

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
Claim No. 2024/CLE/gen/00093

BETWEEN

HOLMES COMPANY LIMITED

CLAIMANT

AND

ERIC MORLEY

DEFENDANT

DECISION

(Extension of Time)

Lockhart Charles J (Acting)

Appearances: Viola Major and Camille Cleare for the Claimant
Lessiah Rolle for the Defendant

Introduction

1. This is my decision on an application by the Claimant for an order granting an extension of time to comply with the case management timetable for the provision of Witness Statements and that the Court vary the pre-trial directions contained in the case management timetable.
2. The application is brought by Notice of Application dated 2 December, 2025 which is in the following terms:

1. The Claimant makes application pursuant to Rules 26.1(2)(k) and 26.7(4), 26.9 and 27.8(4), of the Supreme Court Civil Procedure Rules 2022 and term 8 of the Case Management Order filed herein on 23rd September 2025 for:

- a. An Order granting an extension of time to comply with the case management timetable, contained in the Case Management Conference Order filed herein on 23rd September 2025, for the provision of Witness Statements;**
- b. An Order varying the remaining pre-trial directions contained in the said case management timetable;**

2. The grounds of the application are:

- a. That having regard to the serious allegations of fraud made by the Claimant on Counterclaim without relevant discovery, the Defendant on Counterclaim has been compelled to make further discovery of substantial documents from the three (3) Quieting Actions which were simultaneously heard over eleven (11) days in 2006 by way of a Supplemental List of documents filed herein on 2nd December 2025.**
- b. The aforementioned supplemental discovery concerns documents which are over twenty-years old and have been retrieved from digital archives. This has caused a knock-on delay such that a Supplemental Bundle of Documents will have to be agreed, from which the Defendant to Counterclaim will then provide Witness Statements touching the relevant issues in dispute.**
- c. It is anticipated that the extension of time will not disrupt the current Pre-Trial Review Hearing Date or Trial Date.**

3. The application is supported by the 4th affidavit of Lakeisha Hanna filed on 2 December 2025 (the "Hanna Affidavit"). The relevant background is set out in the Hanna Affidavit. It states that pursuant to a Case Management Conference Order dated 26 June 2025 and filed on 23 September 2025 (the "CMC Order"), the parties were required to comply with pre-trial directions, including a direction in the following terms:

The parties shall file their witness statements and expert reports and exchange them on Friday 31st October, 2025. The failure to serve witness statement on the stipulated date will attract the sanctions set out in Rule 29.11.

4. CPR 27.8 allows parties to agree on extensions of time in certain circumstances without court approval, provided the extension does not affect hearing dates.
5. The Hanna Affidavit indicates the parties have previously agreed to extensions. The Defendant requested an extension to file witness statements by 7 November 2025, which the Claimant agreed. The Claimant then requested an extension to 1 December 2025, which was agreed on condition of an extension for the Defendant to file a final affidavit in a related contempt application by 28 November 2025. The Claimant then informed the Defendant on 27 November, 2025 that it would be filing additional discovery before filing witness statements and that it was still awaiting some documents to complete its Supplemental List and therefore requested a further extension to 1 January 2026, which was denied. The Hanna Affidavit exhibits at “LH1” the e-mail from the Defendant’s counsel dated Saturday 29 November, 2025 in response to the requested extension, stating:

“Having agreed to prior lengthy extension we DO NOT agree to a further extension.

Further our client has informed that your client has commenced work on the subject property. In light of the fact that the matter is before the Court we demand that your client cease all work pending the completion of the trial”

6. Agreement having been withheld by the Defendant, the Claimant filed this Notice of Application seeking an extension of time on Tuesday 2 December, 2025.
7. The explanation for the delay and the need for additional time are set out in paragraphs 8 to 12 of the Hanna Affidavit:

8. It became apparent to the Claimant, when considering the Agreed Bundle of Documents preparatory to drafting witness statements, that the Defendant's discovery had not been sufficient to properly explore the serious allegations of fraud that he has made in his Counterclaim against the Claimant arising out of Quieting Actions No. 981 of 2004 and No. 992 of 2005, which were heard together with Quieting Action No. 01032 of 2005 over the course of eleven (11) days in 2006.

