

SAINT LUCIA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Claim No.28/2005

ANDRIA JOSEPH et al

Claimant

VS

MADELINE MITTEE et al

Defendant

Appearances:

Mrs. Shirley Lewis Attorney at Law for Claimant

Mrs. Carol Gedeon Clovis Attorney at Law for Defendant

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2006: MARCH 15
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DECISION

[1] This is an application by the first Defendant to set aside a Default judgment made on 11th July, 2005.

[2] The application is made pursuant to Part 13.3 CPR which provides for the setting aside of a judgment in three instances.

- a) where the application is made as soon as reasonably practicably after finding out that judgment had been entered.
- b) a good explanation for the failure to file an acknowledgement or defence
- c) The defendant has a real prospect of successfully defending the case.

[3] The chronology of events in this case is instructive.

[4] The claim was filed on 14th January 2005 and served on first Defendant on 10th February, 2005.

[5] There was no further action in this matter until 6th July, 2005 when a request for default judgment was made. That request was granted on 11th July 2005 and filed on 4th August 2005.

[6] On 22nd November 2005 attorney at law for the Defendant sought and was granted on 8th December leave to be removed from the record as Attorney at Law for Defendants.

[7] New Counsel was appointed on 16th December 2005 and this application to set aside article filed on 6th February, 2006.

[8] There is evidence that the first Defendant is unable to properly understand the nature of the proceedings. There was however ostensibly an Attorney at law acting on her behalf.

- [9] If this Attorney at law neglected or refused to act, the Claimant should not be penalized for this.
- [10] If the court were inclined to accept that the first Defendant should be allowed to succeed on the first and second limbs of Part 13.3, there still remains the question of whether there is a real prospect of successfully defending the claim.
- [11] I am of the opinion that there is not, given the nature of the claim and the evidence adduced.
- [12] In addition to her denial of any involvement in what she refers to as “the problem with people living on the land, the Defendant she seeks to proffer a medical certificate to suggest that she was not present at the relevant time.
- [13] The medical certificate speaks to 5:00 p.m. on 28th December 2004. The Claimant states that it was at 4:00 p.m.
- [14] In her purported witness statement, she speaks of watching the eviction in her daughter’s presence.
- [15] In light of the above, I do not believe that the Defendant would be able to successfully defend the claim.

[16 I will dismiss the application to set aside and reaffirm the judgment in default.

SANDRA MASON Q.C.

HIGH COURT JUDGE