

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2022/PRO/cpr/00005

B E T W E E N

IN THE MATTER OF the Estate of MARY CAROLYN PAPAI deceased

AND

NEW PROVIDENCE COMMUNITY CHURCH

Claimant

AND

RONALD HARCOURT KNOWLES

AND

CHARLES WENZEL MACKAY

Defendants

Before: The Honourable Justice C.V. Hope Strachan
Justice of The Supreme Court of the Commonwealth of the Bahamas

Appearances: Norwood Rolls for the Claimant
Owen Wells for the Defendant

Hearing date: 22nd May 2024; 18th September 2024; 24th February 2024; 11th March
2025; 23rd April 2025; 7th July 2025

*Case Management, Relief from Sanctions, Considerations, The Three-Stage Approach to
Determining Whether to Apply Sanctions, Illness as Cause for Delay*

ORAL DECISION

C.V.H. STRACHAN, J

BACKGROUND FACTS

[1.] This is the decision of the court to an Application made by The Claimants herein for Relief from Sanctions made by a Notice of Application (“the said Notice”) filed on 23rd May, 2025. The said Notice set out as follows;

Under the rubric “**General**”;

1. *The Defendants have begun these proceedings under Part 26.8 of The Supreme Court Civil Procedure Rules, 2022, for an Order for Relief from Sanction.*

And under the rubric, ***Remedies Sought***, the Defendants make application for:

- a. An Order for relief to comply with the Directions Order filed herein that the Defendant be granted an extension of Four (4) weeks to file its Witness Statement of Attorney-at-Law Charles Mackay and the costs be in the cause to be taxed if not agreed.
- b. Any other interim or final order that the court thinks fit.

Under the rubric, “The Ground of the Application;” The Defendants are seeking the above mentioned reliefs and orders on the following grounds: -

1. Part 26.8, states –

- a. On an application for relief from sanction imposed for a failure to comply with any rule, practice direction or court order, the Court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need;
 - a. for litigation to be conducted efficiently and at proportionate costs; and
 - b. to enforce compliance with rules, practice directions and orders.

2. An application for relief must be supported by evidence.

3. The Court may not order the respondent to pay the applicant’s costs in relation to any application for relief unless exceptional circumstances are shown.

Under the rubric ***Evidence in Support***, the Applicant intends to rely on the following written evidence at the hearing of this Notice of Application: -

1. The Affidavit of Valarie Turnquest dated 22nd May 2025. A copy of which is attached to this Notice of Application.

Under the rubric, ***Draft Order***, a Draft Order is attached to this Notice of Application setting out the relief and orders sought from the court and the terms and conditions involved, if any, and where applicable. This was followed by the Statement of Truth of Owen Wells of Counsel for the Defendants.

[2.] As the application is supported by the Affidavit of Valerie Wells (“Ms. Wells”) sworn on 23rd May 2025, I have set out the contents immediately hereafter;

1. *“I am a secretary employed with the law firm of McKinney, Turner & Co., counsel for the Defendants in these proceedings, and I have conduct of this matter under the supervision of counsel. I make this affidavit from my own knowledge and from my review of the file and documents maintained in the ordinary course of business.*
2. *The purpose of this affidavit is to support the Defendant’s application for relief from sanction under Part 26.8 of the Supreme Court Civil Procedure Rules 2022, and for an extension of time to file the Witness Statement of Mr. Charles Wenzel Mackay.*
3. *The extension is necessary because Mr. Mackay, who is a defendant in the matter and a vital witness to the defense who intends to provide a witness statement in support of the Defendant’s case, has been suffering from a medical illness that has significantly affected his working capacity. Due to the nature of his illness, he has been unable to work for extended periods or engage in multiple demanding cognitive tasks.*
4. *Despite efforts to obtain and prepare his Witness Statement in the originally ordered timeframe, the Defendants have been unable to do so due to Mr. Mackay’s health condition. Medical documentation can be provided, if required, by the Court.*
5. *The Defendants are not acting in deliberate disregard to the Court’s directions order, and this application is made in good faith with the intention of complying fully once Mr. Mackay is sufficiently recovered.*

6. *In light of the above, the Defendant respectfully requests an extension of four (4) weeks from the date of the hearing of the application or such other times as the Court may deem fit.*
7. *I make this affidavit in support of the Defendant's Notice of Application dated 22nd day of May 2025.*
8. *The contents of this affidavit are true and correct to the best of my knowledge, information, and belief and made from information personally known to me unless otherwise stated."*

[3.] The chronology of events that led to the present application by the Claimants is significant to the determination of the application.

