

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

CLAIM NO. GDAHCV2006/0438

BETWEEN:

THE RESORT MANAGEMENT COMPANY LIMITED

Claimant/Applicant

and

LIBERTY CLUB LIMITED

Defendant/Respondent

Appearances:

Dr. Francis Alexis, Q.C, with him Mr. Anselm Clouden for the Claimant
Ms. Dia C. Forrester for the Defendant

2009: November 17

2010: January 12

February 2

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimant, by way of Claim Form and Statement of Claim filed on 13th September 2006, instituted proceedings against the Defendant for the following relief:

1. The sum of \$140,363.73;
2. Damages for breach of contract;
3. Interest;
4. Such further or other relief as to this Honourable Court seems just.

[2] The Defendant filed an Acknowledgment of Service on 18th September 2006 and thereafter filed a Request for Information on the Statement of Claim dated 21st September 2006.

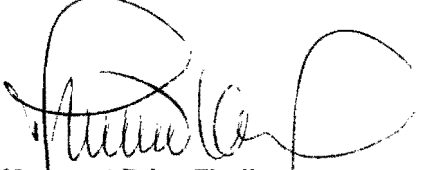
- [3] The Defendant applied to the Court on the 13th October 2006 for an extension of time to file its defence on the ground that it had requested further information which it deemed necessary to prepare its defence in the matter and that the Defendant had written to the Claimant requesting an extension of time for the filing of their defence but had not received a response from the Claimant.
- [4] Some time later in October 2006 the Claimant filed a response to the Defendant's request for further information but did not respond to some of the questions put to them by the Defendant.
- [5] The matter came on for hearing before Master Brian Cottle (as he then was) and the Claimant having failed to appear, the following order was made:
- a) Application dated 13th April 2006 by Defendant is granted;
 - b) The Claimant is to supply the requested information within 14 days of service of the order;
 - c) Should the Claimant fail to provide the requested information the Statement of Claim to be struck out.
- [6] No information having been provided by the Claimant, on 13th September 2007 the Defendant filed a Request for Entry of Judgment pursuant to CPR 26.5 due to the Claimant's non compliance with Master Cottle's order.
- [7] Judgment was duly entered by the Registrar on the 13th September 2006. The Defendant was awarded costs on the default judgment.
- [8] On the 7th January 2009 the Claimant by Notice of Application applied to set aside the default judgment entered on the 30th October 2008. The grounds of the application were that the judgment so entered was irregular, the Claimant had no notice of the case management conference, and that the Claimant had supplied the information requested to the Defendant.

- [9] Cumberbatch, J. on the 6th February 2009 set aside the judgment in default dated 13th September 2007.
- [10] The Defendant thereafter on the 20th February 2009 applied for leave to appeal the order of Cumberbatch, J. setting aside the default judgment.
- [11] That application was heard by Michel, J. (Ag.) on the 19th May 2009, and the learned trial judge refused the application for leave to appeal. The trial judge finding that there did not appear to be a realistic prospect of the Defendant succeeding on an appeal against the decision of Cumberbatch, J.
- [12] Michel, J. in his judgment stated that no information had been provided by the Claimant to the Defendant since the order of Master Cottle. He further stated that as no application for relief from sanction had been made by the Claimant, the Statement of Claim was struck out. Michel, J. further stated that notwithstanding the setting aside of the judgment by Cumberbatch, J., the Defendant need not answer any case the Statement of Claim having been struck out.
- [13] The Claimant applied by way of Notice dated 9th September 2009 for leave to appeal.
- [14] The test as to whether an application for leave to appeal should be granted is whether the appeal has a real prospect of success – **Othniel Sylvester v Faellleseje, a Danish Foundation** Civil Appeal No. 5 of 2005 (St. Vincent & the Grenadines).
- [15] Learned Counsel also referred to the following authorities in their submissions: **Attorney General of Grenada & Ors. v Andy Redhead** Civil Appeal No. 19 of 2007. Edwards, JA. at page 5 of the judgment sets out the threshold that the

applicant has to achieve in order to succeed on an application such as this. She states:

"Applicants seeking permission to appeal must recognize that leave to appeal will only be given where the Court considers that an appeal would have a realistic rather than a fanciful prospect of success or there is some other compelling reason why the appeal should be heard."

- [16] Based on the submissions of both parties and upon review of the authorities, I find that the appeal has a real prospect of success and, accordingly, I will grant the Claimant leave to appeal the decision of Michel, J.



Margaret Price Findlay
High Court Judge