JAMAICA

SUPREME COURT CIVIL APPEAL NO 110/2008

APPLICATION NO 239/2011

BEFORE: **THE HON MRS JUSTICE HARRIS P (Ag)**
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE HIBBERT JA (Ag)

BETWEEN	**WATERSPORTS ENTERPRISES LIMITED**	**APPLICANT**
AND	**JAMAICA GRANDE LIMITED**	**RESPONDENT**

Consolidated with Claim No. 2005HCV02189

BETWEEN	**WATERSPORTS ENTERPRISES LIMITED**	**APPLICANT**
AND	**JAMAICA GRANDE LIMITED**	**1ST RESPONDENT**
AND	**GRANDE RESORT LIMITED**	**2ND RESPONDENT**
AND	**URBAN DEVELOPMENT CORP** (Added pursuant to Rule 19.2 Of the Civil Procedure Rules)	**3RD RESPONDENT**

Dr Lloyd Barnett and Keith Bishop instructed by Bishop & Partners for the applicant

Gavin Goffe instructed by Stephen Shelton of Myers, Fletcher & Gordon for the 1st respondent

Christopher Samuda instructed by Samuda & Johnson for the 2nd respondent

John Givans instructed by Vaccianna & Whittingham for the 3rd respondent

24 January 2012 and 20 December 2012

HARRIS JA

[1] Jamaica Grande was the proprietor and operator of a hotel in Ocho Rios which adjoins a beach. The property on which the hotel is situated was formerly owned by Urban Development Corporation and another party. Watersports had been on the land for over 40 years offering watersports services through contracts with parties other than Jamaica Grande. The beach land was leased by Jamaica Grande from the Urban Development Corporation. In December 2002, a contract was made between Watersports and Jamaica Grande in which Watersports would enjoy exclusive rights to offer watersport services to Jamaica Grande's guests until 31 December 2005. However, in August 2004, the hotel and its operations were purchased by Grande Resort Limited. Jamaica Grande having carried out the sale, terminated the contract with Watersports and sought the removal of Watersports from the hotel property as well as from the beach.

[2] As a consequence, Watersports lodged caveats against the title for the property owned by the hotel in addition to that of the beach land. It also brought a claim against Jamaica Grande for breach of contract and conspiracy to breach the contract against Jamaica Grande and Grande Resort for damages and also sought declarations as to its interest in the respective parcels of land. Following this, Jamaica Grande and the Urban Development Corporation initiated proceedings against Watersports in which they sought a declaration that Watersports had no interest in the disputed lands. Both claims were consolidated and tried at the same time.

[3] On 25 September 2008 Brooks, J (as he then was) made the following orders:

"1. Watersports Enterprises Limited does not have any estate or interest in any of the lands comprised in Certificates of Title registered at Volume 1211 Folio 653, Volume 1094 Folio 240 and Volume 1094 Folio 241 of the Register Book of Titles;

2. Watersports Enterprises Limited does not have any estate or interest in either of the lands comprised in Certificates of Title registered at Volume 1236 Folio 249 or Volume 1059 Folio 240 of the Register Book of Titles;"

It is further ordered that:

"1. Judgement for the Defendants against the Claimant in Claim No. 2004 HCV 02189;

2. The injunctions granted in Claim No. 2004 HCV 02189 are hereby discharged;

3. The Registrar of Titles shall forthwith remove Caveat No. 1317519 from affecting Certificates of Title registered at Volume 1211 Folio 653, Volume 1094 Folio 240, Volume 1094 Folio 241, Volume 1236 Folio 249 and Volume 1059 Folio 240 of the Register Book of Titles;

4. A case management conference be held on the 7th of October 2008 at 9:00 am for 45 minutes in respect of Fixed Date Claim Form No. 2004 HCV 2364 to provide directions concerning an enquiry as to damages allegedly suffered by Jamaica Grande Limited as a result of Watersports Enterprises Limited having lodged Caveat No. 1317519;

