



[2024] JMSC Civ 101

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2021CV01958**

<b>BETWEEN</b>	<b>ROY BURN JOHNSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MARIA ANGELINE STONNER</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>ZELA JAHARI</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS VIA ZOOM**

**Mr George Clue, Attorney-at-law for the claimant.**

**Ms Annalise Lindsay and Mr Josemar Belnavis instructed by Lindsay Law Chambers, Attorneys-at law-for the 1<sup>st</sup> defendant/ applicant.**

**Mrs Denise Senior Smith instructed by Oswest Senior-Smith & Company, Attorneys-at-law for the 2<sup>nd</sup> defendant.**

**Heard: 9 May 2024, 10 June 2024 and 31 July 2024**

***CIVIL PROCEDURE RULES 2002 - APPLICATION TO EXTEND TIME TO FILE DEFENCE - WHETHER DELAY INORDINATE - WHETHER GOOD REASON FOR DELAY - WHETHER DEFENCE HAS ANY REAL PROSPECT OF SUCCESS - FRAUD - REGISTERED TITLE***

**MASTER MISS C MCNEIL (AG)**

**Introduction**

**[1]** On 7 March 2024, the 1<sup>st</sup> defendant filed an application for an extension of time within which to file a defence. The 1<sup>st</sup> defendant was served with the claim form and particulars of claim on 9 November 2021 and had filed an acknowledgment of

service on 23 February 2023. The application invokes the discretion of the court and Supreme Court Civil Procedure Rules, 2002 (CPR). Rule 10.3 (1) provides –

*“the general rule is that the period for filing a defence is the period of 42 days after the date of service of the claim form.”*

The discretion is exercisable by virtue of Part 10.3 (9) and Part 26.1(2) of the CPR. Part 10.3(9) provides that--

*“the defendant may apply for an order extending the time for filing a defence”.*

While Part 26.1(2)(c) vests the court with the power to *extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed.*

- [2] These proceedings are unusual, in that, the application is unopposed by the claimant but rather opposed by the 2<sup>nd</sup> defendant. In this regard, the 2<sup>nd</sup> defendant has filed an affidavit opposing the application. Both the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed written submissions which were supplemented by their oral submissions.

### **The background and procedural history**

- [3] In this case, the claimant (“*Mr Johnson*”) is the step-father of the first defendant (“*Ms Stoner*”), and the former spouse of the 2<sup>nd</sup> defendant (“*Ms Jahari*”). At an earlier stage in life they were one happy family.

- [4] Mr Johnson sued Mesdames Stoner and Jahari to recover real estate, ownership of which he asserted had been fraudulently obtained by both women, thereby dispossessing him, the lawfully entitled proprietor. Mr Johnson launched his suit by a claim form and particulars of claim originally filed on 23 April 2021, both of which were subsequently amended and filed on the 11 May 2021.

- [5] The allegations made by Mr Johnson by his pleadings are that he was the sole proprietor of registered land in Clarendon described as ALL THAT parcel of land PART OF RADLIN-BELL PLAIN in the parish of CLARENON now comprised in certificate of title registered at volume 1532 folio 230 of the Register Book of Titles. He had occupied the land before moving to the United States of America (USA). Unfortunately, he was convicted in the USA and sentenced to a term of imprisonment. Between 1998 and 2004, he was incarcerated and at the end of his sentence he was released and thereupon deported to Jamaica. Upon his return to Jamaica, he resumed occupation of the property in Clarendon. It became and remains his place of abode. He resides there with his family and children.
- [6] Sometime in or around 2013 he received word that his former spouse Ms Jahari was saying that he had transferred his property to her daughter Ms Stoner. This transfer from the claimant to the 1<sup>st</sup> defendant was effected on 12 April 2000. Thereafter, the title to the property was transferred from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.
- [7] The claimant alleges that the transfers to the 1<sup>st</sup> defendant and to the 2<sup>nd</sup> defendant, respectively were fraudulent. The particulars of fraud alleged against each defendant are as follows,