9. Consequently, the Claimant embarked on sourcing, reviewing and collating the approximately 133 documents from these three (3) quieting

actions to provide a Supplemental List of Documents which was filed on 2nd December 2025, with inspection provided simultaneously to the Defendant.

10. The directions for filing and serving Witness Statements have not been complied with by the Claimant and, prior to doing so, the Claimant will need to file a Supplemental Bundle of Documents once ascertaining which documents are agreed or challenged by the Defendant.

11. Accordingly, having regard to the above, the Claimant is no longer able to meet the remaining directions deadlines for trial, and requests a variation of the case management timetable for the provision of the items referred to in paragraph 10 above, as well as the remaining pre-trial directions.

12. It is NOT anticipated that the current trial dates will need to be vacated, or a new trial date be fixed. A draft Order for the modified timetable is attached to the Notice.

Legal Framework and Analysis

8. The CPR, together with the orders that are issued by the court, govern the service of witness statements. Failure to comply with the provisions of the case management order regarding the service of witness statements may result in sanctions. CPR 29.11 provides as follows:

29.11 Consequence of failure to serve witness statement or summary.

(1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the Court, the witness may not be called unless the Court permits.

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

9. Faced with the inability to secure the defendant's agreement to the requested extension of time for service of its witness statements, the Claimant has come to court seeking relief prior to trial. However, it does not do so under rule 26.8. The Notice of Application is pursuant to CPR 26.1(2)(k) and 26.7(4), 26.9 and 27.8(4).

10. CPR 26.1(2)(k) provides as follows:

26.1 Court's general powers of management.

(1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions or any enactment.

(2) Except where these rules provide otherwise, the Court may —

...

(k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed;

...

11. CPR 26.7 addresses the Court's powers in cases of non-compliance:

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.

(Emphasis supplied)

12. CPR 27.8(4) deals with applications to vary the case management timetable after a deadline has passed:

27.8 Variation of case management timetable.

(1) A party must apply to the Court if that party wishes to vary a date which the Court has fixed for —

- (a) a case management conference;**
- (b) a party to do something where the order specifies the consequences of failure to comply;**
- (c) a pre-trial review; or**
- (d) the trial date or trial period.**

(2) Any date set by the Court or these rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the Court, and the general rule is that the party must do so before that date.

(4) A party who applies after that date must apply for —

- (a) an extension of time; and**
- (b) relief from any sanction to which the party has become subject under these Rules or any court order or an order under rule 26.9**

(5)...

13. CPR 26.9 provides as follows:

26.9 General power of the Court to rectify matters.

(1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.

(2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the Court so orders.

(3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the Court may make an order to put matters right.

(4) The Court may make such an order on or without an application by a party.

14. Examining the rules under which the application is brought, it is evident that CPR 26.9 does not apply. Rule 26.9(1) expressly limits its application to situations where the consequence of non-compliance has **not** been specified: “This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction”.
15. In the present case the consequence of failing to file witness statements by the date ordered is specified by CPR 29.11: the witness may not be called unless the Court permits. This is a sanction.. The Privy Council in *Attorney General v Matthews* [2011] UKPC 38) provided helpful guidance as to the meaning of “sanction” in this context. At paragraph 15 the Board stated:

“[15] Secondly, rr 26.6 and 26.7 must be read together. Rule 26.7 provides for applications for relief from any sanction imposed for a failure to comply inter alia with any rule. Rule 26.6(2) provides that where a party has failed inter alia to comply with any rule, “any sanction for non- compliance imposed by the rule . . . has effect unless the party in default applied for and obtains relief from the sanction” (emphasis added). In the view of the Board, this is aiming at rules which themselves impose or specify the consequences of a failure to comply. Examples of such rules are to be found in r 29.13(1) (which provides that if a witness statement or witness summary is not served within the time specified by the court, then the witness may not be called unless the court permits); ...”
(Emphasis supplied)

