[2021] **JMSC CIV. 16**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV00917

BETWEEN	**EAIN WILLIAMS**	**CLAIMANT**
AND	**DOTTLYN TULLOCH**	**DEFENDANT**

IN CHAMBERS

Mrs. Christine Chung-Nunes Attorney-at-Law for Defendant/Applicant

Ms. Nieoker Junor instructed by Knight, Junior & Samuels Attorney-at-Law for the Claimant/Respondent

Heard: December 1 and 17 2020 and January 21, 2021

Civil Procedure – Application to file defence out of time Civil Procedure Rule (CPR) 10.3 and 26.1, whether an applicant is permitted to make more than one application to file defence out of time, Res Judicata

MASTER S. ORR (AG)

[1] Before me is an application by the Defendant Dotlyn Tulloch for permission for her Acknowledgement of Service filed out of time on August 4, 2020 to stand, and for permission to file her defence out of time.

FACTUAL BACKGROUND

[2] A brief summary of the claim and the circumstances leading up to the Defendant's application is helpful.

[3] Eain Williams and Dothlyn Tulloch are the registered owners of premises situated at Lot 72 part of Colbeck called Bowers Estate in the parish of St. Catherine.

[4] By Fixed Date Claim filed on March 7, 2019 Mr. Williams seeks several declarations as to his interest in the Bowers Estate property. It is clear that he wishes to realize his interest as in addition to the declaration sought, he asks that the Defendant be directed to purchase his 50% interest in the property or in the alternate that same be placed on the open market and the net proceeds of sale shared equally between them.

[5] The Claimant served the Fixed Date Claim and supporting affidavit on the Defendant by registered post pursuant to the order of Master Harris of April 25 2019, authorizing service out of the jurisdiction and by registered post.

[6] The Affidavit of Service filed on behalf of Dorothy Franklyn, process server on July 2, 2019 exhibits the registered receipt slip dated June 20, 2019. This is the date on which Miss Franklyn stated that she posted the Fixed Date Claim and Supporting Affidavit and Acknowledgment of Service to Miss Tulloch.

[7] CPR 6.6 (1) provides that the deemed date of service for documents served by registered post is 21 days after the date indicated on the post office receipt which also reflects June 20, 2019.

[8] However, in the affidavit of urgency filed by Mrs. Chung-Nunes filed on May 8, 2020, she states that the Defendant was served on December 27, 2019, some six months after the documents were posted. This was never challenged by the defendant.

[9] By counsel's calculations, Miss Tulloch's defence/affidavit in response to the Claimant's affidavit should have been filed and served on or around February 7, 2020.

[10] No Acknowledgement of Service was filed by the Defendant.

[11] The first application for permission to file her defence/affidavit out of time was filed on May 8, 2020, some nearly seven months after the permissible period prescribed by the rules to file her defence.

[12] This application was heard on July 16 and 28, 2020 by Master Mott Tulloch-Reid and was refused. After refusing the Defendant's application the Master set the claim down for hearing before a Judge on May 5, 2021.

[13] The Defendant filed a second application for leave to file her defence/affidavit out of time on September 28, 2020. This application sought an additional order that the Acknowledgement of Service filed on August 4, 2020, and after the initial hearing be permitted to stand. It is this second application that is now before me.

[14] At the hearing on December 1, 2020 Mrs. Chung-Nunes made oral submissions however the scheduled time was insufficient to hear complete submissions from both parties and counsel agreed to reduce their submissions into writing.

[15] Ms. Nieoker Junor raised a preliminary point as to whether the Defendant could make a second application, her first application having already been considered by Master Mott Tulloch-Reid. In her view the proper forum was in the appellate court as this court could not review the decision of a Judge of equal jurisdiction. Counsel also raised the issue of res judicata which she also believed was applicable and precluded the Defendant from making this 2nd application.

[16] While I have not repeated the submissions filed on behalf of both parties, I am grateful for their industry. They can rest assured that I have given consideration to these submissions.

[17] In considering the Defendants application, I must first determine;

(a) whether the Defendant is permitted to make this second application, or as Miss Junior submits res judicata applies and the Defendant must appeal Master Mott Tulloch-Reid's order; and

(b) whether the Defendant's application should be granted and her Acknowledgment of Service filed on August 8, 2020 should be permitted to stand and she should also be given additional time to file her defence/affidavit.