5. Watersports Enterprises Limited shall quit and deliver up on or before the 31st day of October 2008, to Grande Resorts Limited and/or The Urban Development Corporation, all those parcels of land forming parts of the lands comprised in Certificates of Title registered at Volume 1236 Folio 249, Volume 1059 Folio 240, Volume 1211 Folio 653, Volume 1094

Folio 240 and Volume 1094 Folio 241 of the Register Book of Titles;

6. Costs of all other parties to be paid by Watersports Enterprises Limited, such costs to be taxed if not agreed;

7. Certificate for two counsel granted in respect of each claim."

[4] On 27 October 2008, Watersports Enterprises Limited, filed an appeal against Jamaica Grande Limited (Jamaica Grande), Grande Resort Limited and Urban Development Corporation. On 20 December 2011, the appeal was struck out for want of prosecution. On 10 January 2012, by way of an amended notice of application for court orders, the applicant sought the following reliefs:

"1. That the Appeal be reinstated;

2. [That] time be extended to file Record of Appeal;

3. That the Record of Appeal filed on the 22nd December 2011 to stand; and

4. [That an] injunction granted by the Hon. Justice Harrison to continue until the hearing of the appeal."

[5] On 4 February 2009, Watersports sought and obtained a stay of execution of the judgment pending the hearing of the appeal.

[6] On 13 May 2011, the registrar wrote to the applicant's attorney-at-law, notifying him, of the availability of the transcript of evidence as required by rule 2.5(1) of the Court of Appeal Rules (CAR). By that notice, he was also informed that rule 2.7(3) requires the filing of the record of appeal within 28 days of the receipt of the notice. He was also advised of the necessity of filing skeleton arguments in accordance with

rule 2.6(4) and the filing of written chronology of events pursuant to rule 2.6(5) within 21 days of the notice. A further notification and a subsequent reminder were sent. The applicant's failure to comply with the requisite rules within the specified periods resulted in the appeal being struck out for want of prosecution.

[7] The grounds filed on which the applicant relies are:

> "1. That the Record of Appeal could not be filed before the judge's notes were in hand and these notes were only in hand recently.
>
> 2. That the Record of Appeal is very voluminous and that despite the best efforts, it was difficult to file the Record within the time prescribed by the Rules.
>
> 3. That due to the voluminous nature of the Record a private Company was engaged to do the Record but there were challenges in completing the Record within the required time.
>
> 4. That due to the fact that the Record of Appeal was not filed the Appeal filed by the Appellant was struck out but at the time that the Appeal was struck out the preparation of the Record was in an advanced state and they have now been filed.
>
> 5. That with the Appeal being struck out the Appellant is now exposed and is likely to be evicted without notice by Respondents.
>
> 6. That the Appellant continues to occupy and operate its business on the peninsula and if evicted before the appeal is heard it is likely to ruin its business.
>
> 7. That if the Orders prayed for are granted, there would be no prejudice to the Respondents.
>
> 8. That it is unlikely that the Appellant would cause any further delay or will not comply with Rules with

respect to the timely filing of all documents required for the hearing of the Appeal.

9. That if the matter is not dealt with URGENTLY it is very likely that the Respondents will use the opportunity to immediately evict the Appellant.

10. Pursuant to Part 2.17 of the Court of Appeal Rules, 2002."

[8] An affidavit, sworn by Mr Irvin Wade, an accountant employed to Watersports, was filed on its behalf in support of its application. In paragraphs 9 to 17 he states:

"9. That I am advised by the Appellant's Attorney- at-Law and do verily believe that the Record of Appeal could not be filed before the judge's notes were in hand and I am further advised by the Appellant's Attorney-at-Law and do verily believe that these notes came to the attention of the Appellant's Attorney-at-Law in recent months.

10. That I have been advised by the Appellant's Attorney-at-Law and do verily believe that the Record of Appeal is very voluminous and that despite his best effort he was unable to file the bundle within the time prescribed by the Rules.

