[2021] JMSC CIV. 7

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV05180

BETWEEN	**HECTOR CLARKE**	**APPLICANT**
AND	**PREMIER WASTE MANAGEMENT LIMITED**	**1ST RESPONDENT**
AND	**NATHANIEL BLACK**	**2ND RESPONDENT**
AND	**GARBAGE DISPOSAL & SANITATION SYSTEMS LIMITED**	**3RD RESPONDENT**

IN CHAMBERS

Miss Kimica Hibbert instructed by Green and Company appearing for the Applicant

Mr. David Johnson instructed by Samuda and Johnson appearing for the 1st Respondent

The 2nd Respondent not served, absent and unrepresented

Miss Sadia Smith instructed by Livingston, Alexander and Levy for the 3rd Respondent

December 7 and 16, 2020 and January 12, 2021

Application to extend time to file witness statement – Relief from sanctions pursuant to rule 26.8 of the Civil Procedure Rules 2002 (CPR) – Whether an attorney-at-law ought properly to file her own affidavit in support of an application for relief from sanction – Whether because of failure to comply with rule 26.8(2) of the CPR the court is obliged to refuse to grant relief.

REID, J (AG)

Introduction

[1] This is an application to extend time to file and serve a witness statement which ought to have been filed and served on or before 15 June 2020, pursuant to a case management order. The extension of time is being sought pursuant to rules 26.8, 11.1 and in keeping with the overriding objective of the Civil Procedure Rules 2002 (CPR).

Background

[2] The instant application arose out of a claim filed on October 31, 2014, by Mr Hector Clarke (the Applicant) against Premier Waste Management Limited (the 1st Respondent) and Nathaniel Black (the 2nd Respondent) to recover damages for personal injuries and loss. That claim form and the particulars of claim were amended on December 15, 2015, to add Garbage Disposal and Sanitation Systems Limited as the 3rd Respondent. The Applicant claims that on or about August 19, 2011, whilst in the course of his employment at his usual station, he suffered severe personal injury (amputation of a leg) and loss, as a result of the negligence of his fellow employee, the 2nd Respondent, whilst driving a 1987 Mack Motor Truck bearing registration number CD2867, owned by the 1st Respondent; and the negligence of the servant and/or agent of the 3rd Respondent, whilst driving a Mack Truck bearing registration number CB 4966 which is owned by the 3rd Respondent.

[3] At a case management conference (CMC) held on January 24, 2018, the following orders were made by Master R. Harris:-

1. *Standard Disclosure be on or before September 27, 2019*
2. *Inspection of Documents on or before October 18, 2019*
3. *Ordinary Witnesses limited to 4 for each party.*

4. *Witnesses statements to be filed and exchanged on or before June 15, 2020.*

5. *Listing Questionnaires are to be filed and served on or before December 16, 2020.*

6. *Pre-Trial Review is set for December 7, 2020 at 10:00 am for ½ hour.*

7. *Trial by Judge alone in Open Court is set for 3 days March 8 – 10, 2021.*

8. *Costs to be cost in the Claim.*

9. *[Applicant's] Attorney to prepare file and serve the orders Order.*

10. *Questions to be put to Dr. Phillip Waite concerning his medical report dated November 1, 2012 on or before July 27, 2018.*

11. *Responses (if any) to be provided on or before December 7, 2018.*

12. *The issue of expert report is reserved for Pre-Trial review hearing.*

Present at the CMC was the Applicant, his counsel, Miss K. Hibbert, Mr. Jordon Chin, attorney-at-law for the 1st Respondent and Ms. G. Warren, the Attorney-at-Law for the 3rd Respondent.

[4] The date for filing witness statements was not complied with, and so a notice of application for court orders was filed by the Applicant on October 21, 2020, seeking the following orders:

1. *That this application be abridged with the hearing of the Pre-Trial Review on the 7th day of December, 2020 at 10:00 a.m.*

2. *That permission be granted to have the Applicant file his witness statement out of time. That the witness statement to be served on the Respondents shall be deemed to stand as if having been filed and served within time.*

3. *That the time extended for the Applicant to file his Witness Statement be extended to the date hereof.*

4. *Such further and/or other relief as this Honourable Court deems just.*

5. *That the Applicant's Witness Statement filed out of time be permitted to stand.*

6. That there be no Orders as to costs.

The grounds on which the Applicant seeks the said orders are as follows:-

a. Pursuant to Rule 11.1 of the Civil Procedure Rules, 2002

b. That the application is in keeping with the overriding objectives of this Honourable Court.

c. The Applicant humbly prays that this Honourable Court will grant the Orders sought herein.

