

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2024/CLE/gen/00487

BETWEEN:

ALPHA AVIATION LIMITED

Claimant

AND

RANDY LARRY BUTLER

First Defendant

AND

LARONA BUTLER

Second Defendant

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Marnique Knowles for the Claimant
Ashley Williams for the Defendant

Hearing dates: 28 May 2026, 11 June 2026

RULING

1. There is presently before the Court: (i) a request by the Claimant for the entry of judgment in default in the sum of \$234,955.79, inclusive of costs; (ii) an application by the Defendants seeking relief from sanctions for failure to comply with an Unless Order (the "**Unless Order**" or the "**Order**") requiring them to pay the sum of \$19,000 to the Claimant pursuant to an earlier costs order.
2. As the Defendants' application, if successful, has the potential to dispose of the Claimant's request for judgment, I propose to address this first.

Factual Background and Procedural History

3. This is not my first ruling in this action. I issued a ruling on 31 October 2025 in which I provided a summary of the factual background and procedural history of the matter, including the circumstances which led to the Unless Order being made. I adopt my earlier summary herein.
4. For immediate purposes, it suffices to note the following:

- (i) Following an unsuccessful strike out application by the Defendants, the Claimant was awarded costs of \$19,000 by the Assistant Registrar on 28 May 2025. Those costs were not paid.
- (ii) On 31 October 2025, I issued the Unless Order. This required the Defendants to pay the said sum of \$19,000 to the Claimant within 45 days from the date of the Order, failing which their Defence would stand struck out. The Order further stipulated that the deadline for compliance with the payment obligation was 4:00 p.m. on 15 December 2025 and that payment was to be made to the Claimant's attorneys of record, Messrs. Scott & Co.
- (iii) By Notice of Application filed on 1 December 2025, the Defendants made an application for relief from sanctions to effectively extend the period for making payment pursuant to the terms of the Unless Order.
- (iv) By Order dated 12 December 2025 (the "**Extension Order**"), the Court acceded to the Defendants' application and extended the period for making payment pursuant to the terms of the Unless Order by an additional 60 days from 12 December 2025. It is common ground between the parties that the deadline for payment pursuant to the Extension Order expired on 10 February 2026.
- (v) As it turns out, payment was not made by 10 February 2026 as directed. However, two days later on 12 February 2026, the attorneys for the Defendants presented a cheque to Scott & Co. for the sum of \$19,000. Scott & Co. refused to accept the same. The attorneys accordingly deposited the funds into Court, filing a Notice of Payment Into Court on 13 February 2026. On the same date, the Defendants filed the current Notice of Application seeking relief from sanctions.

Affidavit Evidence

- 5. The Defendants relied on two affidavits in support of their application for relief: (i) the affidavit of Adam Miller, an employee of the Defendants' attorneys, filed on 13 February 2026; and (ii) a second affidavit of Adam Miller filed on 29 April 2026. The second affidavit of Mr. Miller is responsive to the affidavit filed on behalf of the Claimant in opposition to the current application.
- 6. In his first affidavit, Mr. Miller materially deposed:
 - "2. On the 12th day of December 2026 (sic), the Honourable Court made an "unless" Order directing that the Defendants pay the Claimant's costs in the sum of B\$19,000.00 on or before 10 February 2026, failing which the Defence would stand struck out.
 - 3. The Defendants fully intended to comply with the said Order and took steps to arrange payment within the prescribed period.
 - 4. Due to banking processing delay and clearance of funds, payment was not effected by 10 February 2026 but was made on the 12th day of February 2026, being two (2) days after the stipulated deadline. At approximately 11:40am on the 12th February 2026, I attended the Chambers of Scott and Co, and provided to them a cheque for the full amount of the Court Ordered costs which was refused.
 - 5. The delay was not deliberate, contumelious, or in disregard of the Court's authority. It was short, inadvertent, and promptly remedied. To this end, Mr.

Williams spoke to Counsel for the Claimant explaining the problem with the funds being posted to his account.

