IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV01178

BETWEEN	**GLENROY TYRELL**	**CLAIMANT**
A N D	**GREENWOOD PLAZA CO. LTD.**	**DEFENDANT**

IN CHAMBERS

Mr. Nicoy Ferguson instructed by Temple Law for the Claimant

Mrs. Jeromah Onfroy instructed by Dunbar & Co. for the Defendant

Heard: October 23, 2026 Delivered: November 19, 2026

Civil Practice and Procedure – Civil Procedure Rules – Rule 29.7 – Notice of Filing of Witness Statement/Summary – When this Notice Is to be Used.

Civil Practice and Procedure – Civil Procedure Rules – Rule 29.7 – Whether it is the Serving Party or the Receiving Party that Should First Enquire Whether the Other Party is Ready to Exchange Witness Statements Before Proceeding to File a Notice of Filing Under this Rule

Civil Practice and Procedure – Civil Procedure Rules – Rule 29.7 – When should the Enquiry About Exchange of Witness Statements Be Made.

Civil Practice and Procedure – Civil Procedure Rules – Rule 29.7 – Whether the Defendant Could File and Serve a Notice of Filing Where the Claimant Indicated they were Ready to Exchange Witness Statements Before the Serving of the Defendant's Notice of Filing.

Civil Practice and Procedure – Rule 26.8 – Relief From Sanction – Whether or Not Defendant Needed to Apply For Relief From Sanction – Whether or Not Defendant is Entitled to Relief from Sanction.

STAPLE J

STATEMENT OF ISSUE AND RESOLUTION

[1] Is a party who files and serves a Notice of Filing of Witness Statement without ensuring that the other party (the receiving party) failed to make arrangements to exchange statements compliant with rule 29.7? In this case, the Claimant (receiving party) made arrangements to exchange statements, but the Defendant (serving party) filed and served a Notice of Filing. This was a breach of rule 29.7 and rendered the Defendant non-compliant with the order for service.

BACKGROUND

[2] This is the latest iteration of procedural issues that have plagued this case since filing. At the Case Management Conference held on the 24th March 2026, I ordered that the parties were to file and exchange their witness statements on or before June 30, 2026 by 4:00 pm.

[3] At the Pre-Trial Review held the16th September 2026, a dispute arose as to whether or not the Defendant had complied with the order for service of witness statements.

[4] Mr. Eccleston argued that he had called the Defendant's firm on the 30th June 2026 to indicate that he was ready to exchange and asked if they were ready so to do. He said he was told that the Witness Statement of the Defendant was being filed to be served on him that date. Accordingly, he said he gave instructions to his bearer to serve his witness statements.

[5] Mr. Eccleston advised that what he in fact received from the Defendant on the 30th June 2026 was a Notice of Filing of Witness Statement. He complained that he did not receive witness summaries until July 15, 2026. Accordingly, he said the Defendant did not comply with rule 29.7 and breached the order for service of witness statement.

[6] Mrs. Onfroy, who appeared on behalf of the Defendant, was not in a position to dispute the assertions of Mr. Eccleston and requested time to take instructions. I set a further date for the parties to put in their respective affidavits to support their positions and set the matter for hearing before me on the 23rd October 2026 to consider the evidence and arguments.

[7] Subsequently, the Defendant filed an application to get a declaration that they had complied with rule 29.7 and the order for service. They also filed, as part of that application, an application for relief from sanction in the event it was deemed necessary.

[8] I have read the submissions from both parties and I am grateful to them for their industry. I am also thankful to my judicial counsel for her research efforts in this matter. They have all been a tremendous help.

THE FACTS

[9] The facts in this case are not in any real dispute in light of what the affidavit evidence from both sides disclosed.

[10] The Claimant filed his witness statements on the 26th June 2026. Up to the 29th June 2026, the Defendant had not filed any witness statement or witness summary. The Claimant, though ready to exchange, did not call the Defendant at this time to make enquiries.

[11] On the 30th June 2026, the Defendant's firm sent their bearer with prepared witness summaries and a Notice of Filing to have them filed and served on the Claimant in accordance with rule 29.7.