[5] Counsel for the Applicant filed her own affidavit in support of the application. She deponed, in essence, that her firm was unable to contact the Applicant despite numerous attempts. She said that the Applicant had conveyed to her that the reason he had been unable to contact his attorneys was that he had misplaced his telephone. Additionally, the pandemic and his disability prevented him from checking with the post office. It was only after he had called his counsel's office for an update that he was informed of attempts by his attorney to contact him. By that time, the date for the filing of his witness statement had already passed.

Applicant's Submissions

[6] Counsel for the Applicant, Miss K. Hibbert, indicated that the failure to file the Applicant's witness statement in time prompted the filing of this application seeking the court's permission for same to be filed out of time. She urged the court to exercise its discretion in the Applicant's favour and grant the orders as prayed.

[7] She indicated that, in the normal course, her office would make contact with the Applicant through his uncle, but because his uncle had gone overseas, the firm was unable to make contact with the Applicant. Counsel posited that in determining whether to grant the orders being sought in the application for extension of time, regard should be had to rules 26.8 and 29.11 of the Civil Procedure Rules. Counsel also relied on dictum from Harris JA in **Villa Mora Cottages Limited v Monica Cummings and Adele Shtern** SSCA No. 49/2006, judgment delivered on December 14, 2007, where the learned judge said at page 10 that;

> *"It cannot be disputed that orders and rules of the Court must be obeyed. A party's non-compliance with a rule or an order may preclude him from continuing litigation. This, however, must be balanced against the principle that a litigant is entitled to have his case heard on the merits. As a consequence, a litigant ought not to be deprived of his right to pursue his case."*

[8] Counsel also cited **Jamaica Public Service Company Limited v Charles Vernon Francis and another** [2017] JMCA Civ 2, in support of her contention that rule 26.8(2) of the CPR is to be read cumulatively before relief can be granted. However, counsel urged the court to distinguish the instant case from **JPS v Charles Francis**, where the court found that the failure to comply in that case was intentional, and there was no good explanation for the failure to comply, and as a consequence, that Applicant would not be granted relief from sanction. She relied instead on **Earl Martin v Richard Burgher** [2020] JMSC Civ 101, in which Wolfe-Reece J stated that:

> *"While I find that the reasons advanced by the Defendant for filing the witness statements by the ordered time to be wholly unacceptable, I have concluded that an order striking out the Defendant's statement of case is not the most appropriate remedy given the fact that the Defendant has a meritorious claim. I am also mindful that the limitation period for bringing a claim for damages for negligence or breach of contract has since expired, which would cause the Defendant to lose the right to seek redress if his claim is struck out. I therefore find that the Defendant would suffer greater prejudice if the relief is not granted. The Defendant has expressed a willingness to compensate the Claimant if an order for costs is imposed and I agree that this is a case where such an order would be appropriate."*

[9] Counsel argued that the application for relief from sanctions was made promptly. This was because, in her view, the earliest date by which this application could have been heard was at the pre-trial review, and as a consequence, urged this Court to hear the application at that time by having time abridged. Counsel pointed out that there was a significant delay in obtaining a date for the hearing of the applications from the court so she made the best decision she could, in the circumstances, by awaiting the pre-trial review date.

[10] Counsel said that the failure to comply was not intentional and there was a good reason for the delay. The reasons advanced were stated in her affidavit as

mentioned before. She pointed out that she had complied with other CMC orders, save and except for the filing of the witness statement and the list of documents.

[11] As regards rule 26.8(3) of the CPR, the arguments were that the Applicant has a meritorious claim, and should the court refuse the orders sought, he would be left without any legal recourse as his claim became statute barred on August 18, 2017. The Applicant would be able to file the witness statement within a reasonable time if the court permits, and this would not affect the trial date of March 8 – 10, 2021. The granting of the orders would not cause any prejudice to the Respondents and alternatively, the granting of the orders can be cured by a cost order.

1st Respondent's submissions

[12] The 1st Respondent has no objection to the application.

2nd Respondent's submissions

[13] The 2nd Respondent was not served with the Fixed Date Claim Form.