6. *Upon recognising that the deadline had passed, immediate steps were taken to effect payment and regularise compliance.*
7. *The breach is neither serious nor significant in the circumstances, particularly as the Claimant has suffered no prejudice beyond a brief delay of two days.*
8. *The Defendants have otherwise complied with the Orders and Rules of this Honourable Court throughout the proceedings.*
9. *Striking out the Defence for a two-day delay in payment of a monetary order would be disproportionate and contrary to the overriding objective.”*

7. The Claimant relied on an affidavit of Sharon Kelly, an employee of Scott & Co., in opposing the application. Her affidavit was filed on 28 April 2026. In summary, Ms. Kelly asserted on information and belief: the Extension Order was, in part at least, granted based on a representation by the Defendants’ counsel that his clients anticipated being in funds to pay the outstanding \$19,000 imminently following a pending real estate sale, and upon his disclosure of the relevant agreement for sale; the Defendants failed to provide any details as to whether that sale was completed and whether there was any delay in receipt of funds; the Defendants effected payment two days after the extended deadline; the details of the banking delays described by Mr. Miller are lacking in specifics and documentary support; the Defendants’ attorneys did not communicate with the Claimant’s counsel regarding any difficulties in meeting the payment deadline prior to 10 February 2026 or with respect to seeking a further extension; the Defendants have flouted the Orders of the Court, which redounds to prejudice to the Claimant and brings the administration of justice into disrepute; the current application for relief from sanctions was only made after the sanction took effect.

8. In his second affidavit, Mr. Miller materially deposed:

- “7. *In or about early February 2026, I was informed by the First Defendant and/or Counsel that arrangements had been made for the transfer of the sum of \$19,000.00.*
8. *I was further informed, and understood, that the funds had arrived in The Bahamas but had not yet been credited to the relevant account due to delays within the banking system.*
9. *During this period, I observed ongoing communications and follow-ups in relation to the status of the funds. There is now shown to me emails between Counsel for the Defendants and the Bank and between Mr. Williams and Mr. Scott marked 'AM.1'.*
10. *On the 10th February 2026, I was present in Chambers and/or otherwise aware that Mr. Ashley D. R. Williams contacted Ms. Marnique Knowles and Mr. Michael Scott, KC.*
11. *Based on my presence and review of the file, it was conveyed that:*
 - (a) *there was friction with the banking institution;*
 - (b) *the funds were already in-country;*
 - (c) *the funds had not yet been credited to the relevant account; and*
 - (d) *a brief reprieve was sought to facilitate completion of the payment.*

12. *In furtherance of the efforts to comply with the Order, I personally attended at the Chambers of Scott & Co., Counsel for the Claimant, on or about the 12th February 2026, and presented a cheque in the sum of \$19,000.00 in satisfaction of the said Order.*
 13. *The said cheque was not accepted, and I was informed that the Chambers would not take receipt of the same.*
 14. *In light of the refusal to accept payment, and in order to ensure compliance with the Order and secure the funds, I thereafter assisted in arranging for the sum of \$19,000.00 to be paid into Court.*
 15. *The said payment into Court was effected on or about the 12th February 2026.*
 16. *Based on my review of the file and records, the payment into Court was made approximately two (2) days after the expiry of the extended deadline.*
 17. *I observed that the short delay corresponded with the period during which the funds had not yet been credited due to banking processes.*
 18. *At all material times, the Defendants, through Counsel, were taking steps to comply with the Order of the Court.”*
9. Exhibit “AM 1” referred to by Mr. Miller comprised an email chain between counsel for the Defendants and an official at Commonwealth Bank relating to the deposit and subsequent clearing of an incoming wire in the amount of B\$19,000 to what appears to be the Defendants’ attorneys’ bank account. The chain of communications commences at 4:35 p.m. on 11 February 2026 with an email from the bank official to counsel for the Defendants advising him of the incoming wire and requesting completion of source of funds documentation. The chain ends with an email from the bank official to counsel for the Defendants sent at 11:29 a.m. on 12 February 2026, informing him that she would follow up internally with respect to the posting of the funds.
10. Exhibit “AM 1” also includes an email from Mr. Michael Scott KC to counsel for the Defendants, sent at 5:26 p.m. on 12 February 2026, purportedly following a telephone conversation earlier that day. In essence, Mr. Scott informed counsel for the Defendants that in light of his clients’ breach of the Extension Order, “*the action*” stood struck out automatically. The reference to the action standing struck out was obviously in error insofar as the relevant sanction only attached to the Defendants’ Defence. Nevertheless, the Claimant’s position was clear.