**“PARTICULARS OF FRAUD THE 1<sup>ST</sup> DEFENDANT”**

- *That the said documents were [sic] not prepared or signed by the Claimant or by anyone acting on the Claimant's behalf or under or by way of the Claimant's instructions.*
- *That the 2<sup>nd</sup> Defendant knew that at the date of the transfer that the Claimant was in custody in the United States of America and was not present in Jamaica.*
- *Caused the said instrument of transfer to be presented to the National Housing Trust and the Inland Revenue and the Registrar of Titles knowing full well that the said document was not signed or executed by the Claimant.*

**“PARTICULARS OF FRAUD THE 2<sup>nd</sup> DEFENDANT**

- i) *Instituted Civil Proceedings in the Supreme Court by way of Claim no. 2013 HCV 06621 against the 1<sup>st</sup> Defendant knowing full well that criminal proceedings were pending against her in respect of property registered at Volume 1532 Folio 230.*
- ii) *Caused the Court to make orders without disclosing to the court that the aforesaid property was the subject of criminal proceedings in which the 2<sup>nd</sup> Defendant was charged.*
- iii) *Obtaining a Judgement in the Supreme Court in circumstances where the 2<sup>nd</sup> Defendant knew that the Crown obtained question document report which supported the Claimant's position that the aforesaid instrument of transfer was not executed by him.*
- iv) *Failure to disclose to the court in the Civil Proceedings that the Claimant was residing on the premises and that the Claimant was maintaining that he did not sign any transfer.*
- v) *Failure to disclose at the time of obtaining the Judgement that the Criminal Proceedings were still pending against the 2<sup>nd</sup> Defendant.*
- vi) *Obtaining certificate of title by virtue of Section 79 of the Registration of Titles Act the aforesaid certificate of title registered on the 2<sup>nd</sup> day of January 2020 by fraudulent means.”*

**[8]** On these facts, the claimant seeks declaratory relief that he is the true and lawful owner of the subject property and an order that the judgment obtained by the 2<sup>nd</sup> defendant filed in Claim No. 2013 HCV 06621 was procured by fraud.

**[9]** The 2<sup>nd</sup> defendant filed its defence and a counterclaim on 6 July 2021. The 2<sup>nd</sup> defendant alleges that the claimant had a mortgage on the property. That during the period of the claimant's incarceration, the mortgage payments went into

arrears. The claimant requested assistance from the 2<sup>nd</sup> defendant to make a payment in the sum of \$750,000.00 in an effort to avoid foreclosure. The 2<sup>nd</sup> defendant being unable to maintain the mortgage payment and the claimant not making payments, the property was again listed for foreclosure. The claimant thereafter signed a letter prepared and addressed to his bank authorizing the release of the duplicate certificate of title upon payment of the sum of \$2,000,000.00. The claimant transferred the title to the 1<sup>st</sup> defendant to avoid any legal issues. The 1<sup>st</sup> defendant thereafter signed a document acknowledging that she held the property on trust for the 2<sup>nd</sup> defendant.

**[10]** The 2<sup>nd</sup> defendant filed suit against the 1<sup>st</sup> defendant and obtained an order declaring her to be the exclusive beneficial owner of the subject property. That order was made by the Honourable Ms Justice A. Nembhard on 4 July 2018. On the strength of this court order, the property was transferred from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.

**[11]** The 2<sup>nd</sup> defendant further alleged that the claimant and her had a tenancy arrangement whereby the claimant paid her rent. That when the claimant failed to honour his rental obligation, the 2<sup>nd</sup> defendant served the claimant with a notice to quit. The 2<sup>nd</sup> defendant also filed proceedings in the Parish Court (Clarendon) against the claimant to recover outstanding rent. The 2<sup>nd</sup> defendant now claims recovery of possession and alternatively, the sum of \$10,500,000.00.

**[12]** It is undisputed that the 1<sup>st</sup> defendant was served with these proceedings on 9 November 2021. However, neither an acknowledgement of service nor a defence was filed within the time prescribed for the filing of the said documents.

**[13]** The 1<sup>st</sup> defendant did not file an acknowledgment of service until 23 February 2023 wherein she indicated that she does not intend to defend the claim. However, the 1<sup>st</sup> defendant attached a statement to the acknowledgment of service. The 1<sup>st</sup> defendant was not represented at the time of filing the acknowledgment of service.

