[2024] JMSC Civ. 107

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015HCV01892

BETWEEN	**ALVIN WATSON**	**CLAIMANT**
AND	**PASSPORT IMMIGRATION & CITIZENSHIP AUTHORITY**	**1ST DEFENDANT**
AND	**ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

IN CHAMBERS

Ronece Simpson, instructed by Zavia Mayne & Co., Attorneys-at-Law for the Claimant

Jenoure Simpson, instructed by the Director of State Proceedings, for the 2nd Defendant

Heard: July 30 and September 27, 2024

CIVIL PROCEDURE: Applications by the claimant and 2nd defendant for relief from sanctions, arising from the respective parties having failed to file and serve witness statements within the time ordered by the court - Whether the 2nd defendant's application for relief, filed, is supported by evidence on affidavit - Whether the 2nd defendant's application for relief was filed promptly - Whether the party in default, the 2nd defendant, generally complied with all other relevant rules, Practice Directions, orders and directions - Whether the failure to comply was unintentional - Whether there is a good explanation for the failure to comply - Whether the claimant's application for relief was filed promptly - Whether the claimant generally complied with all other relevant rules, Practice Directions,

orders and directions - Claimant's non-compliance with unless order resulting in statement of case being struck out - Civil Procedure Rules 26.8(1), (2) & (3), 27.8(1) & (2) and 27.11 and Practice Direction No. 8 of 2020

ANDERSON K. J

BACKGROUND

Applications by claimant and 2nd defendant for relief from sanctions, arising from the respective parties having failed to serve witness statements within time ordered by the court

[1] On July 30, 2024, two applications were heard by the court. Those applications were unopposed.

[2] The applications were made by the claimant and the 2nd defendant in this claim and were each for relief from sanctions, arising from those parties having each failed to serve witness statements within the time as was ordered by S. Thompson-James, J., on July 24, 2023. It is on the court's record that the 1st defendant was purportedly served with claim documents which served to initiate this claim, on March 30, 2015. The 1st defendant though, has not yet responded to this claim, in any way. Nontheless, albeit surprisingly, no default judgment has, as yet, even been sought by the claimant as against the 1st defendant.

[3] The sanction is, as set out in ***rule 29.11 of the CPR*** and is that, since the party's witness statement(s) was/were not served within time, then those witnesses, who provided those statements, cannot be called upon to give evidence at trial, unless the court permits. That rule also provides that the court ought not to permit same, unless the party asking for permission, that is, the defaulting party, had a good reason for not previously seeking relief under ***rule 26.8 of the CPR***, which sets out the conditionalities to be met by a party, who wishes to obtain via this court, relief from sanctions per ***rules 26.8(1) and (2***), and additionally, goes on to specify numerous factors in ***rule 26.8(3) of the CPR***, which, if this court reaches that stage, shall be considered by this court, in determining whether relief from sanctions, ought to be granted.

[4] In considering an application for relief from sanctions though, unless the applicant crosses the high hurdles of meeting the conditionalities as set out in ***rule 26.8(1) and (2) of the CPR***, the factors as set out in ***rule 26.8(3)***, should not even be considered by the court. A masterful court-led analysis of how a court in Jamaica, should approach and ultimately, be best positioned to resolve any application before it, for relief from sanctions, can, to my mind, be found in one of the leading cases in this area: ***H.B. Ramsay & Associates Ltd. and Ors. v Jamaica Redevelopment Foundation Inc. and The Workers Bank [2013] JMCA Civ. 1***.

[5] I will therefore, now look at the factors as set out in ***rule 26.8(1) and (2)***, in turn, before going on to ***rule 26.8(3)***, if I consider same to be warranted. I will begin by addressing the application, specifically, of the 2nd defendant, before addressing the claimant's application.

Is the application for relief, filed, supported by evidence on affidavit?

[6] Yes, it is. The 2nd defendant has filed and is relying on the affidavit evidence of attorney - Nicola Richards, which was filed on November 22, 2023. In that affidavit of hers, she has deponed that she is an attorney, instructed by the Director of State Proceedings (DSP) and that, *'Insofar as the facts herein are within my knowledge, those facts are true; and insofar as they are not within my personal knowledge, they are true to the best of my information and belief and are based on my review of the record of the 2nd defendant's attorney herein.' (Para. 3)*

Was the 2nd defendant's application for relief, filed promptly?

