

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHMT 2013/0431

BETWEEN:

NAZIM BURKE

Claimant

and

IAN EDWARDS

Defendant

Appearances:

Mr. Alban John for Claimant

Mrs. Venescia Francis-Banfield for Defendant

2014: February 13
April 8.

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** The Claimant instituted the present action on the 23rd August, 2013 against the Defendant for general, aggravated and exemplary damages for defamation of character as contained in a statement of broadcast by the Defendant in a radio program called "Hard Talk" which was broadcast on or about the 23rd May, 2013 simultaneously on radio stations known as City Sound FM, SAC FM and Campeche Radio. He also sought injunctive relief stopping the Defendant his servants and/or agents from further publishing, or broadcasting the said defamatory statements, interest and costs.

- [2] The Claim Form and Statement of Claim were served by Levi Benoit, Process Server on the Defendant personally on Saturday 31st August, 2013 at Tivoli, St Andrew's Grenada. There is an affidavit of service of Levi Benoit filed on the 3rd of September, 2013 containing this information.
- [3] The time for the period for the Defendant to file his Acknowledgment of Service was 14 clear days from the Date of Service. Since the documents were filed and served during the long vacation of the Court (CPR 3.5) time for filing the defence only started to run from the 16th September, 2013 (CPR 3.3). The defendant therefore had until 16th September, 2013 to file the Acknowledge of service and 30th September, 2013 to file a Defence. He did not do so.
- [4] On the 8th of October, 2013 the Claimant applied under Rule 12.4 and 12.12 CPR for the Entry of Judgment in Default in favour of the Claimant with damages to be assessed together with interest and costs. This Rule deals with judgment for failure to file Acknowledgement of Service.
- [5] The Registrar has not entered the Request for the Default Judgment.
- [6] On the 31st October 2013, the Defendant applied to the Court for an Order extending time for the filing and serving of the Acknowledgment of Service and Defence or alternatively that the Acknowledgment of Service and the Defence filed on the 31st October, 2013 be deemed properly filed and that the Defendant be relieved from sanction.
- [7] The grounds of the Defendant's application can be summarized as: upon receipt of the Claim Form and Statement of Claim he took them to his then attorney Chancery Chambers, the Acknowledgment of Service was signed on the 12th September, 2013 but never filed, the head of Chancery Chambers, Mr. Dwight Horsford has since been appointed Solicitor General and can no longer represent him, the Defendant was unable to retrieve his documents in a timely manner from his previous attorney and eventually did so on the evening of 29th October, 2013

and he was unable to meet or receive information from his previous attorney concerning his matter.

[8] Before I deal with the Claimant's position, I note that the primary substance of the Defendant's application is premised upon lack of action by his former attorneys. I have said previously in this court and I repeat that where a party chooses to make certain allegations about the conduct of his former attorney, it is only fair that the attorney is notified so he has the opportunity to address the allegation. In my view in the absence of such service this court is unable to determine the veracity of the statements made by the person making the allegations.

[9] The Claimant has opposed the application on the basis that: (a) Rule 12.4 is mandatory and directs the Court Office to enter the Default Judgment once the conditions set out in that rule are satisfied; (b) the overriding objective does not apply since there is a specific rule, 12.4 which governs the procedure to be followed and (c) relief from sanction does not arise since Part 10.2 does not expressly provide a sanction.

[10] I dismiss the Defendant's application filed 31st October, 2013 for the following reasons:

(a) CPR 12.4 is clear and unambiguous. It is mandatory in tone and directs the Court Office at the request of the Claimant to enter judgment for failure to file an Acknowledgement of Service once the conditions in 12.4 are met. In particular I refer to the guidance of Lord Dyson in **AG v Keron Matthews** [2011] UKPC 38 at paragraph 5 he confirms the mandatory tone of the rule when he stated: "Part 12 contains rules in relation to default judgments. It provides that, if requested by the Claimant to do so, the Court Office must enter judgment if the Defendant fails to enter an appearance where the time has so expired (Rule 12.3) and the Defendant fails to file a Defence where the time for doing so has expired (Rule 12.4)."

- (b) The procedure to be followed by the Court Office is specifically provided for in Rule 12.4 therefore the overriding objective cannot be relied on. **David Goldgar and ors v Wycliffe Baird Civ Appeal No. 13 of 2007.**
- (c) The question of relief from sanction does not arise. Again I refer to the learning of Lord Dyson in **Keron Matthews**. At paragraph 16 he explained that “there is no rule which states that, if the Defendant fails to file a Defence within the period specified by the CPR, no Defence may be filed unless the Court permits. The rules do, however, make provision for what the parties may do if the Defendant fails to file a Defence within the prescribed period: Rule 10.3(5) provides that the Defendant may apply for an extension of time and Rule 12.4 provides that if the period for filing a Defence has expired and a Defence not been served, the Court must enter judgment if requested to do so by the Claimant. It is straining the language to say that a sanction is imposed by the rules in such circumstances. At most, it can be said that, if a Defendant fails to file a Defence within the prescribed period and does not apply for an extension of time, he is at risk of a request by the Claimant that Judgment in Default should be entered in his favour. This is not a sanction imposed by the rules. Sanctions imposed by the rules are consequences which the rules themselves explicitly specify and impose.”

[11] I dismiss the NOA filed 31/10/13. The Defendant to pay the Claimant's costs of the application in the sum of \$500.00. The matter is remitted to the Registrar who is directed to enter the judgment in default against the Defendant.

Margaret Y. Mohammed
High Court Judge