[2019] JMRC 2

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE REVENUE COURT

REVENUE COURT APPEAL NO. 8 OF 2015

BETWEEN	**J. WRAY & NEPHEW LIMITED**	**APPELLANT**
AND	**COMMISSIONER OF TAXPAYER APPEALS DEPARTMENT (NOW REVENUE APPEALS DIVISION, MINISTRY OF FINANCE & PLANNING)**	**RESPONDENT**

IN OPEN COURT

Mr. Jerome Spencer and Mrs. Vanessa Young instructed by Patterson Mair Hamilton for the Appellant

Ms. Lisa White instructed by Hazel Edwards for the Respondent

Heard: 17th May, 20th July, 2017 & 16th April, 2019

Revenue Appeal–Respondent's Notice of Application to strike out Appeal for the Appellant's failure to comply on time with Pre-Trial Review Orders - Rule 26.3 (1) (a) of the Civil Procedure Rules - Whether striking out the most appropriate sanction - Appellant's Notice of Application for Extension of Time to comply with Pre-Trial Review Orders.

Cor: Rattray, J.

THE BACKGROUND

[1] The Appellant, J. Wray & Nephew Limited, has filed this Appeal on the 2nd October, 2015, to challenge the decision of the Respondent, The Commissioner of Taxpayer Appeals Department (now the Revenue Appeals Division), dated the 3rd

September, 2015. In that decision, the Respondent found *inter alia*, that the Appellant had incorrectly misused Free Codes 33.01 and 33.25, in the importation of skimmed milk powder which is used in the production of its rum cream, which resulted in the underpayment of custom duties to the Government. The Respondent ultimately upheld the earlier decision of the Commissioner of Jamaica Customs Agency and found that the assessment of duties by the said Commissioner was not erroneous.

[2] The Pre-Trial Review for this matter was originally fixed by the Registrar of the Revenue Court for hearing on the 20th July, 2016. On that date, it was adjourned to the 21st September, 2016, on the application of Counsel for the Respondent, Ms. White. The adjournment was sought to enable Counsel time to serve the Appellant's Attorneys-at-Law with an Application for Extension of Time filed on behalf of her client on the 20th July, 2016. She indicated to the Court that this Application was necessary, as she had not filed all the relevant documents in response to the Appeal, in particular her client's Statement of Case, by the time stipulated by the **Revenue Court Rules 1972 (Revenue Rules)**.

[3] Subsequently, on the 21st September, 2016, the Pre-Trial Review, together with the Respondent's Application for Extension of Time was adjourned to the 25th October, 2016. When both matters came before the Court on the 25th October, 2016, the Court granted the Respondent an extension of time within which to complete the filing and serving of its documents in respect of the Appeal. In addition, the Court also made, *inter alia*, the following Pre-Trial Review Orders: -

> *"…*
>
> *3. Permission granted to the Respondent to file and serve further Affidavit on or before 1st November, 2016 by 4 pm indicating the reason for the delay in filing the Statement of Case;*
>
> *4. The time for the filing of the Respondent's Statement of Case be extended to the 21st April, 2016 on condition that Order # 3 is complied with;*
>
> *5. Permission granted to the Respondent to file and serve further Statement of Case, if necessary, on or before 30th November, 2016 by 4 pm;*

6. Permission granted to the Appellant to file and serve reply on or before 9th January, 2017 by 4 pm;

7. Matter set for trial on the 21st February, 2017 for 3 days;

8. Permission granted to the Appellant to file and serve Affidavits in Support on or before the 2nd December, 2016 by 3 pm;

9. Permission granted to the Respondent to file and serve Affidavits in Response on or before 20th January, 2017 by 3 pm;

10. Skeleton Submissions together with a List of Authorities being relied on by the parties to be filed and served on or before 10th February, 2017 by 3 pm;

11. Copies of the Skeleton Submissions as well as copies of Authorities relied on to be prepared in a Judge's Bundle by each side, and a copy of said Bundles together with the Core Bundle delivered to the Judge's Clerk on or before 14th February, 2017 by 4pm;

12. This Order is to be filed by the Appellant's Attorneys-at-Law and served on the Respondent's Attorney-at-Law;

13. Costs awarded to the Appellant with respect to the Application to enlarge time for the filing of Statement of Case, such costs to be taxed if not agreed."

[4] Thereafter on the 9th February, 2017, the Respondent filed an Amended Notice of Application for Extension of Time within which to comply with the Pre-Trial Review Orders, made by the Court on the 25th October, 2016. This Application was set to be heard on the 15th February, 2017. On that occasion, Counsel Mr. Spencer indicated to the Court, that he was in an embarrassing position, in that he had not complied with the Pre-Trial Review Orders, as he was overtaken with other matters in the Court of Appeal. He also indicated to the Court, that he would not be able to comply with the Pre-Trial Review Orders in time for the start of the trial. As such, he requested that the trial dates be vacated, and that new dates be fixed.

[5] After due consideration of Mr. Spencer's application, the Court extended the time for compliance with the Pre-Trial Review Orders and made the following Orders: -

"1. Trial date of the 21st February, 2017 for 3 days vacated;

2. New trial date set for the 16th May, 2017 for 3 days;

3. Time for Respondent to file and serve Statement of Case further extended to the 31st December, 2016;

4. Time for Appellant to file and serve Affidavits in Support extended to the 17th March, 2017 by 3 pm;

5. Time for the Respondent to file and serve Affidavits in Response extended to 17th April, 2017 by 4 pm;

6. No Further Affidavits to be filed by either side after 1st May, 2017 without the leave of the court;

7. Time for parties to file and serve Skeleton Submissions together with a List of Authorities being relied on extended to 10th May, 2017 by 4 pm;

8. Time for the parties to each prepare and deliver a Judge's Bundle as well as a Core Bundle to the Judge's Clerk extended to 12th May, 2017 by 12noon;

9. This Order is to be filed by the Appellant's Attorneys-at-Law and served on the Respondent's Attorney-at-Law;

10. Costs to be costs in the Appeal."

THE APPLICATIONS BEFORE THE COURT

[6] When the matter came up for trial on the 16th May, 2017, Counsel Ms. White on behalf of the Respondent advised the Court that she had just filed an Application to be heard as a Preliminary Objection at the trial. In that Application the Respondent sought the following reliefs: -

a) That the Court abridges the time for the making of this Application;

b) That the Court determines the Appeal in favour of the Respondent;

c) In the alternative, that the Appeal be struck out;

d) Costs and wasted costs awarded to the Respondent.