3rd Respondent's submissions

[14] Counsel for the 3rd Respondent relied also on **JPS v Charles Francis** and **Price Waterhouse (A Firm) v HDX 9000 Inc** [2016] JMCA Civ 18, in support of its position that rule 26.8(1) of the CPR provides that the application for relief must be made promptly, and be supported by affidavit evidence. She pointed the court to paragraph [26] of the judgment of Brooks J.A. (as he then was), where he indicated that an application filed two months after the sanction came into effect was held not to be prompt. In **H.B. Ramsay & Associates Ltd and others v Jamaica Redevelopment Foundation Inc and another** [2013] JMCA Civ 1, an application made almost one month later was also held to be not prompt.

[15] Counsel argued that the application should have been made as soon as counsel for the Applicant realised that they would not be able to comply with the order.

Instead, the application for relief is being made five months after the date for compliance had passed and three months from the trial date.

[16] It was further submitted that, in the case at bar, the Applicant has had two years within which to give his evidence to his attorney, and to date, the Applicant had not filed a witness statement nor had his counsel given any indication to the court as to the date by which that would be done. Counsel pointed out that the Applicant's attorney, having received instructions to file a claim, should have had sufficient information to prepare a witness summary, even if she had not made contact with the Applicant to get the witness statement. It would then be possible for the Applicant's attorney to have applied for an extension of time to file the witness statement while relying on the witness summary. She argued that there was no good reason not to have filed the summary.

[17] Rule 26.8(1) (b) requires affidavit evidence in support of the application. The attorney who is counsel in the matter is the affiant. **Hughes v Moncton (city)** [2006] N.B.J. No. 358 was relied on as the authority that "lawyers ought not to argue cases in which they have submitted affidavit evidence in support of a contentious issue". She submitted that it was unacceptable that counsel was the affiant in support of this application. Counsel objected to Miss Hibbert in her oral submission, giving evidence in support of the application. She objected to this additional evidence about her inability to make contact with the Applicant's uncle, who was an alternative contact and was overseas. She argued that the affidavit should have been done by the Applicant, and also that a portion of her affidavit consisted of hearsay evidence. Counsel stated that that information was not within Miss Hibbert's knowledge, and so she ought not to be permitted to speak to this additional reason for delay.

[18] Counsel further submitted that the failure to comply was intentional, as the Applicant had not taken any positive steps to comply with the order of the court, which had been given when he was present in January 2018 and had taken no steps to ensure that the deadline was met.

[19] Counsel argued that pursuant to rule 26.8(2) (b) there was no good explanation for the delay. She sought support from **The Attorney General v Universal Projects Ltd** [2011] UKPC 37, at paragraph 23, as to what amounted to a "good explanation". She submitted that the explanation given for the Applicant's default based on his cellular telephone issues was not a good one. In this age of abundance of cellular telephones, she argued that nothing was preventing the Applicant from obtaining the use of another person's cellular telephone to contact his lawyer.

[20] She dismissed the Applicant's other explanations for the delay that were related to the pandemic and his disability that had prevented him from visiting the post office. While it may be a good reason not to visit the post office during the pandemic, she asserted that the Applicant knew that there were deadlines to be met and should have therefore made contact with his counsel, even by telephone, so that his evidence could have been taken. It certainly does not explain why a witness summary had not been submitted by the appointed date. In any event, the Applicant had two years within which to comply with the CMC orders, which he still has not done.

[21] Counsel further argued that there was a general non-compliance with court orders on the part of the Applicant as he had only complied with filing a listing questionnaire on October 21, 2020. Disclosure was made by the Applicant on October 14, 2019 and was in breach of the CMC order. Separate and apart from the fact that no witness statement has been filed, there was no pre-trial review memorandum filed by the Applicant in breach of rule 38.5(1). Counsel pointed out that the 3rd Respondent would be prejudiced in the preparation of his case and the trial date may have to be vacated, in order to allow the Applicant time to file his witness statement and comply with all the other CMC orders.

[22] In concluding her submissions, counsel submitted that rule 26.8(2) of the CPR is cumulative, and as such, the Applicant, having failed to satisfy any of the

requirements of that rule, ought to have the orders sought in his application refused.

