

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2023/CLE/GEN/00829

BETWEEN

RBC ROYAL BANK (BAHAMAS) LIMITED
Formerly ROYAL BANK OF CANADA

Claimant

AND

CARLA MARIE NEELEY

Defendant

Before: The Honourable Justice Camille Darville Gomez

Appearances: Miss Dennis Newton for the Claimant
Mr. Norwood Rolle for the Defendant

Hearing Date: 11th June, 2025

Practice – claim- Court gave Unless Order for Defendant to file her Defence by a specified date in default of which judgment would be entered for the relief claimed in the Fixed Date Claim Form – Defendant filed Defence within the specified time but did not serve – judgment entered – whether relief from sanctions should be granted – prompt application for relief from sanctions - no trial date set – no history of non-compliance

RULING

DARVILLE GOMEZ, J

- [1.] The action was commenced by the Claimant by a Fixed Date Claim on 25th September, 2023 against the Defendant for vacant possession, an order to exercise its power of sale and judgement for sums outstanding under the mortgage.
- [2.] The parties initially were attempting to settle the action.
- [3.] However, the Defendant notwithstanding that she was in arrears of her mortgage disputed the amount owed by her. At the hearing on 10th February, 2025 (the “February hearing”) the

Defendant advised that she would engage a forensic accountant and requested an adjournment for this purpose.

[4.] At the next hearing on 17th April, 2025 (the “April hearing”) the Defendant advised that a forensic accountant had been instructed however, certain information had been requested from the Claimant which was made on the day of the hearing, therefore, the Defendant sought an adjournment to permit the Claimant to provide the requested information.

[5.] The Claimant objected on the basis that no defence had been filed and that the Defendant had ample time to request the information and to file a defence. The court gave an Unless Order.

[6.] The terms of the Unless Order were as follows:

“Unless the Defendant files and serves her Defence on or before 30th April, 2025 judgment shall be entered for the Claimant for the relief sought in the Fixed Date Claim Form filed on the 25th September, 2023.

[7.] On 11th February, 2025 the Claimant served the Defendant with the Acknowledgement of Service.

[8.] The Defendant filed her Defence and Counterclaim on 25th April, 2025 in advance of the deadline of 30th April, 2025 however, it was not served on the Claimant and was therefore, not in compliance with the Unless Order which required both *filing and serving* on the Claimant by this date.

[9.] The Claimant submitted that by 30th April, 2025 and in fact, up to 14th May, 2025 it had not been served with a Defence on behalf of the Defendant. Therefore, the Claimant exhibited proof of this to the Court and upon being satisfied with the Defendant’s non-compliance with the Unless Order I signed off on the Order granting Judgment against the Defendant.

[10.] On 14th May, 2025 the Defendant then sought to serve on the Claimant via email her Defence and Counterclaim which had been filed on 25th April, 2025. Later on 15th May, 2025 she then filed her application for relief from sanctions. She sought the following reliefs:

- (i) an order pursuant to the Supreme Court Civil Procedure Rules 2022 (“CPR”) 26.8 that Defendant be granted relief from sanctions arising from the Defendant’s failure to comply with an order of the Court dated the 17 April 2025;
- (ii) An order to set aside the Judgment that has been entered herein and that the Defendant be permitted to defend the claim notwithstanding the breach;
- (iii) An order that the Defence and Counterclaim filed herein on the 25th April 2025 and served electronically on the 14th May 2025 do stand; and
- (iv) Costs of this application be in the cause.

- [11.] The Court has considered the application and the submissions by both of the parties.
- [12.] The case of **Belgravia International Bank & Trust Co. Ltd. v Sigma** SCCivApp No. 75 of 2021 established that once there is failure to comply with an unless order, the sanction imposed by the unless order is automatic and the order cannot be varied by a judge. For the sanction to not take effect, the defaulting party will have to apply for relief from sanctions.
- [13.] The decision in **Belgravia** *supra* followed the decision of **Marcan Shipping (London) Ltd. vs Kefalas** [2007] EWCA Civ 463 in which Moore-Brick LJ said that “*the sanction takes effect without the need for any further order once the party failed to comply with it in any material respect*”.
- [14.] The result of non-compliance with the Unless Order by 30th April, 2025 was that “*judgment shall be entered for the Claimant for the relief sought in the Fixed Date Claim Form filed on the 25th September, 2023.*” Therefore, on 30th April, 2025 this sanction took effect as a result of the failure to comply with the terms of the Unless Order. If the Defendant failed to apply for relief from sanctions, the Court’s only function was limited to deciding what order should properly be made to reflect the sanction which had already taken effect. **Marcan Shipping (London) Ltd. supra.**
- [15.] Therefore, the Court must decide whether it ought to grant the Defendant relief from sanctions.
- [16.] **Denton and others v TH White Ltd. and another; Decadent Vapours Ltd. v Bevans and others; Utilise TDS Ltd. v Davies and others** [2015] 1 All ER 880 set out a three stage test when considering an application for relief from sanctions. I refer to it as follows:

“A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the ‘failure to comply with any rule, practice direction or court order’ which engages r 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate ‘all the circumstance of the case so as to enable [the court] to deal justly with the application, including [factors (a) and (b)]’.” Per Lord Dyson MR and Vos LJ at paragraph 35

- [17.] The Claimant has submitted that the failure to serve the Defence in a timely manner and failing to comply with the Unless Order is a serious and significant breach. The Claimant alleged that the Defendant was aware of this action from as early as 2023 and attended both the February and April hearings and further, that she had just under two (2) years to file and serve her defence. The Claimant said that the action has been consistently halted and adjourned at the request of the Defendant and due to the Defendant’s inactivity and sluggish steps to defend her case the Claimant suffers prejudice. Finally, it was alleged that the Defendant’s breach goes afoul of the overriding

objective to deal with cases justly and at proportionate costs and ensuring that they are dealt with expeditiously and fairly.