THE LAW

[18] CPR 10, 3 (9) provides that

> *"a defendant may apply for an order extending the time to file a defence",*

and rule 26.1 (2) (c) further provides that,

> *"except where these rules provide otherwise the court may, extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application is made after the time for compliance has passed."*

[19] This is the authority on which the court exercises its discretion to extend the time to file a defence.

[20] The rules are silent as to the number of applications that a Defendant can make to extend the time to file his defence. In the absence of any rule prohibiting more than one application it is at the court's discretion as to the number of applications a Defendant might make. Guidance can be taken in the exercise of this discretion from other instances where the court has allowed an applicant to make more than one application in relation to interlocutory proceedings. Mrs. Chung-Nunes has relied on several decisions in relation to applications to set aside default judgments where the court determined that a Defendant can make numerous applications to set aside a default judgment in certain instances.

[21] In considering whether the court could entertain more than one application to set aside a default judgment, Rowe, P (**Gordon and Gordon v W Vickers and L. Vickers** [1990] 27 JLR 67,) said that section 258 of the Judicature (Civil Procedure Code) Law enables a court or judge to set aside any judgment obtained by default upon terms as to costs or otherwise.

[22] He held that the discretion given by the section is wide and unfettered. He likened it to the UK RSC Order 27.r 15 which Lord Atkins said gives the court an unconditional discretion to set aside a default judgment (see Evans v Bartham [1937] 2 AII ER 646, 650.

[23] Rowe, P's analysis of the wide unfettered powers of the old Civil Procedure Code equally apply to CPR 26.1 (2)(c).

[24] Brooks, JA as he then was made a similar observation of CPR 26.1(2)(c) in **Attorney General for 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 where he observed that the court's powers to extend time under the CPR were also silent and provided no guidance to the court in the exercise of its discretion to extend time to file a defence. In that case the Attorney General had appealed the decision of the Master who refused to grant an extension of time permitting the Attorney General to file her defence out of time. At the hearing of the application the Defendant did not have a draft defence before the court.

[25] Brooks JA (as he then was) said (at paragraph 14) that the principle that operates in the absence of specific guidance in a particular rule, is that the court is to have regard to the overriding objective in applying that rule. The overriding objective of the CPR he stated, is that courts are to strive to ensure that cases are dealt with justly.

[26] He relied on that court's earlier decision in **Fiesta Jamaica Limited v NWC** [2010] JMCA Civ. 4 where the court approved an approach to assessing applications to file defences out of time. Harris, JA who gave the decision on behalf of the court relied on Lightman, J's summary of the principles governing the court's approach in determining whether leave ought to be granted on an application for an extension of time in **Commissioner of Customs and Excise v Eastwood Care**

Homes (Ilkeston) Ltd and Others AII England Official Transcripts [1977-2008] delivered 18th January 2000 where he said:

> *"The position, however, it seems to me, has been fundamentally changed, in this regard, as it has in so many areas, by the new rules laid down in the CPR which are a new procedural code. The overriding objective of the new rules is now set out in Pt 1, namely to enable the court to deal with cases justly, and there are set out thereafter a series of factors which are to be borne in mind in construing the rules, and exercising any power given by the rules.* ***It seems to me that it is no longer sufficient to apply some rigid formula in deciding whether an extension is to be granted. The position today is that each application must be viewed by reference to the criterion of justice and in applying that criterion there are a number of other factors (some specified in the rules and some not) which must be taken into account.*** *In particular, regard must be given, firstly, to the length of the delay; secondly, the explanation for the delay; thirdly, the prejudice occasioned by the delay to the other party; fourthly, the merits of the appeal; fifthly, the effect of the delay on public administration; sixthly, the importance of compliance with time limits, bearing in mind that they are there to be observed; seventhly, (in particular when prejudice is alleged) the resources of the parties.*

[27] Brooks, JA (as he then was) also expressed the view that one result of the court giving effect to the overriding objective when interpreting the rules or exercising any powers under the CPR is that the court should not adopt an inflexible stance where it is given a discretion. Each case had to be decided on its own facts.

