[2020] JMSC Civ 158

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016 HCV 01910

BETWEEN	**CLIFTON DODD**	**CLAIMANT**
AND	**INSURANCE COMPANY OF THE WEST INDIES**	**DEFENDANT**

IN CHAMBERS

Lorenzo Eccleston of counsel, for the Claimant

Suzette Radlein and Anneika Samms for the Defendant

Heard: June 15 and 24, 2020

Interpretation of contracts – Applicability of arbitration clause – Meaning of 'difference' in the context of an arbitration clause – Summary Judgment – Whether the matter is one for summary judgment

ANDERSON, K.J

BACKGROUND

[1] On June 7, 2014, the claimant was issued a private comprehensive policy, by the defendant, the subject of which, was a 2009 BMW X6, motor vehicle (hereinafter referred to as 'BMW') bearing registration number 1686 GE.

[2] On December 8, 2014, the claimant informed the defendant, by means of a motor vehicle claim form, that at approximately 3:25 a.m., earlier that morning, he had

been travelling through Banbury Cane Piece, in the parish of Westmoreland, on his way to Kingston, when he collided with a small bridge, resulting from a loud bang to the passenger's side of his vehicle, which caused his windshield to shatter.

[3] He stated that, in panic, he quickly exited his BMW and ran into a nearby cane piece, after which, he heard gunshots. He reported that he then called the police and returned to find his BMW in flames. On December 10, 2014, the burnt remains of the alleged BMW, were removed, and its whereabouts since then, is unknown.

[4] The defendant, upon investigation, wrote to the claimant on February 16, 2015, informing him, that indemnity will not be granted in respect of the alleged loss of his BMW, as they were unable to verify that the burnt vehicle, was indeed the subject matter of the policy of insurance. The defendant further noted that, it was the claimant's obligation in the event of a loss, to safeguard the subject matter of the policy and prove the loss sustained.

[5] The claimant, on February 23, 2015, through his then attorneys-at-law: Corporate Collaborative Law, wrote to the defendant, informing them, that he was in the process of preparing data and evidence, to prove the identification of the burnt BMW. On March 2, 2015, the claimant wrote to the defendant, requesting a meeting. On March 16, 2015, the defendant responded and stated that they are unsure if a meeting would advance the issues and allow for a change in their position. They added that, if the claimant had information, which could provide fresh insights into the matter, they would welcome same.

[6] The claimant responded to that letter, on March 17, 2015, with a list of documents, purportedly trying to verify the identity of the BMW. A follow-up letter, dated April 17, 2015, was also sent to the defendant.

[7] The defendant responded to both letters, on April 23, 2015, and stated that the documents provided, did not provide any further insights into the matter and if the claimant had any information, which would enable the defendant to identify the subject matter of the alleged loss, it would be welcomed.

[8] On September 1, 2015, the claimant's present attorney, wrote to the defendant outlining inter alia, that he wished to make fresh representations on behalf of the claimant. He outlined that if the parties were unable to arrive at a settlement, his instructions were, that clause 9 of the insurance contract (hereinafter referred to as 'clause 9'), would come into effect. That which clause 9 specifies, is set out further on, in these reasons. He added, that the claimant is prepared to file a claim in the Supreme Court, if the parties were not to agree on a settlement and/or arbitration.

[9] The defendant responded on September 24, 2015, stating that, unless the details to be provided by the new attorney, contained a confirmation that the vehicle involved in the loss, was the insured vehicle, their position will be as previously indicated. The claimant, on November 27, 2015, wrote to the defendant, and informed them, that he had asked that the matter be referred to arbitration.

[10] The defendant, on December 9, 2015, wrote to the claimant and asked, inter alia, that the claimant provide them with confirmation, that the vehicle involved in the loss, was the insured vehicle.

[11] The claimant, on May 10, 2016, filed this claim seeking damages for breach of contract and /or statutory duty, arising from the defendant's failure to indemnify the claimant, following the loss of his BMW.

