that "*the primary concern of the court is doing justice. Shutting out through a technical breach of the rules will not often be consistent with this because the civil courts are established primarily for deciding cases on their merits, not in rejecting then through procedural default*."[4]

[31] This no doubt explains the general reluctance on the part of the courts to impose the draconian sanction of striking out a claim. It is now established that striking out the whole of a party's statement of case is to be reserved for the most serious or repeated breaches or defaults.[5] While it is not appropriate to order the striking out of a matter where the court has available alternative and more proportionate sanctions, there are cases where there has been serious default and immediate striking out is appropriate.

[32] In **UCB Corporate Services Ltd. v Halifax (SW) Ltd.** the claimant company issued proceedings alleging professional negligence on the part of the defendant company. However, the claimant repeatedly failed to comply with the Rules of the Supreme Court and court orders. The defendant succeeded in having the case struck out on the ground that to continue would be an abuse of process. The claimant appealed, arguing that there were other punitive measures available, such as an order for costs or the deduction of a part of the interest on any damages awarded. In dismissing the appeal, the English Court of Appeal held that although other measures were within the discretion of the court, where

[4] Blackstone's 2009 Civil Practice para 46.6

[5] UCB Corporate Services Ltd. v Halifax (SW) Ltd. [1999] CPLR 691

there was a continued and blatant failure to comply with the Rules and orders of the court, striking out was the only viable option, provided it was just in the circumstances.

[33] In delivering his judgment, Lloyd LJ relied on the following quote from the Court of Appeal decision in **Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 W.L.R. 1426** at page 1436:

> "It is already recognised by Grovit v Doctor [1997] 1 WLR 640 that to continue litigation with no intention to bring it to a conclusion can amount to an abuse of process. We think that the change in culture which is already taking place will enable courts to recognise for the future, more readily than heretofore, that a wholesale disregard of the rules is an abuse of process as suggested by Parker LJ in Culbert v Stephen G Westwell [1993] PIQR P54.
>
> While an abuse of process can be within the first category identified in Birkett v James [1978] AC 297 it is also a separate ground for striking out or staying an action (see Grovit v Doctor at pp 642–643) which does not depend on the need to show prejudice to the defendant or that a fair trial is no longer possible. The more ready recognition that wholesale failure, as such, to comply with the rules justifies an action being struck out, as long as it is just to do so, will avoid much time and expense being incurred in investigating questions of prejudice, and allow the striking out of actions whether or not the limitation period has expired."

[34] In **UCB Corporate Services Ltd,** there were clearly repeated failures by the claimants to comply with their obligations under the rules and orders of the court notwithstanding repeated reminders by the defendants. There was also significant delay following the last case management conference. Although the Court of Appeal declined to go into the details of the claimant's failures, it is clear that the Court of Appeal regarded the flouting of the rules and court orders in this case as sufficiently serious to warrant the striking out.

[35] The Court must therefore consider whether the breaches of rules and orders in the case at bar are sufficiently serious to warrant striking out of claim for damages altogether. Having reviewed the unchallenged evidence of Ms Forbes, it becomes clear that apart from the late compliance with the rules for court (filing of witness statements and standard disclosure), the focal complaint of the application is the defective or incomplete disclosure which failed to show the basis of the Claimant's case on quantum such that the Defendant is prejudiced in preparing its answer to the claim.

[36] Having considered the history of the matter and the state of the Claimant's case, the Court is not satisfied that striking out the entire claim for damages would be consistent with the overriding objective. Although incomplete, it is apparent that some degree of disclosure has been carried out by the Claimant. In light of the sanction imposed by the Court at the hearing on 28th October 2014, to strike out the entire claim would not be to deal justly with this claim. The fact that critical aspects of the Claimant's case would be unsupported is in the Courts view not sufficient to warrant the striking out of the entire claim. Rather, the Court must assume that the Claimant is content to proceed to trial on the basis of the case that is currently before the Court. In the premises, the Court will dismiss this aspect of the Application.

