IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2022CD00044

BETWEEN	**MB DEVELOPMENT & INVESTMENTS LIMITED**	**CLAIMANT**
AND	**A & A LIME HALL DEVELOPMENT COMPANY LIMITED**	**DEFENDANT**

Civil Procedure Rules Part 26.8 – Relief from Sanction – Whether application prompt – Whether Defence has real prospect of success – Relevance.

Shanique Scott instructed by Bishop & Partners for the Claimant

Manley Nicholson instructed by Nicholson Philips for the Defendant

Alexander Williams watching proceedings on behalf of Ophite Limited (an intended purchaser)

G. Ashmead (Judicial Counsel)

Heard: 14th and 16th January 2026

IN CHAMBERS (VIA VIDEOCONFERENCE)

Cor: Batts, J.

[1] On the 16th January 2026 I made the following Orders:

a) Application for relief from sanction is refused. Reasons will be put in writing at a later date.

b) Case Management Conference for determination of remedy fixed for February 17, 2026 at 10 am for 1 hour.
c) Costs to the Claimant to be taxed if not agreed.
d) Leave to appeal is refused.

This judgment is the fulfilment of the promise to provide reasons in writing.

[2] This matter concerns a Notice of Application for Relief from Sanction, filed on the 21st November 2025, which reads as follows:

"1. The applicant be given relief from sanction from the following "unless order" of the court, made on May 29th, 2024 by this Honourable court;

> *"2. Time extended to June 14th, 2024 for the Defendant to comply with all case management Conference orders made on November 16th, 2023.*
>
> *3. Unless the Defendant complies with order #2 above, its Defence shall be struck out and judgement entered accordingly and further directions and orders made at the adjourned Pre-Trial Review date."*

2. That the defence filed herein be re-instated and the default judgement be set aside.

3. That the matter be set for trial and a trial date be fixed for the hearing.

4. That the case management conference for assessment of Damages be postponed until after the trial of the matter.

5. That the costs of this application be costs in the cause

6. Such other relief that this Honourable Court deems just."

[3] The grounds of the application are as follows:

“1. The Court is empowered to make the orders pursuant to Rule 26.8 of the Jamaican Civil Procedure Rules.

2. That it is in the best interest of the administration of Justice that the relief from sanction be granted.

3. That the defendant's failure to comply with the said "unless order" was not intentional.

4. The defendant was not served with the said unless order and only became aware of the said orders when it was sent to the defendant via email on the 12th day of June, 2024.

5. Immediately upon receipt of the said email, the defendant sought and obtained a Stay of all proceedings in the Supreme Court, from the Court of Appeal on the 22nd day of July, 2024

6. The stay of proceedings granted by the Court of Appeal, staying all proceedings in the Supreme Court, only expired on Friday, November 14th, 2025, by order of the Honourable Mr. Justice Batts.

7. The defendant immediately upon the expiration of the stay of proceedings at the said hearing gave notice to the court of its intention to seek Relief from Sanctions for its failure to comply with the said "unless order".

8. The defendant has not disobeyed any other order of this court and has actively pursued its rights under law to have a speedy resolution of the dispute between the parties, including an appeal to the Court of Appeal.

9. *The court of appeal has determined that the issues raised on appeal are not suitable for summary judgment and there are triable issues; accordingly, a trial date should be fixed for a trial of the matter between the parties.*
10. *There can be no trial of the issues without the Defendant's Defence being reinstated.*
11. *In addition to the issues raised on appeal, that is, the interpretation of special condition 3 of the agreement for sale between the parties, and the applicability of section 3 & section 18 of the Transfer Tax Act, there are other triable issues, and the defendant has a good defence to the Claimant's claim.*
12. *That there is no prejudice to the Claimant if relief from sanction is granted by the court, and a date is fixed for the trial of the action.*
13. *That the failure to comply with the "unless order" has had no adverse effect on the Claimant, as the matter has been active in the courts, and it is only fair and just that the matter be determined upon a trial rather than the Claimant obtaining an unfair advantage, of what has amounted to a default judgment if the "unless order" is not discharged and relief from sanction granted."*

[4] An outline of the circumstances giving rise to the application is necessary. On the 8th February 2023 the Defendant's application for summary judgment was denied. On the 16th November 2023 the Hon. Mrs Justice Jackson-Haisley made orders at a case management conference and, at the same hearing, dismissed the Defendant's application for leave to appeal her order refusing summary judgment.