[7] The grounds relied on by the Respondent were as follows: -

a) The Court made an Order that no further Affidavits are to be filed by either side after 1st May, 2017 without the leave of the Court;

b) The Appellant first served the Respondent's Counsel with an Affidavit in Support of its Appeal on the afternoon of 12th May, 2017;

c) The Appellant has otherwise failed to comply with the Orders of the Court;

d) The Appellant has failed to apply for any extension of time to comply with the said Orders of the Court;

e) The Appellant's inordinate delay in pursuing the Appeal and in complying with the Rules of Court is prejudicial to the Respondent in this Appeal and the good administration of the customs laws; the assessment having been done for the period 2007-2009 inclusive;

f) The Respondent was only made aware of the Appellant's intention to proceed on being served with Court documents on 12th May, 2017;

g) Granting the Orders being sought will further the overriding objective in this matter.

[8] The Court having just been made aware of the Respondent's Application on the morning of the trial, adjourned the said Application to the 17th May, 2017. The Court heard submissions from the parties on the 17th May, 2017, and thereafter reserved its ruling to the 18th May, 2017. On that date, Counsel Mr. Spencer informed the Court that he had filed an Application on that same day, seeking an extension of time within which to comply with the Pre-Trial Review Orders made on the 15th February, 2017. Mr. Spencer's Application, in essence, sought to cure the matters complained of earlier by Counsel Ms. White in her Application filed on the 16th May, 2017.

[9] The Appellant in its Application sought the following Orders: -

1. Time be extended for the Appellant to file its Affidavit in Support of this Appeal;

2. Time be extended for the Appellant to file its Skeleton Submissions and List of Authorities;

3. The Affidavit of Andre Sterling filed on the 12th May, 2017 be permitted to stand;

4. The Appellant's Skeleton Submissions filed on the 12th May, 2017 be permitted to stand;

5. Costs of the Application to be costs to the Respondent to be paid by the Appellant's Attorneys-at-Law.

[10] The grounds relied on by the Appellant were as follows: -

1. The Appellant failed to file its Affidavit in Support of the Appeal and Skeleton Submissions in time. This failure was attributable to its Attorneys-at-Law;

2. The prejudice to the Respondent, if any, by virtue of the delay is not material;

3. The overriding objective, and the interest of justice favours the grant of the Orders;

4. The Application is made pursuant to the **Revenue Court Rules** and Parts 25 and 26 of the **Civil Procedure Rules (CPR)**, in so far as is applicable.

THE SUBMISSIONS MADE ON BEHALF OF THE PARTIES

The Respondent's Application to strike out the Appeal

[11] Counsel Ms. White on behalf of the Respondent cited Rule 18 (1) of the **Revenue Court Rules**, which provides that: -

> *"A Respondent intending to rely upon a preliminary objection to the hearing of an Appeal shall, not less than three clear days prior to the hearing, serve on the Appellant and file a notice setting out the grounds of objection."*

She contended that her Application was not filed within the time stipulated by the **Revenue Rules**, and urged the Court to abridge the time based on the particular circumstances of the matter.

[12] She submitted that the Appellant was to file its Affidavits in Support of its Appeal by the 17th March, 2017 by 3pm, which it failed to do, and a grace period was given by the Court up to the 1st May, 2017. Again, the Appellant failed to meet that deadline. Counsel further submitted that the Court ordered that no Affidavits were to be filed by either side, after the 1st May, 2017, without the leave of the Court. The Appellant she contended filed the Affidavit of Andre Sterling on the 12th May, 2017, in contravention of the time frame stipulated by the Court. In light of this, she argued that there was no Affidavit evidence before the Court on behalf of the Appellant, as no Application has been made seeking permission to have the Affidavit of Andre Sterling stand as filed in time.

[13] Counsel insisted that the Appellant has no standing before this Court, and without any evidence to support its Notice of Appeal, there would be no basis on which the Court could rely on the Appellant's case, so as to determine the Appeal in its favour. The Appellant, she further insisted, would not be able to discharge its burden of proof without any Affidavit evidence before the Court, and it was therefore absurd, not to strike out the Appeal at this stage.

[14] Ms. White argued that the Appellant's Skeleton Submissions, due on the 10th February, 2017, and its List of Authorities, were also filed out of time on the 12th May, 2017. She submitted that her client was in a precarious position, as the Respondent's Skeleton Submissions and Affidavits filed in response, were done as holding documents in a vacuum, having not received any documents from the Appellant. The conduct of the Appellant she contended, has affected her client's abilities to properly comply with the Pre-Trial Review Orders. She maintained that her client was non-compliant with the initial Pre-Trial Review Orders made by the Court on the 25th October, 2016, due to the Appellant's failure to file the necessary documents, so that her client could properly respond to them.

[15] She further argued that there were no provisions in the **Revenue Rules** which allow for relief from sanction. She referred however, to Rule 40 of the **Revenue Rules**, which reads: -

> *"Except as otherwise provided in the Act or in these Rules or in any enactment, the practice and procedure of the Supreme Court shall, so far as applicable, be followed."*

[16] This Rule she submitted made provision for the Rules of the Supreme Court, that is, the **CPR** to apply, in situations where the **Revenue Rules** make no such provision. She contended that Part 26 of the **CPR**, dealing with the Court's powers of case management, would be applicable in the circumstances of the instant case. The Appellant, she submitted, would have had to make an Application to the Court for relief from sanction to regularize its position. This the Appellant has failed to do. Furthermore, the Appellant she contended has not filed any Application seeking an extension of time within which to comply with the Pre-Trial Review Orders. She maintained that the Appellant's delay in complying with the Orders of the Court has greatly prejudiced her client.

[17] Counsel Ms. White further contended that Rule 19 (1) of the **Revenue Rules**, does not limit the power of the Court to strike out an Appeal, only in circumstances where the Appellant does not appear. That particular Rule provides as follows: -

> *"If the Appellant fails to appear when his Appeal is called on for hearing, the Appeal may be struck out or dismissed with or without costs or the Court may make such other order as it thinks just or may proceed to hear the appeal ex parte."*

She submitted that in looking at the **Revenue Rules**, it does not outline what flows from the non-compliance of the Orders of the Court and so the **CPR** would supplement the **Revenue Rules** in that regard.

