

SAINT LUCIA

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

Claim No. SLUHCV 944/2004

BETWEEN:

JANE ST. CROIX

Claimant

VS

SHELL ANTILLES AND GUIANAS LTD.,

Defendant

Appearances:

Ms. P. Francis Attorney at law for Claimant

Mr. Mark Maragh Attorney for Defendant

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2005: December, 9

2006: January, 16
.....

DECISION

MASON J:

[1] Whether or not to set aside a judgment is in the discretion of the Court.

- [2] The court in exercising this decision must take into account the requirements of Part 13.3 of the Criminal Procedure Rules 2000, which speak to the application by the Defendant as soon as reasonably practicable after entry of the judgment, the necessity for the Defendant to give a good explanation for failure to file a defence and on the question whether or not there is a real prospect of success on the part of the Defendant in defending the claim.
- [3] Added to these requirements is the need to consider the overriding objective and whether the Claimant would be prejudiced by the setting aside of the judgment or more aptly to what extent the Claimant would be prejudiced.
- [3] I do accept that there has been some delay on the part of the Defendant in this matter but at the same time, I am of the opinion the delay has not been of such unavoidable length to severely prejudice the Claimant.
- [4] I perused the correspondence which was submitted and noted that while the discussions regarding arbitration were on going, the Claimant sought to safeguard her interest by entering judgment and quite rightly so.
- [5] However, I also noted that while there was some progress towards arbitration there never was any conclusion.
- [6] I am therefore of the opinion that since the parties by Clause 30 of their agreement have accepted to submit to arbitration in circumstances such as those which grounded the claim, I may invoke Part 1 Criminal Procedures Rules – overriding objectives so that the

parties may continue to arbitration as agreed by Clause 30 of the agreement between them.

[7] Having said that I am mindful of the concern, the allegation by Counsel for the Claimant that Counsel for the Defendant as Attorney at law for a certain institution is not before the court to genuinely set aside the judgment but to look after the interests of that institution. An allegation which Counsel for the Defendant categorically denies.

[8] In light of this and in accordance with Part 26(1) (3) Civil Procedure Rules the Court will impose the condition that Counsel of the Defendant can do nothing to prejudice the Claimant or jeopardize her chances in these circumstances.

[9] I would wish to state that in coming to the decision to set aside this judgment, I am persuaded that the allegation of theft by the employees of the Claimant is an issue which can only be determined through the giving of evidence and cross examination of the same.

[10] Accordingly the Order of the Court is that:

- 1) the Defendant judgment filed on 30th March 2005 is hereby set aside
- 2) within 30 days the parties will proceed to arbitration under the clause 30 of the agreement 1st September, 1992
- 3) the report of the arbitration is to be submitted to the Court on or before 3rd March, 2006

- 4) costs of this application to Claimant in the sum of \$1,500.00
- 5) matter adjourned to 3rd March, 2006.

SANDRA MASON

High Court Judge