[14] The essence of the statement of the 1<sup>st</sup> defendant is that she did not sign any transfer which caused the transfer of the subject property from the claimant to herself. She said that she had no knowledge of the transaction, which she described as illegal and that when she became aware, she hired the services of Mr Harold Brady to settle the matter. She was of the view that the matter was settled. She also gave a statement to the fraud squad in 2012 concerning this matter to the effect that she had no knowledge of the matter. She indicated that she kept away from the 'drama' between her parents and her sister and that during her absence her sister and the 2<sup>nd</sup> defendant used her name and impersonated her. She indicated that she will be present in court via Zoom to defend her stance, when allowed.

[15] No defence had been filed. Attorneys-at-law for the 1<sup>st</sup> defendant entered appearance by way of notice which was filed 5 January 2024. The matter came on for hearing on 8 January 2024 wherein the following orders were made:

*“1. On the application for the Attorney-at-Law for the 1<sup>st</sup> defendant, the Case Management Conference is adjourned to February 22, 2024 at 12noon for ½ hour.*

*2. The first defendant shall file and serve an application for extension of time to file defence and supporting affidavit on or before January 31, 2024.*

*3. First defendant is required to be present at the Case Management Conference on February 22, 2024.*

*4. Costs are to be costs in the claim.*

*5. The Attorney-at-Law for the 1<sup>st</sup> defendant shall file and serve this order.”*

Counsel appeared on behalf of the 1<sup>st</sup> defendant at this 8 January 2024 hearing.

[16] On 20 February 2024, a defence was filed on behalf of the 1<sup>st</sup> defendant and on that date a consent to filed defence out of time was also filed by the claimant. The

consent was however dated 19 January 2024. Order 2 above was not complied with within the time specified by the court.

**[17]** On 22 February 2024, the matter came on for case management conference hearing. Both the 1<sup>st</sup> defendant and her counsel were present. On this occasion the court extended time to 12 March 2024 for the 1<sup>st</sup> defendant to file and serve an application for extension of time to file defence along with supporting affidavit and also made an order for the acknowledgment of service filed on behalf of the 1<sup>st</sup> defendant to be served on the claimant and the 2<sup>nd</sup> defendant. This order was partially complied with, in that, the 1<sup>st</sup> defendant filed an application for extension of time to file defence on 7 March 2024 but did not file a supporting affidavit until 22 March 2024 out of time. This affidavit is that of counsel Aaliyah Greene.

**[18]** The substratum of the evidence advanced on behalf of the 1<sup>st</sup> defendant in support of the application, is based on information and belief. It was asserted that the explanation for failure to file a defence was because of inadvertence, the 1<sup>st</sup> defendant's unfamiliarity with court processes and she being without the benefit of legal advice. In respect of the matters of merit, reliance was placed on the 'statement' attached to the acknowledgment of service and the defence of the 1<sup>st</sup> defendant filed out of time without permission of the court; these documents formed exhibits AG-1 and AG-2 of the Affidavit of Aaliyah Greene.

**[19]** The 2<sup>nd</sup> defendant filed an affidavit in response to the application on 19 April 2024, in compliance with the orders of the court. The application is strongly opposed by the 2<sup>nd</sup> defendant.

## **Submissions**

**[20]** Submissions were made by counsel Mr Belnavis on behalf of Ms Stoner and Mrs Senior Smith for Ms. Jahari. Counsel for Mr Johnson, Mr Clue expressly consented to the extension of time within which to file the defence. Both Mr Belnavis and Mrs Senior Smith pointed to the factors to be considered by the court,

and sought to argue how the facts benefitted their respective clients. In so doing, various authorities were cited.