Issues, law and analysis

[23] In **Morris Astley v The Attorney General of Jamaica and the Board of Management of the Thompson Town High School** [2012] JMCA Civ 64, the Court of Appeal gave guidance to the court below about how it ought to deal with an application for relief from sanction pursuant to rule 26.8 of the CPR. It emphasised that the court must first consider whether the preconditions of rule 26.8(1) have been met, and, if met, the court must then consider rule 26.8(2). The court would thereafter need to be mindful of the conditions under rule 26.8(3) which operate as general factors.

Rule 26.8 is as follows:

> *(1) "An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be*
>
> *(a) made promptly; and*
>
> *(b) supported by evidence on affidavit.*
>
> *(2) The court may grant relief only if it is satisfied that –*
>
> *(a) the failure to comply was not intentional;*
>
> *(b) there is a good explanation for the failure; and*
>
> *(c) the party in default has generally complied with all other relevant rules, practice directions orders and directions.*
>
> *(3) In considering whether to grant relief, the court must have regard to*
>
> *(a) the interests of the administration of justice;*
>
> *(b) whether the failure to comply was due to the party or that party's attorney-at-law;*
>
> *(c) whether the failure to comply has been or can be remedied within a reasonable time;*

> *(d) whether the trial date or any likely trial date can still be met if relief is granted; and*
>
> *(e) the effect which the granting of relief or not would have on each party.*
>
> *(4) The court may not order the Respondent to pay the Applicant's costs in relation to any application for relief unless exceptional circumstances are shown."*

[24] Consequently, the sole issue for determination in this application is whether the Applicant's application has satisfied the requirements in rule 26.8 of the CPR.

Was the application made promptly?

[25] A party seeking relief from any sanction imposed for a failure to comply with any rule, order or directions must be made promptly. In the case at bar, time began running from June 15, 2020, the date by which the filing and serving of the witness statement should have been complied with. The authorities have stated that the computation of time is not necessarily by days but by reference to particular circumstances.

[26] The Court of Appeal has, in several cases, considered the issue of promptness. In **Jeffrey William Meeks v Victoria Marie Meeks** [2020] JMCA Civ 20, F. Williams JA stated at paragraph [23] that *"[w]hat amounts to promptness is significantly dependent upon the circumstances of the particular case"*.

[27] **Meeks v Meeks** also cited with approval dicta from K Harrison JA in **National Irrigation Commission Ltd. v Conrad Gray and Marcia Gray** [2010] JMCA Civ 18, where, at paragraph [14], in commenting on the meaning of "promptly" he said:

> *[14] "...Promptly is an ordinary English word which we would have thought had a plain and obvious meaning, but if we need to be told a bit more about what it means, we do have the authority of* ***Regency Rolls Limited v Carnall [****2000] EWCA Civ. 379, where Arden, L.J. pointed out that the dictionary meaning of 'promptly' was 'with alacrity'. Simon Brown, L.J. said: 'I would accordingly construe 'promptly' here to require, not that an Applicant has been guilty of no needless delay whatever, but rather that he has acted with all reasonable celerity in the circumstances.'"*

[28] In **HB Ramsay & Associates Limited**, the court found that a delay of almost one month was fatal. Likewise in **JPS v Charles Francis**, a delay of two months was held to be not prompt.

[29] In the instant case, a period of at least four months had elapsed before the application was filed at the court. Another month's delay was occasioned by counsel's decision to await the date for the pre-trial review to make this application. I do not believe that, in all the circumstances, one could say that this Applicant acted promptly. It must be borne in mind, the fact that the trial date in the claim was within three months of the pre-trial review.

[30] The court here considers the comments of the learned judge Harris J.A. in **Villa Mora Cottages Limited**, that *"[e]ven in cases where the fault can be laid at the feet of the defaulting party the court may lend its sympathy to his cause"*. However, the court has to do a balancing act and cannot be overly sympathetic to one side when considering the overriding objective of enabling the court to deal justly with the cases. As a consequence, I do not find that the application was made promptly.

Was the application supported by affidavit evidence?

[31] As indicated, the Applicant's attorney-at-law, Ms. Hibbert, was the affiant in support of the application. It is obvious that some of the information about which she deponed was hearsay and would have been best given by the Applicant.

