

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCMAP2024/0001

BETWEEN:

**[1] ELECTRICAL ASSOCIATES LIMITED
[2] MARCELLINUS STEPHEN TRADING AS – MS STEPHEN TILING**

Appellants

and

**[1] WESLEY J. HALL ALSO KNOWN AS WES HALL
[2] THE HARBOUR CLUB LTD
[3] SUNROD PROPERTY INC.**

Respondents

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mr. Trevor M. Ward
The Hon. Mr. Gerard St. C. Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag]

Appearances:

Mrs. Wauneen Louis-Harris for the Appellants
Ms. Vanessa Pinnock for the Respondents

2025: May 20;
July 24.

Application to discharge order of single judge of the Court of Appeal – Unless Order of Full Court directing applicants to file and serve amended expert report within 21 days of the date of order failing which the Expert Report shall stand struck out without further order of this Court – Non-compliance with Order of the Full Court – Application for extension of time to file report – Application for relief from sanctions - Whether the application to extend the time stipulated in the unless order of the court should be granted

The appellants, by Order of the Full Court dated 10th December 2024, were directed to file an amended expert report within 21 days failing which the expert report shall stand struck out without further order of this Court. Having failed to comply with the said Order of the Full Court, the appellants, by notice of application filed on 3rd January 2025, sought an extension of time to file the report to which the respondents filed a notice of objection on 15th January 2025 and relief from sanctions. On 18th February 2025, a single judge of the Court of Appeal made an order refusing the application for an extension of time and relief from sanctions.

Dissatisfied with the Order of the single judge, the appellants filed the instant application on 4th March 2025 seeking to discharge/revoke the order of a single judge of the Court of Appeal and to consider the application filed on 3rd January 2025 afresh and to grant an extension of time to file the amended expert report or to deem the expert report filed as being validly filed. The respondents filed a notice of opposition to the application on 14th March 2025.

Held: granting the application to discharge or revoke the order of the single judge dated 18th February 2025, dismissing the application for extension of time to file the expert report, ruling that the sanction imposed by the unless order would therefore take effect and ordering that the respondents be awarded the costs of the application to be assessed if not agreed, that:

1. A single judge has a wide jurisdiction to grant or deny applications for extension of time. The power of the single judge to extend time or abridge time is not proscribed by CPR Part 62.19 which specifically empowers the single judge to grant an extension or abridgement of any time limit prescribed in Part 62. There is a much broader remit accorded to the single judge to extend time under rule 27 of the **Eastern Caribbean Supreme Court, Court of Appeal Rules**. It follows that the learned single judge in the application herein had the jurisdiction to consider an application extending the time to file the amended expert report notwithstanding that the time limit was prescribed in an order of the Court rather than CPR Part 62.

Rule 27 of the **Eastern Caribbean Supreme Court, Court of Appeal Rules, Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al** BVIHCVAP2009/0002 (delivered 28th September 2009, unreported) applied.

2. The single judge has wide case management powers to extend or shorten the time even if the application for an extension is made after the time for compliance has passed. An application to extend the time for compliance with an unless order which specifies a sanction for non-compliance made prior to the expiration of the stipulated time for compliance, falls to be considered by the court pursuant to CPR 26.1(2)(k) and the overriding objective, and not CPR 26.8 pertaining to relief from sanctions. This is so even where the application is not

heard and determined by the court until after the time stipulated in the order for the sanction to take effect. In this case, the 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. The learned judge accordingly erred in treating with the application as one for relief from sanctions and the basis upon which the learned judge exercised her discretion was plainly wrong.

Rules 26.1(2), 26.7 and 26.8 of the Civil Procedure Rules 2000 considered **BBL Limited and Anor. v Canouan Resorts Development Limited and Anor** SVGHCVAP2019/0006 (delivered 12th January 2021, unreported) applied.

3. A judge considering an application to extend time for complying with an unless order must take into account the factors which must be weighed when considering an application for extension of time. These factors, which are now well settled, include: (i) the length of the delay, (ii) the reasons for the delay, (iii) any prejudice to the respondent; and (iv) whether the appellant's pleaded case is, in any event, a hopeless one - the chances of success. These factors do not appear to have been considered or applied by the single judge. In these premises, the Court is satisfied that the learned single judge's order should be revoked.

Adam Bilzerian v. Gerald Lou Weiner et al SKBHCVAP2015/0015 (delivered 27th January 2016, unreported) applied, **Ferdinand Frampton v. Ian Pinard et al** Civil Appeal No. 15 of 2005 applied, **John Cecil Rose v Anne Marie Uralis Rose** (SLUHCVAP2003/0019 delivered 22nd September 2003, unreported) applied, **Carleen Pemberton v Mark Brantley** SKBHCVAP2011/009 (delivered 14th October 2011, unreported) applied.

