

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0109

BETWEEN

OLFRED SHARPE

CLAIMANT

and

ANTHONY DASCENT o/c TONEY OR RAMPEL

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. Chanté Francis holding papers for Mr. Duane Daniel of counsel for the claimant.

Ms. Maia Eustace of counsel for the defendant.

2022: Mar. 28
Apr. 11

DECISION

BACKGROUND

[1] **Henry, J.:** This is the second application by the defendant Anthony Dascent for extension of time to file witness statements and relief from sanctions for failure to meet the filing deadline. The first application was considered and granted in November 2021¹. At that

time, Mr. Dascent represented to the court that he had failed to file his witness statements due to his lawyer's simultaneous illness and inundation with legal work. Mr. Dascent's legal practitioner told the court that he intended to file 3 witness statements and that she was in the process of preparing them. She indicated that she would need a further 7 to 10 days to complete the preparation and filing.

[2] Time was enlarged to December 9th 2021 for filing and service of the specified witness statements. No sanctions were decreed for failure to comply with the new timeline. Mr. Dascent has not filed his witness statements. He asserted that his failure in time is attributable to successive illnesses of his legal practitioner's parents in the days just before and after the deadline. Mr. Dascent asserted further that his legal practitioner is the sole caretaker for both parents.

[3] Mr. Sharpe resisted the application. He contended that no evidence has been presented to the court as to why the witness statements were not filed between June 25th 2018 (when the initial deadline for filing was fixed by the court) and November 10th 2021, when the first application was heard. He argued further that no explanation has been given as to why the witness statements were not prepared between the November 2021 order and the December 9th 2021 deadline. He submitted that the reasons proffered for the failure to file the witness statements are unacceptable. For the reasons set out below, the application is granted.

ISSUES

[4] The issues are: -

1. Whether Anthony Dascent should be granted an extension of time to file his witness statements; and
2. Whether he should be relieved from sanctions for non-compliance with the timeline for doing so.

ANALYSIS

Issue 1 – Should Anthony Dascent be granted a further extension of time to file his witness statements?

[5] The court may grant any party an extension of time to comply with its orders². Among the factors to be considered by the court are the nature of the default, the reasons for the same, the length and effect of the delay and the party's prospects of success at trial. The court must also assess the degree of prejudice or advantage to the respective parties if the application is granted or refused. Likewise, the court must have regard to all of the surrounding circumstances and other relevant matters including any Practice Directions or Rules and the overriding objective of the CPR.³

[6] Proceedings in this matter have been protracted. They had lapsed for a considerable period of time between the date of the case management order on February 19th 2018. The parties were at that time directed to file their witness statements by 18th May 2018. No further hearings took place until November 1st 2021 when the court considered Mr. Dascent's first application for extension of time.

[7] This case appears to have fallen through the cracks for about 3 years. In this regard, the record shows that it was listed for hearing on 25th June 2018 and 12th November 2018 and that no hearing took place on either day. Conceivably, the uncertainty occasioned by the COVID-19 pandemic in 2020 may have contributed to the seeming oversight. As indicated in the earlier decision, the court office must shoulder some of the responsibility for the delay in returning this matter to the court's hearing list.

[8] In any event, it does not go unremarked that the claimant filed a single witness statement on 18th May 2018. He has since filed⁴ an application for extension of time to file further witness statements. That Notice of Application⁵ has been amended twice but due to late service of documentation on Mr. Dascent it has not yet been heard. Mr. Sharpe has changed his legal

²Civil Procedure Rules 2000 ('CPR') 26.1(2) (k).

³Carlene Pemberton v Mark Brantley [2011] ECSCJ No. 229, delivered 14th October 2011.

⁴ On 26th October 2021

⁵ On 8th November 2021 and 16th February 2022.

practitioner⁶ between the first filing of that application and the most recent amended version. The application will be considered at a later date. I now turn to consider Mr. Dascent's application.

Length of and reasons for delay

[9] This application for extension of time was filed on 9th December 2021. Mr. Dascent submitted that there was no delay in filing it. This is self-evident. I find therefore that it was made in a timely manner.

[10] The application is supported by affidavit⁷ testimony of Kezzie Woodley, legal clerk at Cato & Cato - Ms. Maia Eustace's law chambers. Ms. Woodley averred that on December 7th 2021, learned counsel Ms. Eustace sought emergency cardiac attention for her mother at the Milton Cato Memorial hospital ('MCMH') as a result of which she was admitted to the female surgical ward early the next day.

[11] She averred further that on December 9th 2022, Ms. Eustace's father suffered a fall resulting in a fracture of his right ankle and as a result was admitted to MCMH on December 10th for surgery and discharged on December 13th 2021. Ms. Woodley explained that Ms. Eustace resides with her parents and is their sole caretaker.

[12] She exhibited a copy of Mrs. Eustace's discharge letter from the hospital dated respectively 8th December 2021. Based on Ms. Woodley's affidavit testimony, I accept that both Mr. and Mrs. Eustace required urgent medical attention and were hospitalized at the stated times and for the mentioned periods. I also accept Ms. Woodley's averment that learned counsel Ms. Eustace is her parent's sole caretaker.

[13] Mr. Sharpe submitted that Mr. Dascent's default in filing and exchanging his witness

statements for the 4 years between the case management order and the November 2021 order granting him an extension of time; and his further failure provide an explanation for not completing and filing his witness statements between November 30th 2021 and December

⁶ By Notice of Acting filed on 3rd January 2022

⁷ Filed on 9th December 2021 and 22nd March 2022

7th 2021 are unreasonable. Mr. Dascent countered that Ms. Woodley has explained that his lawyer was preparing the witness statement after the November 2021 order but was unable to complete them for reasons beyond her control.