[32] I do not agree with counsel for the 3rd Respondent that Ms. Hibbert ought not, as counsel for the Applicant, to have deponed to the affidavit. The case of **Hughes v Moncton (City)** [2006] N.B.J. No. 358 can be distinguished. That case spoke to an attorney-at-law for the Applicant submitting an affidavit detailing events surrounding negotiations that led to an agreement, together with relevant documentary evidence. The main issue before the court was the content of the agreement and whether it was binding. The court indicated that the attorney, in that case, was seeking to give evidence about a matter that was fundamental to

the case. The court ordered that the attorney's name be removed from the record for the Applicant and that they find and instruct a replacement counsel.

[33] The issue that Ms. Hibbert was speaking to in her affidavit is not one which could be considered as being contentious and is not one that is fundamental to the claim that is before this court. There are many authorities in which the attorneys-at-law for the litigants have deponed to affidavits and our courts have not frowned on the practice. An example of this is in **Villa Mora Cottages Limited v Monica Cummings and Adele Shtern**, in which counsel, Mr. Frater gave evidence of the reasons for the failure to comply with the court order and was able to show his contribution to the non-compliance. The Court of Appeal found his explanation plausible and accepted it. I would therefore accept that the application was properly supported by the affidavit evidence of counsel, Ms. Hibbert.

Was the Applicant's failure to comply intentional and is there a good explanation for the non-compliance?

[34] McDonald-Bishop JA in **The Commissioner of Lands v Homeway Foods Limited and another** [2016] JMCA Civ 21 indicated at paragraph [87] that "the intention of the [Applicant] must be viewed against the background of the explanation given for not complying".

[35] Counsel has given a variety of explanations for the Applicant's failure to comply. The misplacement of the Applicant's telephone and his inability to travel to the post office, was information within the knowledge of the Applicant. Even if that was the situation, one would have expected the Applicant's counsel to ensure that he provided an affidavit in support of the application. Certainly, the Applicant could have gone to the post office to check his mail or have someone visit on his behalf. Moreover, the Applicant had two years from the date of the CMC order within which to seek to comply with that order, and yet he failed to do so.

[36] I find that the affidavit is destitute of essential details that ought to have been provided by the Applicant himself. Counsel, Ms. Hibbert, was unable to speak

directly as to what efforts, if any, her client had made and what specific date he had tried to contact her offices. There was no evidence given in support of the application that letters had been posted to the Applicant by his attorney. There was no specific date given as to when the Applicant first made contact with the office and was informed that his witness statement was needed. The court was not given any specific time during which the firm sought to make contact with the Applicant. The information outlined in Miss Hibbert's affidavit was scarce and stated in very general terms.

[37] It would also have been helpful if the Applicant, himself, had sworn to an affidavit offering some explanation, if any, as to why he did not make contact with his attorney. The affidavit of his attorney is insufficient in that regard. His counsel ought to have made the effort to obtain an affidavit from him, in recognition of the importance of the situation.

[38] The pandemic is a recent event that began affecting Jamaica in March 2020. No evidence was given as to the circumstances that prevailed in the period before the pandemic, that would have precluded efforts being made to contact the Applicant or vice versa.

[39] In this age where cellular telephones are in such great abundance, the court finds it hard to appreciate that the Applicant could not get a telephone call from a friend or neighbour to communicate with his attorney. He also ought not to be able to rely on his disability as a reason for not contacting his counsel as one would assume that the first time he contacted his counsel, he would have been suffering from the same disability. The Applicant should have made reasonable efforts to communicate with his counsel.

[40] In all the circumstances, the arguments posited by counsel for the 3rd Respondent on this issue find favour with the court. I do not find that the Applicant's explanations for his failure to comply were good ones. The explanation given by

the Applicant is found to be unreasonable and leads to the irresistible finding that his failure to comply was intentional.

Has the Applicant generally complied with all other relevant rules, practice directions and orders?

[41] There seems to be tardiness by the Applicant in complying with the court orders. Indeed, the Applicant has admitted that he has complied with all except one order made at the CMC hearing. That is not so. Counsel for the 3rd Respondent was correct in that the Applicant has only fully complied with one CMC order. Litigants and their counsel need to appreciate that in trying to achieve the overriding objective of the CPR, the orders made by the court must be obeyed unless counsel and their clients can demonstrate that their non-compliance falls within the exception as provided by those same rules.