4. This Court must therefore, in the exercise of its discretion de novo, consider whether to permit the extension sought by the appellant. In doing so, the Court took into account (1) that the appellants proffered no cogent or persuasive evidence which explains why they would not have been able to comply with the unless order. (2) the appellants did little to assist the court in assessing the chances of success. Copies of the claim form, statement of claim and defence were not included as part of the hearing bundle in this matter. The Court was not taken by counsel for either side to the respective pleaded cases. The fact that the appellants are reluctant to address the substantive issues which arise in their claim did little to persuade the Court as to the chances of success. A court cannot assess the chances of success of a claim solely on the basis that it has reached the point of pretrial review. (3) no analysis of the issues arising

in the claim was advanced and no attempt to connect the expert evidence to these issues or to weigh its import. It is not contended that a refusal of the application would have a devastating impact on them and on their ability to prosecute their claim. (4) that the appellants' dilatory conduct has contributed to significant delays in the progression of the litigation. A trial date had been set for this matter during the pre-trial review conducted in December 2023. The scheduled trial dates of 18th -19th March 2024 had to be vacated. Realistically, there is no prospect of the trial taking place this year. There is therefore inherent prejudice to the respondents.

5. Ultimately, the evidence adduced by the appellant did not rise to the standard expected on an application which seeks to extend the time for complying with an unless order. Having regard to the evidence filed in support of the application and the legal submissions advanced in writing and orally by the appellants, the Court is satisfied that the overriding objective, which obliges courts to deal with cases justly and proportionately and economically, compels this Court to refuse this application to extend the time stipulated in the unless order for the appellants to file the amended expert report.

JUDGMENT

Introduction

- [1] **ELLIS JA:** The application herein seeks to have the Full Court i) discharge/revoke the order of a single judge of the Court of Appeal made on 18th February 2025 and ii) consider the application filed on 3rd January 2025 afresh and to grant an extension of time to file the amended expert report or to deem the expert report filed as being validly filed.

Background

- [2] On 14th October 2024, the Full Court heard a previous appeal involving these parties. The Court issued its judgment and an order on 10th December 2024, stating:
- (1) The appeal against the learned trial judge is allowed.
 - (2) Paragraph [2] of the order is set aside.

- (3) The expert shall file and serve an amended Expert Report to comply with CPR Part 32, within 21 days of the date of this order, failing which the Expert Report shall stand struck out without further order of this Court.
- (4) Costs to the appellants to be assessed if not agreed within 21 days of the date of this judgment.

- [3] The appellants failed to file the relevant expert report within the stipulated time frame. Instead, an Amended Expert Report was filed on 15th January 2025.
- [4] On 3rd January 2025 the appellants filed a notice of application in conjunction with an affidavit in support seeking an extension of time within which to file the Amended Expert Report as well as relief from sanctions (“the extension of time application”).
- [5] On 15th January 2025 the respondents filed a notice of objection to the said extension of time application. On 20th January 2025 the respondent filed an affidavit in reply to the extension of time application.
- [6] The parties later lodged and exchanged written legal submissions in support of their contrasting positions.
- [7] On 18th February 2025 the matter came up for determination before a single judge of the Court of Appeal and the following Order was made:
 - “
 - 1. “The application for an extension of time within which to file the amended expert report and relief from sanctions filed on 3rd January 2025 is refused.
 - 2. For the avoidance of doubt, in accordance with paragraph 3 of the Court of Appeal’s order dated 10th December 2024, the expert report stands struck out.”
- [8] Being dissatisfied with the Order of the single judge the appellants filed the instant application on 4th March 2025.

- [9] The respondents filed a notice of opposition on 14th March 2025, an affidavit in opposition on 17th March 2025, submissions in reply and authorities on 14th April 2025 in response to the appellants' challenge of the single judge's order.

Submissions of the Appellants

- [10] First, the appellants complained that the learned single judge lacked the relevant jurisdiction to hear and determine the extension of time application. Rather they contended that that application could only be considered and granted by the Full Court. The appellants mounted this argument on the basis that the Full Court granted leave to the appellants to file the amended expert report within 21 days, therefore the Full Court is reposed with the jurisdiction to enlarge the time within which to file the amended expert report and not a single judge of the Court of Appeal.
- [11] The appellants also relied on the **Civil Procedure Rules (Revised Edition) 2023** ("CPR") Part 62.19 (1) noting that the extension sought by the appellants in the instant case falls outside of the remit of that rule which provides that:
- "62.19 (1) A single judge of the court may make orders for –
- (a) an injunction restraining any party from disposing of or parting with possession of the subject matter of an appeal pending the determination of the appeal;
 - (b) a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal;
 - (c) extension or abridgement of any time limit **prescribed in this Part**;
 - (d) the giving of security for any costs occasioned by an appeal, and may hear, determine and make orders on any other interlocutory application in the course of an appeal." (Emphasis added)
- [12] The appellants submitted that this procedural rule specifically concerns time limits which are stipulated in Part 62 of the CPR. They contend that the extension of time

application did not seek an extension of a time limit prescribed in CPR Part 62, but rather specifically sought an extension to a time limit imposed by the 21st December 2024 Order of the Full Court.

- [13] In support of this contention, counsel for the appellants relied on the judgment in **Christenbury Eye Center et al v. First Fidelity Trust Limited et al.**¹ Counsel submitted that in that case the appellant sought leave of the Full Court to discharge the order of a single judge who had refused leave to appeal. The application was made in consonance with Rule 62.16A (1) of the Civil Procedure Rules 2000 (hereinafter referred to as the Old Rules). The Full Court's power to vary or discharge an order of a single judge was confined to the orders specifically mentioned in Rule 62.16(1) of the Old Rules. She commended to this Court the following dicta of Barrow JA:

"The heading of this rule is a fair indication of its scope. The rule speaks to the powers that the specified officials of the court of appeal may exercise. No general powers are conferred; rather, specific powers are conferred. In relation to a single judge, these powers are stated to be to make orders for an injunction, a stay of execution, an extension of time and the giving of security for costs.