[18] Counsel further contended that where there is an implied sanction, and a party wishes to make an Application for Relief, the Court would have to look, *inter alia*, at the nature of the Applicant's compliance, the length of the delay, the explanation for the delay or lack thereof, whether the failure to comply was intentional, whether the delay was the Applicant's fault, the merits of the Appeal, the prejudice to the parties and the administration of justice. She argued that the non-compliance by the Appellant was significant, as this was the second hearing date set for the Appeal, and the second opportunity for the Appellant to file the required documents. She maintained that no

explanation was given to the Court for the delay, and nothing placed before the Court to determine whether the failure was intentional or the fault of the Appellant.

[19] She further argued that the Appellant's Skeleton Submissions contained materials that were not in its Notice of Appeal, and her client would not have addressed its mind to the new information. The Appellant she indicated was not being mindful of the efficient use of the Court's time, in furthering the overriding objective to ensure that the parties are on equal footing.

[20] In addition, she submitted that any Application for Extension of Time or Relief from Sanction would need to be a formal Application in writing, and not an oral Application. She insisted that on a perusal of Rule 32 of the **Revenue Rules**, one would expect that the Appellant would have filed a formal Application, and set out the principles the Court should consider when granting an extension of time. Rule 32 of the **Revenue Rules** states that: -

> *"The Court or Judge may on the application of any party by way of summons enlarge or abridge the time for doing any act or taking any proceedings under these rules or under any other rules of procedure governing the exercise of the jurisdiction of the Court or Judge upon such terms as it may think fit; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, or the Court or Judge may direct a departure from the rules in any other way, where this is required in the interest of Justice."*

[21] In order to bolster her contention that the Appeal should be struck out for the Appellant's failure to comply with the Orders of the Court, Counsel for the Respondent cited and relied on the Court of Appeal decisions of **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ. 21, and **H. B. Ramsay and Associates Ltd and Others v Jamaica Redevelopment Foundations Inc and Another** [2013] JMCA Civ. 1.

[22] She argued that in **The Commissioner of Lands v Homeway Foods Limited**, the Court of Appeal weighed in the balance the Court's ability to extend time, against its mandate in the administration of justice. The Court she argued, found that the Appellant did not comport itself in a manner that justified an extension of time. Similarly, she

submitted that the Appellant in the instant matter has not conducted itself in a manner where an extension ought to be granted, and as such the Appeal ought to be struck out.

[23] Mr. Spencer on behalf of the Appellant in his response, acknowledged that the appropriate course, was for him to make a written Application to have the Affidavit of Andre Sterling and the Skeleton Submissions filed out of time stand. He submitted that there was no reason why the Respondent's Application could not have been made before the date set for the hearing of the Appeal. He also insisted that the Application had not been filed within three (3) clear days as provided by the **Revenue Rules**.

[24] The appropriate sanction, if any, he argued for the late filing of the Affidavit of Andre Sterling, would be to preclude his client from relying on the said Affidavit, and not to strike out the Appeal. He submitted that the course which Counsel Ms. White has embarked upon, would be very draconian in the circumstances. Counsel Mr. Spencer argued that even where there has been some delay, the Courts have always been reluctant to strike out a party's case, if some other intermediate step can be taken. He further argued that there was no reason why the Appeal could not be heard, even if it meant that the Appellant would be precluded from being able to rely on the Affidavit of Andre Sterling. The Pre-Trial Review Orders in relation to the filing of Affidavits he submitted, suggest that if you file an Affidavit out of time, you cannot rely on it, not that the Appeal should be struck out.

[25] Mr. Spencer maintained that he need not rely on the Affidavit of Andre Sterling, because the Affidavits filed on behalf of the Respondent contained the same information as that outlined in the said Affidavit. He indicated to the Court that the factual basis on which his client's Appeal rests was already before the Court in the Respondent's Affidavits, and consequently, if his client was not permitted to rely on the Affidavit of Andre Sterling, it would not be greatly prejudiced.

[26] Counsel further submitted that Rule 19 (1) of the **Revenue Rules**, was the only Rule that gave the Court the power to strike out an Appeal. He argued that there are provisions of the **CPR** that apply to Revenue matters, but not all the Rules of the **CPR**

apply to such matters. He maintained that Rule 40 of the said **Revenue Rules** specifically highlights that point. Counsel submitted that in the circumstances, where there is an express provision in the **Revenue Rules** indicating when an Appeal may be struck out, the necessary implication is that Rule 26.3 of the **CPR** would not apply to Revenue matters.

[27] In relation to the issue of prejudice, Mr. Spencer contended that there was nothing in the Affidavit of Krystal Corbett filed on the 16th May, 2017 in Support of the Respondent's Notice of Application, that indicated that the Respondent needed time to respond to anything factual in the Affidavit of Andre Sterling. If that was the case, the deponent ought to have identified what it was that the Respondent needed time to respond to.

[28] Moreover, Counsel Mr. Spencer maintained that the Affidavit of Andre Sterling raised no new facts before the Court. He submitted that no new Grounds of Appeal were raised in his client's Skeleton Submissions, and that there was no deviation from the scope of his client's case as contained in its Notice of Appeal. He contended that the late filing, even if it expanded the Grounds of Appeal, would not be prejudicial to the Respondent

[29] Additionally, Mr. Spencer argued that there are specific provisions in the **Revenue Rules** for the withdrawal of an Appeal, and it was very unusual that Counsel for the Respondent would have thought that the Appellant was not pursuing the Appeal. The Respondent he maintained, made no enquiries to ascertain if the Appeal was being abandoned, but nonetheless took steps to file and serve its documents, which clearly indicated that the Appeal was not being abandoned by the Appellant.

[30] On the issue of relief from sanction, Counsel for the Appellant contended that there was no sanction imposed by the Court on the 15th February, 2017, as regards failing to comply with the Pre-Trial Review Orders. The Order made was that permission was needed to file any Affidavits after the 1st May, 2017. This Counsel submitted, was

not a sanction. It only emphasized the need for an Application to be made for an extension of time to rely on any Affidavit filed after that date.