11. That I have been further advised by the Attorney-at-Law for the Appellant that due to the voluminous nature of the Record a private Company was engaged to do the bundles but there were challenges in completing the bundles within the required time.

12. That I have been advised by the Attorney-at-Law for the Appellant and I do verily that on the 20th December 2011 due to the fact that the Record of Appeal was not filed the appeal filed by the Appellant was struck out.

13. That it was also my advice from the Attorney-at-Law for the Appellant and I do verily believe that at the

time that the Appeal was struck out the preparation of the Record was in an advanced state and they have now been filed.

14. That with the Appeal being struck out the Appellant is now exposed and is likely to be evicted without notice by Respondents.

15. That the Appellant continues to occupy and operate its business on the peninsula and if evicted before the appeal is heard it is likely to ruin its business.

16. That if the Orders prayed for are granted, there would be no prejudice to the Respondents.

17. That it is unlikely that the Appellant would cause any further delay or will not comply with Rules with respect to the timely filing of all documents required for the hearing of the Appeal."

[9] An affidavit was also filed by Mr Bishop on 23 January 2012, in which he stated that after filing the appeal on 27 October 2008, he made intermittent checks with the registrar of this court concerning the availability of the transcript of the notes of evidence. He stated that he received a letter dated 24 September 2009, indicating that the registry was awaiting the receipt of the transcript of the notes from the Supreme Court. Being cognizant of the fact that the registrar of the court of appeal on occasions encounter difficulty in obtaining certified copies of the transcript, he made enquiries of the registrar of the Supreme Court as to its availability. Subsequently, he spoke to the learned trial judge twice sometime close to the commencement of the Michaelmas term 2011 and on the second occasion, the learned trial judge informed him that the judgment was ready and this he collected approximately three days later. He disclosed that he did not recall receiving a notice from the registrar regarding the availability of

the transcript of the notes of evidence. He further spoke of undergoing difficulty in the preparation of the record.

[10] In an affidavit filed by Mr Malcolm Kerr, managing director of Grande Resort Limited in which he averred that Grande Resort Limited (now known as Sunset Jamaica Grande Resort & Spa) had been purchased from Jamaica Grande approximately seven and a half years ago and more than three years have elapsed since a judgment had been delivered in favour of the respondents. He further stated in paragraphs 11 to 17 as follows:

> "11. During this time the hotel has suffered significant losses caused by the continued occupation of the hotel property by the Appellant.
>
> 12. Sunset Jamaica Grande constructed buildings to facilitate the provision of its own watersports services as well as spa services, but has been unable to make use of these buildings because of the pending appeal and the stay of execution.
>
> 13. Watersports does not pay any user fees to Sunset Jamaica Grande as it used to, pursuant to its agreement with Jamaica Grande Limited, in respect of the use of its property.
>
> 14. Watersports was indebted to Grande Resorts Limited by over J$17,000,000 in respect of the supply of water, electricity and garbage removal and to date has only paid J$2,000,000 of that amount.
>
> 15. The presence of Watersports on the property has severely affected the hotel's business. It was our intention to operate our own watersports facility which would have generated significant revenue for the business.

16. The area from which the activities are carried out is not maintained in an attractive manner. Non-hotel guests who use their services have trespassed on the hotel property and have harassed hotel guests. From time to time Watersports would transport busloads of non-hotel guests to the hotel, open the hotel's gates and allow their patrons to walk through the hotel property, without any prior notice or consultation with the management of the Hotel.

17. Sunset Jamaica Grande Resort & Spa is an all-inclusive hotel and therefore it is very important that we are able to properly secure the premises and control the movement of persons on and off the property. We have been unable to do that in the case of persons who claim to be patrons and/or invitees of Watersports."