Discussion and Analysis

11. CPR 26.8 provides as follows:
- (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.* [Emphasis supplied]

12. The 2024 Practice Guide gives guidance on the operation of the rule. This materially states (at p.222):

“... Non-compliance with the rules must be discouraged and not tolerated. However, the court must, in each application for relief, consider the seriousness and the significance of the breach. The court will also look at the underlying breach in order to assess the seriousness of the breach. The court will consider all the circumstances of the case. Such circumstances include the effect of the breach and the promptness of the application for relief.” [Emphasis supplied]

13. The case of *Andrew Smith v. First Caribbean International Bank* [2023] 1 BHS J. No. 76 helpfully summarises the main considerations in an application for relief from sanctions. After tracing the history of Rule 26.8 and reviewing several leading authorities, Winder CJ observed:

“57. *The first observation that I would make is that rule 26.8 of the CPR confers upon the Court a wider discretion to grant relief from sanctions than existed under Order 31A, rule 25 of the RSC. The requirements in order for the Court to grant relief from sanctions contained in Order 31A, rule 25(2) of the RSC were mandatory and had to be satisfied before the Court could grant relief from sanctions. No such fetter exists under the CPR. The discretion conferred upon the Court by rule 26.8 of the CPR is perfectly general and is to be exercised having regard to all the circumstances of the particular case so as to enable the Court to deal justly with the application.*”

...

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).”*

68. *At the first stage of the analysis, it is not a matter of determining whether the breach which occurred may be described as “trivial”. The focus should be on whether the breach was “serious or significant”. There will be many circumstances in which “materiality”, in the sense of whether the breach imperiled future hearing dates or disrupted the conduct of the particular litigation or impacted other litigation, will be the most useful measure of whether a breach has been serious or significant. However, some breaches may be serious even though they are not capable of affecting the efficient progress of the litigation. If the breach is neither serious nor significant, the Court is unlikely to need to spend much time on the second and third stages. In contrast, if the breach is serious and*

- significant then the second and third stages assume greater importance. (Denton at paras 26 and 28).
69. The assessment of the seriousness and significance of the breach should not, initially at least, involve a consideration of other unrelated failures that may have occurred in the past. At the first stage, the Court should concentrate on an assessment of the seriousness and significance of the “very breach” in respect of which relief from sanctions is sought. (Denton at para 27). However, unless orders are an exception. Unless orders do not stand on their own. Not every breach of an unless order is serious or significant. However, the very fact that a defaulting party has failed to comply with an unless order is a pointer towards seriousness and significance because the defaulting party is in breach of two successive obligations to do the same thing and the Court has already underlined the importance of doing that thing by specifying a sanction in default. (British Gas at paras 38, 39, 41 and 42).”
70. At the second stage of the analysis, the Court should consider why the failure or default has occurred. There is no closed list of good and bad reasons for a failure to comply with rules, practice directions or court orders. Good reasons, such as illness or accident, are likely to arise from circumstances outside the control of the party in default. Later developments in the course of the litigation process are likely to be a good reason if they show that the period for compliance originally imposed was unreasonable though the period seemed to be reasonable at the time. Simply overlooking a deadline, whether on account of overwork or otherwise, is unlikely to be a good reason. (Mitchell at paras 41 and 33; Denton at paras 29 and 30).
71. At the third stage of the analysis, the Court must stand back and consider all the circumstances of the case so as to enable it to deal justly with the application. The Court should give particular weight or importance to the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and orders, which are specifically mentioned in rule 26.8(1). In doing so, the Court should take into account the seriousness and significance of the breach which it assessed at the first stage and any explanation which it considered at the second stage. The more serious or significant the breach, the less likely it is that relief will be granted unless there is a good reason for it. Where there is a good reason for a serious or significant breach, relief is likely to be granted. Where the breach is not serious or significant, relief is also likely to be granted. Importantly, however, the Court is not bound to refuse relief unless a default can be characterised as “trivial” or there is a good reason for the failure to comply. (Denton at paras 33, 34, 35, 36, 38).
72. At the third stage of the analysis, among other factors, the promptness of the application for relief from sanctions, other past or current breaches of the rules, practice directions and court orders by the parties and the effect on the proceedings of relief being granted or the sanction taking effect may be taken into consideration and weighed in the balance. (Denton at paras 36, 56, 65, 79; Clearway Drainage at para 71). The two factors specifically identified in rule 26.8(1) must be given greater weight than other relevant factors. (British Gas at para 53). The mere fact that a trial date may be kept and any default in compliance may be