[31] He also referred to the earlier cited case of **H. B. Ramsay and Associates Ltd** and submitted that in that case, there was an express sanction of a striking out. However, in the instant case, there is no such sanction and as a result, that case was distinguishable from the matter before the Court. Similarly, he argued that the case of **The Commissioner of Lands v Homeway Foods Limited** was distinguishable, because in that case, the Appellant was non-compliant with the Orders of the Court, while in the instant matter, the Appellant had complied with the Pre-Trial Review Orders, although admittedly late.

The Appellant's Application for Extension of Time

[32] At the outset, Mr. Spencer in his submissions conceded that the Affidavit of Andre Sterling and the Skeleton Submissions of his client were in fact filed out of time, in breach of the Orders of the Court. He argued that an explanation was provided for the late filing of the documents, although he admitted, that the said explanation was an unacceptable one. He maintained however, that it does amount to an explanation.

[33] He further argued that the authorities have indicated that even if the explanation provided for the non-compliance was inadequate, it does not mean that the extension of time ought not to be granted. In support of this position he relied on the case of **Peter Haddad v Donald Silvera**, SCCA No. 31/2003 Motion 1/07, a judgment delivered on the 31st July, 2007, where Smith JA at page 12 opined that: -

> *"As has already been stated the absence of a good reason for delay is not in itself sufficient to justify the court in refusing to exercise its discretion to grant an extension…"*

[34] Counsel also maintained that the explanation provided in the instant matter has been held to be a good, if not adequate reason, in the Court of Appeal decision of **CVM Television Ltd v Tewarie**, SCCA 46/2003, a judgment delivered on the 11th May, 2005. In that case P. Harrison JA at page 7 indicated that: -

> *"In the instant case, although the reason given for the delay, namely: "…due to oversight and the heavy work schedule…" was good but not altogether adequate, it is not entirely nugatory. The delay was not that of the respondent. The interest of the respondent not to be excluded from the appeal process due to the fault of his counsel, is an aspect of doing justice between the parties."*

[35] Mr. Spencer further submitted that a litigant ought not to be punished for the unintentional mistake of its Attorney-at-Law. In this regard, he relied on the case of **Jamaica Public Service Company Limited v Rose Marie Samuels** [2010] JMCA App 23, in which Morrison JA (as he then was), cited the dictum of Lord Denning MR in **Salter Rex & Co v Ghosh** [1971] 2 All ER 865, who stated at page 866 that *"We never like a litigant to suffer by the mistake of his lawyers."*

[36] In relation to the issue of prejudice to the Respondent, Counsel Mr. Spencer argued that there was none. He submitted that the contention by the Respondent that the Affidavit of Andre Sterling raised new issues that the Respondent would like to respond to was incorrect, as the information in the Affidavit of Andre Sterling is already before the Court as set out in the Affidavits filed on behalf of the Respondent. The Affidavit of Andre Sterling he argued, sought to summarize certain documents that were exhibited to the Respondent's Affidavits, and as such, raised no new issues of facts that would require a response from the Respondent.

[37] Furthermore, he argued that the period of delay in complying with the Pre-Trial Review Orders was not significant. Counsel insisted that the Court must balance the need for the parties to comply with time limits, with the need to ensure that a party who has a real prospect of success on Appeal is not deprived of the opportunity to be heard on the merits of its Appeal.

[38] On the issue of the prospect of success, Mr. Spencer submitted that his client has a good prospect of success on its Appeal. He argued that if the Respondent was of the view that the Appellant did not have a good chance of success, the Respondent could have applied for Summary Judgment. No such step was taken and Counsel maintained that this clearly suggested that there is merit in the Appeal. In this regard,

Mr. Spencer cited the above mentioned case of **Jamaica Public Service Company Limited** and adopted the view of Morrison JA where he indicated that: -

> *"[29] From a reading of the judgment of Williams J (Ag) and the material placed before us in the written and oral submissions of both the applicant and the respondent, I am quite unable to say that there is no merit in the proposed appeal in this matter…"*

[39] In concluding his submissions, Mr. Spencer indicated that there might be a possibility, in respect of the Affidavit of Andre Sterling, that the Pre-Trial Review Order might have amounted to a sanction. If so, Counsel urged the Court to grant his client relief from sanction. Mr. Spencer also prepared Written Submissions in this regard, which I have considered, but will not repeat for reasons which have been outlined later in this judgment.

[40] Counsel Ms. White in her reply contended that it is unfortunate that the Appellant tried to ascribe blame to the Respondent, for its failure to comply in time with the Pre-Trial Review Orders. The Appellant she argued has confused the actions of the Respondent, with its own obligation of compliance with the Orders of the Court.

[41] She further submitted that the **Revenue Rules** do not provide for the situation where an Appellant does not file its Affidavits in Support of its Appeal. Further, she argued that there was no indication from the Appellant as to whether it was still pursuing the Appeal. Ms. White also argued that the unsigned and undated Affidavit of Andre Sterling emailed to her on the 11th May, 2017, does not in and of itself, constitute notice of an intention to pursue with the Appeal.

[42] Counsel for the Respondent argued that the submissions of Counsel for the Appellant, in contending that had her client served its Affidavits on the Appellant, there would have been no need for the Appellant to file the Affidavit of Andre Sterling, was untenable. The Respondent she submitted, cannot furnish evidence on behalf of the Appellant, as it was the Appellant's Appeal, and each party has its own case to put forward. She insisted that such a contention showed that the Appellant had no intention to comply with the Orders of the Court.

[43] She also contended that an Application for Extension of Time cannot properly be treated as an Application for Relief from Sanction. Counsel expressed the view that the requirements under the **CPR** for such latter mentioned Application are quite different. She maintained that the contents of the Appellant's Affidavit filed in support of an Order for an extension of time cannot be relied on to support an Application for Relief from Sanction. She submitted that in relation to an Application for Relief from Sanction, Rule 26.8 of the **CPR** would be applicable, as that Rule outlined the criteria to be considered by the Court. She argued that where a litigant is wanting in any of the criteria, then the Application must necessarily fail. Rule 26.8 of the **CPR** provides as follows: -

> *"(1) An application for relief from any 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*
>
> *relevant rules, practice directions, orders and directions.*
>
> *(3) In considering whether to grant relief, the court must have regard*
>
> *to -*
>
> *(a) the interests of the administration of justice;*
>
> *(b) whether the failure to comply was due to the party or that*
>
> *party's attorney-at-law;*
>
> *(c) whether the failure to comply has been or can be remedied within a reasonable time;*
>
> *(d) whether the trial date or any likely trial date can still be met if relief is granted; and*
>
> *(e) the effect which the granting of relief or not would have on each party.*

