

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 300 OF 2001

BETWEEN:

1. DENNIS O. POSELEY
2. JEFF LEWIS
(TRUSTEES OF SIERRA FOUNDATION MANAGEMENT)

Claimant

and

MARINER INTERNATIONAL BANK LIMITED

Defendant

Appearances: Mr. Stanley K. John for the claimant
Mr. Joseph A. Delves for the defendant

2001: October 05
:

JUDGMENT

ALLEYNE J.

[1] The claimant filed his claim form (Form 1) in this matter on July 17, 2001. In the Notice to the defendant forming part of the claim form the defendant is informed

“If you do not complete the form of acknowledgement of service served on you with this Claim Form and deliver or sent (*sic*) it to the court office (address below) so that they receive it within FOURTEEN/TWENTY ONE days of service of this Claim Form on you, the claimant will be entitled to apply to have judgment entered against you.”

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Level 3: Press ALT 3.....
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Judgment Normal: Press ALT N.....
Judgment Quotations: Press ALT Q

- [2] This claim form, issued in Saint Vincent and the Grenadines for service in that State, was not varied by the striking of the words "TWENTY ONE days" in the notice, as provided by R. 3.10(2), and the defendant says that this may have had the effect of misleading the defendant as to the time within which an acknowledgement of service was to be filed.
- [3] In addition, the statement of claim did not include a certificate of truth in accordance with R. 8.7(5) and 3.12, nor did it identify or have annexed to it any documents such as are required in appropriate cases by R. 8.7(3). It is apparent, from the affidavit and exhibits thereto filed by the claimant on the same day as the issue of the claim form, in support of an application made without notice under R. 11.8(2), that the claimant was in fact relying on certain documents as necessary to the case.
- [4] On July 18, 2001, the claimant served on the defendant the claim form, the notice of application and affidavit mentioned in the foregoing paragraph, the form of acknowledgment of service, and the order made on the aforementioned application. Pursuant to Request for Entry of Judgment in Default filed on August 3, 2001, 15 days after service [see R. 3.2(2) & (3)], judgment in default of acknowledgment of service was entered on August 15, 2001. This judgment was served on the defendant on August 27.
- [5] On September 14, 2001, the defendant filed a notice of application for permission to file an affidavit making certain disclosures in compliance with the order made without notice on July 18, 2001, and on September 25, 2001, filed a further notice, this time of an application to set aside the judgment for failure to file acknowledgment of service. There were several grounds on which this application was made, but I considered only grounds 3, 4, and 5, as possibly meritorious, and confine my consideration to these grounds. They are stated as follows:

"3. The defendant was specifically given 14 or 28 days (in fact it was 14 or 21 days) to file the acknowledgment of service but the default judgment

was entered after the expiration of 14 days but before the expiration of 28 days and the judgment is therefore irregular.

4. The claim form did not identify or have annexed thereto copies of documents which are necessary to the claimant (*sic*) case and the judgment is therefore irregular.

5. The claim form did not include a certificate of truth as required by the Civil Procedure Rules 2000 and the judgment is therefore irregular.

[6] As to the first of the above grounds, although the application for judgment was filed 15 days after service, judgment was not in fact signed until 27 days after service, and the judgment, in this respect, is regular and unimpeachable.

[7] Rule 13.2 (1)(a) is to the effect that the court **must** set aside a default judgment entered for failure to file an acknowledgment of service if any of the conditions in R. 12.4 was not satisfied.

[8] Rule 12.4(a) requires proof of service of the claim form and statement of claim. In my view, this requires that the claim form and statement of claim must be regular and must comply with the essential requirements of the relevant Rules. Rule 8.7 requires, as a mandatory requirement, that the claim form **must** identify or have annexed to it a copy of any document which the claimant considers necessary to his or her case, and further that the statement of claim **must** include a certificate of truth in accordance with R. 3.12. Neither of these conditions was complied with in this case.

[9] Learned Counsel for the claimant/respondent pointed out that the relevant documents on which he relies are annexed to the affidavit filed in support of the application for an injunction, filed on the same day as the claim form. I do not agree that this satisfies the requirement of R. 8.7(3). Counsel also pointed out that a certificate of truth was filed. However this was not done until October 3, 2001, and does not satisfy the requirements of R.8.7(5) and 3.12.

[10] Learned Counsel for the applicant/defendant drew the court's attention to the text of **The Civil Procedure Rules in Action** Chapter 11 paragraph B(i) on the statement of truth. The text emphasises the three very important aims of the statement of truth; first that the pleadings process and the attendant clarification of issues should be taken much more seriously than heretofore; second, that the statement of case should be expressed in simpler terms and should concentrate on the facts rather than on the making of technical pleas, such that the party, whose pleading it is, can understand and sensibly verify it; and third, that in certain circumstances the verified statement of case can be used as evidence of the matters it contains. The text goes on to make the point that to sign such a statement without an honest belief in the truth of the matters verified is a contempt of court. The certificate of truth is thus not a mere formality but a vital element in the process of the claim, and must not be treated lightly.

[11] The Civil Procedure Rules 1998 (England) contains R. 13.2 which is *in pari materia* with R. 13.2(1) of CPR 2000. the White Book 2000, in considering this Rule, says

"The court **must** set aside the wrongly entered judgment in the three situations specified in the rule. It should be noted that the decision in **Faircharm Investments Limited v Citibank International plc.** Times, February 20, 1998, CA would appear to no longer be able to support an argument against setting aside an irregular judgment as the word "must" is used in the new rule."

[12] I think I am bound by this principle, and have no discretion in the matter. I therefore order that the judgment entered against the applicant/defendant for failure to file acknowledgment of service be set aside, that leave be granted to the applicant/defendant to file an acknowledgment of service within 7 days, that leave be granted to the claimant to file a certificate of truth and the documents on which he intends to rely, and that the filing thereof as hereinbefore acknowledged be deemed to be compliance with this order. Leave is granted to the applicant/defendant to file a defence within 14 days. In the circumstances, I make no order as to costs.

Brian G.K. Alleyne
High Court Judge

Comment [BA2]: AT THE END OF JUDGMENT - after last paragraph, leave 4 clear lines and then type name of judge, right justified, bold and initial caps, press ENTER, and type the words "High Court Judge", right justified, initial caps