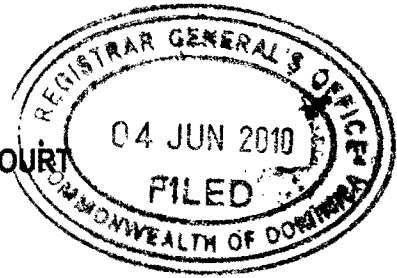


COMMONWEALTH OF DOMINICA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



CLAIM NO DOMHCV2010

BETWEEN:

YOHANNA GEORGE

Respondent/Claimant

AND

**VERNON O'BRIEN
THE ATTORNEY GENERAL OF DOMINICA**

Applicant/Defendants

Before Master Pearletta Lanns
Dated the 2nd June 2010

Appearances

Mrs Kathy Buffong-Royer for Applicants/Defendants
Mrs Dawn Yearwood-Stewart for Respondent/Claimant

ORDER

APPLICATION having been made by the Applicants/Defendants for an Order setting aside the Default judgment entered against them on 9th March 2010; **AND** upon considering the affidavits in support of and in opposition to the Application; **AND** having considered the submissions on behalf of the parties; **AND** the court not being satisfied that the Applicants/Defendants have satisfied the conjunctive requirements of CPR13.3; in particular, the court is not satisfied that in the circumstances of this case, the Applicants/Defendants have applied promptly to set aside the Default Judgment after finding out on 16th March 2010 that Judgment had been entered. The court is of the view that the period 6 weeks between having found out the default judgment had been entered and the filing of the application to set it aside was not reasonable. Secondly the Defendants have not provided a good explanation for failure to file a Defence and have not shown a reasonable prospect of successfully defending the claim.

In arriving at this decision, I have taken cognizance of the **Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Company and ED & F Man Liquid Products Ltd v Patel and Another** which set the standard in relation to reasonable prospects of success. This test has been applied to various decisions of our courts including **Earl Hodge and Albion Hodge** BVIHCV 2007/0098; **Louise Martin v Antigua Commercial Bank** – Antigua and Barbuda Claim No ANUHCV1997/0115; and which interpret CPR 13.3 and CPR 26.8. I have also taken into account **Kenrick Thomas v RBTT Bank Caribbean Ltd** – St Vincent and the Grenadines Civil Appeal No 13 of 2006 delivered 13th October 2005 which mandates that all the criteria in CPR 13.3 must be satisfied. Regard has also been paid to **Ferdinand Frampton v. Ian Pinard et al** – Dominica Civil Appeal No 15 of 2005 which interprets the meaning of the words “only if” set forth in Rule 13.3(1).

THE COURT DOTH THEREFORE ORDER that

- [1] The application by the Applicants/Defendants is refused with costs to the Respondent/Claimant to be assessed if not agreed.

By the Court


Registrar


Appraiser
4/6/10