[11] Dr Barnett submitted that rule 2.16 of the CAR and rule 26.8 of the Civil Procedure Rules (CPR) are applicable in this case. Admitting that there was culpable delay in the pursuit of the appeal, he argued that in examining the time from which the applicant became aware of the notes of evidence to the date on which the application was made, only a period of three to four months would have elapsed, the delay having emanated from the printing and binding of the record. The facts outlined by Mr Wade and Mr Bishop, he submitted, demonstrate that the applicant has an interest in pursuing his appeal and fault cannot be ascribed to the applicant for failure to comply with the requisite rules. It has been shown, he submitted, that repeated requests for the transcript of the notes of evidence were made by the attorney-at-law having conduct of the matter and he took steps to follow up the matter. Although criticisms have been advanced with respect to the notices issued by the registrar, he argued, this

appeared to have been as a result of administrative default as opposed to negligence on the part of the attorney in responding. Relief has been granted in cases in which there have been periods of inactivity, he argued. He cited the cases of **CVM v Tewarie** SCCA No 46/2003, delivered on 11 May 2005; **Auburn Court Ltd v The Town and Country Planning Tribunal and Others** SCCA No 70/2004 delivered 28 March 2006; **Vendryes v Keane and Another** [2010] JMCA App 12 and **The Attorney General v Keron Matthews** [2001] UKPC 38 in support of his submissions. Harrison JA, he submitted, granted a stay by which it is shown that there is an arguable appeal.

[12] Mr Goffe, for Jamaica Grande, argued that the striking out of the applicant's appeal was not only for its failure to have filed the record of appeal but also for its failure to have filed skeleton arguments, a chronology of events and a core bundle. The omission, he argued, was intentional because Watersports failed to give a good explanation for having not filed the record and the documents in time. The reasons advanced for the delay cannot be regarded good, since, save and except for the notes of evidence, the relevant documents for the record were available from the date of the filing of the appeal, he contended. The record, he argued, has been made to look voluminous, by the inclusion of several unnecessary documents and the applicant did not seek to agree the notes of evidence. The application is one to extend time and not for the relief from sanctions, and the authorities cited by the applicant relate to extension of time, he contended. In any event, the applicant has failed to satisfy the requirements for relief from sanctions and citing the case of **Attorney General v Universal Projects Ltd** [2011] UKPC 37, counsel argued that the failure to offer a good explanation for relief from sanctions is fatal.

[13] The stay of execution, he submitted, gives the applicant the right to remain on the property pending the hearing of the appeal but does not place him in a better position to prosecute the appeal. An applicant who enjoys the benefit of a stay denies the successful litigant the right to reap the fruits of his judgment and has a higher responsibility than ordinarily, he argued.

[14] The delay of over seven months in pursuing the appeal, is similar to that in **Peter Haddad v Donald Silvera** SCCA No 31/2003 delivered on 31 July 2007 where Smith JA speaks to the finality of litigation, in the context of the interest of the public and the parties, whereby the court adopts a more strict approach on time limits on appeal, he argued. The delay, he submitted, is prejudicial to Jamaica Grande, it having sold the property more than eight years ago.

[15] It was Mr Samuda's submission that as demanded by public policy, an appeal should be pursued timeously and in the interests of justice, and there has been stringent application of such a policy by this court, in light of the court's duty to regulate the pace of litigation before it. In this case, public policy has not been served for the following reasons: no explanation has been given for the delay in the prosecution of the appeal between 2008 and 2011; all respondents, in particular, the 2nd respondent would suffer prejudice should the time be extended; there is in existence the applicant's egregious conduct in face of the unchallenged averments by Mr Kerr. Although counsel for the applicant indicated that there is a difference in matters for an extension of time where matters are not heard on the merits, the cases cited by him are distinguishable. The court therefore ought not to entertain a

misconceived application for the purpose of achieving a result which is procedurally incorrect, he argued.