16. Turning to CPR 27.8(4), which governs applications made after a deadline has passed, it is clear that a party must apply for both an extension of time **and** relief from any sanction incurred. The Claimant has applied for an extension of time but has not applied for relief from sanctions under CPR 26.8. While the rules do not prohibit the court from dealing with the extension of time application in isolation, it is necessary to identify the proper procedural basis for doing so and to address the outstanding issue of sanctions. See CPR 27.8 (3) and 27.8 (4):

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the Court, and the general rule is that the party must do so before that date.

(4) A party who applies after that date must apply for —

- (a) an extension of time; and**
- (b) relief from any sanction to which the party has become subject under these Rules or any court order or an order under rule 26.9**

Extension of time

17. The approach to both extension of time and relief from sanctions applications is guided by the three-stage test established in *Denton v TH White Ltd* [2014] EWCA Civ 906. This framework was adopted in this jurisdiction by the Chief Justice, the Honourable Sir Ian Winder, in *Andrew Smith, Sophia Smith v First Caribbean International Bank (Bahamas) Limited and Insurance Management (Bahamas) Limited* 2020/cle/gen/00662. At paragraph 67 of *Smith*, the Chief Justice set out the three stages:

[67.] A judge should address an application for relief from sanctions in three stages:

- i) 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 rule 26.8(1).**
- ii) the second stage is consider why the default occurred, i.e., the reason for the breach.**
- iii) the third stage is to consider all the circumstances of the case so as to enable the Court to deal justly with the application (Denton at para 24).**

18. It has been held that the Denton test applies not only to relief from sanctions applications but also to extension of time applications. In *Altomart Ltd v Salford Estates (No.2) Ltd* [2014] EWCA Civ 1408 the UK Court of Appeal confirmed this approach,

19. The UK Court of Appeal in *Altomart* noted that such an application would normally be determined by a single judge in advance of the hearing of the appeal, or by the court at the hearing, but in this case it was directed that it be heard in advance by a full court in order to give guidance on the approach to be adopted to applications of this kind in the light of the court's decision in *Mitchell v. The News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 W.L.R. 795. The guidance given by the full Court of Appeal in *Altomart* was as follows:

15. In Mitchell itself the court made it clear at paragraphs 49-51 that it considered that similar principles applied in other cases of failure to comply with the rules, describing an application for an extension of time for service of particulars of claim as being in substance an application for relief from sanctions under CPR 3.9...

16. ...In my view, therefore, the Mitchell principles apply with equal force to an application for an extension of time in which to file a respondent's notice.

...

19. More recently the rigour of the decision in Mitchell has been tempered by the decision in Denton. In that case the court recognised that Mitchell had been the subject of criticism and, while holding that the guidance it provided remained substantially sound, sought to explain in rather more detail how it should be interpreted and applied. In doing so it identified three stages of enquiry: (i) identifying and assessing the seriousness and significance of the default which engages rule 3.9; (ii) identifying its cause; and (iii) evaluating all the circumstances of the case, including those specifically mentioned, so as to enable the court to deal with the application justly. The court clearly contemplated that if the default is not serious and significant, relief is likely to be granted. For these purposes a default which does not disrupt the progress of the litigation or the business of the courts more generally may well not be regarded as serious or significant. The court did not consider it appropriate to elaborate on the second stage, given the range of circumstances likely to arise. One of the most significant aspects of the decision, however, is to be found in paragraph 31, in which the Master of the Rolls makes it clear when dealing with the third stage that, even if there is a serious and significant default for which no good reason can be given, the application will not automatically fail. Although the factors mentioned in rule 3.9 are of particular importance, they are not of overriding significance.