[4.] It is important to note at this juncture that the original ordered time frame referred to by Ms. Wells (although she does not specify) was made on 18th September, 2024 when the Court ordered inter alia that the parties were to file and exchange Witness Statements on or before 12th December 2024. That order was actually filed on 11th October 2024. At the time the order was made, appearing for the Defendants were Anthony McKinney K.C. and Lilnique Murphy Grant. It is also pertinent that a Defense had been entered in the matter since 30th July, 2024, which was filed out of time, resulting in an order for costs made against the Defendants.

[5.] At that same hearing on 12th December 2024 the court, with a view to managing the progress of the case in addition to setting the time for the filing and exchange of the Witness Statements also set a date for Pre-Trial Review on 24th February 2025 and the Trial date being 17th March 2025.

[6.] At the Pre-trial review on 24th February 2025, the Defense Counsel indicated to the court that he was having difficulties getting witness statements as his witness, one of the Defendants, was not well, was having challenges, and was out of the jurisdiction quite a lot. Notwithstanding, that the court did not receive a medical certificate in support of counsel's assertions, the court adjourned the matter for a status hearing to 11th March, 2025.

[7.] At the hearing on 11th March 2025, Counsel Wells indicated once again that he was unable to obtain the witness statement of Mr. Mackay due to his illness and that he would have to ask for an adjournment in order to obtain said statement and that the situation meant that he would not be able to adhere to the Trial date set for 17th March 2025. Counsel Rolle indicated that Counsel Wells had also failed to file the Witness Statement of Happy Hall, another witness whom Counsel Wells had previously mentioned would be giving evidence for the Defense. He pressed for an order for sanctions if Mr. Hall's Witness

Statement was not filed at the time to be set for the next hearing date. The Court ordered that Mr. Hall's statement should be filed by 11th April 2025, and if not filed by that date, then it could not be used at trial pursuant to part 26.3 of the CPR 2022. Another status hearing date was set for 23rd April 2025, and the trial date was scheduled for 7th July 2025 at 10 a.m.

[8.] At the Status Hearing on 23rd April 2025, both Counsels confirmed that the Statement of Happy Hall had been filed on 11th April 2025 and served by Defense Counsel on the Claimant's attorneys. However, Counsel Wells intimated again that he was unable to secure the Witness Statement from Mr. Charles Mackay due to his illness and was again seeking time to obtain the same, and in addition, he had another person (a Ms. Brown) for whom he would be seeking to file a Witness Statement. Counsel Rolle did not object to the request and indicated that he had no difficulty with it, as he might wish to file documents related to the company Ports International, which he believed were pertinent to determining the case. Both counsel indicated that these matters would be discussed. In any event, the Court ordered that counsel disclose the relevant information regarding the anticipated witness statements and the mentioned company by 23rd May 2025. The Court gave further directions that the parties were to file a Statement of Agreed Facts and Issues on or before 13th June 2025; Trial Bundles by 3rd July 2025; Skeleton Arguments by 4th July 2025, with Trial to take place on 7th July 2025.

[9.] On 25th June, 2025, the Claimants filed a Notice of Application [Opposition to Relief from Sanctions] which stated that the applicant New Providence Community Church makes an application for the following orders:

1. That the Defendant's Application for Relief from Sanctions be dismissed.
2. That the Defendant's Defense and pleadings be struck pursuant to Order dated 23rd April, 2025;
3. That final Judgment be entered for the Plaintiff;
4. Further or in the alternative, that the matter proceeds on 7th July 2025 pursuant to the Order dated 23rd April 2025; and
5. That the Defendants do pay the costs of this Application and the action.

The Grounds of the application are:

1. Repeated failure to comply with court orders;
2. No reasonable excuse for non-compliance;
3. Breach of Rule 26.8 of the CPR;
4. The Prejudice caused to the Plaintiff.

The following written evidence will be used at the hearing of the application:

1. The Affidavit, filed herein on behalf of the Applicant and the exhibits therein referred to, of Dena Feaste.

A draft order of the Order that the Applicant seeks is attached.