The provision in paragraph (4) of rule 62.16, for the full court to vary or discharge an order made by a single judge, seems necessarily to be directed to the orders mentioned in paragraph (1) of the rule. The power to vary or discharge is not given in a standalone rule but is given in a paragraph in a rule that deals with specific orders that may be made and hence, as a matter of context, that may be required to be varied or discharged."²

- [14] The appellants further advanced that even if this Court were to find that the single judge had the relevant jurisdiction to hear and determine the extension of time application, the exercise of the discretion of the learned single judge was

¹ HCVAP2007 /014 (delivered 19th November 2008, unreported).

² Ibid, paragraph 4.

nevertheless flawed and is liable to be set aside. First, the appellants submitted that the extension of time was not filed after the prescribed deadline had elapsed. They contend that the extension of time application was filed on 3rd January 2025 within the mandated deadline and accordingly the expert report could not automatically be deemed to be struck out.

- [15] The appellants also asserted that according to the Eastern Caribbean Supreme Court electronic filing rules (Rule 11 and Rule 2), filing through the E-Litigation Portal is considered the same as filing a document at the physical Court Registry or Court Office. They contended that CPR Rule 3.2 (1) (a), 3.2 (2), 3.2 (5) and 3.3 (a) and Rule 11 of the Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules support this proposition.
- [16] The appellants argued that, under CPR Rule 3.2 (5) and the Electronic Filing Rules, the original deadline of 3rd January 2025, fell on a date when the Court was closed. The appellants argued that the Christmas vacation begins on 23rd December and ends on 10th January and that in reckoning time, these dates are inclusive. The Court office was closed until 10th January 2025 and reopened on Monday, 13th January 2025. The appellants therefore submitted that 13th January 2025 was the correct day upon which the twenty-one (21) day period would have expired.
- [17] Accordingly, the appellants maintained that the sanction prescribed by the 10th December 2024 Order would not have bitten and so the judgments in **Adam Bilzerian v. Gerald Lou Weiner et al**³ and **Ferdinand Frampton v. Ian Pinard et al**⁴ (relied upon by the single judge in her order) would not apply.

³ SKBHCVAP2015/0015 (delivered 27th January 2016, unreported).

⁴ Civil Appeal No. 15 of 2005.

[18] Moreover, counsel for the appellants submitted that the learned single judge did not adopt the proper approach when considering the extension of time application and consequently did not considering the appropriate factors. They submitted that the proper approach that the learned single judge ought to have applied was canvassed in **C.O. Williams Construction (St. Lucia) Limited v Inter-Island Dredging Co. Ltd**⁵ and **Joseph Hyacinth v Allan Joseph**⁶. The factors to be considered by the court included: 1) length of the delay; 2) reason for the delay; 3) likelihood of success; and 4) degree of prejudice and they submit that had these factors been taken into account then the application for an extension of time would have been granted.

[19] The appellants argued that the delay in filing the Expert Report is not inordinate. They further submitted that even where the reason proffered for the delay is not a good one, the Court can grant the extension of time where the claim has good prospects of success. In that regard, they submitted that the prospect of success is a critical factor which was ignored by the learned single judge. They contended that they have good prospects of success in the substantive matter. They say that this can be gleaned from the court record and the stage of the proceedings. Counsel for the appellants submitted that the claim would have arrived at this stage as a result of there being actual triable issues between the parties. She further submitted that it is worthy of note that although the respondents had made an application for summary judgment against the first and second defendants earlier in the proceedings, no such application was made by the respondent herein. The appellants submitted that the respondents would have acceded to the fact that the claim of the appellants disclosed a reasonable prospect of succeeding on the claim.

⁵ SLUHCVP2011/017 (delivered 19th March 2012, unreported).

⁶ GDAHCVP2015/0025 (delivered 20th June 2016, unreported).

[20] Counsel for the appellants further submitted that the litigation is at the pre-trial review stage. The appellants contended that no trial date has been set and that the report has been filed in this Court and in the Court below and therefore no prejudice would be caused to the respondent in the circumstances. The respondent has unequivocally conceded that the amended report of the expert was filed herein on the 15th day of January 2025. The appellants maintain the argument that the respondents are seized of the report well before the trial date.

[21] The appellants concluded that due to the improper exercise of the discretion by the learned single judge, and in any event the lack of jurisdiction to entertain the Extension of Time Application that the Full Court is empowered to revoke and set aside the order of the single judge of the Court. They further submitted that if the Court is of the view that the Order should be revoked, then the Full Court may proceed to consider the application for extension of time afresh.