[7] The order of Thompson-James, J. was that as regards witness statements, the same were to have been, *'filed and exchanged on or before November 17, 2023.'* Therefore, having failed to serve same by then - November 17, 2023, the 2nd defendant has, as also the claimant, applied for relief from sanctions. The 2nd defendant filed its application for that relief, on November 22, 2023. In the circumstances, I have had no difficulty in concluding that the said application was indeed, filed promptly, as was submitted to this court, by the 2nd defendant's counsel, during oral submissions on this

application of theirs, which were made in this court, on July 30, 2024. The requirements of ***rule 26.8(1) of the CPR***, have therefore been met, by the 2nd defendant. That is though, only the first of the hurdles that the 2nd defendant had to overcome, if the Attorney General's application is to be successful.

[8] Before going on to address whether the 2nd defendant has overcome the hurdle as set out in ***rule 26.8(2) of the CPR***, it is especially important and convenient, particularly at this stage, to make something which was not in dispute at all and on which, no oral submissions were made, by either counsel, pellucid. That is that, on an application such as the present one, it is the applicant, who has the burden of proof and it is therefore, the applicant that must prove that the conditionalities as set out in ***rule 26.8(1) and (2) of the CPR***, have been met. Same must be proven, on a balance of probabilities. Furthermore, on an application for relief from sanctions, even though such an application may not be, or is not being opposed by any opposing party to the claim, that does not and cannot mean that this court is obliged to grant relief from sanctions. If that were to be so, it would drive an armoured car and a horse carriage, through the relevant rules of court, in particular, ***rule 27.11***, read along with ***rule 26.8, of the CPR***.

Moving on now, to the conditionalities of rule 26.8 (2) of the CPR: Has the party in default, the 2nd defendant, generally complied with all other relevant rules, Practice Directions, orders and directions?

[9] Unfortunately for the 2nd defendant, the answer to this question is: No, that office has not. The 2nd defendant has generally, not complied, with all of same. The 2nd defendant's assertion to the contrary, is patently false, as I will show further on, in these reasons. I must state at this stage though, that it is very unfortunate that such an assertion was made to this court. I do not know whether same was knowingly so made, either by Crown Counsel - Ms. Nicola Richards - who deponed to the 2nd defendant's affidavit evidence, which was filed in support of the Attorney General's present application or by Mr. Simpson - Crown Counsel, who appeared before this court and submitted in support of this application, but I must state that to have made such a patently false assertion, as glibly and strongly as same was made, may very well, even amount to an ethical violation on the part of those Crown Counsel, in so far as their duty

of honesty to the court, is one of the paramount obligations of counsel. If counsel has not properly checked on the propriety and accuracy of an assertion of alleged fact, which counsel wishes to make to the court, on behalf of his or her client, then counsel should not make that assertion at all. Being "wrong and strong" is not a characteristic which is worthy of emulation by any advocate, in any of our nation's courts, particularly when the wrong assertion which was made, could easily have been ascertained as being so. For my part, I expect better from any advocate appearing in court, in any matter, whether before me, or not, just as also, from any other officer of the court, as is every attorney - whether or not appearing as an advocate in court.

So what rules, orders and Practice Directions were not complied with by the 2nd defendant?

[10] To begin with, the 2nd defendant's acknowledgment of service was both filed and served out of time. According to the 2nd defendant's acknowledgment of service's stated information, which was purportedly, then provided by attorney - Ms. Carlene Larmond, as she was the person whose name and signature, appears on that document, the 2nd defendant received the claim and particulars of claim, on March 30, 2015. That being so, the 2nd defendant ought to have filed and served that office's acknowledgment of service, within fourteen (14) clear days of the receipt of those two documents. That office's acknowledgment of service therefore, which was filed on April 20, 2015, ought instead, if there was to have been compliance with the applicable rule of court, to have been filed and served, by no later than April 14, 2015 - fourteen (14) clear days after the Attorney General was placed into receipt of the claim form and particulars of claim. That office's acknowledgment of service therefore, though only filed and served a few days late, was nonetheless, not filed and served, in a time that complies with the relevant rule of court. That office's acknowledgement of service, it should be noted, was the first document that the 2nd defendant was expected to have filed and served, in response to this claim. From the very inception of that office's intended defence of this claim therefore, the 2nd defendant was not in compliance with the applicable rule of court. Actually though, that office's non-compliance with rules, orders and even Practice Directions, just began, at that stage. Not only did that continue from there, it continued in several different respects, as I will go on to highlight, below.

