

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 808 of 2021

BETWEEN

HECTOR ISAIAS ROMERO

CLAIMANT

AND

JUAN FRANCO

DEFENDANTS

DECISION OF The Honourable Madam Justice Patricia Farnese

Hearing by Written Submissions

Counsel for the Parties

Darrell Bradley for the Claimant

Audrey Matura for the Defendant

DECISION ON APPLICATION FOR RELIEF FROM SANCTION

[1] On March 27, 2023 counsel for the Parties appeared before me and Mr. Bradley made an oral application to strike out the Defendant's witness statements for late filing. In an order dated December 12, 2022, the Parties were to file and exchange witness statements on or before February 17, 2023. The Parties agreed, among themselves, to allow the Defendant until February 20th, 2023 to file and exchange his witness statements. The Claimant has complied with that deadline. The Defendant's witness statements were filed on February 22, 2023 and March 3, 2023.

[2] In response to Mr. Bradley's application to strike out the witness statements, I struck out the witness statement that was filed on March 3, 2023 because it was made after the witness reviewed the Claimant's witness statement. I reserved my decision on the remaining 2 witness statements because I received Ms. Matura's assurance that they were prepared before the Defendant's witnesses reviewed the Claimant's witness statements. I gave Ms. Matura until April 3, 2023 to file an application for relief from sanction under Rule 26.8 of the High Court Civil Procedure Rules (CPR). Mr. Bradley was to respond to that application by April 11, 2023. I was clear with the Parties that if

an application was not received, I would grant Mr. Bradley's application to strike out the witness statements on the basis of non-compliance with the Court's order. I would also strike out the witness statements if I dismiss the application for relief from sanction.

[3] While I have some discretion when deciding to grant relief from sanction, the CPR provides clear guidance on the eligibility for and factors to consider when granting relief from sanction:

- 26.8 (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 his legal practitioner;
 - (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.

[4] I find the Defendant is ineligible to receive relief from sanction. Although I find no evidence that the failure to comply was intentional, the Defendant has not provided a good explanation for the failure or established that he has generally complied with the court's orders and directions. Sub-rule (2) is clear; relief can **only** be granted if the court is satisfied that all three conditions have been met.

[5] While I have no doubt that Ms. Matura's paralegal did her best to comply with the court's order, the responsibility to comply with the Court order did not rest on her. That

obligation is owed by the Defendant and Ms. Matura as the Defendant's legal representative and as an Officer of this Court. If Ms. Matura delegates the performance of this obligation to her staff, it is her responsibility to provide adequate training and supervision to ensure compliance with the Court's rules, procedures, and orders. Blaming one's staff is simply not an acceptable explanation especially when the court was faced with multiple incidents of noncompliance.

[6] The Claimant's affidavit in response to the Defendant's application for relief from sanction documents a pattern of non-compliance with the rules, procedures, and orders of this court including failing to attend court at scheduled times, failing to attend court ordered mediation, and failing to serve standard disclosure on time. I have observed that these failures were often accompanied by either no or very late communication with counsel for the Claimant and this Court. I also note that even this application for relief from sanction was non-compliant. The first page of the application appears to be missing from the uploaded document. CPR Rule 3.7(3) also provides:

- (3) Where a fee is to be paid the document is not to be treated as filed until –
 - (a) the fee is paid; or
 - (b) an undertaking to pay the fee acceptable to the Registrar is received.

Ms. Matura did not pay the fee and no undertaking was provided until April 12, 2023 after the deadline provided to file this application. Had the application not been marked, in error, as "filed" and the Claimant not provided a reply, I would have refused to hear the application.

[7] I have also considered the factors outlined in sub-rule (3) and find that denying the request for relief from sanction is appropriate in these circumstances. The administration of justice requires compliance with the Court's rules, directives and orders to ensure the efficient use of the court's resources and that the Parties are placed on an equal footing. The Court's over-riding objective to do what is just in the circumstances would be undermined if counsel is permitted to remedy repeated incidents of non-compliance with an appeal to that objective.

[8] I am cognizant that the consequence of granting the Claimant's application to strike out the witness statements will have a significant effect on the Defendant's ability to defend against the claim. I find that the totality of the circumstances justify that result. I note in particular that the incidents of noncompliance are not solely the result of Ms. Matura's conduct. The Defendant did not comply with my order to attend mediation. That non-compliance alone could justify this result.

Disposition:

- (1) The application for relief from sanction is denied.
- (2) The Witness Statements of Juan Franco and Maria Angelita Martinez are struck out.
- (3) The Defendant is ordered to pay costs to the Claimant as agreed or assessed.

DATED the 13th day of April, 2023.

Justice Patricia Farnese