Respondents' submissions

[22] The respondents submitted that the learned single judge was rightfully empowered to hear the application for an extension by virtue of rule 62.19(c). The respondents submitted that where a party asserts that a judge exercised his judicial discretion in arriving at a decision, the Court will not lightly interfere with such exercise of discretion. Reliance was placed on the decision of **Sheikh Mohamed Ali M Alhamrani v Sheikh Abdullah Ali Alhamrani**⁷, which relied on the decision of **Dufour et al v Helenair Corporation Ltd et al**⁸, wherein Sir Vincent Floissac CJ articulated the basis on which an appellate court would interfere with the exercise of a judicial discretion of a trial judge in the following terms:

'We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be

⁷ BVIHCVAP2012/026 (delivered 3rd October 2012, unreported).

⁸ (1996) 52 WIR 188.

allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."⁹

[23] The respondents contended that this Court should not readily substitute its own discretion for the discretion already exercised by the learned single judge merely because they would themselves have exercised the original discretion in a different way.

[24] As it relates to the appellants' contention that the learned single judge lacked jurisdiction to hear and determine the Extension of Time Application, the respondents simply contended that the learned single judge was rightly empowered to hear the application by virtue of CPR Part 62.19 (c) which includes the important catch-all that empowers a single judge to "hear, determine and make orders on any other interlocutory application in the course of an appeal."

[25] As it relates to the timing of the filing of the Extension of Time Application, counsel for the respondents conceded the point, succinctly stating that:

"Upon a review of the legal arguments advanced on the behalf of the Appellant for both issues, it can be gleaned that the main contention of the Appellant is that the application for an extension of time and relief from sanctions was not filed after the deadline for compliance had passed, and accordingly, the filed amended expert report could not have been deemed struck out."

[26] However, counsel pointed out that although the appellants now contend that relief from sanction was unnecessary in all the circumstances, it was the Appellants who

⁹ Ibid, p. 189

concluded and had advanced the argument that an application for relief from sanctions was warranted in the circumstances. Counsel for the respondents argued that for the appellants to come at this juncture and blame the learned single judge for its own failures and inability to recognise this error ought to be rejected as a basis upon which to contest the findings of the learned judge.

- [27] It is submitted that in any event, even if the learned single judge was properly directed on the (correct expiration of the deadline and) timeframe within which the Extension of Time Application was made, the outcome of the matter would not be changed as the fact still remains that none of the factors to be considered for an extension were addressed in the appellants' evidence or submissions. It follows that even if the learned single judge had been properly directed on the timing of the application, the outcome would not be changed.
- [28] Counsel for the respondents submitted that notwithstanding the appellants' failings, the learned single judge was addressed by the respondents on matters pertaining to an extension of time in written legal submissions. It follows that the learned single judge would have addressed her mind to the relevant factors which must be considered in an application for an extension of time.
- [29] Although the order of the learned single judge would not have specifically addressed these factors, counsel for the respondents submitted that there is no requirement of the learned judge to state all the matters that he has taken into account once he is able to demonstrate that care has been taken and that the evidence as a whole has been considered. In that regard, counsel noted that the order specifically listed all of the documents considered by the learned single judge. She further submitted that in any event, with the promulgation of the revised CPR 2023, there is an overlap between the factors to be considered for an extension of time and for relief from sanctions. Given the paucity of information advanced by the Appellants to assist the

judge she argued that the learned judge had no other option but to deny the Extension of Time Application in its entirety as to do otherwise would be to enter into the realm of dangerous speculation.

- [30] Counsel for the respondents submitted that even upon a re-consideration of the initial affidavit filed in support of the application on 3rd January 2025, it is clear that the appellants still have not satisfied the requirements for the granting of any extension of time. Counsel submitted that the affidavit in support of applications for an extension of time must be written with great particularity to allow for a proper determination by the court. In the absence of cogent evidence a court is left to speculate on whether each ground has been satisfactorily met by the Appellant.
- [31] Applying the well-known dicta in **Carleen Pemberton v Mark Brantley**¹⁰, counsel for the respondents submitted that they have failed to adequately explain why the expert report could not be produced within the court's express deadline. The affidavit filed in support reflects that the report could not have been produced because the expert quantity surveyor had to travel overseas between 22nd December 2024 to 2nd January 2025. However, counsel noted that one can find no evidence to explain why the preparation of the report was hindered by her departure from the island, especially in light of the fact that she would have been informed of the Court's deadline for the submission of the report. Moreover, counsel submitted that there is no listing of any detailed steps taken by the expert to meet the deadline at the very least. Counsel for the respondents further argued that in order to succeed in an application for an extension of time, the Court needs a clear, detailed explanation of the failure and the steps taken to rectify it. In the absence of the same, no extension ought to be granted.

¹⁰ SKBHCVP2011/009 (delivered 14th October 2011, unreported).

[32] Counsel for the respondents further submitted that the degree of prejudice weighs heavily against it. Given the fact that the expert report had been the subject of numerous previous applications, and the appellants would have been well aware of the prescribed deadline imposed in the form of an unless order, more ought to have been done to ensure its completion within the time stipulated. Greater care and steps ought to have been immediately taken for the preparation of same. Counsel also pointed out that the claim is of some vintage, and that significant expenses would have been incurred in defending the same. Thus, the extensive delays in the determination of the matter have denied the disposal of the matter in a timely manner.