> *(4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown."*

[44] In addition, Ms. White argued that the conduct of Counsel for the Appellant, Mr. Spencer, was not a factor to be considered by the Court on an Application for Extension of Time or on an Application for Relief from Sanction. The relevant factors to be considered, she submitted, were outlined by McDonald-Bishop JA (Ag) (as she then was), in the earlier mentioned case of **The Commissioner of Lands v Homeway Foods Limited**, where she stated that: -

> *"[44] Some of the relevant considerations that govern the question of whether an extension of time should be given to a party in default have been laid down in several cases from this court. These principles have been distilled and outlined as follows:*
>
> *(i) Rules of court providing a timetable for the conduct of litigation must, prima facie, be obeyed.*
>
> *(ii) Where there has been non-compliance with a timetable, the court has a discretion to extend time. The court enjoys a wide and unfettered discretion under CAR, rule 1.7(2)(b) of the CAR to do so.*
>
> *(iii) The court, when asked to exercise its discretion under CAR, rule 1.7(2)(b), must be provided with sufficient material to enable it to make a sensible assessment of the merits of the application.*
>
> *(iv) If there is non-compliance (other than of a minimal kind), that is something which has to be explained away. Prima facie, if no excuse is offered, no indulgence should be granted.*
>
> *(v) In exercising its discretion, the court will have regard to such matters as:*
>
> *(a) the length of the period of delay;*
>
> *(b) the reasons or explanation put forward by the applicant for the delay;*
>
> *(c) the merits of the appeal, that is to say, whether there is an arguable case for an appeal; and*
>
> *(d) the degree of prejudice to the other party if time is extended.*
>
> *(vi) Notwithstanding the absence of a good reason for the delay, the court is not bound to reject an application for extension of time.*
>
> *(vii) The overriding principle is that justice is done."*

[45] Counsel further argued that there was insufficient evidence before the Court, to show that the failure of the Appellant to comply in time with the Pre-Trial Review Orders, was not intentional. She pointed out that it was not correct to just state a reason for the delay, as what the Court requires is that a good explanation be proffered. Ms. White submitted that the Court of Appeal decisions of **The Commissioner of Lands v Homeway Foods Limited** and **Peter Haddad** are to be preferred over the decision of **Tewari**, as they show that the Court of Appeal has moved from the position that oversight and heavy workload could constitute a good explanation.

[46] Furthermore, she contended that the Appellant has not acted promptly in making its Application, because even after it realized that its documents were filed out of time, the Appellant did nothing. The Appellant she insisted filed its Application for Extension of Time belatedly, in light of the Respondent's Application to strike out the Appeal. As a result, she submitted that the Appellant has caused considerable delay in having the Court dispose of the Appeal.

[47] In concluding her submissions, Counsel argued that the Appellant does not have an arguable case on Appeal, nor does it have a realistic prospect of success. She insisted that the Appellant's late compliance prejudiced her client from properly responding to the Affidavit of Andre Sterling and this has prevented the Appeal from proceeding.

ANALYSIS AND DISCUSSION

[48] Before I address the respective Applications before the Court, I wish to comment on a preliminary point based on the submissions of Counsel Mr. Spencer. In his submissions, Counsel contended that if the failure of his client to file its Affidavits by the stipulated time amounted to a sanction then his client's Application for Extension of Time filed on the 18th May, 2017, can properly be treated by this Court, as an Application for Relief from Sanction.

[49] The Orders made by the Court on the 15th February, 2017, gave deadlines for the parties to file their respective Affidavits and thereafter gave a final deadline by which all further Affidavits were to be filed. If any Affidavit was filed after the deadline, then permission would have had to be sought from the Court for that Affidavit to be allowed to stand. Mr. Spencer failed to meet both deadlines set for his client to file its Affidavits. Nonetheless, he proceeded to file the Affidavit of Andre Sterling out of time on the 12th May, 2017, without seeking the Court's permission for the said Affidavit to be allowed to stand. Similarly, the Appellant's Skeleton Submissions and List of Authorities, were also filed out of time on that same date.

[50] The Order in relation to the filing of the Appellant's Affidavits does not provide an express sanction if it failed to comply. Nevertheless, it cannot be too often stated that Orders of the Court must be obeyed. The Order also mandated that the Appellant should file no further Affidavit after the 1st May, 2017, unless permission was sought and received from the Court. This position contemplated, that if the Appellant filed an Affidavit after the deadline and wished to rely on it, then it would have to file an Application seeking an extension of time to have the Affidavit stand as filed out of time.

[51] The position in the instant matter was different from that which occurred in the case of **Charles Vernon Francis v Columbus Communications Jamaica Limited (trading as FLOW) and Jamaica Public Service Company Limited** [2016] JMSC Civ. 218. In that case, the First Defendant had failed to file and serve its Witness Statements by the time stipulated by the Court. That failure was a breach of Rule 29.11(1) of the **CPR**, which provides an express sanction for such a failure in the following terms: -

> *"Where a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court then the witness may not be called unless the court permits."*

[52] Therefore, in that case the First Defendant had breached the Order of the Court, which provided for an automatic and express sanction pursuant to Rule 29.11(1) of the **CPR**. In those circumstances, the appropriate Application to be made was one for relief from sanction. With respect to the instant matter, I am satisfied that the appropriate

Application to be made was for an extension of time and not one for relief from sanction, as no penalty was mandated for a breach of the Court Order.

[53] In the previously cited case of **The Commissioner of Lands v Homeway Foods Limited**, McDonald-Bishop JA (Ag) was faced with the same Applications now before this Court. The learned Judge of Appeal dealt with the Application for Extension of Time before considering the Application to strike out the Appeal. In the circumstances, I am prepared to adopt that approach of the learned Judge of Appeal in the instant matter.

