

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2014/0334

BETWEEN:

**THE METHODIST CHURCH IN THE CARIBBEAN AND THE
AMERICAS**

Claimant

AND

MARJORIE SWIFT

Defendant

Appearances:

Ms. E. Ann Henry QC for the Claimant

Ms. J. Laurent for the Defendant

2014: November 18
2015: January 13

JUDGEMENT

- [1] **Cottle, J.:** On 18th August, 2014 the defendant filed an application to set aside a judgment obtained by the claimant in default of defence. That judgment had been entered by the court in 24th July, 2014. It was served on the defendant on 13th August, 2014.

[2] The CPR 2000 sets out the rules for applying to set aside a judgment in default. Part 13.3 (1) reads:-

“If Rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant-

- a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
- b) gives a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; and
- c) has a real prospect of successfully defending the claim.

[3] In the present case the defendant has applied to the court as soon as reasonably practicable after finding out that judgment had been entered against her. Having been served with the judgment on Wednesday, the application to set aside was filed the following Monday. In her affidavit in support the defendant advances her explanation for the failure to defend in time. The affidavit is filed by a clerk in the Legal Aid and Advice Centre. The defendant is elderly and infirm. She approached the Legal Aid and Advice Centre for assistance shortly after the claim was served. The Centre is under resourced. The assigned counsel was not able to comply with the deadline for filing a defence. This is said to have been due to inadvertence on the part of counsel. Annexed to the affidavit in support was a draft defence. It reveals that the defendant was contesting the quantum of the claim.

Delay

[4] Hariprashad-Charles J in Earl Hodge v Albion Hodge BVIHCV 2007/00098 reviewed the authorities. At paragraph 14 she said:-

13.3 (1) “In my judgment, the delay of 13 days between service of the judgment and the filing of the application to set aside the default judgment was reasonable. The defendant has therefore satisfied the threshold requirement of CPR13.3 (1) (a).

[5] I am content to accept that this defendant has acted promptly.

Good Explanation

[6] The explanation offered by the defendant or rather by the legal representative of the defendant is remarkable for its brevity. The position is that the demands on the Legal Aid Centre were such that, coupled with inadvertence, the deadline for defending was missed.

[7] Many cases had remarked upon the rigidity of CPR 13.3 (1) in its original form. One example will suffice. Thomas J in Louise Martin v Antigua Commercial Bank ANU HCV 1997/0115 found that the three elements laid down in the rule had to be conjunctively present before any discretion was afforded to a court to set aside a default judgment.

[8] Hariprashad J attempted to mitigate that harshness by giving more weight to the merits of the proposed defence in the Earl Hodge case.

[9] Fortunately there is a new part (2) to the rule.

(2) In any event the court may set aside a judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances.

It now affords the court a discretion in exceptional circumstances. In this case where the defendant was compelled to rely on assistance from the Legal Aid and Advice Centre I conclude it would be unjust to visit her with the consequences of the failure of her counsel.

Real prospect of success

[10] As noted earlier, the thrust of defence consists of a contest about the quantum claimed by the claimant.

[11] That being the case I have arrived at the conclusion that this is a proper case to apply CPR 13.3 (3).

“(3) Where this Rule gives the court power to set aside a judgment, the court may instead vary it.”

Instead of setting aside the judgment I will vary it. I order that judgment be entered for the claimant for an amount to be assessed upon application by the claimant unless agreed by the parties within 7 days. I make no order as to costs of this application.

Brian Cottle
High Court Judge