[12] The defendant on June 22, 2016, filed a defence and denied the claimant's claim. In that defence, the defendant, reiterated that the claimant had been unable to, and had not placed the defendant in a position to verify that the subject matter of the policy of insurance, was the subject of the alleged loss. The defendant, in turn, alleged breach of contract, against the claimant, in fraudulently reporting a loss, failing to prove the identity of the alleged vehicle, leaving it unattended for an unreasonable amount of time, denying the defendant the opportunity to identify the subject matter of the insured contract, and failing to take proper precautions to prevent loss or damage to the insured vehicle.

[13] The defendant, on February 12, 2020, filed a notice of application for court orders, seeking summary judgment as against the claimant, or in the alternative, the determination of the preliminary issue as to whether the claimant must be deemed to have abandoned his claim against the defendant, by failing to refer the matter to arbitration in keeping with clause 9.

[14] The basis for that application, was that pursuant to clause 9, the claimant is deemed to have abandoned his claim against the insurer, because the claimant did not submit the, 'difference' which exists between the parties, arising out of the contract, to arbitration, within twelve (12) months of that 'difference' having arisen. As such, according to the defendant, clause 9 prescribes that the claim is deemed abandoned.

[15] In the circumstances, it is the defendant's contention, that this claim which relates to the said, 'difference' between the parties, has no realistic prospect of success.

ISSUES

[16] The following issues are now before this court, for determination:

a. Whether the issues presented in this application can be dealt with by the court, at this time?

b. In what circumstances would clause 9 become operative?

c. Is it necessary for any, 'difference,' between the parties which, 'arises out of this policy,' to be unequivocal and thus, not subject to any further negotiation or discussion, in order for the party seeking to rely on the insurance policy, not be deemed as having abandoned his or her, or their claim?

d. In the particular circumstances of this particular case, did clause 9 become applicable and if so, as of when, did same become applicable?

e. In the circumstances, is the claimant to be with treated by this court, at this time, as having abandoned his claim against the insurer (the defendant) such that the claimant's claim before this court, has no real prospect of success?

LAW AND ANALYSIS

Whether the court can deal with this application at this time.

[17] The first question which must be answered, is as to whether the issues, which arise out of the defendant's application for summary judgment, are such that they ought to be resolved now, by means of such an application, as distinct from being resolved at trial - which will occur at a later stage, in the event that the defendant's application for summary judgment, is unsuccessful.

[18] In **ICI Chemicals and Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725**, Moore-Bick LJ at paragraph 18, pronounced that, where a short point of construction, arises on a summary judgment application, and the parties are ready to argue it, the judge should decide the point, unless there is likely to be other evidence at trial, which will shed light on it. (See also Blackstone's Civil Practice and Procedure, 2014, at paragraph 34.12)

[19] In **R. G. Carter Ltd. v Clarke [1990] 1 WLR 578**, Donaldson MR at 584F stated that:

> *'If a judge is satisfied that there are no issues of fact between the parties, it would be pointless for him to give leave to defend on the basis that there was a triable issue of law. The only result would be that another judge would have to consider the same arguments and decide that issue one way or another. Even if the issue of law is complex and highly arguable, it is far better if he then and there decides it himself, entering judgment for the plaintiff or the defendant as the case may be on the basis of his decision. The parties are then free to take the matter straight to this court, if so advised. This was the situation in the classic case of* Cow v. Casey *[1949] 1 K.B. 474. But it is quite different if the issue of law is not decisive of all the issues between the parties or, if decisive of part of the plaintiff's claim or of some of those issues, is of such a character as would not justify its being determined as a preliminary point, because little or no savings in costs would ensue. It is an a fortiori case if the answer to the question of law is in any way dependent upon undecided issues of fact.'*

[20] This matter is, for present purposes, primarily a matter pertaining to the interpretation which this court should give to clause 9. There are sub-issues, but those all fall within the ambit of the interpretation of the contract.