[11] The 2nd defendant's defence was also, filed and served out of time and in non-compliance with the applicable rule of court, in that regard. Same was filed on January 27, 2016 and therefore, could not lawfully have been served, at any time prior to that date. I have been unable, from the court's record, to ascertain precisely when it was that the 2nd defendant served its defence, but nonetheless, since same could not lawfully have been served, prior to same having been filed, it follows inexorably, that if the 2nd defendant's defence was filed late, then it must also have been served late. The 2nd defendant's defence, according to the applicable rule of court, ought to have been filed and served within 42 clear days of the claim form and particulars of claim, having been served, on that office. Clearly that did not happen. In fact, the court's record shows that the claimant actually filed an application for leave to enter judgment in default in defence. That was filed on May 19, 2015, and when the same came up for hearing before Master Y. Brown, in this court, on January 7, 2016, it was on that occasion, that the parties informed the court that they had agreed to allow for the 2nd defendant's defence, within twenty-one (21) days from as of January 7, 2016. The 2nd defendant's defence was filed and served, several months later than the applicable rule of court, required it to have been.

[12] The 2nd defendant's non-compliance did not end there, either. The 2nd defendant did not file and serve any witness statement on which that office intends to rely, within the time for same, which was ordered by this court, at the Case Management Conference, which took place on July 24, 2023, and which was presided over, as earlier stated, by Thompson-James, J. The learned judge had, at that hearing, ordered that the parties were to have filed and exchanged witness statements on or before November 17, 2023. Up until now, same was has not yet, even been filed. Of course therefore, for the reason already given same could not lawfully have been served, at any time prior to now. To reiterate, the filing of a court document, is a pre-requisite to the lawful service of that court document.

[13] This court though, as presided over by me, heard a statement made by the respective counsel, during their oral submissions, which I think is worthwhile examining at this stage, for the purpose of providing guidance to legal practitioners in particular.

That statement was that those counsel are each waiting to ascertain whether their respective client's application for relief from sanctions, arising from having failed to file and serve witness statement(s) within time, will be granted, in order to file and serve same, because, same cannot be served out of time, unless their respective applications for relief, are granted. Since each of the two counsel who appeared before me, made that statement, I have referred to them, collectively, but it must be stated now, that each party's counsel made that statement as being applicable individually, to each of their respective clients.

[14] Let me state that it is my considered view, that such a statement, is erroneous, as a matter of law. I will now briefly explain why it is that I have reached that conclusion. Firstly, the relevant sanction as imposed in ***rule 29.11 of the Civil Procedure Rules (CPR)***, arises, not from the failure to file a party's witness statement within time, but rather, from the failure to serve same, within time. Accordingly, same can be filed, out of time, without the need for a prior order of this court to be obtained, permitting same. Of course though, once filed out of time, same will also be served, out of time.

[15] There is no sanction though, which serves to prevent a party from serving a witness statement intended to be relied upon, by that party, out of time. The failure to serve the witness statement within time, is what results in the sanction being applied, and that sanction is that, the party who has served a witness statement out of time, will not be permitted to rely on that witness' evidence, unless the court permits. The wording of ***rule 29.11 of the CPR***, makes that clear. It is, I think worthwhile for present purposes, to specify that wording as follows:

'(1) 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.

(2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.' (Emphasis Mine)

Therefore, to my mind, a party cannot be lawfully prevented from serving a witness statement, out of time. There will though, be an automatically imposed, potentially, seriously negative consequence for that party, if that party's witness statement(s)

has/have been served out of time. That being said, that party may be precluded from relying on that intended evidence, in respect of which, witness statements exist, unless this court permits. It will always be very difficult to obtain such permission, whether before trial, or during trial, according to the present wording of ***rule 29.11***, if and when, correctly applied.