[28] I have considered several decisions on setting aside default judgments both in the Supreme Court and Court of Appeal. These are all cases in which the court considered an interlocutory application where the court had a similar wide discretion to set aside a default judgment and where the court considered whether an applicant could make more than one application.

[29] A common theme running through those decisions was that "unless and until the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure (per Lord Atkins in **Evans v Bartlam** [1937] 2 AII ER 646, 650)

[30] To put it another way, *"the court may in the exercise of its discretion relieve the Defendant of the "punishment" meted out to him for his omission, tardiness, negligence or what have you, provided he begs, prays or pleads in the proper manner whether it took him two or more occasions to beg or pray properly*" (see **General Moors Co-operation v Canada West Indies Shipping Co. Ltd**, (Essays in the Jamaican Legal System 1660 - 1973 by HVT Chambers at page 65).

[31] Rowe P, cautioned that these wide powers to hear several applications to set aside a default judgment *"does not mean that the court is powerless to curb an abuse of its process, nor does it mean that a Defendant against whom a default judgment has been regularly entered can make repeated applications to have it set aside without advancing new relevant facts*" (**Granville Gordon and Adelaide Gordon v William Vickers and Lucille Vickers** [1990] 27 JLR).

[32] Harrison, P. P(Ag) as he then was in **Trevor McMillan et al v Richard Khouri** (unreported) SCCA III/2002 delivered on July 29, 2013 said that:

> *"A second and subsequent application may be made to the same or another judge of the Supreme Court to set aside such a judgment as long as the applicant can put forward new, relevant material for consideration (**Gordon et al v Vickers)** [1990] 27 JLR 60. Facts may be regarded as new material, although through inadvertence or lack of knowledge such facts were not placed before the Court on the first occasion provided they are relevant…"*

[33] More recently the court held that:

> *"A court may entertain an application to set aside a default judgment even if a previous application had been made and dismissed. It also does not matter whether the previous application was heard on the merits and the evidence in the second application need not be evidence which was not available at the time of the first (hearing) but must be new in the sense that it had not been placed before the court at the hearing of the 1st application." (**Russell Holding Ltd v L and W Enterprises Incorporated and Anor** 2016 JMCA Civ. 39 decided July 1, 2016).*

[34] Hart-Hines J (Ag) has cautioned in **Paulette Richards v North East Regional Health Authority and Ors** [2020] JMSC Civ. 90 at para 20 that;

> *"Though the CPR is aimed at achieving great efficiency in the administration of justice, courts must always bear in mind the overriding objective of achieving fairness. Consequently, it has been repeatedly said in cases both here and in England that courts must be reluctant to deprive a litigant of the opportunity of having the case determined on the merits."*

She relied on Blackstone's Civil Procedure 2014. The commentary at paragraph 1.27 states:

> *"The main concept in the overriding objective (CPR, r. 1.1) is that the primary concern of the court is to do justice. Ultimately the function of the court is to resolve issues between the parties … shutting a litigant out through some technical breach of the rules will not often be consistent with this, because the main purpose of the civil courts is to decide cases on their merits, not to reject them for procedural default."*

[35] These principles are equally applicable to all applications for an extension of time to file a defence out of time.

[36] They are even more relevant to this particular case where no judgment has been entered against the Defendant as CPR 12.2 prohibits a Claimant from obtaining a default judgment when the claim[A1] is commenced by a Fixed Date Claim.

[37] Given the court's wide powers to set aside a default judgment where the court has not considered a case on its merits, it would seem inconsistent with the overriding objective to refuse to hear this defendant's second application. For while there has been a procedural breach of the rules, there is no sanction or coercive measure of the court that arises as a result of the Defendant's breach of the rules.

[38] This inconsistency would lead to the court hearing the Claimant's Fixed Date Claim without the benefit of the evidence of Miss Tulloch and without determining the Fixed Date Claim on the merits but most importantly contrary to the overriding objective of dealing with all cases justly.