[54] The guiding principles to be contemplated by the Court with respect to an Application for Extension of Time, can be found in the well-known and oft-cited case of **Leymon Strachan v Gleaner Co Ltd and Dudley Stokes**, Motion No. 12/1999, a judgment delivered on the 6th December, 1999. In that case Panton JA (as he then was), at page 20 outlined the principles as follows: -

> *"The legal position may therefore be summarized thus:*
>
> *(1) Rules of court providing a time-table for the conduct of litigation, must, prima facie, be obeyed.*
>
> *(2) Where there has been a non-compliance with a time table, the Court has a discretion to extend time.*
>
> *(3) In exercising its discretion, the Court will consider-*
>
> > *(i) the length of the delay;*
> >
> > *(ii) the reasons for the delay;*
> >
> > *(iii) whether there is an arguable case for an appeal and;*
> >
> > *(iv) the degree of prejudice to the other parties if time is extended.*
>
> *(4) Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time, as the overriding principle is that justice has to be done."*

[55] The Court of Appeal in the case of **Fiesta Jamaica Limited v National Water Commission** [2010] JMCA Civ. 4, approved the dicta of Lightman J in the case of the **Commissioner of Customs & Excise v Eastwood Care Homes (Ilkeston) Limited**

and Ors [(2000) Times, 7th March (a judgment delivered on the 18th January 2000)], where at paragraph 8 he stated: -

> *"In deciding whether an application for extension of time was to succeed under rule 3.1(2)* ***it was no longer sufficient to apply a rigid formula in deciding whether an extension was to be granted. Each application had to be viewed by reference to the criterion of justice. Among the factors which had to be taken into account were the length of the delay, the explanation for the delay, the prejudice of the delay to the other party, the merits of the appeal, the effect of the delay on public administration, the importance of compliance with time limits bearing in mind that they were there to be observed and the resources of the parties which might, in particular be relevant to the question of prejudice****."*
>
> [Emphasis supplied]

[56] In the case of **The Attorney General of Jamaica and Western Regional Health Authority v Rashaka Brooks Jnr (a minor) by Rashaka Brooks Snr (His father and next friend)** [2013] JMCA Civ. 16, Brooks JA, in commenting on the Court's discretion to grant an extension of time posited that: -

> *"[15] The result of applying that principle is that there should not be an inflexible stance where the court is given a discretion. Generally, each case is to be decided on its own facts…"*

[57] In reviewing the authorities cited above, a consideration for the Court is the length of the delay on the part of the Appellant in complying with the Orders made. As regards the filing and serving of the Appellant's Affidavit this was done eleven (11) days after the time ordered by the Court. With respect to the Order for the filing and serving its Skeleton Submissions together with its List of Authorities, the Appellant was again in breach, on this occasion by two (2) days.

[58] Furthermore, in respect to the Application for an extension of time, this was filed six (6) days after the Appellant filed the Affidavit of Andre Sterling, its Skeleton Submissions and List of Authorities out of time. I am of the view, that such an Application could and should have been made at an earlier stage, thereby saving judicial time. The Application could have been filed on the 12th May, 2017, at the same time that the Appellant eventually complied with the Pre-Trial Review Orders.

[59] The next issue for consideration by the Court is the reason for the delay by the Appellant in complying with the Pre-Trial Review Orders. This was outlined at paragraph 5 of the Affidavit of Vanessa Young filed on the 18th May, 2017, where she deponed that: -

> *"**I have been advised by Mr. Spencer and do verily believe that he lost track of some of the timelines set out in paragraph 3 with the result that it caused JWN's affidavit and skeleton submissions to be filed out of time**. Mr. Spencer has advised me and I do verily believe that his default is inexcusable but that there is little or no prejudice to the Respondent if this Honourable Court were to permit the affidavit and skeleton submissions to stand as filed."*
>
> [Emphasis supplied]

[60] This explanation in my view, does not amount to a good explanation that can avail the Appellant, particularly as Counsel has conceded that his actions were inexcusable. I should also indicate, that this was not the first time in this matter, that Counsel for the Appellant Mr. Spencer had *lost track* of the time frame set for compliance with the Pre-Trial Review Orders. The original Pre-Trial Review Orders made on the 25th October, 2016, were extended due to his admitted oversight in keeping track of the time set for compliance with the Orders of the Court.

[61] The authorities have clearly shown that the Courts will not readily accept inadvertence or administrative inefficiencies as good explanations for failing to comply with the Orders of the Court. P. Williams JA in the case of **Mirage Entertainment Limited v Financial Sector Adjustment Company Limited et al** [2016] JMCA App 30, declared with respect to the inadvertence of Counsel that: -

> *"[26]…The reason offered by the applicant was the often used excuse of the inadvertence of its attorney.*
>
> *[27] As often as this excuse is used, is as often as this court has expressed its displeasure of having it being relied on. Indeed, in **Anthony Powell v The Attorney General for Jamaica** [2014] JMCA Appeal 33, Panton P expressed it thus: at paragraph [8]:*
>
> *"In my view, the statement as to inadvertent neglect is one that has been overworked in these courts and ought to be given short shrift. Legal representation is a very serious matter, and there is no place for inadvertent neglect when the court has set firm timelines, especially often there what been earlier disregard of the rules and orders made under those rules." (sic)*

[62] Lord Dyson, in delivering the judgment of the Court in the case of **The Attorney General v Universal Projects Limited** [2011] UKPC 37, at paragraph 23 stated that: -

> *"…To describe a good explanation as one which "properly" explains how the breach came about simply begs the question of what is a "proper" explanation. Oversight may be excusable in certain circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly, if the explanation for the breach is administrative inefficiency."*

[63] Although I do not consider the explanation proffered on behalf of the Appellant as a good one, that does not mean that the Appellant's Application for an Extension of Time must automatically fail. The Court is obliged to consider all the other factors outlined in the case of **Leymon Strachan**.

[64] Another factor for the Court to consider is whether the Appellant's failure to comply in time with the Pre-Trial Review Orders was intentional. Counsel Mr. Spencer did not lead any evidence in this regard. However, in his submissions to the Court, he indicated that the default in complying was not intentional. I am satisfied that there is no evidence to indicate that the oversight by Mr. Spencer in failing to keep track of the timelines set for compliance was intentional.

[65] The merits of the Appeal should also be considered as another important and weighty consideration for the Court. Mr. Spencer indicated that in order to show a real prospect of success, he was relying on his client's Skeleton Submissions filed on the 12th May, 2017. I have read and considered the Skeleton Submissions, as well as the Affidavits filed on behalf of the Appellant, and I am of the view that the Appellant has an arguable case on Appeal. That being said, it is not to be taken that the Court is indicating that the Appeal will succeed, if the extension of time is granted.