compensated by an award of costs does not necessarily mean relief from sanctions or an extension of time should be granted. (Clearway Drainage at para 67). The strength of a party's case on the ultimate merits of the proceedings will generally be an irrelevant consideration except where a party has a case whose strength would entitle him to summary judgment and the Court is able to quickly be persuaded of this. (Apex Global at paras 29 to 31)." [Emphasis supplied]

14. I have also found the cases of *Decadent Vapours Ltd. v. Bevan and Ors.* and *Lloyds Developments Ltd. (in administration) v. Accor Hotel Services UK Ltd.* [2024] EWHC 941 (TCC) to be instructive, insofar as they both involved applications for relief arising from late compliance with a payment-based obligation embodied in an unless order where the delay in compliance was short. In *Decadent Vapours*, which was one of the three appeals considered in *Denton v. White* [2014] 1 WLR 3926 (CA), the claimant failed to pay court fees by the date stipulated in an unless order. As a result, its claim automatically stood struck out. There was evidence that the claimant's then solicitors had placed the cheque for payment of the fees in the document-exchange on the actual deadline for payment. In the ordinary course it should have arrived the next morning, but it never reached its destination. When the matter came to light at a pre-trial review a few weeks later, the claimant immediately sent a second cheque for payment of the court fees, which also encountered postal delays. The fees were thereafter paid by credit card two days later.

15. In allowing an appeal against the first instance judge's rejection of the claimant's application for relief from sanctions, Dyson MR and Vos LJ materially stated (at paras.62-65):

"62. In our view, the judge fell into error. His first task was to consider the seriousness and significance of the claimant's failure to pay the fees. The gravamen of the claimant's conduct was (i) sending the cheque by DX on 19 December 2013, so that it would inevitably arrive one day late and (ii) running the small risk (which unfortunately materialised) that the cheque would go astray. All failures to pay court fees are serious, because it is important that litigants pay court fees on time. But some failures to pay fees are more serious than others. The failure in this case was near the bottom of the range of seriousness.

63. At the second stage, the judge ought to have considered whether there was good reason for the breach. There was not, since the solicitor knew in advance that his method of payment would inevitably give rise to a breach of the court order.

64. At the third stage, however, the judge should have concluded that factor (a) pointed in favour of relief, since the late payment of the fees did not prevent the litigation being conducted efficiently and at proportionate cost. Factor (b) also pointed in favour of the grant of relief since the breach was near the bottom of the range of seriousness: there was a delay of only one day in sending the cheque and the breach was promptly remedied when the loss of the cheque came to light. It only affected the orderly conduct of the litigation, because of the approach adopted by the defendants and the court.