[33] Finally, counsel for the respondents asserted that the appellant's filed affidavit lacked any evidence regarding their prospects of success. The respondents maintained that the appellants' claim is hopeless, as to date, neither of the appellants have been able to substantiate the sum they claimed the respondents owed. Consequently, due to the failure to advance cogent reasons for the failure to file in time as well as the hopelessness of the claim and the grave prejudice to the respondents, the respondents sought the dismissal of the application with costs.

Discussion and Analysis

The Power of Review of the order of a Single Judge

[34] The jurisdiction of the Full Court to review an order made by a single judge is prescribed in the **CPR 2023** Part 62.20 which provides that:

“62.20 (1) Any order, direction or decision made or given by a single judge may be varied, discharged or revoked by two judges where the order, direction or decision relates to an appeal of a class which may be heard and determined by two judges and by the full court in any case.”

[35] In considering the remit of this jurisdiction this Court in **Cage St. Lucia Limited v**

Treasure Bay St. Lucia Limited¹¹ the Court made clear that:

“The jurisdiction of the Full Court to review an order made by a single judge of the court is based on the inherent jurisdiction of the court. The court as a matter of law and practice has always had jurisdiction to review any decision of a single judge on any matter relating to a pending appeal.”¹²

[36] The order which is the subject matter of this application refused to grant relief from sanctions and to extend the time prescribed in an unless order for filing an amended expert report. The order further struck out that report in accordance with the terms of an unless order. A judge’s decision to grant or refuse relief from sanctions and an extension of time is discretionary, meaning that they have the power to decide whether or not to grant it based on the specific circumstances of the case and after considering various factors which are prescribed by the CPR or by case law.

[37] In **DuFour v Helenair Corporation Ltd. and Others**¹³ Sir Vincent Floissac CJ articulated the basis on which an appellate court would interfere with the exercise of a judicial discretion by a trial judge. He said:

“We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.”

We adopt Gordon JA's words in the case **Edy Gay Addari v Enzo Addari**:
“The first condition was explained by Viscount Simon LC in **Charles Osenton & Co v Johnson [1941] 2 ALL ER 245 at page 250**. There, the

¹¹ SLUHCVP2011/045 (delivered 23rd January 2012, unreported) and see: BVIHCVP2009/002 Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al at paragraph 21.

¹² Cage St. Lucia Limited v Treasure Bay St. Lucia Limited at paragraph 8.

¹³ (1996) 52 WIR 188.

Lord Chancellor said:

"The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. If, however, the appellate tribunal reaches the clear conclusion that there had been a wrongful exercise of discretion, in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."

The second condition was explained by Asquith LJ in *Bellenden (formerly Satterthwaite) v Satterthwaite* [1948] 1 ALL ER 343 in language which was approved and adopted by the House of Lords in *G v G* [1985] 2 ALL ER 225 and which I have gratefully adopted in this judgment. Asquith LJ said ([1948] 1 ALL ER at page 345):

"...We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact plainly wrong, that an appellate body is entitled to interfere."

[38] I am satisfied that a similar approach is mandated when the Full Court is asked to review and reconsider a decision taken by the single judge of appeal.

[39] I am further satisfied that in considering an application to revoke or vary the order of a single judge, the Full Court exercises a power of review and that the proper approach is as prescribed in **Inna Gudavadze et al v Ivane Chkhartishvili**¹⁴ in which Pereira CJ observed:

"The Court will therefore look to the material and the nature of the application before the single judge and not any new material placed before

¹⁴ BVIHMAP2016/0037 (delivered 11th January 2017, unreported) at paragraph 13.

the Court thereafter. For the reasons which we have already given, based on the application to the single judge and the material before him, it was quite within the exercise of his discretion to arrive at the conclusion that he did. There is no reason why this Court should upset this conclusion.”

- [40] Applying these dicta, I will now turn to consider the issues which arise in this application.

Whether the learned single judge had the jurisdiction to grant the extension of time to file the amended expert report.

- [41] After considering the precise terms of **CPR 2023** Part 62.19(1)(c), counsel for the appellants submitted that the power of the single judge to grant an extension of time is limited such that a judge is only permitted to extend or abridge time limits which are prescribed in Part 62 and not otherwise. She prays in aid the dicta in **Christenbury Eye Center v First Fidelity Trust Limited**¹⁵ in which Barrow JA in dealing with the question as to whether a failed application for leave to appeal was open to review, opined that the power of review granted under CPR 62.16(4) was limited in scope to the specific types of orders which could be made under 62.16(1) and accordingly was not of general application.¹⁶

- [42] However, this submission ignores the much broader remit prescribed in rule 27 of the **Eastern Caribbean Supreme Court, Court of Appeal Rules** (the “**Court of Appeal Rules**”) which provides that:

“27. (1) In any cause or matter pending before the Court, a single judge of the Court may upon application make orders for –
(a) giving security for costs...;
(b) leave to appeal in forma pauperis;
(c) a stay of execution on any judgment appealed from...;

¹⁵ Civil Appeal No. 14/2007 (SKN) (delivered 19th November, 2008, unreported).

¹⁶ This narrow remit was pointed out in **Inna Gudavadze et al v Ivane Chkhartishvili BVIHCMAP2016/0037 (delivered 11th January 2017, unreported)** where in considering an application for revocation or variation of an order of single judge of Court of Appeal reviewed Rules 62.16 of the CPR 2000 which is similar in wording to CPR Rules 62.19 (2023) Revised Edition.

