

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2005/0202

BETWEEN

BEATRIX GUMBS

CLAIMANT

AND

**COLLYMORE SAMUEL Substituted by GASNEL SAMUEL of Vermont
but presently residing at 520 Williams St. Apt 2B Brooklyn, NY 11207
pursuant to an order of court dated 21st day of October, 2015
entered on the 18th day of November, 2015.**

DEFENDANT

Appearances:

Mr. Samuel Commissiong for the claimant.

Mr. Emery Robertson Snr. for the defendant.

2016: Apr. 13
Apr. 27

DECISION

BACKGROUND

[1] **Henry, J.:** This is an application¹ by Gasnel Samuel for relief from sanctions for his failure to file his witness statements on or before 12th February, 2016, for extension of time to file them and for an order that his witness statements filed on 5th April, 2016 be deemed properly filed. Beatrix Gumbs sought leave of the court to file affidavits in response. She was granted permission to file such affidavits if any on or before 21st April, 2016. None were filed. The application is unopposed. The application is granted on both counts for the reasons outlined in this decision.

ISSUES

[2] The issues are:

1. Whether Gasnel Samuel should be granted relief from sanctions for his failure to file his witness statements within the time limited by the court?
2. Whether Gasnel Samuel should be granted an extension of time to file his witness statements and should they be deemed properly filed?

ANALYSIS

Issue 1 – Should Gasnel Samuel be granted relief from sanctions for his failure to file his witness statements within the time limited by the court?

[3] The original defendant in this matter was Collymore Samuel. He died on 19th June, 2011. By order dated 21st October, 2015, Gasnel Samuel was substituted as defendant in his place. Counsel for the defendant was ordered to serve that order and all documents in the claim on Mr. Gasnel Samuel. By further order dated 27th January, 2016, the trial date was set for 12th May, 2016 and Mr. Samuel was ordered to file his witness statement on or before 12th February, 2016. He did not comply with that order. He filed his witness statements on 5th April, 2016. He now seeks relief from sanctions for his non-compliance.

¹ Filed on 8th April, 2016.

[4] In his application, Mr. Samuel states that neither he nor his witness could be reached to give their witness statements. He deposed that he lives in Brooklyn, New York and has not been enjoying the best of health lately. Consequently, he was unable to go before a Notary Public to swear his affidavit. He deposed further that due to work, he could not be reached by his lawyer. He indicated that his witness who lives in a different state could not be contacted either. Mr. Samuel did not say what prevented him from contacting his lawyer and his witness nor has he said what attempts were made to contact them.

[5] The court has broad discretion to grant relief from sanctions for non-compliance with its order or a rule. However, such relief will be granted only if the court is satisfied that the failure was unintentional, with good reason and the applicant has generally complied with rules, practice directions and orders.² In the exercise its discretion under the CPR, the court is required to act judicially³ in accordance with well-established principles and give effect to the overriding objective to act justly.⁴ It must also consider the degree of prejudice the respective parties will suffer, by its decision.⁵ In doing so, the court considers all relevant factors, including the reasons for non-compliance and the length of the delay

Length of and reasons for delay

[6] Mr. Samuel's delay in filing this application is relatively short. It was made just over a month after the deadline. His explanation is not as comprehensive as it could have been and it lacks certain details. Further, in some respects it is contradictory. In this regard, the court notes that Mr. Samuel appears

² The Civil Procedure Rules 2000, ("CPR"), 26.8 (2). See also C.O. Williams Construction (St. Lucia) Co. Ltd. v. Inter-Island Dredging Co. Ltd. SLUHCVAP 2011/017.

³ Fok Hei Yu and John Howard Batchelor v Basab Inc. et al BVIHCMAP2014/0010.

⁴ CPR Part 1.2 (a).

⁵ John Cecil Rose v Anne Marie Uralis Rose SLUHCVAP2003/0019.

to have made it out to work during the period he claims he was unable to see a notary public. He also did not indicate any challenges with contacting his lawyer during that time, nor did he explain why his application for an extension of time was not made before the deadline. However, it provides a satisfactory explanation, if in reality his illness and presence at work occurred at different times. On one possible interpretation of his averments, this is conceivable.

Effect of delay and degree of prejudice to the parties

[7] This claim was initiated in 2005. It is one of the older cases in the system. Mr. Samuel came into the matter only after the death of the original defendant. It is therefore understandable that he might have encountered some challenges as he explained. Both parties are perhaps no doubt eager to have this matter finally resolved. Mr. Samuel did not indicate whether he served his witness statements on Beatrix Gumbs and if so, when. If he did, Ms. Gumbs would have had the opportunity to review their contents and conduct further inquiries to enable her to respond to them at trial. Even at this juncture, this can still be achieved if the witness statements are served within the next 3 days.

[8] If the requested relief is refused, Mr. Gasnel Samuel and Collymore Samuel's estate would be denied the opportunity to mount a fulsome defence and would conceivably have judgment entered against him. Beatrix Gumbs would not be hampered in making her case if the application is granted. Any inconvenience caused to Ms. Gumbs by such grant can be adequately cushioned by a costs order. In either event, the trial may proceed as scheduled. Furthermore, Gasnel Samuel has complied with all other rules and orders. Accordingly, his application for relief from sanctions is granted.

Issue 2 – Should Gasnel Samuel be granted an extension of time to file his witness statements and should they be deemed properly filed?

[9] The court may enlarge time for complying with the rules or a court order.⁶ In the event of failure to comply with a court order, the court may also make an order to put things right.⁷ An applicant must

⁶ Rule 26.1 (2) (k) of the CPR.

⁷ CPR 26.9 (3).

as a general rule apply to the court before the deadline,⁸ or apply for relief from sanctions.⁹ Mr. Samuel's application includes a prayer for relief from sanctions.

[10] When exercising its discretion under the CPR, the court must consider all relevant factors, including the reasons for non-compliance and the length of the delay. It must also consider the degree of prejudice the respective parties will suffer, from its decision to grant or deny the application.¹⁰ I have already considered some of those matters. I will examine the parties' respective statements of case and chances of success.

Likelihood of success

[11] Beatrix Gumbs' claim is for possession of a parcel of land and damages for trespass. Mr. Samuel has disputed her ownership and possession of the land and countered that he has occupied it by authority of the rightful owner, Grenville Ballah. He has challenged Ms. Gumbs' title as being illegal and invalid. He lodged a counterclaim for damages and an injunction. The parties' respective chances of success would depend in large measure on issues of fact and by extension the evidence advanced and credibility of their witnesses. Either party may prevail. In view of all the circumstances, I find that it is just to grant relief of sanctions to Gasnel Samuel for his failure to file his witness statements within the time limited by the court order.

ORDER

[12] It is accordingly ordered:

⁸ CPR 27.8(3).

⁹ See CPR 27.8 (4).

¹⁰ See John Cecil Rose and C. O. Williams' cases.

1. Gasnel Samuel's application for relief from sanctions and extension of time to file his witness statement is granted.
2. The witness statements of Gasnel Samuel and Christa O. Gumbs are deemed to have been properly filed.
3. Gasnel Samuel shall on or before 29th April 2016, serve the witness statements of Gasnel Samuel and Christa O. Gumbs on Beatrix Gumbs and file proof of service.
4. Gasnel Samuel shall pay assessed costs to Beatrix Gumbs of \$550.00, pursuant to CPR 65.11.

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Esco L. Henry
HIGH COURT JUDGE