- [21] The parties are joined in respect of the authorities and the principles emanating therefrom to guide the court in whether to exercise its discretion to extend the time for the filing of a defence. The authorities are, **The Attorney General of Jamaica and Western Regional Health Authority v Rashaka Brooks JNR (A Minor) by Rashaka Brooks SNR (His Father and Next Friend)** [2013] JMCA Civ 16 and **Fiesta Jamaica Limited v National Water Commission** [2010] JMCA Civ 4.
- [22] Learned counsel for the 1<sup>st</sup> defendant submitted that the court in considering the length of delay, should have regard to the filed acknowledgment of service and the statement attached thereto wherein the 1<sup>st</sup> defendant categorically denied the allegations set out in the claim form and particulars of claim. It was further submitted that delay is not the decisive factor and that the court should have regard to the reasons for delay.
- [23] It was argued on behalf of the 1<sup>st</sup> defendant that there exists good explanation for the delay. It was argued that given the nature of the dispute being as between her mother and stepfather, and that she was already involved as a witness in related criminal proceedings, she was of the view that it was best not to be caught in the middle of the dispute. Additionally, it was submitted that the 1<sup>st</sup> defendant's failure to file a defence could be reduce to "a failure to abide by the proper procedure" and the lack of legal representation. Reliance was also placed on **Philip Hamilton v Frederick Flemmings and Gertrude Flemmings** [2010] JMCA Civ 19 for the point that even if there was no good reason for the delay, the court may exercise its discretion to extend time once it served the interest of justice.
- [24] Finally, it was submitted that there would be no prejudice to the claimant and that no trial date was set in the matter.



[25] Counsel for the 2<sup>nd</sup> defendant argued that there is nothing in law which prevents a co-defendant from opposing an application by another defendant for extension of time to file a defence. The position of the 2<sup>nd</sup> defendant in respect of the application may be summarized as follows:

- i. The 1<sup>st</sup> defendant has not offered an affidavit of merit. The sole affidavit in respect of the matter is from counsel for the 1<sup>st</sup> defendant.
- ii. There has been categorical delays between November 2021 and March 2024.
- iii. That the affidavit evidence only addressed the period of delay between November 2021 and January 2024 and the reason offered was because of unfamiliarity with the procedure. This explanation is to be rejected by the court as not good.
- iv. It was further submitted that the 1<sup>st</sup> defendant after being advised of the procedure, did not file an application for an extension of time until at least one month and no explanation given for this delay.

### **The issue**

[26] The issue is whether or not the court should exercise its discretion and grant an order extending time within which to file a defence.

### **Analysis and application**

[27] It is not uncommon for the court to be called upon to exercise such a discretion, hence there is a plethora of decided cases in this area of law. Jurisprudentially, however, each case is considered on its own merit.

[28] The factors to be considered in any application for an extension of time to file a defence are settled and well known. They are set out clearly by the Court of Appeal in **Strachan v The Gleaner Company**, Motion No. 12 of 1999 in the judgment delivered on 6 December 1999. The factors have been repeated and applied in several cases since then.

[29] In **Attorney General and Western Regional Health Authority v Rashaka Brooks** [2013] JMCA Civ 16, Brooks JA, as he then was, acknowledged and applied the factors and emphasised the principle that the court should not be inflexible in the exercise of its discretion when considering such an application. He reiterated the factors with respect to a defendant who advances such an application, as follows:

- (a) the application is made within a reasonable time;
- (b) there are good reasons for the delay;
- (c) there is good reason why the extension should be granted; and
- (d) there would be no prejudice to the claimant should the extension of time be granted.

It is to be noted that the order in which the factors are listed does not suggest any ranking in importance or relative weight to be attached to each.

***Whether Ms Stoner's application was made within a reasonable time***

[30] The claim form and particulars of claim were served on Ms Stoner on 9 November 2021. She filed an acknowledgement of service over a year and three months later, on 23 February 2023. The acknowledgement of service was accompanied by a document dated 9 February 2023. That document was notarized and addressed to the "*Supreme Court of Jamaica*". It is supposed to contain the categorical denials of Mr Johnson's allegations "*set out in the Claim Form and/or Particulars of Claim*". At the time of the filing of the acknowledgement of service, Ms Stoner seemed to have been without legal counsel.

[31] It is to be noted again that despite Ms Stoner's notarized document, she indicated in her acknowledgement of service that she did not intend to defend Mr Johnson's claim which Mr Johnson filed again, even though she indicated that she did not admit the claim either in whole or in part for a specified sum of money.