(d) an injunction...;

(e) **extension of time;**

and may hear, determine and make orders on any other interlocutory application...

(2) Every order made by a single Judge of the Court in pursuance of this rule may be discharged or varied by any Judges of the Court having power to hear and determine the appeal.” (Emphasis added)

[43] The submission further ignores this Court’s decision in **Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al**¹⁷ which reflected on the intersection of Rule 27 and the relevant provisions of the **Old Rules**. In that case, this Court concluded that Rule 27(2) of the **Court of Appeal Rules** rule 62.15 and rule 62.16(4) of the Old Rules, and the jurisdiction and powers residing in the Court of Appeal by enactment, when taken together really do no more than codify to some extent and give broad recognition to the court’s inherent jurisdiction. At paragraph 18 the Court noted:

“This rule [27 of the Court of Appeal Rules] is to be compared with CPR 62.16 (set out above) which deals with the power of a single judge of the court. It becomes readily apparent that Rule 27 and CPR 62.16 appear to cover almost identical ground. However, there are some differences. The ambit of CPR 62.16 is not as wide as the tail piece to Rule 27 which encompasses “any other interlocutory application”. ...The question then is whether Rule 27 is incompatible or inconsistent with CPR 62.16. In my view they are not. The specific orders or applications referred to under CPR 62.16 are not exhaustive of the types of interlocutory applications which may come before the court. One which springs readily to mind is an application to adduce fresh evidence. Rule 27 recognizes and provides for this.”

[44] On a plain reading of Rule 27 (1) (e) of the Court of Appeal Rules and applying the reasoning in **Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al**, I find that any cause or matter pending before this Court, a single judge has a wide jurisdiction to grant or deny applications for extension of time. More specifically, I find that the power of the single judge is not proscribed in respect of

¹⁷ BVIHCVAP2009/0002 (delivered 28th September 2009, unreported).

time limits prescribed by CPR Part 62. It follows that the learned single judge in the application herein had the jurisdiction to consider an application extending the time to file the amended expert report notwithstanding that the time limit was prescribed in an order of the Court.

Substantive reasoning of the single judge
Relief from Sanctions

- [45] In making her final determination of the matter, it is clear that the learned single judge relied on the grounds advanced in the Extension of Time Application and the averments contained in the evidence filed in support. That application clearly sought relief from sanctions and this position was maintained in the legal submissions filed in support of the application.
- [46] It is therefore not surprising that the learned single judge would have considered the relevant legal principles and legal authorities on this issue. Given the way in which the application was advanced, it is also not surprising that the learned judge would have proceeded on the basis that the application would have been filed one day after the prescribed deadline.
- [47] It now appears that the parties in the matter are now *ad idem* that the Extension of Time Application was in fact filed on 3rd January 2025 – within the deadline specified in the 10th December 2024 order. Consequently, the parties are also *ad idem* that it was not necessary to seek relief from sanctions. I am compelled to agree. The effect of issuing an application notice at this late stage was that although it was impossible to list a hearing before the deadline for compliance expired, technically this is not an application for relief against sanctions because the sanction had yet to bite.

[48] In **BBL Limited and Anor. v Canouan Resorts Development Limited and Anor**¹⁸ this Court (in a judgment authored by Farara JA) held:

“An application to extend the time for compliance with an order, practice direction or rule which specifies a sanction for non-compliance (including an unless order) made prior to the expiration of the stipulated time for compliance, falls to be considered by the court pursuant to CPR 26.1(2)(k) and the overriding objective, and not CPR 26.8 pertaining to relief from sanctions. This is so even where the application is not heard and determined by the court until after the time stipulated in the order, practice direction or rule for the sanction to take effect. It cannot be correct as a matter of principle, nor is it just and in keeping with the overriding objective of the CPR, for an application for extension or variation of an order (including an unless order), filed before the expiry of the date upon which the sanction would take effect and which, if heard before a sanction bites, would be governed by CPR 26.1(2)(k) and the overriding objective, to be somehow transformed into or treated in accordance with the more stringent requirements of CPR 26.8(2) applicable to relief from sanctions, simply because the court is unable to deal with the application prior to the expiration of the time stipulated for compliance or prior to the sanction taking effect. 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. The learned judge accordingly erred in treating with the application as one for relief from sanctions and the basis upon which the learned judge exercised her discretion was plainly wrong.”

[49] It follows therefore that to the extent that the learned single judge arrived at the determination that in the circumstances of the case (incorrectly premised on the fact that the application having been filed one day after the specified deadline) that it was just to refuse the application for relief from sanctions, it is clear that the learned single judge would have erred in principle. The judgments in **Adam Bilzerian** and **Ferdinand Frampton v Ian Pinard et al** which were extensively relied upon by the learned single judge were not relevant in the circumstances and could not and should not have informed the learned judge’s reasoning.

¹⁸ SVGHCVAP2019/0006 (delivered 12th January 2021, unreported).

[50] It follows that the learned judge should have taken into account the factors which must be weighed when considering an application for extension of time. These factors are now well settled. In **John Cecil Rose v Anne Marie Uralis Rose**¹⁹ this Court concluded that granting an extension of time is a discretionary power of the Court, which will be exercised in favour of the appellant for good and substantial reasons. It continued that the matters which a court will consider in the exercise of its discretion are: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if the extension is granted; and (4) the degree of prejudice to the respondent if the application is granted.