65. On a consideration of all the circumstances of the case, the only reasonable conclusion in this case was to grant relief. If relief were not granted, the whole proceedings would come to an end. It is true that the claimant had breached

earlier court orders (as indeed had the defendants). As discussed at paras 27 and 36 above, previous breaches of court orders may be taken into account at the third stage. Nevertheless, even taking account of the history of breaches in the Decadent litigation, this was not a case where, in all the circumstances of the case, it was proportionate to strike out the entire claim. In our judgment, the defendants ought to have consented to relief being granted so the case could proceed without the need for satellite litigation and delay.

66. We will therefore allow the claimant's appeal and set aside the judge's order of 18 February 2014. [Emphasis supplied]

16. *Lloyds Developments v. Accor Hotel Services* shared certain factual similarities with the present case. In a nutshell, Lloyds commenced proceedings against Accor in January 2022 for breaches of commercial agreements entered into between the parties. At a case management conference in October 2022, a trial date was fixed for March 2024. As a result of changes made to Lloyds' case, Accor applied for and obtained an adjournment. The judge ordered Lloyds to pay Accor's costs of that application, which were subsequently summarily assessed in the sum of £120,000. By order made in December 2023, Lloyds was directed to pay the assessed costs by 4:00 p.m. on 12 January 2024. Lloyds failed to pay. Accor thereafter sought an unless order. By order made in February 2024, the judge gave Lloyds until 4:00 p.m. on 8 March 2024 to comply with the December 2023 order, failing which its claim would be struck out and judgment entered against it. Lloyds did not pay by the stipulated deadline, but instead three minutes before expiry of the period for payment filed an application seeking an extension of time to comply with the unless order. Accor, on the other hand, filed an application for judgment and other consequential orders against Lloyds. Subsequently, on 15 March 2024, Lloyds paid the sums ordered to be paid pursuant to the unless order.
17. When the matter came before Jefford J., she determined that the application by Lloyds, having been made just before time for compliance with the unless order expired, was not properly to be treated as an application for relief from sanctions. Instead, it was to be regarded as an application to extend time for compliance with the unless order, which affected the principles governing the application. Applying those principles, she granted the requested extension of time. In doing so, she noted (*inter alia*): that the sums payable under the unless order had in fact been paid, albeit seven days after the due date; the delayed payment of the costs had no impact on the progress of the action towards trial; refusal of the extension would result in judgment being entered against the claimant; although there is strong public interest in ensuring compliance with unless orders, the overriding objective also requires cases to be dealt with fairly and justly.
18. Of note, the learned judge added that she would have reached the very same conclusion had she regarded the claimant's application as out of time and as an application for relief from sanctions. Applying the three-stage test in *Denton v. White*, she expressed her view that the breach in question was serious and that the reasons for non-compliance were at best neutral. However, considering all relevant circumstances, on balance, the just and fair result was that Lloyds should be given more time to comply with the order, as they in fact did.

19. I will now briefly address the various considerations relevant to the immediate application.

The seriousness and significance of the Defendants' failure to comply with the Extension Order (Stage 1)

20. The obligation to pay \$19,000 in costs arose pursuant to an Order of the Assistant Registrar dated 28 May 2025. No later date for payment having been specified, CPR 71.14 required that those costs be paid within 21 days of the Assistant Registrar's Order (i.e. in June 2025). This of course was not done. This led to the issuance of the Unless Order on 31 October 2025, which was subsequently extended on 12 December 2025. As a result of the foregoing, there were in fact three failures to pay the outstanding costs by a stipulated deadline; one arising by operation of the provisions of the CPR and the other two arising pursuant to the terms of the Unless Order and the Extension Order. I accept therefore that the breach was serious.

21. At the same token, it has been acknowledged that the concepts of seriousness and significance are not hard-edged and that there are degrees of seriousness and significance (see *Denton v. White*, para.26). In the present case, the Defendants tendered payment of \$19,000 to the Claimant's attorneys two days after the deadline provided for in the Extension Order. After their refusal to accept, they paid the sum into Court on the same day. It is also noteworthy that the breach did not imperil any future hearing dates. In fact, due to the various interlocutory skirmishes between the parties, CMC directions have yet to be issued and no trial date has been set.

