

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

SUIT NO. GDAHCV2010/0392

BETWEEN:

SAMUEL LEWIS

CLAIMANT

AND

ALICIA GRIFFITH

DEFENDANT

Appearances:

Ria Marshall of Counsel for the Defendant/Applicant

The Claimant/Respondent absent

4th February 2014

DECISION

- [1] **TAYLOR-ALEXANDER, M:** This matter comes on for the hearing of an application to strike out the claim form and statement of claim filed in these proceedings on the basis that there is a good explanation for the failure to have filed a defence and on the basis of exceptional grounds.
- [2] The claimant Samuel Lewis is a supplier of ready mix concrete and construction support services and alleges he is owed the sum of \$58,021.60 being the balance owed on ready mix concrete sold and delivered to the

defendant during the period July to September 2008, and interest that has accrued on the sum owing to date

- [3] On the 6th September 2010, a claim was filed and the defendant was served on the 15th September 2010, to which the defendant filed nothing such that judgment was entered against her pursuant to a request filed on the 17th November 2011.
- [4] There is no filed evidence of service of the default judgment, but on the 27th of April 2012 the defendant filed an application to set aside the judgment entered on the grounds that her application was made as soon as she became aware of the judgment; that she has a good explanation for not filing an acknowledgment of service and defence; and she has a real prospect of success in her intended defence. A draft defence was exhibited to her application, its pith being that the proper defendant to the action for the recovery of monies for concrete supplied ought to be Building Techniques Company Limited a company of which the claimant is a sole director. The exhibits accompanying the applications were of a notice of directors showing the appointment of Alicia Griffith from March 2006. The defendant also alleges that she has exceptional circumstances although these were not provided. The defendant alleges that she was served with the application to set aside the default judgment on the 24th of April 2012, and the application to set aside the judgment was filed on the 27th April 2012. The defendant explained that she is a lay person and was unaware of the implications of the proceedings filed against her in her own name, moreover she was satisfied that the business transacted if any with the claimant was undertaken by the company and not by her.
- [5] The amended application was served on counsel for the defendant on the 2nd July 2012, to which there has been no response.

- [6] The court's jurisdiction to set aside a judgment regularly entered is under rule 13.3 (1) which allows for the setting aside of a regular judgment where the court is satisfied that the party has applied without delay; there is a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; there is a real prospect of successfully defending the claim, or otherwise the court is satisfied that there are exceptional circumstances for setting aside the default judgment.
- [7] The issue requiring the court's determination independent of a response by the defence, is whether the defendant's deliberate act of not defending the proceedings on the basis that she had a good defence are grounds sufficient to amount to a good explanation or otherwise an exceptional circumstance.

A Good Defence

- [8] Exhibit "**SLI**" supplied by the claimant in support of its claim is an invoice from the claimants addressed to "Building Techniques" requesting payment for the cement supplied. It is quite probable that where a party contracts under a name of a business, such a business may in fact be transacting under any one of a number of acceptable legal personalities, such as a business name/ sole trader, an unincorporated, or an incorporated association, or even a partnership. Often and despite their legal formation, these companies come to be known by abridged versions of their names. It is left to a prudent practitioner upon being engaged to investigate the character of the legal personality, so as to ensure that legal proceedings once instituted are issued according to the manner in which the parties contracted.
- [9] I find that the draft defence filed is reasoned and is one which if established can offer the defendant complete defence to the proceedings filed.

Timing of the Application

- [10] The issue of delay after knowledge of the judgment does not arise in this case as the defendant it appears filed her application within days of becoming aware of the judgment.

Explanation for the delay/ Exceptional circumstances.

- [11] I cannot accept the reasoning proffered as being a reasonable explanation for the delay, nor can be stretched to warrant consideration as an exceptional circumstance. The defendant with knowledge of the proceedings and of the strength of her case, deliberately chose to sit back and do nothing. This is precisely the type of inactivity which the rule is designed to protect a litigant from.

Reasoning

- [12] The purpose of the rule enabling the entry of default judgments is to protect a diligent party where the process of litigation has been halted by an unresponsive party. But the obligation of the court is larger. It is to ensure compliance with what is the sound application of the CPR 2000 while ensuring the overall attainment of a just resolution.
- [13] Despite my findings above in relation to what was offered as the reasons for the delay, I remain convinced that this is a matter where the default judgment entered ought to be set aside. The defence filed as I have earlier asserted is sound and the courts have historically held the view that where merit is shown, the court will not prima facie desire to let a judgment pass on which there has been no proper adjudication See **Evans v Bartlam** [1937] AC 473 at 489. But beyond that, the claimant/respondent took no part in the application despite being served, and he being clearly aware of the implication of the application. In my view the claimant/ respondent's conduct is tantamount to consent to the application filed.
- [14] As such and where as in this case, there has been no opposition to the application brought and the court is of the view that the defence is one of

merit; I can find no justification for preventing the issues from being tried. The application to set aside the default judgment entered on the 17th January 2011 is granted as prayed.

- [15] For the inconvenience caused to the claimant who was diligent in the observance of the rules of procedure, I award his costs on the application in the sum of \$750.00.

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER