

THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV211/0721

BETWEEN:

STUART LOCKHART

Claimant

and

[1] CARIBBEAN DEVELOPMENT (ANTIGUA) LTD  
[2] GEERT DUIZENSTRAAL  
[3] GAYE HECHME

Defendant

Appearances:

Mr. Andrew Young for the Claimant  
Mr. John Fuller for the Defendants

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2014: November 13  
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**REASONS FOR DECISION**

- [1] **Cottle, J.:** On 22<sup>nd</sup> January, 2014 a case management order was made. The defendants were required to file and serve witness statements by 5<sup>th</sup> February, 2014. The defendants failed to comply. The matter came up for pre trial review on 19<sup>th</sup> June, 2014. The claimants made an oral application to have judgment entered for them on the basis that the Civil Procedure Rule 2000 (CPR) part 29.11 applied. The defendants would not be permitted to call witnesses without the leave of the court which could not be granted since the defendants had also failed to seek relief under part 26.8.

- [2] The oral application by the claimants was not considered as the court was of the view that such an application ought to be made in writing. The Court indicated to the claimants that if they so desired they could make the application formally and in writing and it would then be considered. Counsel for the defendants was advised that it would be a good idea to apply for an extension of time to file witness statements along with an application for relief from sanctions before the claimants made a formal application.
- [3] The defendants again failed to avail themselves for this opportunity and on 15<sup>th</sup> July, 2014 the claimants filed an application to have the statement of case of the defendants struck out for failure to comply with the case Management Conference Order.
- [4] The hearing of the claimant's application was set for 18<sup>th</sup> September, 2014. The defendants had filed no witness statements. They had not applied for an extension of time to do so. They had not applied for relief from sanctions. The ruling on the application was reserved.
- [5] On 26<sup>th</sup> September, 2014 counsel for the defendants filed submissions concerning the claimant's application. At the same time the defendants also applied for relief from sanction for the failure to file their witness statements.
- [6] Counsel for the defendants cited the case of Schenato v Schenato Civil Appeal no.7 of 2010 (Antigua & Barbuda). In that case an application was made orally on the day of trial to have the statement of case of the other side struck out for failure to file witness statements on time. The Court of Appeal held that the CPR 2000 does not permit the court to strike out based on an oral application on the date of trial. That is in stark contrast to the present case. The defendants here were warned both by the claimant and the court that a written application would be made unless they put themselves in order. That application was filed one month later.
- [7] Counsel also cited the case of Treasure Island Company Ltd. V Audubon Holdings Ltd. Civil Appeal no.22 of 2003 (British Virgin Islands) where the court refused an application to strike out a statement of case for late filing of a witness statement. The applicants "had conducted themselves

as though they were intent on proceeding with the trial.” The application had come as a surprise on the first day of trial. The present defendants were not surprised. They had been forewarned.

[8] At the hearing I decided that I would grant the claimant’s application because the defendants had simply acted far too late despite repeated warnings. I promised to produce the reasons for my ruling to writing. I have now done so. I also allowed the defendants leave to appeal this ruling if they so desire.

**Brian Cottle**  
High Court Judge