[16] Mr Givans adopted the submissions of Messrs Goffe and Samuda and further submitted that the evidence contained in the affidavits of the applicant is insufficient in furnishing any material which could favourably move the court to exercise its discretion in the applicant's favour.

THE LAW

[17] Rule 2.5 (1)(b) of the CAR states:

> "Upon the notice of appeal being filed (unless rule 2.4 or paragraph (4) applies) the registry must forthwith –
> (a)...
>
> (b) if the appeal is from the Supreme Court –
> (i) arrange for the court below to prepare a certified copy of the record of the proceedings in the court below and a transcript of the notes of evidence and of the judgment; and
>
> (ii) when these are prepared give notice to all parties that copies of the transcript are available from the registrar of the court below on payment of the prescribed fee; or..."

[18] By its application, Watersports seeks an order to reinstate the appeal and an extension of time to comply with the requisite rules of court. It is clear that two remedies have been sought, namely, an application for the reinstatement of the appeal which would be one for relief from sanctions under rule 26.8 of the Civil Procedure Rules (CPR) and an application for extension of time to file the record of appeal,

skeleton arguments and core bundle. Undoubtedly, the court is at liberty to consider the question of relief from sanctions as well as the extension of time. Rule 2.16 is inapplicable, in that it relates to an application to restore an appeal where it is struck out at the time of hearing. In this case, the appeal was struck out prior to a date of hearing.

[19] Rule 1.7 of the CAR accords to the court general powers of management of cases. Rule 1.7 (2) (b) permits the court to extend time for compliance with a rule. It reads:

> "Except where these rules provide otherwise, the court may:
> (a) ...
> (b) 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;..."

[20] Rule 1.13 permits the court to strike out an appeal.

[21] Rule 2.15 (g) of the CAR allows the court to make any incidental decision pending the determination of an appeal or hear an application for permission to appeal.

[22] Rule 1.2 of the Civil Procedure Rules (CPR) mandates the court to give effect to the overriding objective when exercising its powers under rule 1.1 which speaks to the court dealing with cases justly.

[23] Rule 26.8 of the CPR which permits a party to apply for relief from sanction reads:

"(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."

ANALYSIS

[24] Two issues arise for the court's consideration. The first is whether the applicant ought to be granted relief from the sanction of the striking out of his appeal. The second is, if the appeal is restored, whether time should be extended for the filing of the core bundle, record, skeleton arguments and chronology of events.

[25] I will now direct my attention to the question of the reinstatement of the appeal. The fundamental question in this application is whether in view of the delay by Waterports to comply with the rules it ought to be permitted to pursue its appeal. As sanctioned by rule 26.8 of the CPR , in seeking to obtain the requisite relief, an applicant must satisfy three criteria, namely, show that the non compliance is unintentional, provide a plausible excuse for the non compliance and show that generally it has complied with all other relevant rules. The court, in giving consideration to these factors, must be mindful of the conditions prescribed by sub rule 26.8(3) of the CPR.

[26] Rule 1.1 of the CPR, by its mandate, imposes on the court a duty to deal justly with cases. In its quest to do so, the court, is directed by special guidance from rule 1.2(d) of the CPR to ensure that cases are dealt with expeditiously and fairly. What is fair and just in a particular case is a dominant feature in arriving at a decision. Delay engenders injustice, it being inimical to the good governance and the good administration of justice. As a consequence, the focus of the court should be one in which any order made is least likely to generate injustice to any party.