[51] These principles have been applied several times by this Court in the context of an application for an extension of time for filing a notice of appeal, including in **Carleen Pemberton v Mark Brantley**²⁰. These principles do not appear to have been considered or applied by the learned single judge. In these premises, I am satisfied that the learned single judge's order should be revoked. The appellants have however invited this Court to take a broad view of the Extension of Time Application and evidence in determining whether it ought to exercise its discretion de novo to permit the extension sought. The Court has a wide discretion to extend the time to comply with any order, rule or practice direction. This discretion is not to be exercised in a vacuum, but in accordance with well-established principles already identified and with a view to giving effect to the overriding objective.

Length of Delay

[52] It is common ground that the Amended Expert Report was filed on 15th January 2025 outside the time prescribed in the 10th December 2024 Order. This Extension of Time application, however, was filed on 3rd January 2025, within the time prescribed.

¹⁹ (SLUHCVP2003/0019 delivered 22nd September 2003, unreported) and see: Ramesh Amarnani et al v AEA Company Limited GDAHCVAP2023/0019 (delivered on 6th May 2025, unreported).

²⁰ SKBHCVAP2011/009 (delivered 14th October 2011, unreported).

Reasons for Delay

- [53] In determining what qualifies as a good explanation for delay, the Judicial Committee in **AG v Universal Projects Limited**²¹ rejected a submission that a good explanation is one which properly explained how the breach came about, but which may involve an element of fault, such as inefficiency or error in good faith. The Board in its judgment stated (at para. 23):

“The Board cannot accept these submissions. First, if the explanation for the breach i.e. the failure to serve a defence by 13th March connotes real or substantial fault on the part of the defendant, then it does not have a “good” explanation for the breach. To describe a good explanation as one which “properly” explains how the breach came about simply begs the question of what is a “proper” explanation. Oversight may be excusable in certain circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly if the explanation for the breach is administrative inefficiency.”

- [54] In **Rawti Roopnarine v Harripersad Kissoo**²² Mendonça J.A. observed that:

“An explanation therefore that connotes real or substantial fault on the part of the person seeking relief cannot amount to a good explanation for the breach. On the other hand a good explanation does not mean the complete absence of fault. It must at least render the breach excusable. As the Court of Appeal observed in *Regis*, supra, what is required is a good explanation not an infallible one. When considering the explanation for the breach it must not therefore be subjected to such scrutiny so as to require a standard of perfection.”

- [55] In order to determine whether there is a good explanation for the failure to file a defence within time, there must be proper evidence before the Court to justify the entire period of delay. Once such an application is made, the party in breach must be prepared to condescend to particulars, without this the Court would have no material to make a proper assessment as to whether the threshold has been met.

²¹ [2011] UKPC 37.

²² Civil Appeal No. 52 of 2012 CA 2011-15, page 13.

[56] In this case, the explanation proffered by the appellants is set out in the affidavit evidence filed in support of the extension of time application, Mr. Stephen stated inter alia:

...

4. **"That the Quantity Surveyor was informed of the Order by a verbal communication on the 11th December 2024** followed by a subsequent email dated the 18th December 2024. A copy of the email has been shown to me and is marked MS1 and is exhibited hereto.
5. That the **Quantity Surveyor went to visit the site on Saturday 21st December 2024** and confirmed same in an email dated 22nd December, 2024. A copy of the email has been shown to me and is marked MS2 and is exhibited hereto.
6. **The Quantity Surveyor traveled overseas from the 22nd December 2024 to the 2nd January 2025.**
7. **The Quantity Surveyor was unable to complete the report by the date which is the 3rd day of January 2025."** (Emphasis added)

[57] In my view, this is clearly not a good explanation for failing to comply with what was essentially an unless order of the court. It could not have been lost on the parties that this expert was the subject of multiple previous applications and hearings commencing with a case management conference on 22nd September 2022 in the court below where the learned judge directed the appellant to file an application to adduce expert evidence by 4th November 2022. That application was not filed within the time prescribed and so the appellants were compelled to file an application for an extension of time. That application was considered by the court below on 13th March 2023 with the judge extending time in the interest of justice to 24th March 2023.

[58] It appears that the expert report was filed. However, by application filed on 21st December 2023, the respondents sought to have the report struck out on the basis that it did not comply with requirements of CPR Part 32. One day before the strike application was due to be heard, the appellants filed a fresh application for leave to

amend the expert report (on 22nd December 2023).