[21] As such, this matter is, on the grounds as put forward by the defendant, one that is very suitable for resolution by means of a summary judgment application. In relation to the interpretation of clause 9, the parties have advanced all of the relevant facts. There are no new facts, which this court can reasonably foresee, that will arise at trial, which should now serve to properly preclude this court, from addressing those issues, at this time.

[22] Addressing those issues at this time, will result in the saving of time and costs, particularly, if the defendant's application is successful, since, if so, it will result in this claim being brought entirely to an end. Even if the defendant's application for summary judgment is unsuccessful, it will resolve now, by means of this court's ruling on that application, the issue as to whether or not the claimant is deemed as having abandoned his claim against the defendant, under and in accordance with clause 9 of the applicable insurance policy/ contract.

Applicability of Clause 9

[23] Clause 9 of the insurance contract states that:

> *'All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.'*

Interpretation of contracts

[24] On the interpretation of contracts, and/or contractual clauses, two of the leading cases in the United Kingdom are: **Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896 (**which has been applied by the Jamaican Court of Appeal, in more than one decided case) and **Rainy Sky SA v Kookmin Bank [2011] UKSC 50.**

[25] In **Investors Compensation Scheme Ltd v West Bromwich Building Society,** Lord Hoffman summarized the relevant principles at 912H - 913E and stated as follows:

> *'(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*
>
> *(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the[1998] 1 WLR 896 at 913exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*
>
> *(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.*
>
> *(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd. [1997] A.C. 749.*
>
> *(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to*

attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in Antaios Compania Naviera S.A. v. Salen Rederierna A.B. [1985] A.C. 191, 201.'

[26] Lord Hoffman at page 914E further stated that:

'I do not think that the concept of natural and ordinary meaning is very helpful when, on any view, the words have not been used in a natural and ordinary way. In a case like this, the court is inevitably engaged in choosing between competing unnatural meanings. Secondly, Leggatt L.J. said that the judge's construction was not an "available meaning" of the words. If this means that judges cannot, short of rectification, decide that the parties must have made mistakes of meaning or syntax, I respectfully think he was wrong.'

[27] In **Rainy Sky SA v Kookmin Bank,** at paragraph 21, Lord Clarke noted that:

'The language used by the parties will often have more than one potential meaning. I would accept the submission made on behalf of the appellants that the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other.'

[28] Having delved into the authorities surrounding the interpretation of contracts, this court is now tasked with determining, what would the reasonable person, having all the background knowledge, which would reasonably have been available to the parties, at the time when they were entering into the contract, construe 'difference' to mean, in the context of clause 9?

Is it necessary that difference be unequivocal

[29] In **Fastrack Contractors Ltd v Morrison Construction Impreglio UK Ltd. and Anor [2000] EWHC Technology 177**, Thornton J at paragraphs 27-28 delved into what constituted a 'dispute,' and stated as follows:

> *'27... A dispute only arises when the claim is rejected in clear language. An obvious refusal to consider the claim or to answer it can, however, constitute such a rejection.*
>
> *28. These cases help in showing that a claim and its submission do not necessarily constitute a dispute, that a dispute only arises when a claim has been notified and rejected, that a rejection can occur when an opposing party refuses to answer the claim and a dispute can arise when there has been a bare rejection of a claim to which there is no discernible answer in fact or in law.'*

[30] Lloyd J., in **Griffin and Anor v Midas Homes Ltd**. **[2000] EWHC 182 (TCC)** noted that it is not every exchange that creates a 'difference' and added that:

> *'A dispute is not lightly to be inferred. Nevertheless, there must come a time when a dispute will arise, usually where a claim or assertion is rejected in clear language without the possibility of further discussion, and such a rejection might conceivably be by way of an obvious and outright refusal to consider a particular claim at all.'*

