

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO: 209 OF 1999

BETWEEN:

Adolphus Grant

Plaintiff

and

Cynthia Williams

Defendant

Appearances:

Mr. Grahame Bollers for the Applicant/Defendant

Mr. Emery W. Robertson for the Plaintiff/Respondent

2001: February, 23, March 2

RULING

- [1] **WEBSTER, J (acting):** This is an application to set aside the judgment in default of the defence entered against the defendant on June 9, 2000. The application is supported by the affidavit of the defendant sworn on January 12, 2001.
- [2] The action was commenced on April 23, 1999 by a generally indorsed Writ of Summons claiming various reliefs relating to an oral agreement for the sale of property at Broadroad, Bequia. The Statement of Claim was also filed on April 23, 1999.
- [3] The Writ and Statement of Claim were served on the Defendant on July 23, 1999. On August 31, 1999 the Defendant entered an appearance through her Solicitor, Mr. Grahame Bollers.
- [4] No defence was filed and on December 2, 1999 the plaintiff's solicitor wrote to the defendant's solicitor asking him to file a defence within fourteen (14) days. There was no response to this request. On May 15, 2000 the Plaintiff applied for judgment in default of

defence against the Defendant pursuant to Order 19 Rule 7 (1) of the Rules of the Supreme Court. The application was heard by Mr. Justice Mitchell, Q.C. on June 9, 2000 in presence of Counsel for the Plaintiff and the Defendant. The Learned Judge ordered that judgment be entered for the plaintiff in terms of the order settled by the Court and entered on October 4, 2000.

[5] The Defendant's application seeks to set aside the judgment on the ground that the Defendant has a good defence to the plaintiff's claim. Additionally, Mr. Bollers urged on the Court at the hearing in Chambers that the judgment was entered irregularly and should be set aside *ex debito justitiae* .

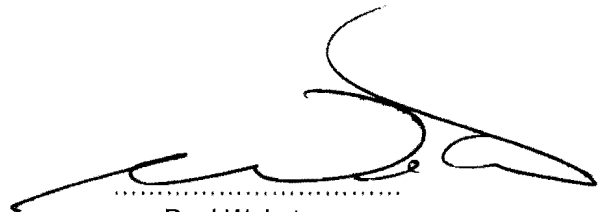
[6] Dealing with the second ground first, the claim includes reliefs falling under Order 19 Rule 7, namely: specific performance and declarations. The Plaintiff was therefore not entitled to enter judgment in a default of defence under Rules 2 to 6 unless he specifically abandoned his claims under Rule 7. However, the Plaintiff's application was to the Court under Rule 7 and the plaintiff was not required to abandon any part of his claim before pursuing his application for judgment. He was entitled to apply to the court under Rule 7, and it was then for the court to give judgment as the plaintiff was entitled on his Statement of Claim. I therefore find that the judgment was entered regularly.

[7] The defendant has also asked the court to exercise discretion in her favour and set aside the default judgement. The approach that the court should take in matters like this is admirably set out in the Ruling of Mr Justice Cenac in Suit No 334 of 1996 – **Carlyle Dougan v the News Limited and others** and is worth repeating:

"The power to set aside a judgment obtained in default of defence is given to the Court under 19 r 9 of the Rules of the Supreme Court. It is a power entrusted to the discretion of the Court. There are however guidelines laid down which the Court should follow in the exercise of that discretion. One such guideline is that where the judgment was obtained regularly, there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a

prima facie defence. The principle therefore, as expressed in **Evans V. Bartley (1937) 2 ALL ER 646**, obviously is that, unless and until the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure."

- [8] The Defendant's affidavit discloses a defence to the plaintiff's claim which goes to the identity of the party who made the contract, and the contract price. I am satisfied that the affidavit shows that the Defendant has a *prima facie* defence to the Plaintiff's claim.
- [9] The defendant has accounted for the delay in making this application. I therefore grant the application and set aside the default judgment. The Defendant must file her defence within fourteen (14) days after March 1, 2001.
- [10] The Defendant will pay the costs of this application in any event. Payment is to be made within fourteen (14) days of the issue of the Taxing Master's Certificate.



Paul Webster
High Court Judge [Ag.]