[12] Mr. Jahvair Brown said, in his affidavit filed on the 29th September 2026 on behalf of the Claimant, that Mr. Eccleston had advised him that he had called the Defendant's firm at around 3:00 pm on the 30th June 2026 to enquire whether the

Defendant was ready to exchange witness statements. The fact of this telephone call was not disputed by the Defendant's witness, Ms. Vinnette McDonald, in her affidavit filed on the 1st October 2026.

[13] As it turned out, at the time Mr. Eccleston was placing his call, the Defendant had already dispatched their bearer to the Supreme Court to file a Notice of Filing of Witness Statement as well as Witness Summaries for the Defendant's witnesses. I drew this inference from the fact that the Notice of Filing of Witness Statement, as recorded on the Court's copy of the filed document, records the filing as having been done at 3:01 pm on the 30th June 2026.

[14] According to Mr. Brown, Mr. Eccleston advised him that the staff member for counsel for the Defendant's firm advised him that their bearer was filing the witness statements at that time and that he would be served shortly. Mr. Eccleston then advised that he would send his bearer to serve them.

[15] What in fact transpired was that the Defendant served Mr. Eccleston only the Notice of Filing of Witness Statement at around 3:10 pm on June 30, 2026. Mr. Eccleston served his witness statements on the Defendant's firm at around 3:34 pm the same date.

[16] Importantly, Mr. Brown said that Mr. Eccleston notified the Defendant's firm, at around the time of being served, that only the Notice of Filing was served without the accompanying witness statement or summaries. Mr. Eccleston said that he was told that those documents would be coming shortly. He did not, in fact, receive the documents.

[17] Mr. Eccleston wrote to Ms. Dunbar via email advising her that he had not received either witness statement or witness summary. This email was sent on July 3, 2026. Later that same day, Mr. Eccleston received the two witness summaries filed on the 30th June 2026 via email. Mr. Eccleston received the physical copies of the same witness summaries on July 15, 2026.

[18] It was in these circumstances that Mr. Eccleston disputed that the Defendant complied with rule 29.7 and therefore raised the question of whether or not the Defendant had complied with the order for service of the Witness Statement.

[19] The Court is now called upon to resolve this question. At the Pre-Trial Review on October 23, 2026, I heard argument from both counsel for the Claimant and the Defence on this matter and on the Defendant's application filed on the 1st October 2026 seeking relief from sanctions as an alternate remedy and for a declaration of compliance as the primary remedy.

[20] I identified these issues for resolution:

a) Whether or not rule 29.7(1)(b) imposes an obligation on the receiving party to make initial contact to make reasonable arrangements or if the obligation to make initial contact to make arrangements is imposed on both parties;
b) When should this initial contact to make arrangements be done? and
c) In the circumstances of this case, did the defendant act reasonably by going ahead and filing a Notice of Filing of Witness Summary and serving same on the Claimant?

[21] I am grateful to the parties for their helpful submissions on what I find to have been an area with very little written judgments on this issue.

THE LAW AND ANALYSIS

[22] Rule 29.7 of the Civil Procedure Rules was introduced to provide parties with a mechanism to effect service of witness statements (or summaries) on parties that are not yet ready to exchange their witness statements whilst still themselves being compliant with the order for service.

[23] It allows them the security of being able to comply with the order without exposing the details of the witness statement and thereby allowing the other side to gain a tactical advantage by modifying their own witness statement to meet the opponent's evidence.

[24] How the mechanism works is that the ready serving party may file and serve what is called a Notice of Filing of Witness Statement on the receiving party. The Witness Statements are filed in a sealed envelope at the Registry and the non-ready party is served with notice that the witness statements have been duly filed under seal. This seal is not broken and the documents not served until the receiving party certifies that they have served all other parties.

[25] I will set out the rule below.

"29.7 (1) This rule applies where -

(a) one party ("the first party") is able and prepared to comply with the order to serve witness statements; and
(b) the other party fails to make reasonable arrangements to exchange statements.

(2) The first party may comply with the requirements of this Part by -

(a) filing the witness statements in a sealed envelope at the registry by the date directed; and
(b) giving notice to all other parties that the witness statements have been filed.

(3) The statements filed pursuant to paragraph (2) must not be disclosed to any other party until that party certifies that witness statements or summaries in respect of all witnesses upon whose evidence that party intends to rely have been served."

[26] Note well that the starting line of rule 29.7(1) clearly states that the application of the rule is conditional on two things. Firstly, the "first party" (the serving party) must themselves be **able and prepared** (my emphasis) to comply with the order to serve witness statements. Secondly, the other party (receiving party) must have failed to make reasonable arrangements to exchange statements.