Interpretation of 'difference/dispute'

[31] The parties are at odds as to the interpretation that should be ascribed to the word 'difference/dispute.' The defendant is asking this court give the word, its literal and ordinary meaning and to consequently find that there was a, 'difference' by the letter communicated to the claimant, on February 16, 2015, which outlined, inter alia:

> *'Regrettably, indemnity will not be granted in respect of the alleged loss as we are unable to verify that the burnt vehicle was indeed the subject of your policy of insurance.'*

[32] The claimant, on the other hand, is asking the court to find that on the facts of the case, there was no 'difference' that had arisen, so as to cause, clause 9 to come into operation.

[33] The principles as adumbrated above, by Lord Hoffman, do not support the defendant's argument. Though the literal and ordinary meaning of a word, is usually the starting point in a matter of interpretation, where the relevant provision to be interpreted is a contractual provision, then, the principles adumbrated above, apply.

[34] A finding in favour of the defendant's submission would mean that, if, at any point throughout the duration of the policy, for any reason (as long as the parties do not see, 'eye to eye'), clause 9 can be invoked and, if the insured does not act, with expedition, in referring that 'difference' to arbitration, then their rights under the policy are treated as abandoned.

[35] This interpretation offends the business common sense principles, adumbrated above, to which the court must have regard to. It offends same, because it would render the contract unworkable. At the time of entering into the contract, both parties intended that, at the very least, it was expected to be workable, in a commercial context.

[36] Further, this court having looked at clause 9, concluded that, at the time of entering into the contract, the parties intended it to be practical and not detrimental to any reasonable possibility of resolving matters. That intention, would exclude the need for long, disputed claims, which may end up before the court.

[37] Also, in a context of this nature, where the onus to refer a matter to arbitration, is placed on the insured, the insured party would, at the time of entering into the contract, have had to feel that there must have been some reasonable protection, in clause 9, for them. What balances out this onerous obligation on the insured, is that, there must be an unequivocal difference. This then, would make the contract workable.

[38] Though the use of the word 'difference,' lends itself to both of the interpretations being proffered, to this court and to each other, by the parties, there can, in these circumstances only be one correct interpretation. That interpretation must, to my mind, be that the 'difference' must be unequivocal and not one, in respect of which, any further negotiation could be helpful.

[39] This court also rejects the defendant's counsel's contention that the cases relied on by the claimant's counsel, as regard the interpretation of the word, 'difference' in the context of commercial contracts containing an arbitration clause, which

operates in circumstances wherein there is a, ‘difference’ between the parties, arising out of the contract, are inapplicable to the matter at hand, because those cases do not pertain to insurance contracts.

[40] This court has rejected that contention, because the principles of contractual interpretation do not vary, based solely on the type of contract which is being interpreted. The parties to an insurance contract will, of course, interpret words based on their background knowledge when they entered into the contract. The same is true, of any parties to any and every contract. The interpretation to be given to contractual provisions therefore, is that which this court believes, that a reasonable person would have given to those provisions, while possessed of the background knowledge that those parties had, at the time when they entered into the contract.

[41] Whilst it may be correct to state that none of the cases being relied on by the claimant, as to the meaning of the word, ‘difference,’ have arisen in respect of an arbitration clause in an insurance contract, that is a distinction which is, in the context of the matter now at hand, one without a difference - pun intended.

[42] In the circumstances, clause 9 when properly interpreted, in accordance with the applicable legal guidelines at present, does not allow for the interpretation as put forward by defence counsel. Instead, to my mind, when properly interpreted, it permits only one interpretation, which is that, which has been submitted by the claimant’s counsel and accepted, by this court.

When was liability disclaimed

[43] In **Lemard, Duhane v Key Insurance Company Limited [2017] JMSC Civ. 208** Bertram Linton J., at paragraph 29 stated that time begins to run, in relation to an arbitration clause, when there was a clear difference in opinion.