20. Applying the Denton test to the present application, I begin with the first stage: identifying and assessing the seriousness and significance of the failure to comply with the CMC Order's direction for filing witness statements by 31 October 2025 (as extended to 1 December 2025 by prior agreement of the parties).

21. The breach here involves a delay in filing witness statements, which were due under the agreed extensions by 1 December 2025. The Claimant filed the application on 2 December 2025, shortly after the Defendant withheld agreement to a further extension. While the delay is not insignificant, as it impacts the pre-trial timetable, it is not of the most serious nature. The Hanna Affidavit explains that the delay stems from the need to source and disclose substantial additional documents from the 2006 Quieting Actions, comprising approximately 133 documents, to address the Defendant's allegations of fraud. This

supplemental discovery was filed on 2 December 2025, and the Claimant anticipates no disruption to the Pre-Trial Review or Trial Date. The breach has not yet caused substantial prejudice to the Defendant or derailed the overall progress of the litigation. In the context of Denton, where breaches that jeopardize hearing dates or cause significant inefficiency are viewed as serious, this delay appears manageable and not gravely significant.

22. Moving to the second stage: considering why the default occurred. The Hanna Affidavit provides a clear reason for the breach. The Claimant, upon reviewing the Agreed Bundle of Documents in preparation for witness statements, identified deficiencies in the Defendant's discovery related to the fraud allegations in the Counterclaim. This necessitated retrieving and collating over 20-year-old documents from digital archives across three Quieting Actions heard over 11 days in 2006. The process caused a "knock-on delay," requiring a Supplemental List of Documents (filed on 2 December 2025) and subsequent agreement on a Supplemental Bundle before witness statements could be finalized. Prior extensions were agreed upon by the parties, reflecting mutual recognition of complexities in the case. The Defendant's email of 29 November 2025, while withholding agreement, does not dispute the need for additional discovery but raises unrelated concerns about work on the property. The reason for the default is thus attributable to legitimate efforts to ensure full disclosure in response to serious fraud claims, rather than neglect or inefficiency. This constitutes a satisfactory explanation/a good reason for the purposes of the Denton analysis.
23. At the third stage, I evaluate all the circumstances of the case to deal justly with the application, including the factors in CPR 26.1(2)(k), 26.7(4), and 27.8(4), as well as the overriding objective of enabling the Court to deal with cases justly and at proportionate cost. The case involves complex historical disputes from the 2006 Quieting Actions, with allegations of fraud that demand thorough preparation. Granting the extension promotes fairness by allowing proper exploration of these issues without vacating the trial date. The Defendant has not demonstrated specific prejudice from the delay, and the Claimant's prompt application on 2 December 2025 shows diligence. Prior agreements to extensions indicate a cooperative history. Refusing the extension would hinder the Claimant's ability to present its case, which, in my view, is disproportionate and likely to negatively impact the overall fairness of the proceedings. As noted in Denton at paragraph 31, even serious defaults without good reason do not automatically bar relief if justice requires otherwise; here, with a non-serious breach and a good reason, relief is warranted. The overriding point is that enforcing compliance is not intended to be punitive in nature but rather to serve the interests of justice.

24. For these reasons, I grant the extension of time sought. The Claimant is granted an extension to comply with the case management timetable for the provision of Witness Statements.
25. I further order that the remaining pre-trial directions contained in the CMC Order be varied such that all remaining case management directions are to be complied with by 24 February 2026.
26. As noted earlier, the Claimant has not applied for relief from sanctions under CPR 26.8, which is required given the mandatory language of CPR 27.8 (3) and 27.8 (4). Accordingly, I direct that to obtain relief from sanctions the Claimant must file an application for relief from sanctions by 24 February 2026. This application will be dealt with at the commencement of the trial.
27. The costs of the application for an extension of time are awarded to the Defendant in the amount of \$1000.

Dated this 18th day of February 2026

Gail Lockhart Charles KC
Justice (Acting)