On the 29th November 2023 the Defendant filed an application for leave to appeal. This was granted by the Court of Appeal either, on the 4th March 2024 (see paragraph 7 of the affidavit of Arlene Gaynor filed on 21st November 2025) or, on the 10th April 2024 (see paragraph 12 of the judgment of the Court of Appeal delivered 11th April 2025, [2025] JMCA Civ 10). No application was made for a stay of proceedings at that time.

[5] The Defendant failed to attend a pre-trial review scheduled for the 29th May 2024. The reason given for this absence, stated in paragraphs 8 – 10 of the affidavit of Arlene Gaynor, filed 21st November 2025, is that she had the mistaken belief that the appeal to the Court of Appeal acted as an automatic stay of all proceedings in the Supreme Court. The "unless order", quoted at paragraph 2 above, was made at the pre-trial review which the Defendant failed to attend. The Defendant asserts that it was not served with the "unless order" and only became aware of it when it was sent via email on the 12th June 2024, see paragraphs 11 to 13 of the affidavit of Arlene Gaynor. The Defendant sought, and obtained from the Court of Appeal on the 22nd July 2024, a stay of all proceedings in the Supreme Court.

[6] On the 25th, 26th and 28th February 2025 the Defendant's appeal was heard and dismissed. An order was made remitting the matter to the Supreme Court for the hearing of a case management conference. No other order was made to stay the proceedings. On the 25th July 2025 the Hon Miss Justice Jarrett adjourned the case Management Conference to the 14th November 2025:

"…for the court to consider whether the order of the Court of Appeal on July 22, 2024 staying these proceedings means that the Case Management Orders made on November 16, 2023 and the Pre-trial Review Orders made on May 29, 2024 are now no longer in effect and that there must now be a new first Case Management Conference".

On the 14th November 2025 this court determined that the *"unless order"* was still in effect and the stay of proceedings, ordered by the Court of Appeal, was

no longer in effect. The "unless order", still being in effect, has caused the Defendant to seek relief from sanctions and this is the application now before me.

[7] Rule 26.8 of the **Civil Procedure Rules** provides for an application to be made for relief from sanction as follows:

> *"26.8 (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."*

[8] The Hon Justice of Appeal Brooks (later to become President of the Court of Appeal) stated, in ***H.B. Ramsay & Associates Ltd et al v Jamaica Redevelopment Foundation Inc et al [2013] JMCA Civ 1,*** the following:

> ***"31. An applicant who seeks relief from a sanction, imposed by his failure to obey an order of the court, must comply with the provisions of rule 26.8(1) in order to have his application considered. If he fails, for example, to make his application promptly the court need not consider the merits of the application. Promptitude does, however, allow some degree of flexibility and thus, if the court agrees to consider the application, the next hurdle that the applicant has to clear is that he must meet all the requirements set out in rule 26.8(2). Should he fail to meet those requirements then the court is precluded from granting him relief. There would, therefore, be no need for a court, which finds that the applicant has failed to cross the threshold created by rule 26.8(2), to consider the provisions of rule 26.8(3) in relation to that applicant."***

[9] This application fails rule 26.8(1)(a) as it was not made promptly. On the 16th November 2023 the usual case management conference orders were made. A director of the Defendant was then present. Included in those orders were the requirement for standard disclosure on or before the 19th January 2024 and for witness statements to be filed by the 29th February 2024. These orders were not complied with. At a pre-trial review hearing on the 29th May 2024 this court issued an unless order for compliance, with the case management orders, by the 14th June 2024. The director for the Defendant, Ms. Gaynor, in her affidavit filed 21st November 2025 at paragraph 10 admits that her absence from court on the 29th May, was due to her belief that there would have been no hearing because an appeal operates as an automatic stay. This is not a good reason for a party to be absent from a scheduled hearing. The more so because the basis of the belief is

unreasonable.

