

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO. 86/08

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRIS, J.A.
THE HON. MISS JUSTICE SMITH, J.A. (Ag.)**

BETWEEN	BARTHOLOMEW BROWN BRIDGETTE BROWN	APPLICANTS
AND	JAMAICA NATIONAL BUILDING SOCIETY	RESPONDENT

Applicants in person

Stuart Stimpson, instructed by Garth McBean & Co., for the respondent

October 15 & 24, 2008

ORAL JUDGMENT

PANTON, P.

1. On November 16, 2007, the applicants herein served a claim on the respondent for:

Damages for breach of contract;

Negligent misstatement;

Breach of trust;

Economic intimidation;

Negligence;

Loss of employment and income;

Pain and suffering;

Aggravated damages;

Exemplary damages;

Costs; and

Interest.

2. On April 2, 2008, the respondent filed a defence. In view of the fact that the time for filing a defence had passed, the respondent sought an extension of time for filing same. The extension was granted by Master Lindo on May 8, 2008. The Master also set a case management conference for June 9, 2008.

3. The application to extend time to allow for the filing of the defence was resisted by the applicants who now, in these proceedings, are seeking an extension of time within which to file an appeal against the decision of the Master.

4. The main points for consideration in dealing with this application are:

(a) the chances of success of the proposed appeal; and

(b) the likelihood of prejudice to the respondent.

5. In relation to (a), there can be no doubt that it was within the discretion of the Master to extend time. In exercising her discretion, she would have considered the reason for the delay by the respondent. The affidavit of Byron

Ward which she had before her indicated that no defence was filed as efforts were being made to settle the matter. This, in a situation in which the applicants had changed attorneys more than once.

6. The applicants have made allegations against the Master in respect of the appearance of bias on her part. We are of the opinion that these allegations are unsubstantiated and unfair. There is nothing disclosed in the copious documents placed before us to suggest that there is any chance of the Master's decision being reversed. In this situation the need to consider prejudice to the respondent does not arise.

7. The claim alleges many improprieties and breaches on the part of the respondent. The averments in the defence suggest that the respondent may well have a good defence. Clearly, there is no indication of the defence being a mere sham. It was only right that the Master should have allowed the extension of time for the filing of a defence. This will ensure a proper airing of the issues and ultimately a proper resolution of the dispute.

8. In the circumstances, there is no basis for the granting of leave to extend time to file an appeal against the Master's Order. The matter is to proceed in the Supreme Court with the scheduling of a new date for a case management conference.

ORDER

The application is refused. A new case management conference date is to be fixed in the Supreme Court. Costs of the application to the respondent to be agreed or taxed.