[37] The Claimant's conduct of the litigation no doubt motivated the terms of the Court's orders on 28th October 2014. Notwithstanding this, the Claimant's attorneys failed to take the necessary steps to ameliorate their client's position and seek relief from the very obvious sanctions which could result.

[38] The Court must assume that in circumstances where a claimant has chosen not to appeal orders or directions which have been made and in circumstances where he/she has failed to properly advance a case seeking relief from sanctions, that he/she is prepared to accept the sanction imposed. It follows that after 6 November 2015, the Claimant cannot at trial advance any evidence or rely on any documents which had not been disclosed to the Defendant.

Application for Summary Judgment

[39] It is now widely accepted that applications for summary judgment and striking out may be sought in the alternative. The fact that the Defendant has been unsuccessful in striking out the application will therefore not preclude it from pursuing this alternative remedy.

[40] The Rules of Court allow for summary judgment in situations when there are no genuine triable issues between the parties. CPR Part 15 provides that a defendant may apply for summary judgment against a claimant for the claim or any issue in the claim against him to be dismissed on the basis of the evidence. In this case, the test is whether the claimant has "*no real prospect of succeeding on the claim or issue*." Together with Part 26 - **Court's General Case Management powers**, Part 15 provides the court with the power to dispose summarily of claims in furtherance of the overriding objective.

[41] In **Three Rivers DC v Bank of England (No.3) (Summary Judgment) No**. [**2001] UKHL 16**, the proper approach which the Court should adopt is set out at paragraph 95 and 158

> "In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents without discovery and without oral evidence. As Lord Woolf said in Swain v Hillman, at p 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all.

The criterion which the judge has to apply under Part 24 is not one of probability; it is absence of reality."

[42] The Defendant seeks summary judgment in the matter on the basis of the opinion advanced by his expert and the legal advice rendered by Ms. Beattie who is not a witness before this court. While the Court accepts that the Claimant has advanced no expert opinion which either supports her claim or traverses the opinion rendered by Professor Brown, the Court cannot ignore that there is evidence (witness statements) which are relevant to the issue of damages. Further, the matters at issue are such that the question of damages cannot be fairly be determined without *viva voce* evidence and without findings of credibility.

[43] In that regard, the Court notes that while Expert evidence generally plays a very important role in defending any negligence case. (Since judges do not and are not expected to have the knowledge of medical issues, they take help of experts in technical matters). The opinion of an expert is not binding on the court. The real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Court with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria.[6]

[44] While the Claimant has advanced no expert testimony which could be said to oppose the Defendant's expert, the Court cannot without more simply adopt the conclusions drawn by the Defendant's expert. As an expert witness, Professor Brown is subject to examination and cross-examination in the court. His evidence if intelligible, convincing and tested will

[6] Titli v. Jones (AIR 1934 All 237)

become an important factor for consideration along with other available evidence of the case. And notwithstanding the paucity, there is some evidence filed in this matter which appears somewhat relevant at least in part to the issue of damages. The Court will therefore continue the assessment trial in order to determine damages. Given the nature of the conduct on the part of the Claimant, I do not order costs against the Defendant even though it was unsuccessful in the Applications.

[45] By Notice of Application filed on 24th February 2015, the Claimant sought relief from sanctions pursuant of CPR part 26.8. The Court finds that the affidavit evidence filed in support of the Application is wholly inadequate and satisfies none of the constituent elements prescribed in part 26.8.

[46] That Application is therefore dismissed with costs to the Defendant in the sum of $1000.00

[47] **It is therefore ordered as follows:**

i. **The Defendant's Application for Entry of Judgment is dismissed with no order as to costs.**

ii. **The Defendant's Application to strike out the claim or Summary Judgment is dismissed with no order as to costs.**

iii. **The Claimant's application for relief from sanction is dismissed.**

iv. **The Defendant will have its costs in the sum of $1000.00.**

v. **The question of interest on the damages (if any) is reserved to the close of the assessment.**

……..……
Vicki Ann Ellis
High Court Judge