[42] In **National Workers Union v Shirley Cooper** [2020] JMCA Civ 62, Brooks JA at paragraph [1] emphasised this warning to litigants that "orders of the court are to be obeyed and failure to abide by that principle will be costly". Dunbar-Green JA (Ag) cited with approval **Norma McNaughty v Clifton Wright and others** (unreported) Court of Appeal, Jamaica, Supreme Court Civil Appeal No 20/2005, judgment delivered on May 25, 2005, at page 2 in which Smith J.A. opined:

> *"... I am constrained to repeat what the Court of Appeal has said **ad nauseam**, namely that orders or requirements as to time are made to be complied with and are not to be lightly ignored. No court should be astute to find excuses for such failure since obedience to the orders of the court and compliance with the rules of the court are the foundation for achieving the overriding objective of enabling the court to deal with cases justly."*

[43] By virtue of counsel's admission, I am led to believe that there had not been general compliance with the court orders.

Further considerations pursuant to rule 26.8(3) of the CPR?

[44] Despite failing in the various areas considered above, the court ought to go on to consider other requirements in rule 26.8(3) of the CPR in order to make a final

decision as to whether to grant the extension of time to comply with the CMC orders.

[45] It was emphasized that the Applicant's leg was amputated below the knee as a result of the accident caused by the negligence of the Respondents. If his application is denied, he would have no recourse as by now his claim has been statute-barred. I bear in mind too, that the failure to comply was due to the Applicant and partly his counsel who should have filed a witness statement. Counsel for the Applicant has submitted that the witness statement can be filed as soon as the court will allow. I also note that the 1st Respondent has no objection to the application. The Applicant has also expressed a willingness to compensate the Respondents if costs are awarded to them. I, therefore, find that more prejudice would be done to the Applicant than the Respondents if the application was denied.

[46] I believe that the trial dates may not have to be vacated for the Applicant to comply with the CMC orders. I note also that the 1st Respondent has not complied with all the CMC orders.

[47] I must also consider whether there is any merit in the Applicant's claim and the interests of the administration of justice. By virtue of **Villa Mora Cottages Limited**, the learned Harris JA opined at page 10 that:

> *"On the one hand, the appellants were clearly in breach of the Case Management Orders, the consequence of which was the striking out of the defence…. However, on the other hand, the defence advanced by the appellants is not without merit,…"*

She continued:

> *"The function of the Court is to do justice. … It is … the function and duty of a judge to see that justice is done as far as may be according to the merits per Wooding C.J. in* ***Baptiste v Supersad*** *[1967] 12 W.I.R. 140 at 144."*

She further added that:

> *"In its dispensation of justice, the Court must engage in a balancing exercise to seek to do what was just and reasonable in the circumstances*

> *of each case, in accordance with Rule 1 of the CPR. A court, in the performance of such exercise, may rectify any mischief created by non-compliance with any of its rules or order."*

[48] In **Morris Astley**, at paragraph [31], Morrison JA (as he then was) provided support for a similar position to be taken when he declared that:

> *"... The core principle of the CPR is that the court "must seek to give effect to the overriding objective when interpreting these rules or exercising any powers under these rules" (rule 1.2). As Mr Stuart Sime observes in his work, 'A Practical Approach to Civil Procedure' (10th edn, para. 3.28), '[s]hutting a litigant out through a technical breach of the rules will not often be consistent with... [this objective], because the primary purpose of the civil courts is to decide cases on their merits'...."*

[49] I accept that the Applicant has an arguable claim on the merits. Additionally, the risk of prejudice to the Applicant if the application is not granted is far greater than that which would affect the Respondents, especially since the 1st Respondent is not fully compliant with the CMC orders. Accordingly, I find that it is more just to grant the application being sought.

Conclusion

[50] I find that the reasons advanced by the Applicant for not filing the witness statement within the time ordered are not acceptable. He has also failed to comply, generally with other CMC orders. However, I believe that the interest of justice supports the granting of the extension of time. In the circumstances, an award of costs to the 3rd Respondent would also be appropriate.

ORDER

1. Orders granted in terms of paragraphs 1, 2, 3, and 4 of the notice of application for court orders filed on October 21, 2020.

2. The time for compliance with all CMC orders is extended until January 15, 2021.

3. The Applicant is to file the Pre-trial review memorandum by January 22, 2021.

4. The Pre-trial Review is adjourned to February 4, 2021 at 9:30 a.m. for ½ hour.

5. Costs to the 3rd Respondent to be agreed or taxed.

6. The Applicant's attorney-at-law to prepare file and serve the orders herein.