[14] It suffices to states that the non-filing of witness statements by Mr. Dascent between June 2018 and November 2021 were fully considered by the court when the first application was heard. It is not necessary to explore them again as they are not relevant for present purposes.

[15] The court appreciates that when deadlines are imposed by orders of court, a party is entitled to utilize the entire stipulated period for satisfying the order. He may choose to complete the task in stages, with the final stage taking place on the last day. If he wishes to, he may even wait until the final day to commence and bring the task to completion.

[16] I accept Ms. Woodley's testimony of that counsel Ms. Eustace was unable to complete drafting of the witness statements for the reasons she has given. It seems to me that the family was struck in quick succession by a potentially serious medical emergency and incapacitating injury which required urgent surgical intervention. The inescapable inference is that learned counsel Ms. Eustace would have had to make hasty arrangements for her parents' care and supervision in the wake of those incidents which took place within a short space of time.

[17] It would be remarkable if the court in those circumstances, were to expect counsel to disregard the urgent or serious medical needs of her parents in a bid to meet looming filing deadlines. Au contraire, I find that the circumstances facing learned counsel Ms. Eustace between December 7th and 13th 2021 were significant, unexpected, unusual, spanned roughly one week and coincided with the final days leading up to the referenced filing deadline. They were clearly outside of Mr. Dascent's and his counsel's control. They created the proverbial 'perfect storm' which in all probability derailed any chances of counsel completing the preparation of the witness statements within that period.

[18] These reasons are in my opinion not trivial. They afford a reasonable justification for the failure to meet the December 9th 2021 filing and service deadlines. I have no difficulty concluding that the events surrounding the Eustaces' respective illness and hospitalization

would have required counsel's full attention and would have severely impacted her ability to focus on and complete any court related obligations including the completion, filing and service of Mr. Dascent's witness statements by December 9th 2022.

Effect of the delay and prejudice

[19] If a further extension is granted to Mr. Dascent to file his witness statements this will push back the timeline for the trial by about 3 to 4 months. No trial date has been set. As indicated earlier, Mr. Sharpe is poised to seek an extension of time. Bearing this in mind, it seems that he is likely to suffer little prejudice by the grant of an extension to Mr. Dascent.

[20] The court reminds itself that in its bid to further the overriding objective, it must seek as far as possible to facilitate parties in presenting their case. In the premises, any advantage which may accrue to Mr. Dascent by a further extension of time can be cured by the grant of time to Mr. Sharpe to respond by filing further witness statements to address any new matters which arises from Mr. Dascent's filings.

[21] On the issue of Mr. Dascent's prospects of success at trial, similar considerations arise as during the hearing of the first application. They bear repeating: -

'... the court is restricted to his defence which essentially is a denial of the claim and the proffering of an alternative narrative as to ownership of the disputed tract of land. The outcome of the case will to a large extent depend on the parties' and witnesses' credibility. Mr. Dascent may prevail depending on the view the court takes of the veracity of the competing assertions. He therefore has a realistic chance of prevailing.'

[22] In light of the foregoing and on balance, I am of the considered opinion that Mr. Dascent has advanced a reasonable explanation for his non-compliance with the timeline for filing his witness statement; that the failure was neither intentional nor deliberate; that his application was made promptly; that the effect on the trial will be minimal and that he has a fair chance of success at trial. In all of the circumstances, I am satisfied that it is just that he be granted a further extension of time to file his witness statements - i.e. those of his

two witnesses Comsie Jobe and Omega Vanterpool and his own. I consider that a period of 7 days would be adequate.

Relief from Sanctions and costs

[23] Mr. Dascent submitted that no sanctions were prescribed for failure to comply with the timeline for filing his witness statements. Citing **BBL Ltd. et al v Canouan Resorts Development Limited et al**⁸ he argued that he filed this application on the deadline set by the court. He reasoned that the issue of relief from sanctions does not arise because sanctions had not yet bitten. He submitted that furthermore no sanctions were prescribed for non-compliance with the timelines and there was therefore no need for apply for relief from sanctions.

[24] Learned counsel Ms. Eustace is correct that the **BBL Ltd. case** makes those rulings. In the headnote, the Court of Appeal's decision is summarized. It is to be noted that the court determined among other things that:

‘... it is pellucid that rule 26.8 of the CPR applies only where a sanction has already taken effect’ and, ‘In this case, the appellants’ application for extension of time and relief from sanctions, having been filed before the sanction took effect, therefore fell to be determined as an application for an extension of time.’

[25] The Court of Appeal stressed in the **BBL case** that it is not necessary for a litigant seeking extension of time to make an application for relief from sanctions if no sanction is prescribed for the relevant default and if no sanctions are prescribed in the material order. Having filed his application before the specified deadline Mr. Dascent did not need to seek relief from sanctions. Moreover, no sanctions could have been invoked as none was specified. The application for relief from sanctions is therefore dismissed.

COSTS

[26] The parties have agreed costs of \$750.00. Mr. Dascent shall pay that sum to Mr. Sharpe.

⁸ SVGHCVAP2019/0006.

ORDER

[27] It is accordingly ordered:

1. Anthony Dascent is granted an extension of time to April 22nd 2022, to file and serve his witness statement and those of his proposed witnesses Comsie Jobe and Omega Vanterpool.
2. Anthony Dascent's application for relief from sanctions is dismissed.
3. Non-compliance with the timeline in this order will attract wasted costs sanctions.
4. Anthony Dascent shall pay agreed costs of \$750.00 to Olfred Sharpe on or before April 28th 2022.

[28] I am grateful to the legal practitioners for their submissions.

Esco L. Henry
High Court Judge

By The Court

Registrar