[39] In her judgment Master Mott Tulloch-Reid said that (at paragraph 9):

> *"The draft affidavit is not evidence and so what is contained in that document cannot be considered evidence before the court. It is what is intended to be put before the court. The evidence of merit of the Defendant's case would have to be contained in the affidavit supporting the*

> *application. Unfortunately for the Defendant, that evidence is missing and the merits of the case of the party applying for the extension of time is not before me."*

She went on to find at paragraph 11 that:

> *"Since there is no affidavit of merit the draft affidavit by itself is insufficient to give rise to a meritorious defence, I am unable to determine whether the Defendant would have a real prospect of successfully defending the claim, which is what filing a meritorious defence boils down to."*

[40] In the circumstances I could not accept counsel's submission that the Defendant's second application would require me to review a decision of a court of equal jurisdiction, and that the Defendant must appeal Master Mott Tulloch-Reid's decision. From the learned Master's reasoning, she did not consider the Defendant's defence or whether Miss Tulloch had a good defence. She instead concluded that there was nothing before the court since she could not consider the information contained in Miss Chung Nunes' affidavit, since it was in an unacceptable format.

[41] Similarly, Res Judicata would not apply because the decision on the Defendant's first application was not a decision on the merits.

[42] In **Martin v Chow** [1985] 34 WIR the Court of Appeal of Trinidad and Tobago in granting the applications for an extension of time in which to lodge an appeal held that although two earlier applications had been struck out, they had not been dismissed on their merits. Accordingly, the Respondent could not plead Res Judicata so as to preclude the Applicant from making a third application.

[43] The facts of that case were that there had been two previous applications to extend the time limited for lodging an appeal against the decision of the lower court. The first application was struck out as it did not disclose any grounds of appeal. The second application was struck out because the affidavit had been sworn before the date of the notice of motion.

[44] At the hearing of the third application, the Respondent objected to the jurisdiction of the court to entertain the application on the basis that the matter was now res judicata. The court held that as there was no dismissal on the merits res judicata did not apply and the appellant's third application was properly before that court.

[45] Counsel has also pointed out that Miss Tulloch's affidavit was witnessed by a notary public from a non-Commonwealth jurisdiction. As such a certificate (apostilles) is required certifying that the notary public's appointment was valid at the time of notarization.

[46] This error can be cured with counsel's undertaking to provide the certificate and attach same to the affidavit before the court.

[47] In light of the foregoing, I accept Miss Chung-Nunes' submissions that the peculiar circumstances of this case would permit me to consider the Defendant's second application to extend the time limited to file defence/affidavit

THE APPLICATION TO EXTEND THE TIME LIMITED TO FILE THE DEFENCE

[48] In determining whether to grant the Defendant's application to extend the time to file her defence, I am also guided by the criterion outlined by Panton, JA in **Leymon Strachan v Gleaner Company Limited and Dudley Stokes** (Unreported) Supreme Court, Jamaica Motion No. 12/1999 delivered on December 6, 1999.

[49] Although that court was considering an application to extend the time to file an application for leave to appeal, Panton, JA set out the principles that should guide the court in considering an application to extend the time for procedural steps to be taken generally.

[50] He said that in exercising its discretion the court will consider;

(i) the length of the delay

(ii) the reason(s) for the delay

(iii) any prejudice and the degree of the prejudice to other parties where time is extended

[51] Importantly the learned judge also said that notwithstanding the absence of a good reason for the delay, the court is not bound to reject an application for an extension of time as the overriding principle is to ensure that justice is done.

DELAY

[52] In considering the period of delay, I have taken into account the period between February 7, 2020, when Miss Tulloch's defence/affidavit in response should have been filed in keeping with CPR 10. (3)(1); and May 8, 2020. This is when her first application was made. I must also consider the period between July 28, 2020 and September 28, 2020 when her first application was refused and this application was filed. [I have not included the legal vacation as time would not run for this application during the legal vacation].

[53] There was a delay of a little over three (3) months in the first instance and 28 days before the filing of this second application. I do not consider this period to be inordinate. I am guided by the several pronouncements of this court reminding us that time periods prescribed by the rules are important. However, considering the many decisions from both this court and the Court of Appeal, permission has been granted in cases where the delay in making the application was for greater than the cumulative period of almost four (4) months in this case.

[54] The length of the delay in making the application cannot be considered independently of the other factors.

THE DELAY EXPLAINED

[55] In explaining her delay in filing her defence and in applying to extend the time limited to file her defence Miss Williams has said many things.