- [59] The court below ultimately struck out the expert report and ruled that the application to amend the expert report would fall away. Dissatisfied with that decision, the appellants appealed to this Court.
- [60] The appeal was ultimately successful and on 10th December 2024, this Court made an unless order which mandated that the amended expert report was to be filed within 21 days of the Order failing which the Expert Report shall stand struck out without further order of the Court.
- [61] The appellants still did not comply with the terms of that Order and was compelled to seek a further indulgence from the Court. In so doing, they assert that the expert had to travel overseas from 22nd December 2024 to 2nd January 2025 and was therefore unable to complete the report by 3rd January 2025. The appellant proffered no evidence which explains why the preparation of the report was hindered by the expert's travel plans given that she would have been well aware of the Court's Order from 11th December 2024. The appellants did not indicate what efforts were made to ensure that the report was filed before the unless order took effect.
- [62] Moreover, it should have been a grave concern that the expert would have conducted a site visit one day before she chose to travel. It should have been a concern to the appellants that she chose to travel during this period and for a duration which would have taken her very close to the court's deadline. There is no indication that these travel plans were precipitous or urgent (following some emergency) in any way. Accordingly, it begs the question of why no indication was made by the appellant at an earlier junction that the date could not have been complied with. A party who faces genuine difficulties in complying with a court order, particularly an unless order, should come back to the Court and explain the problems

that it is facing as soon as they arise, if those problems are sufficiently serious to give rise to a real risk of non-compliance.

- [63] This did not occur here. Instead, the appellants chose to rely on an expert witness who could not meet the Court's deadline. Given the relevant background, I am satisfied that greater care and diligence should have been applied to ensure compliance with the terms of the unless order. Granting an extension of time is a discretionary power of the Court, which will be exercised in favour of an appellant for good and substantial reasons. I am not satisfied that the appellants in this case have met that threshold.

Prejudice

- [64] Counsel for the appellants has submitted that the matter in the court below is awaiting a trial date and that no prejudice will be occasioned to the respondents. This is especially so as the expert report was filed on 15th January 2025 and the respondents are now well seized of the same. Given the procedural background, this is a surprising submission.
- [65] There can be no doubt that the appellants' dilatory conduct of this matter has contributed to significant delays in the progression of the litigation. Moreover, it is clear that a trial date had been set for this matter during the pre-trial review conducted in December 2023. The scheduled trial dates of 18th -19th March 2024 had to be vacated.
- [66] If this Court were to accede to the application to extend time, the respondents would now be compelled to treat with this amended opinion evidence. The consequence would be that a further CMC and/or pre-trial review would have to be conducted in a claim which commenced in the Commercial Division in 2020. Realistically, this means that there is little prospect of the trial taking place this year. There is inherent

prejudice in this for the respondents.

- [67] It is clear that the unless order of 10th December 2024 was made against a background of dilatory conduct and non-compliance over a considerable period. The order warned of the consequences of non-compliance. It behooved the appellants to devote the necessary time and resources to ensuring strict compliance with the terms of the unless order in order to avoid the prescribed sanction. There is no evidence which supports an attempt to do so.

Prospects of Success

- [68] The respondents complains that there is no evidence advanced by the appellants regarding the prospects of success. I agree with that contention. Instead of advancing a cogent case which addresses this critical factor, counsel for the appellants invites this Court to infer from the progression of the litigation and the stage at which it stands that there are strong triable issues between the parties. This submission is simply not sustainable. The fact that the claim persists to the point of trial is not indicative of its viability and the fact that the appellants are reluctant to address the substantive issues which arise in their claim does little to persuade this Court.
- [69] This deficiency was not alleviated by oral submissions advanced by counsel for the appellants during the course of the hearing. No analysis of the issues arising in the claim was advanced and there was no attempt to connect the expert evidence to these issues or to weigh its port. It is not contended that a refusal of the application would have a devastating impact on them and on their ability to prosecute their claim.
- [70] The respondents have contended that the claim is hopeless. It contends that to date neither of the appellants has been able to demonstrate or show proof of the sum

which they claim is owed by the respondents. Instead, the pleaded case sets out only bald assertions surrounding the alleged debt owed. Unfortunately, during the course of this hearing this Court was not taken by counsel for either side to the pleaded case of the appellants, and copies of the claim form, statement of claim and defence were not included as part of the hearing bundle in this matter. This Court is not permitted to guess and to supply the omissions in the appellants' application, evidence or submissions. The evidence adduced by the appellants did not rise to the standard expected on an application which seeks to extend the time for complying with an unless order. Accordingly, this Court cannot give any weight to this being a ground upon which the Court ought properly to grant or refuse to exercise its discretion to extend the time for the appellants to file their expert report.

- [71] This Court's approach to the exercise of its discretion de novo must take particular account of the fact that the application herein seeks to extend time to comply with an unless order, following repeated dilatory conduct on the part of the Appellants in a claim commenced some 4 years prior to the making of the unless order. Further, the unless order imposed the ultimate sanction for failure to comply, that is, that the expert report filed by the appellants would be struck out. Having regard to the application, evidence and legal submission advanced in writing and orally by the appellants. I am satisfied that the overriding objective, which obliges courts to deal with cases justly and proportionately and economically, compels this Court to refuse this application to extend time.

Disposition and Order

- [72] For the reasons set out above, I would refuse the application to extend the time stipulated in the unless order of the court dated 10th December 2024 for the appellants to file their amended expert report. Accordingly, my order is as follows:
- (1) The application to discharge or revoke the order of the single judge dated 18th February 2025 is granted.

- (2) The application for extension of time to file the expert report is dismissed.
- (3) The sanction imposed by the unless order will therefore take effect and the expert report is consequently struck out.
- (4) The appellants will pay the respondent's costs of this application to be assessed if not agreed.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar