

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

**ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

Claim Number NEVHCV2020/0060

BETWEEN

PABLO STAPLETON

Claimant

-and-

[1] SHERLON PIERRE

[2] PHEON JONES

Defendants

Appearances:

Eustace D. Nisbett for the Claimant; and
No appearance for the First Defendant

2021: September 27;
November 01.

DECISION

Claimant's application for default judgment against the First Defendant

[1] **PARIAGSINGH, M. (Ag.):** - Before the Court is the Claimant's application filed on June 26, 2021 for judgment in default of an acknowledgment of service against the first defendant. The first defendant has not filed an acknowledgment of service upon being served with the claim

[2] The grant of a default judgment is not the exercise of a judicial discretion. It is an administrative function of the Court. The nature of a default judgment is such that it is not considered a decision of the High Court, even if it is dealt with by a Master, it remains an administrative act, see **Lux Locations Ltd v Yida Zhang, ANUHCVP2020/0028**.

- [3] It is important to appreciate the nature of a default judgment and the need for the procedural requirements to be complied with. The regime set out in the rules for obtaining a default judgment does not provide for an application to be made. It specifically mandates a Form 7 request be filed. Filing an application and a supporting affidavit may be necessary in instances where the terms of the relief to be granted are to be decided by the Court. This however does not relieve the claimant of his obligation to apply in the prescribed form nor does it change the nature of any default judgment regardless of whether it is dealt with by a judicial officer or not.
- [4] This is the third attempt by the claimant to secure a default judgment against the first defendant. The other two attempts were made in the correct form. On March 17, 2021 the Assistant Registrar refused to enter judgment in default of an acknowledgment against the first defendant on the grounds that the claim against the first defendant cannot be dealt with separately from the claim against the second defendant. The Assistant Registrar referred to Rule 12.9 (2)(b) CPR which says inter alia, that the request is to be dealt with at the same time as the Court disposes of the claim against the other defendant. This application which was refused at that time, remains live to be dealt with at the determination of the claim against the second defendant.
- [5] Notwithstanding this, the claimant again applied for judgment in default of a defence against the first defendant. This too was refused on April 22, 2021. The claimant then launched his third attempt by notice of application and supporting affidavit filed on June 29, 2021, the application now before the Court.
- [6] All the conditions necessary for the entry of judgment in default of appearance set out in Part 12 CPR have been satisfied. The issue which arises is whether the court ought to exercise its discretion and enter default judgment against the first defendant at this

stage or whether this application ought to be determined when this claim is determined against the second defendant.

- [7] This is a claim for damages arising out of a motor vehicle accident. At the time of the accident the first defendant was the driver of the motor vehicle which collided with the claimant's vehicle. The second defendant was the registered owner of the vehicle.
- [8] The defence of the second defendant is that the vehicle was sold. The second defendant contends that the vehicle was sold to the first defendant sometime in or about February 2019 when title, custody and control of same passed to the first defendant.
- [9] The second defendant further contends the first defendant was negligent in not updating the records at the Traffic Department. Accordingly, the second defendant denies that at the time of the accident the first defendant was driving with his knowledge or permission or as his servant or agent.
- [10] The issue of the ownership of the vehicle will be germane to the issue of liability in respect of the second defendant. If the second defendant proves the sale, he would have had no interest in the vehicle insurable or otherwise at the time of the accident, see **Presidential Insurance Ltd -v- Twitz & Anor. [2020] UKPC 20.**
- [11] The claimant referred the Court to two decisions of Actie M. (as she then was) in support of his position. **Clouden v Culzac, SVGHCV2011/0466** and **Shearman v Glasgow, SVGHCV2011/0259**. Both these cases dealt with applications to set aside default judgment. In both these cases one of the defendants (the driver in both cases) was not served. The learned Master held that based on the pleaded cases that the issue of liability of the both defendants could not be separated. I adopt the reasoning of the learned Master as to the why it was not possible to separate the claims against the driver and the owner.

[12] In his statement of case, the Claimant pleads that the first defendant was the driver of the vehicle which caused the accident. Particulars of negligence are pleaded against the first defendant and it is specifically pleaded that he did not have a driver's licence and that he breached his statutory duty.

[13] The pleaded case against the second defendant is that he had knowledge and/or gave permission to the first defendant to use the vehicle and as such the first defendant was the agent of the second defendant.

[14] The pleading at paragraphs 18 and 19 of the statement of claim sets out the pleaded relationship between the first and second defendants. It is pleaded that:

18. In all circumstances the First Defendant drove the vehicle PA5703 with the full knowledge and consent of the Second Defendant and/or was an agent or servant of the Second Defendant as the First Defendant was at that time acting under the instructions of the Second Defendant.
19. The Second Defendant was therefore negligent because he owed a duty to the Claimant not to permit or authorize or solicit the First Defendant to drive the vehicle when it was reasonably foreseeable that he would get into an accident because he knew that the First Defendant was incompetent to do so

[15] A complete case is pleaded against the first defendant apart from the case pleaded against the second defendant. If the claimant is permitted to take up default judgment against the first defendant at this stage certain issues may arise in respect of election and estoppel in proceedings against the second defendant. If the claim proceeds to trial against the second defendant and the sale is not proven, then the issue of joint liability/ servant and/or agent may arise. If the second defendant proves the sale, then liability would be established as against the first defendant only.

[16] In my respectful view, the claim against the first and second defendants cannot be separated. This is not a new determination but simply restating what the Assistant Registrar has already communicated to the claimant when his request made in the proper form was refused in March of 2021.

[17] The claimant's request for judgment in default of acknowledgement of service filed on March 17, 2021 which was refused by the Assistant Registrar at that time remains live to be determined at the time this claim is determined against the second defendant.

[18] In the circumstances, the first defendant's application filed on June 29, 2021 is dismissed with no order as to costs.

Alvin Shiva Pariagsingh
Master (Ag.)

By the Court,

M Fleming
Asst Registrar