[27] There is no difficulty with the 1st requirement. A party is able and prepared to exchange when they have themselves filed the witness statement or witness summary within the time specified by the Order. Please note that the rule does not

say “will” be able. It says the party “must be able” – as in at the time of serving the Notice.

[28] The greater difficulty lies in the second aspect – that is, the receiving party must have failed to make reasonable arrangements to exchange statements. The difficulty that arises is the question as to whom must initiate the enquiry into the making of the arrangements. Is it the “first party” (the serving party) or the “other party” the receiving party?

The Normative Position

[29] Rules 29.4(3) and (4) set out what I call the normative positions once an order is made by the Court for the service of witness statements. It is the starting point and I set out the rules here.

> “*29.4…*
>
> *(3) The court may order a party to serve on any other party witness statements setting out the evidence on which that party intends to rely at the trial or other hearing.*
>
> *(4) A party’s obligation to serve a witness statement is independent of any other party’s obligation to serve such a statement.*
> *(Rule 29.7 provides a procedure that may be adopted when one party is and the other party is not prepared to serve witness statements.)”*
> *(**Brackets as present in rule**)*

[30] According to rule 29.4(4), the obligation on a party to serve a witness statement is independent of any other party’s obligation to serve their own statement. Then we see the reference to the procedure under rule 29.7 immediately below rule 29.4(4). Rule 29.7 is therefore an ***optional method*** (emphasis mine) available to a serving party to comply with their obligation to serve. It is, in my view, an option of **the serving party’s** (emphasis mine) choosing.

[31] Therefore, a serving party has an obligation to serve utilizing either option available to him. I had regard to the decision of the Eastern Caribbean Supreme Court of ***Philsbert Magloire v SAT Telecommunications Limited et al***.[1]

Exercising the Option

[32] It is not the first rule that gives a litigant an option on how to carry out an action mandated by the rules. Let us look at service of the Claim Form as an example. A litigant commencing suit must serve the Defendant or Respondent with the Claim or notice of the fact of a claim being made against them.

[33] The rules prescribe certain methods of service depending on the legal personality of the Defendant/Respondent[2]. But it also gives the Claimant options to serve outside of the prescribed methods of service.

[34] Each option carries with it a set of criteria that must be fulfilled and satisfied before the Claimant can utilize the said option and before the Court (whether through a judicial officer or Registrar) can say that the result was deemed effective.

[35] Let us look at rule 5.13 as an example. This deals with alternative methods of service. I will set out the rule here:

> *"5.13 (1) Instead of personal service a party may choose an alternative method of service.*
>
> *(2) Where a party -*
> *(a) chooses an alternative method of service; and*
> *(b) the court is asked to take any step on the basis that the claim form has been served,*

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[1] Unreported Eastern Caribbean Supreme Court, Claim No. DOMHCV2013/0200, August 17, 2015.
[2] See broadly the requirements for service of the Claim Form found under Part 5 of the CPR (2002) as amended.

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

(3) An affidavit under paragraph (2) must -
(a) give details of the method of service used;
(b) show that -
(i) the person intended to be served was able to ascertain the contents of the documents; or
(ii) it is likely that he or she would have been able to do so;
(c) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents; and
(d) exhibit a copy of the documents served."

[36] As is shown, when you exercise an option outside of the normative position, it is incumbent on the party exercising the option to demonstrate that they have met the conditions stated by the option to make the option effective in its objective.

[37] It is always for the serving party to prove that they have effected service of the Claim Form[3]. In my view, this is the case for any document under the Civil Procedure Rules.

[38] Therefore, in my view, the burden to prove that they have met the criteria under rule 29.7, if exercising this option outside of the normative position under rules 29.4(3) and (4), must be that of the serving party. To this end, I disagree with the blanket statement in the ***Philsbert Magloire*** decision[4] which suggests that the party who complies first has *carte blanche* authority to file the notice under seal. In my view, before they can apply this rule, there must be a default by the receiving party in the making of arrangements to exchange witness statements. This is the clear wording of the rule when it says "*This rule applies where*…".

What Must the Serving Party Prove?