- [32] Forty-two (42) days from 10 November 2021 (that is the day immediately after the service of the claim) ended on 21 December 2021. The period for the filing of the defence therefore expired on **22 December 2021**, in accordance with the 42-day stipulation in Part 10.3 of CPR.
- [33] On 24 February 2024, a defence was filed by counsel on behalf of Ms Stoner. This was two years and two months beyond the end of the period for the filing of the defence. On 7 March 2024, counsel for Ms Stoner filed a notice of application for extension of time to file a defence and therein prayed that the defence filed on 20 February 2024 stands as filed within time. In a rather interesting twist, Mr Johnson offered no objection to the application, while Ms Jahari, the co-defendant, strongly opposed same. Mr Johnson reinforced his position by filing on the same 20 February 2024, a notice of consent to file defence out of time.
- [34] In **Edwards v Kelly and Kelly**, unreported judgment dated 2 November 2009, the delay of more than a year beyond the end of the period for the filing, was found to be “*not prompt*”. While in the case of **Clarke and Clarke v Clarke and Clarke** [2017] JMSC Civ 195, the court found that the delay of 332 days (approximately 11 months) was inordinate.
- [35] The notice of application for court orders coming as it did, on 7 March 2024, over two years and two months after the deadline, in the court’s view, was not made within a reasonable time. This delay is accordingly inordinate.

### ***Reasons for the delay***

- [36] In the affidavit filed in support of the application for an extension of time, four primary reasons were assigned for the delay. The affidavit was sworn to by counsel for Ms Stoner; there was no affidavit from Ms Stoner herself. I hope I do no violence to the effort of counsel, when I summarise the reasons proffered as follows:
- (a) Ms Stoner took the view, in paragraph 4 of the affidavit, that although she was innocent of the allegations raised against her by Mr Johnson, her lack of

understanding led her to inadvertently delay her response to the claim in the proper manner.

- (b) Ms Stoner believed that because her document dated 9 February 2023 (the one which accompanied the acknowledgement of service) was signed by her and witnessed by a Notary Public, it would have sufficed as her defence. Paragraph 7 of the affidavit.
- (c) At the time of filing the acknowledgement of service, Ms Stoner was unfamiliar and unaware of the procedure of the court, and it was only on retaining counsel in January 2024 that she became aware of the correct procedure and the proper format of documents required by the court. This was the essence of paragraph 10 of the affidavit.
- (d) In paragraph 12 of the affidavit, there is reference to a criminal matter against Ms Jahari. According to the deponent, because Ms Stoner had given statements to the police's fraud squad in 2013, she inadvertently formed the view that those statements would be taken into consideration by the court in the instant matter.

[37] In **Marline Clarke et al v Enos Clarke Anor** [2017] JMSC Civ 195, the reason given for the delay of nearly eleven months, was that the numerous receipts to be collated and the volume of paperwork involved and the taking of instructions prevented the defendant from filing the defence in the prescribed time. The court rejected that excuse out of hand. Like the instant case, **Marline Clarke** was a matter in which fraudulent transfer of land was the subject of the claim.

[38] With the **Marline Clarke** decision aside, this court finds Ms Stoner's reasons almost incredulous. Firstly, ignorance of the law is never an excuse. Secondly, the professed lack of understanding, and the unfamiliarity with, and the unawareness of the court procedure do not ring particularly true. Ms Stoner herself was the

named defendant in an earlier matter in the said Supreme Court. It was the civil matter designated 2013HCV06621. She not having attended court in person in that matter is irrelevant and of no moment.

[39] Thirdly, the argument that Ms Stoner believed that the statements which she gave to the police's fraud squad in 2013 would be considered by the court in this civil case, strains credulity. This of course is no reflection upon counsel who swore the affidavit. Counsel was merely acting on instructions and seeking to represent her client to the best of her ability.

[40] In the circumstances, this court does not find that the reasons advanced are sufficiently acceptable to satisfy the criteria for extending time.

***Whether there is good reason for granting extension***

[41] To grant Ms Stoner the extension sought, her defence would have to have, a real prospect of success. A real prospect of success as opposed to a fanciful prospect is in itself a good reason for granting the extension. This principle was highlighted by McDonald-Bishop, J (Ag), as she then was, in **Marcia Jarrett v SERHA & Ors** [2010] JMCA Civ 15. At paragraph 39 of the judgment, she said--

*"A defence [which] when ... examined in relation to the claim, would show that the defendants have a real prospect of defending the claim. It must be a 'real prospect' as opposed to a 'fanciful prospect' of success."*

[42] This principle is a part of the process of filtering, an essential feature of the administration of justice and the efficient management of cases. Sykes J (as he then was) in **Edwards v Kelly and Kelly** (Claim No. 2008 HCV 00303) unreported judgment dated 2 November 2009, explained the principle succinctly in paragraph 12 of the judgment, where he said --