[16] Permit me to reiterate though, a witness statement can be filed and served, out of time, without the need for a prior order of this court, to be obtained, permitting same to be filed and served, out of time. Indeed, I will also go a bit further, by stating that it behoves a party, who has been late in the filing and service of witness statement(s), to file and serve same, as soon as possible, after the expected time for compliance, as was stipulated by order of the court, has passed. That will go in that party's favour if, albeit only if, the overall interests of justice are required to be considered by this court, upon an application by the party in default, for relief from sanctions, since it will then, if so done, serve to satisfy this court, upon the hearing of such an application, that no further delay whatsoever, will result, in compliance, as regards the date for service of witness statement(s), if relief from sanctions is granted and an extension of time is ordered by this court, for the filing and service of witness statement(s), by that party.

[17] Furthermore, it is important to note that the relevant witness statement(s), which was/were served out of time, unless there are compelling circumstances, which dictate otherwise, whilst not simultaneously causing irreparable legal harm to an applicant such as this, ought always to be appended to affidavit evidence in support of such an application. That is important because, if this court has to consider whether it is in the interests of justice to grant an application such as this, then this court must consider whether the intended witness statement(s) will serve to advance the applicant's case, in some useful way. This should not and ought not, to be presumed, as in my experience as a judicial officer, which I doubt is unique in this particular respect, that is not always so.

[18] As if the Attorney General's respective failures to comply with court orders, were not, by themselves, sufficient to amount to general non-compliance, regrettably, there

was one other failure to comply. That is in so far as, upon the hearing of the application, now under careful consideration by this court, the 2nd defendant did not either file any bundle of documents pertinent to same, or any skeleton submissions. The Attorney General's failure to have done so, was in breach of two separate directions under ***Practice Direction No. 8 of 2020***.

Whether the failure to comply was not intentional

[19] ***Rule 26.8(2)(a) of the CPR*** requires this court to consider, upon an application such as this, whether the failure to comply was not intentional. It must be stated at this juncture, by this court, that this court, in determining whether the failure to comply was intentional or not, should infer same and not determine same, based only, on that which has been deponed to, by an affiant in support of, an application such as this. That must, of necessity, be even more so, the approach of this court, in considering an application such as this, in a context wherein, the affidavit evidence, which is being relied on, by the applicant, is not deponed to, by anyone who can speak or who is able to speak 'first-hand', as to why the applicant, failed to comply with the relevant rule or order of this court, which resulted in the relevant court sanction, having been applied. Thus, the customary assertion, in affidavit evidence which has been filed by an applicant, in support of an application such as this one, that the failure to comply was unintentional, carries with it, at least in my mind, little, if any weight at all.

[20] This court should, instead, based on the particular circumstances of the particular case then before it, infer, whether the failure to comply, was intentional or unintentional.

[21] Of course, the party who/which bears the burden of proof in that regard, is the applicant. I am satisfied that, each of the applicants' counsel in the present matter, were well aware of, on whose shoulders, the burden of proof lay and at no time, even in the slightest, suggested otherwise.

[22] Typically, the best person/party to specifically address whether the failure to comply was, or was not intentional, must be the party in default, as distinct from the

attorney of that party. Everything in that regard though, depends on the particular circumstances, of each particular case.

[23] Attorney, Nicola Richards, deponed to the only affidavit evidence for the applicant, upon the hearing of this application. In that affidavit of hers, she deponed to her address as being care of the Attorney General's Chambers and that she is instructed by the Director of State Proceedings and that, in so far as the facts therein, are not within her personal knowledge, they are true to the best of her information and belief and based on her review of the record of the 2nd defendant's attorney-at-law. Of course, the 2nd defendant's attorney-at-law is the Director of State Proceedings. In paragraphs 5 and 6 of her affidavit in support of the application, which is now under consideration, Ms. Richards has deponed as follows:

'That I am advised by the Attorney with conduct of the matter and verily believe that at the date of the Case Management Conference, the matter was being handled by Counsel, Mr. Louis Jean Hacker. That Counsel was unable to finalize the witnesses in order to comply with the deadline for the filing of the witness statements. (Para. 5) In the premises, the Defendant's failure to comply with the Order of the Court on the 19th of June 2017 in relation to the filing of the witness statements is not intentional.' (Para. 6)

[24] With there being no evidence as to exactly why it was, that counsel - Mr. Hacker, who was then, counsel at the office of the Director of State Proceedings, was, *'unable to finalize the witnesses'* in a timely way, I have been wholly unable to reasonably draw the inference which attorney - Ms. Richards has so boldly stated, in her affidavit evidence, that being that the 2nd defendant's failure to comply with the order of the court, in relation to the filing of the witness statement, is not intentional.

