

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHAD2017/0001

BETWEEN:

WARREN MITCHELL

CLAIMANT

AND

“MV TENACITY1”
And The Owners Of and Parties Interested
in the Motor Vessel “TENACITY 1”

DEFENDANT

Appearances:

Mr. Duane Daniel for the Claimant

Ms. Vynnette Frederick for the Defendant

2020: February 7

REASONS FOR DECISION

- [1] **Byer, J.:** By application filed on the 1st November 2019 the claimant herein sought to invoke the provisions of CPR 26.8 2000 and applied to the court for an extension of time for the filing of their Reply and Defence to Counterclaim and for relief from sanctions the same having been filed on the 9th May 2019 some two years after the time prescribed for the filing of the said document.
- [2] The court on the hearing of this application on the 7th February 2020 delivered an oral decision which the parties asked the same to be reduced into writing. These are the said reasons,
- [3] The application was supported by an Affidavit of one Sherisse Veira who set out in some detail the unfortunate set of circumstances that unfolded in the office of counsel for the claimant during the latter part of 2017 when pursuant to the Civil Procedure Rules 2000 the Reply and Defence to Counterclaim would have been due.

- [4] The application was also supported by an Affidavit of counsel Carlos James who sought to expound on the circumstances that led to flooding of the space occupied by counsel for the claimant and which resulted in the extensive delays that were complained of by the applicant and the foundation of the application as a whole.
- [5] On the first hearing of the application after the court made some preliminary observations, counsel for the claimant, unopposed by counsel for the defendant, sought leave to file a further affidavit which would in the words of counsel, further explain the issues which had occurred and the reason why it took two years for the filing of the Reply and Defence to Counterclaim.
- [6] That further Affidavit was filed on the 27th January 2020 along with a copy of unsigned submissions on the issue at hand.
- [7] In this court's mind, this Affidavit set out in detail the information that was required to fill in the blanks for the court as to the reason why it took two years for the claimant to file the outstanding document.
- [8] However in this court's mind there was an omission on the part of the claimant to explain why the application itself was not also filed at the date of the filing of the said Reply and Defence to Counterclaim in May 2019. At that date it would have been clear in this court's mind that the claimant knew that the same was already out of time and that an application was required to be filed to have the same accepted by the court.
- [9] Indeed it was noted by this court that that it took a further six months to file the application for extension of time and relief from sanctions.
- [10] Although it is recognized by our courts that the delay or lack of promptitude in filing the application is not fatal to the application, it is a factor to be considered in exercising the discretion under Section 26.8.
- [11] However I must add here a point that I did not indicate to the parties at the hearing on the 7th, which in any event does not change the outcome of the application. It must be noted that in any event an application for an extension of time for the out of time filing of a defence, does not require an additional prayer for relief from sanctions, there actually being no sanction applied to the late filing of the same within our CPR 2000 rules¹.
- [12] However the parties having couched their application in the manner that they have, I have addressed my mind to the same in that regard under Part 26.8 and even if there was no need to apply for relief from sanctions the court must still be provided with information to exercise its discretion in granting the extension of time. I am thus in agreement with the words of the Learned Chief Justice, although dealing with an application for relief from sanctions, in the case **Adam**

¹ **Attorney General v Keron Matthews** [2011] UKPC 38

Bilzerian v Gerald Weiner and anr² in which she stated at paragraph 15 that the onus is on the applicant (appellant in that case) to show by credible and particularized evidence that he has met the threshold warranting consideration for the grant of relief and that in essence that he had taken all reasonable steps to meet the timeline. It was then for him to finally show, that why, notwithstanding taking such reasonable steps, that he was unable to meet that deadline.

- [13] That being said, I have examined the reasons given for the failure for the filing of the reply and more importantly the defence to Counterclaim. I am satisfied that the factors identified show that the claimant had a good reason for his failure and that the defendant in any event would not have been in a position to take any step against the claimant to seek judgment in default given the fact that the claim had been brought within the Admiralty jurisdiction.
- [14] In looking at this application, I am therefore satisfied, that the claimant is entitled to his relief as prayed.
- [15] In my mind it is in keeping with the administration of justice that permission be given to file this document late though it be. Additionally, case management of this matter has not yet been undertaken and as such no trial date was set. Thus, although the delay that occurred was solely at the hands of counsel this court has taken into consideration all of the factors presented and is of the opinion that the extension should be granted for the filing of the reply and defence to Counterclaim.
- [16] The application as filed is therefore granted and the Reply and Defence to Counterclaim filed on the 9th May 2019 is deemed properly filed with costs to the defendant on the application of \$350.00.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar

²SKBHCVP2015/0015; Also considered **Issa Nicholas v Time Bourke** GDAHCVAP2015/0029; **Prudence Robinson v Sagicor** SLUHCVP2013/0009