[10.] Dena Feaste's affidavit was sworn on 24th June 2025. I have extracted the pertinent paragraphs for the purposes of this application. They are as follows;

1. The Plaintiff respectfully submits that the Defendant's application for Relief: from Sanctions ought to be dismissed for the reasons set out below.
2. The chronology of this matter demonstrates a sustained and deliberate pattern of non-compliance by the Defendants, coupled with an absence of candour and good faith.
3. The material history is as follows:
 - i. The Plaintiff commenced these proceedings by Writ of Summons filed on or about the 4th February 2022, which was subsequently re-amended on the 25th October 2022. The Plaintiff's Statement of Claim was filed on 27th October 2022.
 - ii. On the 28th June, 2022, the Defendants filed a Notice of Appearance and Memorandum of Appearance through their attorneys, Messrs. McKinney Turner & Co.
 - iii. Thereafter on 20th October 2023, the Plaintiff filed a Notice seeking directions in this matter, which was heard on 22nd May, 2024.
4. The Defendant's failure to comply with the Court's orders are summarized as follows:
 - i. By Order of the Court made on 22nd May 2024, arising from the Notice of Application filed by the Plaintiff on the 10th October 2023, the Defendants were ordered to file their Defense by 10th June 2024. They failed to do so, filing their Defense by the 30th July 2024. Further, Witness Statements were ordered to be filed by the 12th July, 2024. This order was wholly ignored.

- ii. A further extension was granted on the 18th September 2024, directing that Witness Statements be exchanged by the 13th December 2024. The Defendants again failed to comply.
 - iii. The trial originally fixed for 18th September 2024 had to be vacated solely due to the Defendants' continuing non-compliance.
 - iv. The second trial date was set for the 17th March, 2025, once again due to the Defendant's ongoing breaches of the Court's orders.
 - v. On 23rd April 2025, a final extension was granted by the Court, expressly providing for automatic strike-out in the event of further breach.
5. Despite the clear and unequivocal terms of that final order, the Defendants failed yet again to comply. Instead, on the 23rd May 2025, the very deadline imposed by the Court, they filed the present application seeking yet further indulgence.
6. The Defendants rely, as they have consistently done since May 2024, on the alleged medical incapacity of Mr. Charles Mackay as the basis for the failure to comply with the Court's orders. However, this explanation is untenable for the following reasons:
- i. On or about the 20th and 21st May 2025, Mr. Mackay was observed by Counsel for the Plaintiff attending Court in an entirely separate matter, where he appeared to be acting in a professional capacity. This casts serious doubt on the credibility of the alleged medical incapacity.
 - ii. No timely or adequate medical evidence has been produced to substantiate the excuse advanced.
7. Moreover, the Defendants have provided no draft Witness Statements, nor any indication of when such statements may be available.
8. The Defendants conduct reveals a persistent and deliberate disregard for the authority of the Court, and constitutes an abuse of the Court's process. The cumulative effect of their breaches, coupled with the dubious excuses proffered, underscores a calculated strategy to delay the final resolution of this matter.
9. The Defendants have wholly failed to satisfy the mandatory criteria for Relief from Sanctions under Rule 26.8(2) of the Rules of the Supreme Court, 2022. Further no exceptional circumstances have been demonstrated as required by Rule 26.8(3).

10. In all the circumstances, it is respectfully submitted that the Court should refuse the Defendant's application and enter judgment for the Plaintiff as prayed in the Writ of Summons.

[11.] It should be noted that the Witness Statement of Mr. Charles Mackay was filed on 7th July, 2025.

[12.] THE ISSUES

Whether the court should grant the Defendant's relief from sanctions in the circumstances of the case?

[13.] The relevant legislation is The Supreme Court Civil Procedure Rules 2022 Part 26.8 and 26.7.

Part 26.7 The Court's powers in cases of failure to comply with rules, etc.

(1) If the Court makes an order or gives directions, the Court must, whenever practicable also specify the consequences of failure to comply.

(2) If a party has failed to comply with any of these rules, a direction or any order, any

express sanction for non-compliance imposed by the rule, direction, or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.

(3) If a rule, practice direction, or order —

(a) requires a party to do something by a specified date; and

(b) specifies the consequences of failure to comply, the time for doing the act in question may not be extended by agreement between the parties.

(4) If a party has failed to comply with any of these rules, a direction or any order, where no express sanction for non-compliance is imposed by the rule, direction or the order the party in default may make an application under rule 26.9. (5) If a rule, practice direction, or order —

(a) requires a party to do something by a specified date; and

(b) does not specify the consequences of failure to comply, the time for doing the act in question may be extended by agreement in writing between the parties provided that the extension does not affect the date of any hearing or the trial.

Part 26.8 Relief from sanctions.

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or Court order, the Court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need —

(a) for litigation to be conducted efficiently and at proportionate cost;
and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.

(3) The Court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown

[14.] DISCUSSION AND ANALYSIS

There is no doubt that considerable delay has been caused in this case due to the Defendant. There were a total of five (5) occasions that the Defendant applied for an adjournment on the premise that their main witness, Attorney Charles Mackay was ill and could not provide a Witness Statement. The illness was alluded to on 18th September, 2024 at the scheduled trial date. The final date given for filing and service of the Witness Statement was 23rd May 2025.