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[3] See the decision of *GK General Insurance Co. Ltd. v Baker* [2025] JMCA App 13 at para 34.
[4] N1 *supra* at paragraph 14

[39] Rule 29.7(1) makes it clear that in order to rely on rule 29.7, the serving party must prove:

a) That they are able and prepared to comply with the order; and
b) That the Receiving party failed to make reasonable arrangements to exchange witness statements.

[40] The serving party must satisfy themselves of this **before** (emphasis mine) they are even able to file a Notice of Filing.

[41] It stands to reason then that, if challenged, the serving party must be able to prove to the Court that they met the above criteria. That is, at the time of filing of the Notice of Filing, they themselves were able and prepared to comply with the order for filing and service and that the receiving party had failed to make reasonable arrangements.

[42] The serving party does not necessarily have to prove that the receiving party failed to make any arrangements; the arrangements proposed by the receiving party must be unreasonable. Of course, if no arrangements are made at all, or if the receiving party were not in a position to make arrangements, then this would also satisfy the requirement.

A Rationale for the Rule

[43] This is an important rule. It forces the serving party to engage with the receiving party on the question of service of witness statements when ordered so to do. This is a reciprocal requirement as both parties are under a separate and independent obligation to serve their witness statement as per rule 29.4(4). Therefore, both parties stand in the shoes of a serving party. It prevents either party from trying to take advantage of the other.

[44] The requirement also has the benefit of saving precious court resources and time by alerting each other to the need to comply with the requirement for filing and service of witness statements and so earlier remedial steps can be taken to avoid

sanctions or to get relief sooner (if relief is needed), as opposed to sanctions being imposed and late applications for relief being made resulting in delays.

[45] Rule 1.3 imposes a duty on all parties to help the Court further the overriding objective. There is also a duty imposed on Attorneys-at-Law, under the Canons of Ethics, to have a spirit of cooperation with opposing counsel in dealing with matters[5]. In this regard, both sides can (and perhaps should) initiate contact to make arrangements for service. One does not need to wait for the other.

[46] If it were otherwise, then both parties (who are both serving parties) would simply be able to sit back and file Notices of Filing and Witness Statements/Summaries under seal. This would be contrary to the clear intent of the rule which is an exchange of witness statements before the deadline given. It would also result in an absurdity at the Pre-Trial Review where both parties are simply looking at each other to say, "Well, you did not contact me and so I just went ahead and filed my documents under seal and served a Notice".

[47] It is my view, therefore, that if a serving party is going to rely on rule 29.7, the onus would be upon them to show that they have satisfied the requirements for reliance on the said rule. This enquiry should be made of any such party by the Court as it determines whether or not that serving party has actually effected service of the witness statement. There should be no presumptions on this issue.

The Circumstances of the Case at Bar

[48] In this case, the evidence clearly shows that the Claimant's Attorney-at-Law made contact with the Defendant's Attorneys-at-Law to make arrangements for the exchange of witness statements. This was done at or around 3:00 pm on the 30th June 2026, an hour before the deadline for compliance.

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[5] See Canon VI(a) and (b).

[49] At this stage, the Court's records clearly show that the Defendant's bearer had just filed the Notice of Filing and the Witness Summaries on behalf of the Defendant. I can infer from this fact that the Defendant's Attorneys-at-Law had prepared the Notice of Filing for filing on this date. There was no evidence from the Defendant's Attorneys-at-Law of even an attempt to enquire of counsel for the Claimant whether he was in a position to exchange witness statements before this date and time. Yet, the bearer was sent by the Defendant's Attorneys-at-Law to Court to file a Notice of Filing under Seal.

[50] This, in my view, shows non-compliance with the provisions of rule 29.7 on the part of the Defendant as they intended to rely on the said rule without first ensuring that the Claimant's Attorneys were not in a position to make reasonable arrangements to exchange witness statements.

[51] In any event, the Claimant's Attorneys-at-Law called the Defendant's firm contemporaneously to the Defendant's Attorneys-at-Law's bearer filing the documents (including the witness summaries). The Claimant's Attorneys-at-Law indicated that they were ready to exchange and he was given assurances that the Defendant's Witness Statement/Summary would be served on him that day. I accept this evidence as being the truth of the conversation and it has not been challenged. The affidavit from Ms. McDonald filed on the 1st October 2026 gives support to this position at paragraph 3.