- [18.] I readily agree that this action has moved at a sluggish pace and this Court has granted at least two adjournments to permit the Defendant to get her proverbial “house in order” regarding the use of the forensic accountant. This did not occur and the Unless Order was granted to move matters along. However, since pleadings were not yet closed, there was no trial date set and the action was still in very early stages.
- [19.] This court had to consider whether to grant relief from sanctions in the case **Myles Brennen v Stafford Prince Ferguson [2021] CLE/GEN00304** where the Defendant had failed to serve his List of Documents and Witness Statements by a specified date due to difficulties in locating the Claimant’s Counsel’s office. In that case, the action was at an advanced stage because there was a trial date set. However, the breach of the Unless Order did not delay the trial date that had been set; there was no history of non-compliance with orders and there was a good explanation for the delay. Therefore, I gave the Defendant relief from sanctions and awarded costs against him which I assessed at \$500.
- [20.] The Claimant cited **Andrew Smith and another v First Caribbean International Bank (Bahamas) Limited and another [2023] 1 BHS J. No. 76** which was the first or at least one of the first cases on the issue of relief from sanctions shortly after the coming into force of the Civil Procedure Rules, 2022. The Honourable Chief Justice Winder gave a comprehensive judgment on the issue and he found that the Claimants were in fact in breach of the Unless Order. In that case, the application was not made promptly which would have mitigated the disruption caused by their breaches and two trial dates were vacated. The breaches were deemed serious and significant. However, they were granted relief from sanctions and penalized in costs which he said that he would assess at a later date.
- [21.] The Defendant’s Counsel did file the Defence and Counterclaim within the time prescribed in the Unless Order, however he failed to serve within the prescribed time. His reason he explained for his delay in his affidavit in support of relief from sanctions as follows:

- “3. By the Unless Order, the Defendant was ordered to “file and serve her Defence on or before 30th April, 2025” and unless this is done by the stipulated date, judgment shall be entered for the Claimant for the relief set out in the Fixed Date Claim. **The Defendant filed the Defence on the 25 April 2025, well within the time stated in the Unless Order but did not serve the said document** within the time stipulated by the Unless Order. The failure to comply was due to inadvertence on the part of the Defendant’s legal representatives, as more specifically, set out below for which the Defendant sincerely apologized to the Court.

4. The failure to comply with the Unless Order was due to the bereavement of a close family member of my Personal Assistant occasioned by the death of her mother. As a result, she was unexpectedly absent from work during the critical period leading up to and after the deadline. Despite efforts to manage the many tasks during her absence. The oversight in serving the Defence was regrettably not identified until after the deadline had passed and in fact after the filing of the Affidavit for non-compliance by the Claimant on the 14 May 2025.
5. Upon being notified that the Defence had not been served, the default was promptly remedied and the Defence and Counterclaim a copy of which is exhibited EXHIBIT NAR-1, was served without further delay on the same date as the notification being the 14 May 2025. The Defendant and her legal representatives sincerely regret the oversight and respectfully submit that it was neither deliberate nor negligent but rather the consequence of unforeseeable personal circumstances.
6. The Defendant respectfully submits that the failure was neither willful nor contumelious and was promptly rectified once discovered. The delay has not caused significant prejudice to the Claimant nor disrupted the progress of the proceedings.”

[22.] The Court in applying the three stage test considered that the seriousness and significance of the each was minimal because:

- (i) The application was made promptly.
- (ii) There was no trial date.
- (iii) there was no history of non-compliance with court orders by the Defendant.
- (iv) The Defendant had in my view a good explanation for non-compliance. In fact, he had already filed the Defence and Counterclaim.

[23.] Therefore, for these reasons I refuse to consider stages two and three of the test.

[24.] I grant the Defendant relief from sanctions.

[25.] Accordingly, I order as follows:

- (i) An order pursuant to the Supreme Court Civil Procedure Rules 2022 (“CPR”) 26.8 that the Defendant be granted relief from sanctions arising from the Defendant’s failure to comply with an order of the Court dated the 17th April 2025;
- (ii) An order to set aside the Judgment that has been entered herein and that the Defendant be permitted to defend the claim notwithstanding the breach;

- (iii) An order that the Defence and Counterclaim filed herein on the 25th April 2025 and served electronically on the 14th May 2025 do stand;
- (iv) The Claimant may file a Reply to the Defence within fourteen (14) days from the date of this ruling;
- (v) The Court will schedule a Case Management Conference (“CMC”) in the next thirty (30) days at a date mutually convenient to the parties.
- (vi) The Defendant shall pay costs to the Claimant which the Court will summarily assessed in accordance with the CPR, 2022 at the CMC. The Claimant should come prepared to address the Court on this issue.

Dated the 30th June, 2025



Camille Darville-Gomez
Justice