[15.] The Order made on 23rd April, 2025 (“the case management order”) which mandated that the Witness Statement of Charles Mackay was to be filed by 23rd May, 2025 specified the consequences for failure to adhere to the order as required in the terms as follows:

“Failure by any party to comply with the directions in this shall result in their pleadings being struck out automatically, with judgement to the innocent party and an appropriate order as to costs being made. The non-complaint party is at liberty to apply for relief from sanctions in compliance with Rule 26.8 of the CPR.

[16.] The clause included in the Case Management Order complies with the criteria for an order for strike out of the Defense, provided an application for Relief from sanctions is not made. Part 26.7 (2).

[17.] Whenever Mr. Owen Wells, attorney for the Defendant, presented to the court the reason for the non-compliance to file and serve the Witness Statement of Mr. Mackay, was that he was unwell and unable to provide the instructions for the Witness Statement. Mr. Wells did so orally during the case management or on other respective days set for trial. He did not present a medical certificate any of those times neither did the court require him to do so.

[18.] What is obvious is that counsel knew that the Witnesses illness would provide an excuse that the court could not or would not ignore. The provision of a credible excuse in situations such as this has been established as a reliable ground for relief from sanctions. In fact, the court's decision is assisted by the three-step approach given in the seminal case of **Denton v TH White Ltd [2014] EWCA Civ 906**;

- i. Assess the seriousness and significance of the breach
- ii. Consider the reason for the Default.
- iii. Look at the Reason for the Default.

[19.] Denton was followed in the Bahamian case of **Smith v First Caribbean International Bank (Bahamas) Ltd. [2023]** Supreme Court of the Bahamas, where medical incapacity, which included recovery from eye surgery, caused the delay in obtaining the Witness Statement. It is not difficult to appreciate that medical illness would be deemed a valid excuse for default even in litigation where the court has an obligation to deal with cases justly, fairly, and at proportionate costs, and most importantly, to do justice between the parties. In seeking to accomplish that, the court has to guard against false claims of illness with the objective of delaying the trial. To that end, the Denton case puts the onus on the court to ensure that an illness claimed is only excusable provided it is genuine and evidenced.

[20.] The proviso that the illness must be genuine and evidenced was never called into question by this court or in fact, by counsel for the Claimants. The court does not at this stage, even know the nature of the illness. It was not until 11th March 2025, after several adjournments, that the Defendants applied for the specified order for imposing the sanction. I am therefore of the view that not requiring the Defendant to produce a medical certificate for Mr. Mackay could not be held against them at this juncture. It is a circumstance that must be considered as mandated in Denton.

[21.] It is also fair to say that the Claimant on 23rd April 2025 when the specified unless order was made, altered his position as it related to the absolute imposition of the sanctions on the Defendant, when they indicated to the court that the delay being afforded to the Defendants to

file Mr. Mackay's witness statement, also afforded them the opportunity to file additional documents related to Port's International Ltd.

[22.] The Claimants' application at this stage of the proceedings conveyed to the court that notwithstanding the Claimants position that the Defendant's was causing delay in the trial they themselves were not ready for trial.

[23.] In certain circumstances, breaches of the nature that have arisen in this case could affect the proceedings seriously or significantly. For instance, delays in the trial dates set might well be considered so significant or serious that sanctions should result. In fact, there were four (4) different trial dates set, none of which were possible due to the delay of the Witness Statement from Mr. Mackay. The latest trial date is still being maintained, being 26th November, 2025. It is for this reason and the fact that since the last hearing date on 7th July, 2025, the defendant finally filed the Witness Statement of Charles Wenzel Mackay, thereby leaving opportunity for compliance with all of the other case management directions. The prospect of meeting the trial date on 26th November, 2025 is realistic and expected.

[24.] The probability of still meeting the trial date I believe overrides consideration that Counsel Wells did not make the application for relief from sanctions at the earliest opportunity but waited until the 11th hour on 23rd May, 2025, I am also convinced that his failure to meet the deadlines for the witness statements was not entirely his fault, that Mr. Mackay's illness explained that failure, it was not intentional. Finally, in all the circumstances of the case, I am of the view that the interest of justice dictates that the case should be completely ventilated through a Trial of the issues and, from hearing the witnesses in particular, Mr. Mackay.

DISPOSITION

1. The Defendants' Application for Relief from Sanctions pursuant to Part 26.8 of the Supreme Court Civil Procedure Rules 2022 by Notice for Relief from Sanctions is granted.
2. As no exceptional circumstances have been shown, each party shall pay their own costs of the application

Dated the 10th day of October 2025



The Honorable Justice Hope Strachan