[10] Whether or not the Defendant's absence from the pre-trial review hearing is excusable the admitted fact is that the "unless order" came to the Defendant's attention on the 12th June 2024. Therefore, the Defendant knew the orders were to be complied with on the 14th June 2024 and the consequences of non-compliance. The breach of the order has continued since then. The application for relief from sanction was brought 525 days (1 year, 5 months and 7 days) after the sanction took effect. The Defendant is still in breach of the case management orders, made on the 16th November 2023, when the director was present.

[11] The Defendant applied to the Court of Appeal on the 15th June 2024, for a stay of proceedings, see Defendants chronology of events at paragraph 12 of the affidavit of Arlene Gaynor filed on the 6th January 2026 (hereinafter referenced as the chronology). By the 15th June therefore the Defendant knew that the appeal did not operate as a stay of proceedings. The order for a stay was not made until the 22nd July 2024, see chronology. Therefore, the Defendant knowingly continued in breach of the unless order, without making any application for relief, until the date the Court of Appeal granted a stay of proceedings

[12] The stay of proceedings ended when the Court of Appeal gave its decision on the 28th February 2025. The Defendant ought at least to have applied promptly thereafter but did not. Instead, the Defendant at the case management conference, scheduled pursuant to the order of the Court of Appeal, argued that the stay of proceedings was still in effect and the "unless order" was not. Those issues were eventually resolved in favour of the Claimant on the 14th November 2025. This application for relief from sanctions was filed on the 21st November 2025, 266 days (8 months and 24 days) after the appeal was dismissed and the stay of proceedings ended. Once the Court of Appeal ordered that the matter must go to case management conference it meant the matter would progress. The Defendant lost the appeal in February 2025 but waited until November of that year to apply

for relief from sanctions. The explanation that they believed the stay was still in place is, with respect, incredible, unacceptable and does not constitute a good explanation within the meaning of the rule.

[13] If I am wrong, and the application is prompt or there is a good explanation for the delay, it is relevant to consider whether the Defendant has a real prospect of success at trial. This is because it cannot be in the best interest of the administration of justice to give relief from sanctions to a party whose case has no real prospect of success, see Rule 26.8(3) (a). In its written judgment, dismissing the application for summary judgment, the Court of Appeal, construed clause 3 of the agreement for sale dated the 12th October 2021. The Defendant, in its application, argued that there were no factual issues and the matter turned on an interpretation of that section of the contract. The Court of Appeal did not interpret the contract in the way the Defendant urged. I respectfully agree with the construction of the contract adopted by the Court of Appeal. Any other meaning leads to absurdity. It is manifest that, had there been an application for summary judgment by the Claimant, it would have succeeded before the Court of Appeal, see per Laing JA, ***A & A Lime Hall Development Company Limited v MB Development & Investment Limited [2025] JMCA Civ 10 :***

> ***"[41] The benefits of summary judgment in appropriate circumstances could not be gainsaid. However, as framed by the appellant, the third issue is unnecessarily wide. The ultimate issue to be determined by this court was not a general one of whether summary judgment was appropriate in the circumstances but whether it was appropriate for the learned judge to have granted summary judgment in favour of the appellant specifically. It must be highlighted that the respondent did not make a similar application to that of the appellant for summary judgment in the court below, and there was no cross-appeal asserting that the learned judge should have entered summary judgment in favour of the respondent. Therefore, although Mr Lindo tangentially raised the question of whether the***

> ***learned judge should have, of her own volition, granted summary judgment in favour of the respondents, it was our view that it was not necessary or prudent for this court to consider that issue.***
>
> ***[42] The appellant suggested that implicit in the learned judge's refusal of the application for summary judgment was support for its argument that the learned judge must have concluded that there were disputed matters of fact that can only be determined on a trial and, in so finding, she erred. We did not agree that arriving at this conclusion as advanced by the appellant was reasonable. The order of the learned judge must be viewed in the context of the precise terms of the application for summary judgment. The application, in order to succeed, required the learned judge to have found that the respondent had no real prospect of succeeding on the claim or issue determinative of the claim. The appellant argued that the construction to be placed on special condition 3 was a determinative issue of the claim. We were firmly of the opinion that the only reasonable inference that could be deduced from the learned judge's order was that the learned judge did not find that the claim had no real prospect of succeeding. In that regard, the learned judge did not err."***

[14] Therefore, and for all the reasons stated above, the application for relief from sanction was refused.

David Batts
Puisne Judge.