

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

SAINT LUCIA

CLAIM NO. SLUHCV2004/0658

BETWEEN:

VELA SAMUEL

Claimant

and

- (1) ST. LUCIA CHAMBER OF COMMERCE, INDUSTRY
& AGRICULTURE
- (2) BRIAN LOUISY

Defendants

Appearances :

Mrs. L. Faisal for Claimant

Mr. M. Maragh for Defendants

2008: January 22;
February 6.

RULING

- [1] COTTLE, J.: This is an application by the Defendant to have a judgment in default of defence set aside.
- [2] The Claimant filed a claim on 26th August, 2004. It was served on the Defendant on 30th August, 2004. The Defendant filed an Acknowledgment of Service on 9th September, 2004. The Defendant indicated that it had not been properly named, but that it intended to defend the claim. No defence was filed.
- [3] On 8th November, 2004 the Claimant applied for judgment in default. An amended Affidavit of Service was filed on the same date. It evidenced service of the original claim with the name of the Defendant as The St. Lucia Chamber of Commerce.

- [4] The Affidavit of Service itself was headed with the correct name of the Defendant - The St. Lucia Chamber of Commerce Industry and Agriculture.
- [5] The Court Office entered judgment in default of defence on 8th June, 2005.
- [6] Before applying for judgment in default the Claimant filed on 14th September, 2004 an amended Statement of Claim and Claim Form. These were in identical terms of the original documents save that the name of the Defendant had been corrected as indicated on the Acknowledgment of Service. This Claim Form was never served.
- [7] The Defendant has now applied to have the default judgment set aside on the basis that the amended Claim Form and Statement of Claim were never served. Alternatively, they seek to move the Court to act under CPR 2000 Part 13.3 in setting aside the default judgment.

Effect of failure to serve the amended Claim and Statement of Claim

- [8] I do not consider the failure of the Claimant to serve the amended Claim to be of much moment. The Defendant was served with the original documents. The only issue was the full and proper name of the Defendant. There could have been doubt in the mind of the Defendant that a Claim was being made against them. This is demonstrated by the fact that they did not just ignore the claim. They responded by filing an Acknowledgment of Service indicating that they intended to defend.
- [9] At the hearing of the application, Mr. Maragh for the Defendant argued that the Defendant chose not to defend because the claim referred to “a non-judicial entity.” As I indicated, this position is belied by the fact that they did respond. It is also important to emphasize that both the claim and the amended claim are

identical in terms save for the correction to the name of the Defendant as they had indicated in the Acknowledgment of Service.

- [10] To have the judgment set aside under CPR 2000 Part 13 the Defendant must satisfy the Court that the factors which are to be considered persuade the Court to exercise its discretion in favour of the Defendant.
- [11] This Defendant had notice of the judgment by 13th September, 2007 at the latest. The application to set aside was filed on 27th November, 2007. This cannot be described as prompt.
- [12] The reason adduced for the failure to defend is confusing. Mr. Maragh says the Defendant did not defend the amended claim as they had no notice of it. They did not defend the claim filed and served because the name of the Defendant was stated as the St. Lucia Chamber of Commerce and not the St. Lucia Chamber of Commerce, Agriculture and Industry. I do not consider this to be an adequate reason to explain away the failure to defend.
- [13] The draft defence exhibited by the Defendant does disclose a good defence. However, when I consider all the factors of this case, I come to the conclusion that it would not be just to grant the application by the Defendants.
- [14] The application to set aside the judgment in default is refused. Costs of this application to the Claimants to be determined upon the hearing of the assessment of damages.

BRIAN S. COTTLE
HIGH COURT JUDGE