[66] Moreover, the Court need not delve into a detailed consideration of the merits of the Appeal at this stage. In this regard, I refer to the case of **Palata Investments Ltd and Others v Burt & Sinfield Ltd and Others** [1985] 2 All ER 517, where, with respect to an Application for Extension of Time to file an Appeal, the Court indicated that where the delay is very short and there is an acceptable excuse, it will not be necessary for the

Court to consider the merits of the Appeal. In that case Ackner LJ at page 521 posited that: -

> *"The whole of this matter, it seems to me, depends on whether or not we can properly look on the delay in this case as being an exceptional one. In my judgment I would so classify it. I have already referred to the shortness of the period involved: three days. I have already referred to the fact that the plaintiffs' solicitors knew that there was in all likelihood to be an appeal, so that there was no question of their proceeding on the false assumption that they had achieved finality for their client. I have referred to the fact that the solicitors asked specifically of counsel for a statement of the length of time for serving the notice and that he gave them a clear statement that it was six weeks.... There is no question of any prejudice arising to the plaintiffs in the circumstances which I have described, and in that situation there was in my judgment absolutely no need to go into the complex and time consuming question whether or not there was a good arguable case on the appeal. There is no invariable rule which requires that consideration and it would obviously involve the very reverse to what the new procedure is designed to achieve if on every application to extend time for leave to appeal there was a pre-appeal hearing in order to consider what were the prospects of success."*

[67] The Court must also consider the issue of prejudice to the parties. It must be noted that the Affidavit evidence reveals that the assessment has been on the Respondent's book since 2010. It is therefore understandable that the Respondent has been prejudiced by the delay in having the matter disposed of.

[68] The grant of an extension of time, in my view, would not severely prejudice the Respondent, compared to the manner in which the Appellant would be affected. The doors to justice would in effect be closed to the Appellant, were its Application to be refused. In arriving at this conclusion, the Court has taken into consideration the fact that the Appellant has now complied with all the Pre-Trial Review Orders, although admittedly late, and as such the matter is in a state of readiness for trial. Further, if an extension of time is granted, an expedited trial date can be set for the hearing of the Appeal, so as to prevent any further delays in dealing with this matter.

[69] Additionally, the contention by Counsel Ms. White, that the Affidavit of Andre Sterling raised new issues of facts and that the Appellant's Grounds of Appeal were extended by its Skeleton Submissions, are both considerations that can be dealt with appropriately at the hearing of the Appeal, if the extension of time is granted and the Appeal is allowed to proceed.

[70] I must mention an important point raised by Counsel Mr. Spencer in his submissions to the Court. Counsel contended that he need not rely on the Affidavit of Andre Sterling, as the information in his Affidavit was already before the Court, as set out in the Affidavits filed on behalf of the Respondent. He further contended that it was not necessary for his client to have filed any Affidavit evidence before the Court, as the Affidavit of Andre Sterling was purely formal in nature. That is a decision that Counsel will have to make in deciding how to proceed in his client's best interests. That being said, it must be mentioned that on an Appeal to the Revenue Court, it is the Appellant who has the burden of proof. This is indicated at section 18 of the **Customs Act** which states that: -

> *"(1) Any person (hereinafter in this Act referred to as the "objector") who has disputed an assessment by notice of, objection under section 17 of this Act and who is dissatisfied with the decision of the Commissioner therein may appeal to the, Taxpayer Appeals Department within thirty days of the date of receiving the Commissioner's decision.*
>
> ***(2) The onus of proving that the assessment complained of is erroneous shall be on the objector.***
>
> *(3) An objector who is dissatisfied with the decision of the Taxpayer Appeals Department may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court."*
>
> [Emphasis supplied]

[71] In relation to the Respondent's Application to strike out the Appeal, the question to be determined is whether the striking out of the Appeal is a proportionate response to the Appellant's failure to comply in time with the Pre-Trial Review Orders made by this Court.

[72] Rule 40 of the **Revenue Rules** states that: -

> *"Except as otherwise provided in the Act or in these Rules or in any enactment, the practice and procedure of the Supreme Court shall, so far as applicable, be followed."*

[73] This Rule, in my view, clearly indicates that the provisions of the **CPR** should, where necessary supplement the **Revenue Rules**. Further, Rule 19 (1) of the **Revenue**

Rules, goes on to provide, *inter alia*, that an Appeal may be struck out if the Appellant fails to appear when the Appeal is set for hearing. I disagree with the submissions of Counsel Mr. Spencer, when he contends that the **Revenue Rules** already provide in what circumstances an Appeal may be struck out, and therefore Rule 26.3 of the **CPR** would not be applicable. It is my considered view that what Rule 19 (1) of the **Revenue Rules** provides for, is one such instance, in which the Court may strike out the Appeal, that is, on the non-appearance of the Appellant. This provision is clearly not meant to be exhaustive.

[74] The **Revenue Rules** do not indicate the likely effect of failing to comply with its Rules or the Orders of the Court, in the circumstances of the present case. As such, the **CPR** would supplement the **Revenue Rules** in that regard. Rule 26.3 (1) (a) of the **CPR**, in particular reads: -

> *"In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -*
>
> *(a)* ***that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings****…"*
>
> [Emphasis supplied]

[75] The Court of Appeal in this jurisdiction has made it quite clear that striking out should only be used as a matter of last resort. McDonald-Bishop JA (Ag) in delivering the judgment of the Court, in the case of **The Commissioner of Lands v Homeway Foods Limited** opined as follows: -

> *"[50] The authorities have equally made it clear that striking out or dismissing a party's case is a draconian or extreme measure and so it should be regarded as a sanction of last resort. As Lord Woolf explained in* ***Biguzzi****, there may be alternatives to striking out, which may be more appropriate to make it clear that the court will not tolerate delay but which, at the same time, would enable the case to be dealt with justly, in accordance with the overriding objective. The court in considering what is just, he said, is not confined to considering the effects on the parties but is also required to consider the effect on the court's resources, other litigants and the administration of justice."*

[76] In reliance on the case of **Barbados Rediffusion Service Ltd v Asha Mirchandani and Others (No 2)** (2006) 69 WIR 52, the learned Judge of Appeal in **The**

Commissioner of Lands v Homeway Foods Limited, highlighted at paragraph 52, some of the pertinent considerations the Court should consider when deciding whether to strike out a party's Statement of Case: -