[44] There is doubt, from examining the communication between the parties as to when there was a clear difference of opinion, between the parties, as to the matter which

has remained in dispute, between them. The question of whether there is an unequivocal disclaimer, is a question of fact and therefore, it is incumbent on this court, to examine the correspondence between the parties, in resolving that issue. The correspondence includes:

a. March 16, 2015 - the defendant's letter to the claimant, stating that *'if you have information which could provide fresh insights into the matter at hand, please be so kind enough to provide us with this new information*;"

b. March 17, 2015 - the claimant providing the defendant with documents, which he believed would prove the identity of the burnt vehicle;

c. April 16, 2015 - the defendant's finding that the documents provided, yielded no further insight. Also, a further request to the claimant, that if he had any other information which will enable them to confirm the identity of the loss, they would welcome same; and

d. September 24, 2015 and December 9, 2015 - further inquiries by the defendant for information which would prove the identity of the burnt vehicle.

[45] Having examined the communication between the parties, this court concluded that the correspondence concerned an active negotiation. Both parties were in the environment where, they were trying to verify whether the burnt vehicle was the subject of the insurance contract, so that the right protected under the policy i.e. indemnity, could be honoured.

[46] There was no unequivocal disclaimer of liability by the defendant to the claimant, which was clear and excluded any possibility for further discussions. Had the defendant stated, say for example: '*You are not able to provide us with any further*

information as such, we can offer you no indemnity,' as they did in their defence, that would, to my mind, point to there being an unequivocal disclaimer of liability. The defendant would have concluded, that the claimant is not, nor will he ever be, in a position to verify the identity of the burnt vehicle.

[47] Thus, in the circumstances, this court finds that, as at the date of the filing this claim, there was no unequivocal difference as communicated by the defendant to the claimant. This however, changed, when the defence was filed, which contained a clear denial of the claim by the defendant. Prior to that, the communication between the parties, were premised on the defendant asking the claimant to put them in a position to be able to identify the vehicle and the claimant trying to do so. The defendant, on more than one occasion, had left the door open, for the right to indemnity, which the claimant was entitled to, under the contract, to be honoured, on the condition precedent that, the claimant prove the subject of the contract as the subject of the loss suffered on December 8, 2014.

[48] Further, it is important to observe that clause 9, speaks about arbitration as compared to mediation. To my mind, arbitration is needed where both parties are at solid odds and require the binding decision of an independent authority. In the instant case, that was non-existent and thus, could not serve to have invoked clause 9, so as to have caused time to begin to run, resulting in the claimant being deemed as having abandoned his claim.

SUMMARY JUDGMENT

[49] Part 15 of the **Civil Procedure Rules (C.P.R)** empowers the court to determine a claim or a particular issue in a claim without a trial. Further, Rule 15.2 permits the court to grant summary judgment on a claim, or on a particular issue of the claim, where the court considers that the claimant has no real prospect of succeeding on that claim, or issue, or the defendant has no real prospect of successfully defending the claim or issue, as the case may be. Rule 15.2 of the C.P.R states as follows:

'15.2 The court may give summary judgment on the claim or on a particular issue if it considers that –

(a) the claimant has no real prospect of succeeding on the claim or the issue; or

(b) the defendant has no real prospect of successfully defending the claim or the issue.'

[50] Additionally, rule 15.6 of the C.P.R outlines the court's powers in granting summary judgment. That rule reads as follows:

'15.6 (1) On hearing an application for summary judgment the court may-

(a) give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end;

(b) strike out or dismiss the claim in whole or in part;

(c) dismiss the application; (d) make a conditional order; or (e) make such other order as may seem fit.'

