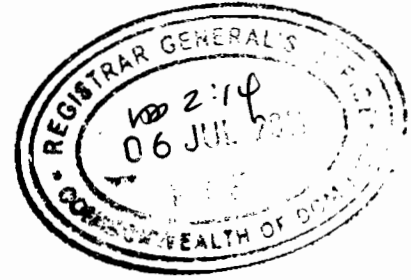


IN THE HIGH COURT OF JUSTICE  
COMMONWEALTH OF DOMINICA  
DOMHCV2010/0127  
[Civil]



BETWEEN:

LAYOU IMPROVEMENT COMMITTEE

Applicants

WACK ROLLERS ADVENTURES, VACATIONS AND EXPEDITIONS LTD

WAITUKUBULI ECOLOGICAL FOUNDATION

and

DEVELOPMENT & PLANNING CORPORATION

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Geoffrey Letang for Applicants  
Ms. Sanura Lambert for Respondent

[2011: June 24<sup>th</sup>, 28<sup>th</sup>]

[2011: July 6<sup>th</sup> ]

### JUDGMENT

[1] **COTTLE J:** At a hearing before the court on 21<sup>st</sup> December 2010 the court made an order requiring the applicants to amend their application to comply with the

requirements of Civil Procedure Rules (CPR) 2000 part 56. The Affidavits in Support were ordered to be amended to comply with parts 56.7 (ii) (d). The Fixed Date Claim Form filed on behalf of the Applicants was also ordered to be amended to comply with the CPR 2000.

- [2] The Applicants were given 14 days within which to comply with the court order. The sanction expressed for failure to comply with the order was that the application for judicial review and supporting affidavits of the applicants along with the Fixed Date Claim Form would all be struck out. The court adopted this attitude at the hearing because the applicants had failed to take advantage of an earlier opportunity to amend their pleadings to comply with the rules. Again, the Applicants failed to comply with the order of the court.
- [3] On 2<sup>nd</sup> March 2011 there was filed on the behalf of the Applicants a notice of change of legal practitioner. One day later the new legal practitioner, Mr. Letang, filed the present application. In the application he sought an extension of time to comply with the order of 21<sup>st</sup> December 2010. The application itself did not seek relief from sanctions. The application was supported by affidavits from the three applicants. In those affidavits the Applicants also asked for Relief from Sanctions for the failure to comply with the court order of 21<sup>st</sup> December 2010.
- [4] The grounds of the application were stated as follows:
- i. the failure of the Applicants'/Claimants' former Attorney, Bernard Wiltshire, fault and /or negligence and /or willful refusal to comply with the said order;*
  - ii. by email dated 18<sup>th</sup> December 2010, addressed to the former Attorney the 3<sup>rd</sup> Applicant/Claimant expressed their concerns of how their former Attorney was conducting or handling the matter;*
  - iii. by letter dated 4<sup>th</sup> February 2011 addressed to the said former Attorney, all three Applicants/Claimants expressed their disappointment in the said former Attorney's failure to follow up with the said Court order dated 21<sup>st</sup> December 2010. The said Applicant/Claimants also highlighted that the former Attorney's failure to file the necessary Court documents in time, this could jeopardize the case;*

- [5] The Affidavits in Support exhibit correspondence to the former attorney of the applicants. These exhibits have some bearing on the outcome of the present application. CPR 26.8 requires applicants for Relief from Sanctions to apply promptly. Before the court is vested with a discretion to grant relief, the Applicants must satisfy the court that the failure to comply with the court order was not intentional. They must also show that there is a good explanation for the failure. Unless these matters satisfy the court there is no discretion in the court to grant the relief sought.
- [6] The Applicants say they have acted promptly. This application was filed one day after they were able to secure the services of new counsel. The exhibit annexed to their affidavits show that as early as 18<sup>th</sup> December 2010 they were aware that the previous legal practitioner did not wish to proceed with the matter. They were aware of the risk of the claim being “thrown out due to procedural technicalities”. Certainly by 7<sup>th</sup> January 2011 they were aware that they had missed the deadline to amend their pleadings. They then knew that they needed to petition the court for an extension of time. The letter of 4<sup>th</sup> February 2011 says that the applicants were “in the process of engaging Mr. Letang, yet this application was only filed one month later.
- [7] The explanation offered by the Applicants for failing to comply with the court order of 21<sup>st</sup> December 2010 is simply that they were let down by their legal practitioner. They did all they could, including, personally approaching the Registrar of the High Court for assistance.
- [8] Turning to the instant application for extension of time, it is clear that the Applicants should also have applied for relief from sanctions. CPR 2000 part 28.7 makes this clear. Had this been the only failure, this court might have been minded to consider that the affidavit in support does make the request for relief from sanctions and treat the present application for extension of time as also including an application for relief from sanctions. But the Applicants face other hurdles.
- [9] It is difficult to describe the delay of the Applicants after they knew that the deadline had been missed, as prompt. Additionally, the explanation for the failure to comply has been repeatedly struck down by the Court of Appeal. Byron JA in Civil Appeal 19 of 2003 John Cecil Rose v Anne Marie Uralis Rose from St. Lucia said:  
***“We have expressed the view on many occasions that the lack of diligence of an attorney is not a good reason for delay”.***  
These Applicants may have been treated very badly by the attorney they had selected but they must abide by the consequences of their choice of counsel.

[10] This court is not satisfied with the explanation offered for the failure to comply with the court order of 21<sup>st</sup> December 2010. Neither has the application for extension of time been made promptly. This court has no discretion to grant the orders sought by the applicants. The application is dismissed. As is usual in matters of this nature I make no order as to costs.



*Brian J. Cottle*  
Justice Brian Cottle  
High Court Judge