At paragraph 40 of her affidavit filed on September 28, 2020 she says that she "was in a complete state of shock and confusion" when she received the Claimant's fixed date claim as while she has not communicated with Mr. Williams for some time, he shares an amicable relationship with her children, particularly her youngest daughter and her grandchildren. She therefore never anticipated "an action of this nature being brought against her".

[56] She further stated that up to the time that she received the fixed date claim, she too shared an amicable relationship with the Claimant. There was no animosity between them which would have precluded them from dealing with the subject property and his claim without resorting to the court.

[57] She admitted that while she received the documents in December 2019, she did not read the claim in its entirety. It was therefore not until her niece's visit in February of the following year that she informed herself of the contents of the document and the consequences of not responding to the claim. It was her niece Patricia Taylor who read the documents and explained the urgent need to retain counsel and respond to the claim. This she did when she visited Jamaica in February 2020.

[58] Aside from her fear of court, she outlined that she was further hampered in instructing her Attorney-at-law as she has admitted that she is unfamiliar with email communications and thus had to seek assistance from her niece Patricia Taylor who lived in another county, New York. Her niece would receive emails from her Attorney-at-law in Jamaica, drive to New Jersey to pick her up and return to New York to read her attorney's emails with her and respond on her behalf.

[59] Her efforts were further hampered by the difficulties she experienced in securing documentation from the Canada Border Services Agency and the Passport Immigration & Citizenship Agency (PICA) here in Jamaica. She has dual citizenship and wished to include evidence as to her travel to Jamaica in relation

to the disputed property. She says that the response from PICA only came on May 8, 2020.

[60] Apart from her own delay in receiving the documentation, she says her Attorney-at-law who is a resident of the parish of St. Catherine was subject to quarantine restrictions imposed on non-essential workers in that parish as a result of the COVID pandemic. This affected her ability to prepare her defence.

[61] Between the period April 13 and 30 2020, she concedes that nothing was done to further the preparation of her defence due to the stay at home orders imposed both in this jurisdiction and in her country of residence.

[62] She further explained that her own movements were restricted as she is a live-in nanny and the children in her care were no longer attending school. She also rarely ventured out during that time only traveling with her niece when she collected her to take her to her home in New York to discuss and respond to the emails from her attorney. In addition, she said the normal hours of operations for businesses were also affected by the restrictions imposed by the authorities as a preventative measure during the pandemic. This also affected her ability to complete her application and defence.

ANALYSIS

[63] I do not believe that Miss Tulloch has provided a reasonable explanation for her failure to read the claim form and take action between December 2019 and February 2020. While she may have been shocked at being sued by Mr. Williams and even fearful of court proceedings, I would think that the very nature of the documents she received should have propelled her to seek immediate legal assistance.

[64] She has however to my mind explained and accounted for the period between February 2020 (when her niece bought the details of the claim to her attention and

the urgent need to respond to same) and the filing of her previous application on May 8, 2020.

[65] The court term would have ended shortly after Master Mott Tulloch-Reid's order of July 28, 2020. This second application was filed on September 28, 2020, after the legal vacation in August. While no explanation is provided for the intervening period, (during the period leading up to September 28, 2020,) it is not a lengthy period. Given the detail provided in Miss Tulloch's second affidavit, a reasonable inference to be drawn is that this second application and affidavit were being prepared during that time.

[66] It has not escaped me that no explanation has been provided for the delay in filing the Acknowledgment of Service. This would be an oversight on counsel's part as well as there being no explanation as to why it was only filed on August 4, 2020.

[67] The purpose of filing an Acknowledgment of Service is to confirm receipt of the claim and to inform the Claimant and the court as to whether the Defendant intends to challenge or admit the claim against her. While the Acknowledgement of Service was not filed until August 2020, there could be no doubt that Miss Tulloch had received the claim and intended to defend the claim prior to the filing of the Acknowledgment of Service.