[27] The first issue to be addressed is whether Watersports' lapse is intentional. The question of intention must be examined in light of the reasons profferred for the delay. Accordingly, the intention of the applicant must be viewed against the background of the explanation given for the non compliance in filing the core bundle, skeleton arguments and chronology of events and record of appeal. As prescribed by rule 28.8 (2)(b) of the CPR, a good reason for not complying with the relevant rules of this court is a very important consideration. In obvious cases, the absence of a good reason for the delay is enough to cause the court to refrain from exercising its discretionary powers. In applying rule 26.8, a court will be reluctant to entertain an application where no good reason has been advanced for a party's tardiness in fulfilling the relevant requirements of the rule. Dr Barnett's submissions that the attorney's lapse was due to an administrative default would not assist the attorney in showing a good excuse in not adhering to the rules. In **Attorney General v Universal Projects Ltd** Dyson LJ expressly excludes administrative default as amounting to a good excuse for non compliance with the rules. In that case, Dyson LJ, in speaking to the issue as to what amounts to good reason for non compliance with a rule, said at paragraph 23:

> "First, if the explanation for the breach ie the failure to serve a defence by 13 March connotes real or substantial fault on the part of the Defendant, then it does not have a "good" explanation for the breach. To describe a good explanation as one which "properly" explains how the breach came about simply begs the question of what is a "proper" explanation. Oversight may be excusable in certain circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly if the explanation for the breach is administrative inefficiency."

[28] The cases of **CVM Television Ltd v Fabian Tewarie** and **Auburn Court Ltd v The Town and Country Planning Appeal Tribunal and Others** and **Vendryes v Keane and Another** cited by the applicant are unhelpful, in showing good reason in explaining a delay, to support an application for relief from sanction. Significantly, of these cases, none was decided within the purview of rule 26.8 of the CPR. Each was in respect of an application for extension of time to file documents in circumstances where an appeal was in existence. **CVM Television v Tewarie** related to an application for extension of time to file the skeleton arguments in a pending appeal. In **Auburn Court Ltd v The Town and Country Planning Appeal Tribunal and Others** which also a pending appeal, leave was granted to file skeleton arguments. An extension of time was granted in each case although the reasons for the delay in not complying with the rules were somewhat deficient. **Vendryes v Keane and Another** was also concerned a pending appeal in which time was extended for the filing of skeleton arguments, chronology of events and record of appeal despite a very good reason was not given for the delay in complying with the requisite rules.

[29] **The Attorney General v Keron Matthews** essentially turned on the interpretation, by the Privy Council, of rule 26.7 of the Civil Procedure Rules of Trinidad and Tobago (which is similar to our rule 26.8(2)) and rule 26.7(4)(a)(b)(c) and (d) (which mirrors our 28.8(3)(a)(b)(c) and (d)) as to whether it applied in circumstances where the issue to be determined was whether an application by a defendant to set aside a default judgment under rule 13.3 (which is akin to our rule 13.3) fell within the scope of rule 26.7. It was held that the failure of a defendant to file a defence within the period specified by rule 13.3, did not render him subject to an implied

sanction imposed by the rules. This case may only give support to the applicant to the extent that the court is empowered to extend time.

[30] Now turning to the case under review, was a good reason given for the delay in complying with the rules? Mr Bishop did not recall receiving a notification from the registrar of this court in respect of the outstanding matters and explained that the transcript of the proceedings and the judgment of the court were obtained sometime in the Michaelmas term 2011 as a result of his own industry. He, asserted that on his own initiative, had not only made enquiries of the registrar of the Supreme Court about the notes of evidence but had also spoken to the learned trial judge about the availability of the judgment, following which he received. He disclosed that it was the learned trial judge who informed him that the notes of evidence were available. A further explanation was offered by him, showing that he experienced difficulty in completing the preparation of the record at his office. The record, comprising 10 sets of four volumes, had to be outsourced and the company which had undertaken the job to prepare it also experienced some difficulty in completing it on time. Mr Wade's evidence as to the delay is substantially the same as that of Mr Bishop.