> *"(i) Strike out orders should be made either when that is necessary in order to achieve fairness or when it is necessary in order to maintain respect for the authority of the court's orders. In this context, fairness means fairness not only to the non-offending party but also to other litigants who are competing for the finite resources of the court.*
>
> *(ii) If there is a real risk that a fair trial may not be possible as a result of one party's failure to comply with an order of the court, that is a situation which calls for an order striking out that party's case and giving judgment against him.*
>
> *(iii) The fact that a fair trial is still possible does not preclude a court from making a strike out order. Defiant and persistent refusal to comply with an order of the court can justify the making of a strike out order. While the general purpose of the order in such circumstances may be described as punitive, it is to be seen not as retribution for some offence given to the court but as a necessary and, to some extent, a symbolic response to a challenge to the court's authority, in circumstances in which failure to make such a response might encourage others to disobey court orders and tend to undermine the rule of law. This is any type of disobedience that may properly be categorized as contumelious or contumacious.*
>
> *(iv) It must be recognised that even within the range of conduct that may be described as contumelious, there are different degrees of defiance, which cannot be assessed without examining the reason for the noncompliance.*
>
> *(v) The previous conduct of the defaulting party will obviously be relevant, especially if it discloses a pattern of defiance.*
>
> *(vi) It is also relevant whether the non-compliance with the order was partial or total.*
>
> *(vii) Normally, it will not assist the party in default to show that non-compliance was due to the fault of the lawyer since the consequences of the lawyer's acts or omissions are, as a rule, visited on his client. There may be an exception made, however, when the other party has suffered no prejudice as a result of the noncompliance.*
>
> *(viii) Other factors, which have been held to be relevant, include such matters as (a) whether the party at fault is suing or being sued in a representative capacity; and (b) whether having regard to the nature of the relief sought or to the issues raised on the pleadings, a default judgment can be regarded as a satisfactory and final resolution of the matters in dispute.*
>
> *(ix) Regard may be had to the impact of the judgment not only on the party in default, but on other persons who may be affected by it."*

[77] Although the striking out of a party's Statement of Case should only be used as a matter of last resort, the Rules and Orders of the Court are meant to be complied with. As such, litigants and their Attorneys-at-Law must, to the best of their ability in their clients' interests, ensure compliance. In considering the rights of the respective parties, the Court must be engaged in a balancing act, to ensure that the parties have their day in Court to properly ventilate their issues. At the same time, the Court is obliged to ensure compliance with the Rules of the Court and to prevent abuse, whether negligently or deliberately by the parties and/or their Attorneys-at-Law.

[78] Harris P (Ag) (as she then was), in the case of **Watersports Enterprises Limited v Jamaica Grande Limited and Others** [2012] JMCA App 35, noted at paragraph 35 that: -

> *"it has often been declared by this Court that where time limits are prescribed by the rules a litigant is duty bound to adhere to them."*

[79] Similarly, Harris JA in the case of **Villa Mora Cottages Limited and Monica Cummings v Adele Shtern**, SCCA No. 49/2006, in a judgment delivered on the 14th December, 2007, at page 10 expressed that: -

> *"It cannot be disputed that orders and rules of the Court must be obeyed. A party's non-compliance with a rule or an order of the Court may preclude him from continuing litigation.* ***This, however, must be balanced against the principle that a litigant is entitled to have his case heard on the merits****. As a consequence, a litigant ought not to be deprived of the right to pursue his case.*
>
> *The function of the Court is to do justice. "The law is not a game, nor is the Court an arena. It is…the function and duty of a judge to see that justice is done as far as may be according to the merits" per Wooding, C.J. in* ***Baptiste v. Supersad*** *[1967] 12 W.I.R. 140 at 144. In its dispensation of justice, the Court must engage in a balancing exercise and seek to do what is just and reasonable in the circumstance of each case, in accordance with Rule 1 of the C.P.R. A court, in the performance of such exercise, may rectify any mischief created by the non-compliance with any of its rules or orders."*
>
> [Emphasis supplied]

[80] The learned author Stuart Sime in his book, **A Practical Approach to Civil Procedure**, 12th edition, noted at page 378 that: -

> *"There are relatively few occasions where immediate striking out as opposed to some lesser sanction or imposition of an unless order is appropriate…Courts considering striking-out have to pay attention to the fact that they may be denying the claimant of access to the court…"*

[81] It is evident from the history of this matter that both parties have failed to comply in time with the Orders of the Court or the **Revenue Rules** at some point or another. As a result of their non-compliance, extensions of time were sought and granted by this Court. At this stage, the parties have now complied with all the Pre-Trial Review Orders, although the Appellant was admittedly late. Nevertheless, there has been compliance.

[82] I am of the opinion that the striking out of the Appeal is a draconian measure which ought not to be utilised in the present circumstances of this matter. I believe that there are less severe sanctions that can be utilised to show the Courts' displeasure with the conduct of the Appellant, and by extension its Counsel. I do not wish to penalise the Appellant by depriving it of access to the Court, when the failure to comply with the Orders of the Court falls squarely at the feet of its Counsel. I am reminded and guided by the dictum of Lord Denning MR, when he said in the earlier cited case of **Salter and Rex**, which bears repeating, that *"We never like a litigant to suffer by the mistake of his lawyers."*

CONCLUSION

[83] In the circumstances, the Court is prepared to grant the Appellant a further extension of time within which to comply with the Pre-Trial Review Orders made by the Court. As such, it is hereby ordered that: -

1. The Respondent's Application to strike out the Appeal is refused;

2. The Appellant is granted an extension of time to file its Affidavit in Support of this Appeal and to file its Skeleton Submissions and List of Authorities as at the 12th May, 2017;

3. The Affidavit of Andre Sterling filed on the 12th May, 2017 is permitted to stand;

4. The Appellant's Skeleton Submissions filed on the 12th May, 2017 are permitted to stand;

5. Costs of the Application to strike out awarded to the Appellant, such costs to be taxed if not agreed;

6. Costs of the Application for Extension of Time awarded to the Respondent, to be paid by the Appellant's Attorneys-at-Law as agreed and set out in paragraph 5 of the Appellant's Notice of Application to Extend Time;

7. Trial date to be set after consultation with the Registrar of the Revenue Court.