[68] Given the detailed evidence outlined in Miss Tulloch's affidavit explaining the efforts she took as well as her counsel's efforts towards preparing a defence, it would seem that the failure to file an Acknowledgment of Service could have been an oversight or inadvertence on counsel's part. In the circumstances in the interest of justice it would be unfair to penalize the Defendant for counsel's oversight. Brooks JA (as he then was) has accepted that inadvertence is not an unreasonable explanation in some instances (**Attorney General of Jamaica v Rashaka Brooks** (supra))

[69] In any event, the rules do not provide any sanction for a defendant who fails to file an acknowledgement of service within the prescribed time in response to a fixed

date claim. There is no provision for a judgment to be entered in default of an acknowledgement of service for a fixed date claim.

THE DEFENCE

[70] It is equally important to examine the proposed defence in order to determine whether it discloses an arguable defence to Mr. Williams' claim.

[71] Miss Tulloch's defence is summarized at paragraph's [5] – [37] of her affidavit filed on September 28, 2020. She states that although the parties purchased the Bower's Estate property as joint tenants, she claims to have dispossessed Mr. Williams of his interest in the property.

[72] She concedes that initially they both contributed to the cost of constructing the home situated on the property. However, she alleges that after 2006, Mr. Williams never visited the premises or exercised any ownership over same.

[73] Reference is made to a visit he made to the premises in 2015, only after he requested and obtained permission to use the premises, returning the key to her agent after his departure. The Defendant avers that on his own admission, Mr. Williams cannot speak to the state of the premises nor does he speak to any contribution to the premises after 2006.

[74] On this basis, she alleges that Mr. Williams abandoned his interest in the property and could not now seek to exercise any interest in same.

[75] The defence raises triable issues and is not fanciful. Whether she will succeed on her defence is not an issue for the court at this stage. (**Swain v Halliman**) It is sufficient if the defendant is able to show that she has a good defence on the merits.

PREJUDICE

[76] I must also consider any prejudice real or substantial, to the Claimant as a result of the Defendant's delay. The Claimant has not pleaded any prejudice. I am

cognizant of the fact that the most obvious prejudice to any Claimant will be any delay experienced in securing a timely trial date.

[77] In considering the issue of prejudice Panton, JA spoke particularly of "any prejudice and the degree of the prejudice to the parties" where time is extended. (**Leymon Strachan v The Gleaner Company Ltd & Anor,** supra)

[78] At the end of hearing of the Defendant's first application to extend the time to file her defence, the claim was set down for hearing on May 5, 2021 for three hours. With the necessary case management orders, there is nothing before me that would preclude the parties from keeping that date.

CONCLUSION

[79] This court has accepted the approach suggested by Sir Thomas Bingham, MR in **Costellow v Somerset County Council** [1993] 1 WLR 256, 264 (h) where he said;

> *"Saving special cases or exceptional circumstances it can rarely be appropriate, on an overall assessment of what justice requires to deny the plaintiff an extension, (where the denial will stifle his action) because of a procedural default, which even if unjustifiable, has caused the defendant no prejudice for which he cannot be compensated by an award of costs."*

[80] I would venture to say that this principle would equally apply to this Defendant and her application to extend the time limited to filing her Acknowledgment of Service and Defence.

[81] It would be inconsistent with the overriding objective of dealing with all cases justly to close the door on a defendant who failed to adhere to a prescribed rule, where no sanctions apply as a result of this procedural breach and in circumstances where no prejudice is pleaded and the scheduled trial date can still be retained.

DISPOSITION

[82] In light of the foregoing I make the following orders:

(i) The Defendant's Acknowledgment of Service filed out of time and filed on August 4, 2020 is to stand.

(ii) The time to file the defence/affidavit in response to the Fixed Date Claim is extended and the Defendant is permitted to file and serve her defence/affidavit in response on or before February 12, 2021.

(iii) The Claimant is permitted to file an affidavit in response on or before March 5, 2021.

(iv) Skeleton submissions and a list of authorities are to be filed and served by April 23, 2021.

(v) Both parties are to attend the hearing for cross-examination and permission is granted to both parties (where necessary) to attend the hearing via video link.

(vi) A Pre-Trial Review is scheduled for April 14, 2021 at 10:30 am for half an hour.

(vii) The trial date of May 5, 2021 at 10:00 am for three (3) hours before a judge in chambers is confirmed.

(viii) The costs of this application are to the Claimant to be taxed if not agreed.

(ix) The Defendant's Attorney-at-law is to prepare, file and serve this order.

(x) The Claimant is granted leave to appeal this decision.