22. In these circumstances, I would be inclined to regard the breach as falling within the lower range of the seriousness spectrum.

The reason for the Defendants' default (Stage 2)

23. The affidavits of Adam Miller are conspicuously vague in providing details surrounding the underlying delay. In his first affidavit, Mr. Miller basically asserts that the Defendants took steps to arrange payment within the time prescribed by the Extension Order but failed to do so due to "*bank processing delay and clearance of funds*".

24. His second affidavit sheds little further light on the matter. Therein, he states that "[i]n or about early February 2026", he was informed by the First Defendant "*and/or*" counsel for the Defendants that arrangements had been made for the transfer of the sum of \$19,000. He continues that he was further informed or understood that the funds had arrived in The Bahamas but had not been credited to the account from which they were to be disbursed due to banking delays. He subsequently refers to the email chain between counsel for the Defendants and the official at Commonwealth Bank described earlier relating to the deposit and subsequent clearing of an incoming wire of B\$19,000. Notably, however, the email chain commences at 4:35 p.m. on 11 February 2026 and ends at 11:29 a.m. on 12 February 2026, all of which was after the payment deadline. It says nothing about what transpired before then. Further, the Defendants have failed to disclose the original instructions directing the transfer of the \$19,000 to the relevant account at Commonwealth Bank, or any information confirming the specifics of the said transfer. This would have obviously placed the Court in a better position to assess

whether banking delays in fact prevented timely compliance with the Extension Order. Mr. Miller's statement to the effect that counsel for the Defendants contacted counsel for the Claimant on 10 February 2026 to apprise them of the situation and to seek a brief reprieve is also seemingly denied.

25. In this state of affairs, I am unable to accept that the Defendants have shown good reason for their default in complying with the Extension Order.

All the circumstances of the case, so as to enable the Court to deal justly with the application (Stage 3)


26. At this stage of the analysis, the Court must stand back and consider all the circumstances of the case so as to enable it to deal justly with the application. In doing so, it must specifically consider and give due weight to the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce compliance with rules, practice directions and orders (see *Smith*, para.72).

27. As indicated, the breach of the Extension Order in the present case was serious, albeit at the lower range of seriousness. No good reason for the non-compliance, in my view, has been established. The Defendants' successive failures to pay the assessed costs by a stipulated deadline has served to undermine the efficient conduct of the present litigation and increase costs. I also readily accept the need to enforce compliance with the CPR and the Court's practice directions and orders, which, besides being expressly referenced in Rule 26.8, is encompassed within the overriding objective. This is especially so in the case of unless orders. These factors all weigh against the grant of relief in the instant case.

28. Based on the limited information before me, I am unable to reach any firm conclusion on the substantive merits of the parties' respective cases and these have not been argued before me in any detail. I certainly do not consider this to be a case where I could be quickly persuaded to grant summary judgment in favour of one party or the other. As such, I regard this as a neutral factor.

29. On the other side of the balance, the Defendants did in fact tender payment of the outstanding costs to the Claimant's attorneys. After being rebuffed, they immediately paid the funds into Court. The period of default in compliance with the Extension Order was also very short. The Defendants also applied for relief from sanctions very promptly. The Claimant would suffer no evident prejudice by the grant of relief. The grant of relief will not result in the loss of any hearing date or an adjournment of trial. Importantly, the refusal of relief will result in the Defendants' Defence remaining struck out and the Claimant moving to enter judgment against them for the sum of approximately \$234,000. I regard this potential outcome as unduly draconian and disproportionate in all the circumstances.

30. Weighing all these factors together, I am satisfied that it would be fair and just to grant the Defendants relief from sanctions and I so order. I will also direct that the \$19,000 paid into Court be released to the Claimant. I will hear from the parties further on the issue of costs.


Farquharson, J.