*"It goes without saying that unless there is a real prospect of success then the extension of time within which to file a defence should not be granted because it would [be] a waste of the court's resources to entertain a hopeless case".*

[43] Mr Johnson has alleged fraud on the part of both defendants; but as against Ms Stoner, the 1<sup>st</sup> defendant, the averments in the claim against her are rather sparse, certainly when compared with those against Ms Jahari. The tone and tenor of Mr Johnson's pleadings suggest that Ms Stoner was a mere secondary party and primary beneficiary of the fraudulent activity of Ms Jahari. The effect of the relief prayed would be the cancellation of the transfer of the property to Ms Stoner.

[44] Under the Registration of Titles Act a registered title confers on the proprietor, indefeasibility in his title, save for fraud. This is the very basis of the Torrens System of land registration in Jamaica. P Harrison, JA, in **Registrar of Titles v Ramharrack**, SCCA No 80 of 2002 delivered on 29 July 2005 described the indefeasibility in the following way--

*“Under the Registration of Titles Act the registered proprietor of any estate or interest has a valid indefeasible title (subject to some reservations) unless such registration by the proprietor has been tainted by fraud.”*

[45] A litigant who seeks to defeat a registered title on the basis of fraud on the part of the registered proprietor, has a high threshold in establishing his case. Jurisprudentially, the standard of proof required to prove fraud in a civil matter is on a balance of probabilities. However, a court when considering a case of fraud in a civil matter will of course require a higher degree of probability than in other civil cases like negligence for example. See **Hornal v Neuberger Products Ltd.** [1957] 1 QB 247 (CA). This principle necessarily has to be reckoned with, when considering the prospect of success of the proposed defence.

[46] Ms Stoner has unequivocally denied involvement in the fraud. In the proposed defence Ms Stoner has cast responsibility for the fraud upon her mother, Ms Jahai. It is a defence which raises mainly issues of facts.

[47] The court is of the view that even though the threshold of proof for Mr Johnson might be high, Ms Stoner's defence is essentially one of shunting blame for the

alleged fraudulent transfer, to Ms Jahai exclusively. While this does not diminish the potency of the defence, the defence has not sufficiently address the question of the property being transferred to her.

**[48]** In the **Attorney General v Roshane Dixon and Sheldon Dockery** [2013] JMCA Civ 23, Harris JA at paragraph 27, in considering an appeal on the issue of an application for the extension of time to file defence, said this with respect to the factor regarding whether the defence had a real prospect of success or whether it represents an arguable case--

*“Even though there is substance to the proposed defence] this however, does not mean that the [applicant] would be entitled to have time extended to file his defence. The opportunity to pursue his defence would be available to [her] only if all the other requisite criteria for an extension of time are fulfilled”*

This court adopts the dictum of Harris JA. Even if there was some substance to Ms Stoners’ proposed defence, that would not be determinative of the matter.

***Whether any prejudice to the claimant***

**[49]** In the proceedings for the enlargement of time to file defence, the prejudice to be considered, is prejudice to the claimant. As stated earlier, Mr Johnson, the claimant has filed a notice of consent to file defence out of time. The inescapable conclusion is that Mr Johnson will not be prejudiced if the application is granted to Ms Stoner.

**[50]** The position of Mr Johnson with respect to Ms Stoner’s application is easily understood. A cursory look at the proposed defence revealed that it confers both a tactical and a strategic advantage to him as against Ms Jahari. The court is however concerned less about tactical and strategic legal advantages enjoyed by the parties involved in the litigation, and more about justice, even-handedness and fidelity to the law. In the result, the confessed absence of any prejudice to Mr Johnson and hence the consent to the application, does not impress the court at this time.

## **Conclusion**

**[51]** Considering all the factors, this court is not satisfied that the criteria set down by the law for an extension of time within which to file a defence, have been met. In the circumstances, the application is refused.

**[52]** The Orders of the court are:

- (a) The application for an extension of time within which to file a defence on behalf of the 1<sup>st</sup> defendant is refused.
- (b) Costs of the application to the 2<sup>nd</sup> defendant to be agreed or taxed.