[52] The Claimant's Attorneys-at-Law, acting on the assurance, gave instructions to his bearer to serve. However, the Claimant's Attorneys-at-Law only received the Notice of Filing and not the summaries. I accept the evidence from the Claimant's Attorneys-at-Law that immediately upon being served with the Notice of Filing from the Defendant at around 3:10 pm, he called the Defendant's Attorney's office and made enquiries about the other documents.

[53] I accept his evidence that he was given assurances that he would be soon served on that date, but that the service of the summaries never in fact took place.

[54] It is my view that the Defendant cannot rely on rule 29.7 in these circumstances. Rule 29.7 can only apply if both conditions under 29.7(1)(a) and (b) are met and the serving party, the Defendant in this case, must prove that both conditionalities were met **before** (emphasis mine) they proceeded to file and serve the Notice. Since the clear evidence, which I accept, is that the Claimant's counsel (the receiving party) made what I consider to have been reasonable arrangements to exchange in the circumstances and was given an assurance that the exchange would take place on the 30th June 2026, it stands to reason that the condition under rule 29.7(1)(b) would not have been met at the time the Defendant served the Notice of Filing on the Claimant's Attorneys-at-Law.

[55] What ought to have happened is that the Defendant's firm should have contacted their bearer and given him clear instructions to serve the Witness Summaries on the Claimant's Attorneys-at-Law and withhold the Notice of Filing. Or at the very least give him the Witness Summaries as well as the Notice of Filing.

[56] In my view then, the Defendant has failed to fulfil their obligation under rule 29.4 to serve the witness statements/summaries on the Claimant's Attorneys-at-Law in accordance with the Case Management Orders.

THE APPLICATION FOR RELIEF FROM SANCTION

[57] Concerning this aspect of the Defendant's application, I will be brief. Firstly, I am satisfied that the application has now become necessary in light of my ruling on the Notice of Filing. I am satisfied that the application was made promptly in all the circumstances and that the failure to comply with the rule of service was unintentional. It was due to a misapprehension of the rules and facts by the untrained clerical staff of the Defendant. They were also awaiting confirmation of this position by the Court itself.

[58] There is, also, in the round, a good explanation for the failure to comply for the same reason set out in paragraph 57.

[59] We now come to the vexed question of whether there has been general compliance with all other rules, orders and practice directions. My frank position is that there hasn't been such. This present situation is simply the latest infraction of the rules and orders by the Defendant. The Claimant, in his submissions, highlighted the previous instances of non-compliance by the Defendant in their conduct of the case. This is just the latest episode of same.

[60] Indeed, only recently have I had to deal with another application for relief from sanction for this very Defendant in this very suit. I found then that I could not grant relief from sanction due to the fact that there had been general non-compliance on their part. This situation certainly has not helped their cause in this regard. As counsel for the Claimant submitted, it is the cumulative effect of the repeated breaches that makes the Defendant a habitual offender and therefore not generally compliant.

[61] Accordingly, I refuse relief from sanction with the consequence that the Defendant will not be permitted to present any evidence at trial.

[62] I can already hear the cries about "draconionness" etc. but the Defendant only has itself to blame. It was they who chose this route of service rather than simply serving the document on counsel in the conventional manner or simply picking up the phone and calling him. Even after he called, remedial steps could have been taken by the staff instructing the bearer to just serve everything. Perhaps, as Ms. McDonald said, she thought that was what he was going to do. This suggests there was some terrible mix up in communication at the Defendant's Attorney's office that day. Who knows?

[63] Whatever the cause, it is they that must suffer the consequence of their inattentiveness. What makes it worse is that the Defendant themselves have provided no evidential basis for their witnesses not giving their lawyers their

witness statements in a more timely fashion. Why put your lawyers in such a position? We encourage conduct that we allow. I will not be encouraging litigants to engage in litigation in the Supreme Court in this manner. The Defendant will still be able to participate in the trial by testing the Claimant in cross-examination. So it is not entirely put out.

DISPOSITION

1 It is declared that the Defendant failed to comply with rule 29.7, with the result that they did not serve their witness summary within the time ordered at the Case Management Conference.
2 The Defendant's application for relief from sanction is refused and the Defendant is, therefore, not allowed to call any evidence in this matter.
3 Costs to the Claimant to be taxed if not agreed.
4 Leave to appeal is refused.

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Dale Staple
Puisne Judge