[25] This court, if it was to properly have been able to reasonably so infer, needed to have been provided with information as to why attorney - Mr. Hacker, was unable to, '*finalize the witnesses'* within the relevant, applicable time period. For instance, is it that Mr. Hacker failed, in a timely way, to try to '*finalize those witness statements?'* Or is it that no witnesses could have been located by the 2nd defendant, in a timely way? This court is wholly unable, on the available evidence, to properly answer, either of those

questions and this court should neither be invited, nor expected to speculate as to what the answer may be. Accordingly, the applicant's office, has failed to meet its burden of proof as regards the need to satisfy this court, that the failure to comply was unintentional.

Is there a good explanation for the failure to comply?

[26] There are other factors, which the applicant, upon an application such as this, must satisfy this court. In that regard, one such, is as set out in ***rule 26.8(2)(b) of the CPR***.

[27] To my mind, the applicant's office, has also failed to meet its burden of proof, in respect of this particular factor. That must be so, since this court does not know and cannot speculate as to why it was, that counsel - Mr. Hacker, was, *'unable to finalize the witnesses in order to comply with the deadline for the filing of the witness statements.'* Attorney - Ms. Richards, in her affidavit evidence as quoted immediately above, has stated a conclusion, just as she also did in paragraph 6 of her affidavit evidence, as earlier quoted, without providing any justification whatsoever, for either of those conclusions, as deponed to.

Conclusion as regards the 2nd defendant's application for relief from sanction

[28] Ultimately, each case involving an application for relief from sanctions, must be considered, on its own facts. In the circumstances, based on the particular facts of this particular case, the 2nd defendant's application, must fail. For reasons which though, will become apparent later on in these written reasons, no order ought now to be made by this court, as regards the said application.

The claimant's application for relief from sanctions:

[29] The claimant's application for relief from sanctions is supported by the affidavit evidence of Abishai Wilkie, who has deponed that she is a paralegal in the law firm of Zavia Mayne & Co. - the applicant's attorneys-at-law. She has deponed that her knowledge of the facts deponed therein, was derived from her assistance in the conduct

of the matter and, *'from information and instructions which the claimant/applicant have provided to our law firm.'* (Para. 3)

[30] The claimant's application for relief from sanctions was filed on February 29, 2014. The relevant sanction took effect on November 18, 2023 - since the witness statements of the parties were required, by order of this court as made at Case Management Conference, to have been filed and exchanged, on or before November 17, 2023. To simplify, I will, for present purposes, describe the claimant's present application as having been filed approximately three months after the relevant sanction took effect.

Was the claimant's application for relief from sanctions filed promptly?

[31] The affidavit evidence being relied on, by the claimant, has disclosed that the claimant's law firm, was unable to make contact with the claimant, despite having made efforts to do so, via phone calls, between July and November, 2023. In or about January of 2024, the claimant's attorneys were finally able to then make direct contact with the claimant. It is to be noted that neither the claimant nor any attorneys-at-law, from the law firm of Zavia Mayne & Co., were present in court when the relevant Case Management orders were made.

[32] Nonetheless, I have drawn the inference that, the claimant's law firm, must have been aware of the orders that were made in July, from as of that month, since they were trying to contact the claimant from as of that month and when, eventually, that law firm did make contact with him, in or about January of 2024, they then informed him that the court made orders for certain documents to be filed and served, and that they were not in a position to file the witness statements, as they had no contact with him.

[33] Bearing in mind the particular circumstances of this particular case, I have concluded that the claimant has proven that the present application of his, was filed promptly. That conclusion of mine though, ought not hereafter to be used by anyone, as though it is a broad precedent, in terms of the three-month time factor, which can be utilized in any other case, as an example of promptness. Everything in that regard, of

necessity, will depend on the particular circumstances of each particular case and the views of reasonable judicial officers, can differ, even when considering a similar, or the same, time period. Such differing views will not, in and of themselves, signify that one such view is correct and the other, is wrong. Reasonable judicial officers can differ, without being considered by a higher court, on an issue of fact, as having been palpably wrong, such that the judgment of the court of first instance, will be over-turned, on appeal.

Has the claimant generally complied with all other relevant rules, Practice Directions, orders and directions?

