

## BRITISH VIRGIN ISLANDS COURT OF APPEAL

### ***Adam Bilzerian -v- Gerald Lou Weiner and Kathleen Ann Weiner Claim No. SKBHCVAP - 2015/0015***

APPLICATION FOR RELIEF FROM SANCTIONS FOR FAILURE TO COMPLY WITH RULE - RULE 26.8 OF THE CIVIL PROCEDURE RULES 2000 - BALD ASSERTIONS MADE IN AFFIDAVIT IN SUPPORT OF APPLICATION FOR RELIEF FROM SANCTIONS - WHETHER ADEQUATE FOR PURPOSE OF DETERMINING WHETHER CRITERIA SATISFIED FOR GRANT OF RELIEF - RULE 29.11 OF THE CIVIL PROCEDURE RULES 2000 - FAILURE TO FILE WITNESS STATEMENTS IN TIME - EXTENSION OF TIME TO FILE WITNESS STATEMENTS WHETHER LEARNED JUDGE ERRED IN HER ASSESSMENT OF EVIDENCE ON THE APPLICATION FOR EXTENSION

This was an Appeal of the lower Court's refusal to grant relief from sanction under Rule 26.8 (2) caused by the Appellant's late filing of its witness statements, the effect of which was to prevent the Appellant from relying on same. The Court of Appeal found that for an applicant to satisfy the conjunctive requirements of rule 26.8 (2) the evidence must be "*clear, detailed and accurate picture of what caused the failure*" and should delineate the steps taken to remedy the failure. The Court stressed that the applicant bore the burden of producing "*credible and particularised*" evidence as opposed to bald unparticularised assertions.

The Court of Appeal found that the Appellants evidence in the court below consisted predominantly of the latter and that the Learned Judge was right in concluding that that evidence fell short of the requirements for the grant of relief. (*Robin Mark Darby -v- LIAT 1974 Ltd* ANUHCVP2012/0002 (delivered 5 June 2012, unreported) applied; *Prudence Robinson -v- Sagicor General Insurance Inc.* SLUHCVP2013/0009 (delivered 29 September 2014, unreported) applied; *The Treasure Island*

*Company and Another -v- Audubon Holdings Limited et al* BVIHCVP2003/0022 (delivered 20 September 2004, unreported) applied.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.