[31] The record of the court shows that the notice, as required by rule 2.5 (b) (ii) of the CAR was sent to Mr Bishop on 13 May 2011. A further notice was sent on 20 June 2011. On 25 July 2011, a reminder was sent. On 31 August 2011, a notice of default was sent. Mr Bishop has not said that he did not receive them. His excuse is that he could not recollect having received the notifications. The records of the court reveal that they were dispatched to his office. It is reasonable to conclude, therefore, that

they all would have been brought to his attention. He has given no reason for failing to file the core bundle, the skeleton arguments and chronology of events in time. Despite this, even if it could be said that the reasons given also relate to the core bundle, skeleton arguments and chronology of events as well as the record, it could not be acknowledged that the excuses given by Watersports for its delay in making its application are plausible and accordingly, acceptable.

[32] The applicant's failure to comply with the rules is clearly due to its attorney-at-law's omission to do that which was required to be done within the time specified by the rules. In the circumstances of this case, this would not avail the applicant, in that, no proper or good reason has been put forward by his attorney-at-law for the disobedience of the relevant rules.

[33] Although the foregoing is sufficient to dispose of the application, the question of prejudice occasioned by delay will also be considered. Watersports is guilty of delay in pursuing the appeal, it having failed to comply with the prescribed rules of court within the specified time. Prejudice is an intrinsic part of the court's determination. It is, in fact, a substantial feature. If the circumstances were such that the application could have been granted, the question for the court would have been, which of the parties is least likely to suffer irreparable harm if the application is granted?

[34] Watersports, through Mr Wade, speaks to it being ruined if the application is refused. There is evidence from Grande Resort Ltd in which its general manager points to it suffering great harm due to the presence of the applicant on the property. He speaks to the 2nd respondent's inability to operate its own watersports facilities despite

the construction of the buildings so to do. As a consequence, it has not been able to obtain revenue from such source. There is also evidence from him that the applicant's customers have persisted in trespassing on the hotel's property and the guests are harassed by them. Each respondent has been prejudiced by being prevented from proceeding with the enforcement of its judgment. Grande Resort Limited would suffer most if the appeal were to be reinstated.

[35] It has often been declared by this court that where time limits are prescribed by the rules a litigant is duty bound to adhere to them. In **Port Services Ltd v Mobay Undersea Tours Ltd and Fireman's Fund Insurance Co**. SCCA No 18/2001, delivered 11 March 2002, Panton JA (as he then was) had this to say:

> "In this country, the behaviour of litigants, and, in many cases, their attorneys-at-law, in disregarding rules of procedure, has reached what may comfortably be described as epidemic proportions. The widespread nature of this behaviour is not seen or experienced these days, I daresay, in those jurisdictions from which precedents are cited with the expectation that they should be followed without question or demur here. ...
>
> For there to be respect for the law, and for there to be the prospect of smooth and speedy dispensation of justice in our country, this Court has to set its face firmly against inordinate and inexcusable delays in complying with rules of procedure. Once there is a situation such as exists in this case, the Court should be very reluctant to be seen to be offering a helping hand to the recalcitrant litigant with a view to giving relief from the consequences of the litigant's own deliberate action or inaction."

[36] In **Golding v Simpson Miller** SCCA No 3/2008 delivered 11 April 2008, Panton P had this to say:

> "Before leaving this matter, I have to remind litigants and their attorneys-at-law that they ignore the Civil Procedure Rules at their peril. The days of paying scant regard to the Rules are over. Those days went out with the 1990s. It will not always be productive to cite authorities from diverse jurisdictions on this point. Those jurisdictions do not necessarily suffer from the problems that we face in our Courts. Ignoring the Rules over the years has been a major factor in the length of time that matters have taken to be disposed of in this country. There can be no return to such times as it is not in the interests of justice for the Courts to permit such laxity."

[37] No good reason has been advanced for Watersports' failure to comply with the rules. The application is refused. Costs are awarded to the respondents.

DUKHARAN JA

[38] I have read in draft the judgment of my sister Harris JA and agree with her reasoning and conclusion. I have nothing further to add.

HIBBERT JA (Ag)

[39] I too have read the draft judgment of Harris JA and agree with her reasoning and conclusion.

ORDER

Application is refused. Costs to the respondents to be taxed if not agreed.