[51] In **Fiesta Jamaica Ltd. v National Water Commission** [2010] JMCA Civ. 4, Harris JA, at paragraph 31 stated:

"A court, in the exercise of its discretionary powers must pay due regard to the phrase "no real prospect of succeeding" as specified in Rule 15.2. These words are critical. They lay down the criterion which influences a decision as to whether a party has shown that his claim or defence, as the case may be, has a realistic possibility of success, should the case proceed to trial. The applicable test is that it must be demonstrated that the relevant party's prospect of success is realistic and not fanciful. In Swain v Hillman [2001] All ER 91, 92 at paragraph [10] Lord Woolf recognized the test in the following context:

The words 'no real prospect of being successful or succeeding do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospect of success or, as, Mr. Bidder QC submits, they direct the court to the need to see whether there is a realistic as opposed to a fanciful prospect of success."

[52] Further, at paragraph 34, Harris JA, referred to the House of Lords' judgment in the case: **Three Rivers District Council v Governor and Company of the Bank of England** [2001] 2 All ER 513, where Lord Hutton, at paragraph 158, stated the approach, a judge should adopt when dealing with the applicable test. Lord Hutton stated the following:

> *'The important words are "no real prospect of succeeding." It requires the judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without a trial and give summary judgment. It is a 'discretionary' power, ie one where the choice whether to exercise the power lies within the jurisdiction of the judge. Secondly, he must carry out the necessary exercise of assessing the prospects of success of the relevant party. If he concludes that there is "no real prospect," he may decide the case accordingly.'*

[53] This court, has concluded that, on an interpretation of clause 9, as at the date of filing this claim, between the parties, there was no unequivocal difference, so as to have caused time to have begun to run, resulting in the claimant being deemed as having abandoned his claim, as against the defendant. Consequently, this court is satisfied the claimant's claim one that is more than just arguable and one, which has a real and not merely, a fanciful prospect, of being successful at trial.

No affidavit evidence from the claimant as to the meaning of the word 'difference' as used in clause 9

[54] Upon the making of an oral application for leave to appeal, counsel for the defence posited the argument, that there was no affidavit evidence, presented by the claimant to the court, as what he understood the word 'difference,' in the context of clause 9 to have meant, at the time he was entering into the contract. The court, in interpreting contractual provisions, is not fettered by the absence of any evidence by the parties as to what they believed the terms to have meant. The test is clear: **What would the reasonable person, having all the background knowledge, which would reasonably have been available to the parties, at the time of entering into the contract, have understood clause 9 to have meant?** This court has applied same, and arrived at the conclusion stated earlier.

[55] Further, even if the parties had presented evidence, as to what they understood the word 'difference' to have meant, at the time of entering into the contract, this would have been given little to no weight by this court, as it would have certainly been presented, after the 'difference/dispute' had already arisen between the parties.

The preliminary issue

[56] For the sake of completeness, it should be noted that, the preliminary issue, raised in the defendant's application, adds nothing to the defendant's application for summary judgment. Accordingly, that preliminary issue, has also, been rejected by this court.

DISPOSITION

[57] It is hereby ordered that:-

(1) The defendant's application for summary judgment which was filed on February 12, 2020, is denied in its entirety.

(2) The court grants leave to appeal this order.

(3) All trial dates are vacated.

(4) No new trial dates shall be scheduled, unless either, the defendant does not appeal; this order, within the time as prescribed by law, or alternatively if any appeal filed against this order, is unsuccessful.

(5) No pre-trial review shall be held, until the outcome of any appeal filed against this order, is known and such hearing is then necessary or alternatively, if no appeal is filed against this order, within the time limit as prescribed by law.

(6) The claimant's application to adduce expert evidence, which was filed on April 6, 2020, shall not be scheduled for hearing, unless such hearing is necessary, following upon the conclusion of any appeal filed against this order, or alternatively, if no appeal is filed against this order, within the time as prescribed by law.

(7) The costs of the defendant's application for summary judgment are awarded to the claimant, with such costs to be taxed, if not sooner agreed.

(8) The claimant shall file and serve this order.

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Hon. K. Anderson, J.