[34] As aforementioned in paragraph 30 of these reasons, the claimant was not present at the Case Management Conference and neither, was his attorney-at-law. They ought to have been present. See ***rule 27.8(1) and (2) of the CPR*** in that regard. The Attorney General was present thereat, via counsel from her office. Zavia Mayne & Co. were aware of the scheduled date and time for the Case Management Conference that was held on July 24, 2023. Attorney Stephen McCreath from Zavia Mayne & Co. was present in court, when Wong-Small, J. (Ag.) ordered, on January 12, 2023, that the Case Management Conference was adjourned to July 24, 2023.

[35] No statement of facts and issues, whether agreed or not, has as yet, been filed or served, by the claimant. Para. 5 of the orders made by this court at Case Management Conference, required same to have been filed, on or before December 15, 2023.

[36] For the purpose of the claimant's present application, the claimant ought to have filed a bundle of documents pertinent to this application of his, as well as served on the 2nd defendant, an index to that bundle and ought to have also, filed and served a bundle of submissions and authorities. See: ***Practice Direction No. 8 of 2020***, in that regard.

[37] On July 24, 2023, at the then scheduled, adjourned Case Management Conference hearing, apart from having made at least some of the typical Case Management orders, Thompson-James, J. then also ordered that the Case Management Conference hearing was adjourned to January 15, 2024. At that further Case Management Conference, the claimant was once again, not then in attendance.

Interestingly and also, importantly, on that date, this court ordered that the parties are to comply with all outstanding orders by the 28th June, 2024. Up until now, a statement of facts and issues has not been filed by the claimant, nor has the claimant as yet filed any witness statement.

[38] Quite frankly, the claimant has been so non-compliant with court orders, up until January 15, 2024, that on that court date, Hutchinson-Shelly J. then made an unless order against the claimant. That unless order, was that: *'If the claimant is not ready to proceed on the next court date, his statement of case shall stand as struck out.'* It must now be stated that it is, at least, very unfortunate and perhaps even a violation of the claimant's counsel's ethical obligation to the court, that the making of that order, was never disclosed to this court, at the last court hearing, which was presided over, by me, on July 30, 2024, when each counsel made oral submissions to this court, in support of their respective clients' applications for relief from sanctions. If ever there was a time when such an order, ought to have been disclosed to this court, it must have been on the hearing of the claimant's application for relief, especially since, on that application, as the claimant's counsel clearly knew, based on the oral submissions which she made to this court, the claimant needed to satisfy this court, that the claimant had been in general compliance with court orders, rules, directions and Practice Directions.

[39] To my mind therefore, the claimant's entire statement of case, now stands as struck out and this court will, unless persuaded by counsel hereafter, to do otherwise, order accordingly. If that were not so, rest assured that at the very least, the claimant's application, which is now under consideration by this court, would have been denied by this court, as the claimant has not met the requirement of ***rule 26.8(2)(c) of the CPR***. That failure is in and of itself, fatal to any application for relief from sanction. There is, in the circumstances, no need to proceed any further in this court's analysis of the claimant's application for relief. The claimant's entire case, has been struck out. As such, no relief from sanctions, arising from the claimant's failure to file and exchange witness statements by the specified date, can properly now be granted to the claimant. In any event though, had I proceeded to analyze the claimant's present application further, I am satisfied beyond all doubt, that his present application could not and would

not, have been successful, for the reasons that I have adumbrated above, with respect to his general non-compliance with rules of court, orders, directions and Practice Directions.

[40] I am surprised, to put it mildly, that defence counsel representing the 2nd defendant was patently unaware that an unless order was made by this court, against the claimant, which was not complied with, by that party. I do hope that the advocates, who appeared before the court, in respect of the relevant applications, will do better, in terms of meeting their ethical obligations to the court and with respect to being properly prepared for court proceedings.

[41] These written reasons, will be shared with the parties and with the wider public, including attorneys-at-law. It is hoped by me, that same will provide important future guidance to those seeking relief from sanctions. Moreover, it is hoped by me, that attorneys and litigants alike, will develop a culture of compliance, rather than non-compliance with respect to rules and orders and Practice Directions, with the latter-mentioned being that which, I think, generally, presently prevails in this jurisdiction.

[42] At this stage, I will proceed to hear from the parties, before making my orders and in particular, I will now hear from the parties as to whether judgment on this claim, should now be entered, by this court, in favour of the defendant.

.....
Hon. K. Anderson, J.