

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2011/0298

BETWEEN: JARDE VEARL PIERRE

Claimant/Respondent

AND

KAREEM NEPTUNE

Defendant/Applicant

Appearances:

Mrs. Andra Gokool-Foster for the Claimant
Mr. Horace Fraser for the Defendant

2014: February 20th

DECISION

- [1] **TAYLOR-ALEXANDER, M.:** The claimant has sued the defendant for loss and damage occurring to his vehicle while being driven by the defendant on the 1st June 2009 on the Castries Gros Islet Highway. It is alleged that as a result of the defendant's negligence in driving at an excessive speed, he lost control of the vehicle, so that it flipped and crashed and was rendered irreparable.
- [2] The claim was filed on the 22nd of March 2011, and was served on the defendant on the 17th September 2011. An acknowledgment of service was filed by the defendant on the 27th September 2011, indicating an intention to defend the suit and a defence and counterclaim was filed 38 days after service of the claim on the when a request to agree an extension of time made to the claimant on the 21st

October 2011, was denied. At the time the defence was filed there had not been any request for judgment pursuant to part 12.4 of CPR 2000. According to the court record a request was filed one day after the filing of the defence. Notwithstanding, judgment was entered for the claimant pursuant to the request on the 5th December 2011, forcing the defendant to apply to set the default judgment entered and to deem the defence and counterclaim regularly filed.

[3] The claimant has responded to the application by affidavit, challenging the late filing of the defence without leave as defective and in violation of CPR 2000. She argues that the defence filed ought to have been preferably lodged, until the court on application approved of the filing of the defence. According to her evidence, the record did not reflect a defence filed as of Friday the 21st of October 2011, and further, in conversation had with the defendant's counsel on the 25th of October 2011, he had not alluded to having filed a defence and led the claimant to believe that his defence was in draft form.

[4] The question for ultimate consideration is whether the late filing of a defence before a request for judgment is made, is permitted only by agreement of the parties or on an application to the court for an extension of time.

The Civil Procedure Rules 2000

[5] The provisions of CPR 2000 relevant to the question are as follows:—

- (a) The general rule in CPR 10.3 speaks to the period of filing of a defence as being 28 days after the date of service of the claim form and statement of case (rule 10.3(1));
- (b) Part 26, generally, gives the court power to extend or shorten the time for compliance with any rule, practice direction order or direction of the court, and Part 10 provides that a defendant may apply for an order extending the time for filing a defence.
- (c) CPR 10.2 provides the consequences for not filing a defence and provides that if a defendant fails to file a defence within the period for filing a

defence, judgment for failure to defend may be entered if Part 12 allows it. The provisions of Rule 12.5 are coterminous and are applied when a party requests judgment in default. It provides that, the court office at the request of the claimant must enter judgment for failure to defend if (a) the claimant proves service of the claim form and statement of claim; the period for filing a defence and any extension agreed by the parties or ordered by the court has expired the period for filing a defence has expired and any extension agreed or ordered by the court has expired; the defendant has not filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1 (6); or a defence has not been filed, the court must enter judgment if requested to do so by the claimant.

- [6] The rules make provision for a party to apply for an extension of time to file its defence where it cannot meet the 28 day period, and certainly a party who applies and obtains an extension has the comfort of not having judgment against it even on the expiry of the 28 day period. There is no rule which states that, if the defendant fails to file a defence within the period specified, no defence may be filed unless leave is granted. The onus in that instance is on a claimant to act promptly in seeking judgment where the time for filing a defence has expired, but the practice which is not forbidden by the rules is to allow the late filing of a defence where there has been no request filed. In the current case, when the defence was filed there had been no request for judgment and as such, judgment ought not to have been entered in default in the face of a file defence. The decision in **C.O Williams Construction v Inter Island Dredging** Civil Appeal No.17 of 2011 was considered and **Attorney General v Keron Matthews** [2011] UKPC was considered and applied.

[7] In the circumstances, the defendant's application to set aside the default judgment is granted and I do so on the basis that judgment was irregularly entered. I further award the defendant's costs in the sum of \$750.00.

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER