THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2004/0293

BETWEEN:

SANDRA GEORGE

Claimant

and

CLEMENT SAMUEL and MEGAN SAMUEL-FIELDS
(as Executors and Trustees of the Estate of CHARLESWORTH SAMUEL, deceased, who was Executor of the Estate of KATHLEEN SPENCER, deceased)

Defendants

Appearances:

Ms. Kathleen Bennett for the Claimant
Ms. Megan Samuel-Fields for the Defendants

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2010: November 11
December 13

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JUDGMENT

[1] **MICHEL, J.:** By Notice of Application filed on 18th August 2010 the Defendants, Clement Samuel and Megan-Samuel-Fields, applied to the Court for an order that the Default Judgment filed in this case on [12th] April 2010 be set aside and that the Defendants be at liberty to file a defence to the Claimant's claim within seven days.

[2] By Affidavit in Reply filed on 14th October 2010 on behalf of the Claimant, Sandra George, the Claimant challenged the Defendants' entitlement to have the Default Judgment set aside on the basis that the Default Judgment was regularly obtained and the Defendants have failed to satisfy the conjunctive requirements of Rule 13.3 (1) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (the CPR).

[3] The matter came before the Court on 15th October 2010 whereupon application was made viva voce on behalf of the Defendants for leave to file a draft defence and to respond to the Affidavit in Reply filed on behalf of the Claimant the previous day. The Defendants had not exhibited with their affidavit in support of the application to set aside the Default Judgment a draft of their proposed defence, as is required by Rule 13.4 (3) of the CPR. The application for leave to file the draft defence was opposed by Counsel for the Claimant.

[4] The Court directed both parties to file written submissions on the Defendants' application to be given leave to file a draft defence to append to his application to set aside the Default Judgment and addressing as well the Defendants' application to set aside the Default Judgment. Hearing of the applications was set for 11th November 2010.

[5] On 29th October 2010 written submissions were filed on behalf of the Defendants in support of their applications and the case of **Marble Point Energy Ltd. v Multiperils International Inc.**[1] was cited as a judicial authority in support of the submissions. On 9th November 2010 a written submission was filed on behalf of the Claimant, opposing the Defendants' applications, and the cases of **Kenrick Thomas v RBTT Bank Caribbean Limited**[2] and **Sven Frisell v Hodges Bay Estate Ltd**[3] were cited as judicial authorities.

[6] At the hearing of the applications on 11th November 2010 Counsel on behalf of both the Claimant and the Defendants indicated that the parties would rely on their written submissions. Counsel for the Claimant was asked by the Court why there were two

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[1] BVI Claim No. 238 of 2006
[2] St. Vincent and the Grenadines Civil Appeal No. 3 of 2005
[3] Antigua and Barbuda Claim No. ANUHCV 2010/0233

judgments in default of acknowledgement of service in the same case, to which she responded that there was nothing in the rules which prohibits this and that the Claimant had satisfied the conditions of Rule 12.4 of the CPR.

[7] Having considered the matter, this Court takes the view that there may be nothing in the rules which expressly prohibits a party from entering judgment in default of acknowledgement of service on a claim twice, or any number of times for that matter, but the second or all of the default judgments after the first would be invalid. As is stated in Halsbury's Laws of England, Fourth Edition Reissue, Volume 37 at paragraph 1225: "When judgment has been given in a claim ... the cause of action in respect of which it was given is merged in the judgment and its place is taken by the rights created by the judgment, so that a second claim may not be brought on that cause of action." To the words quoted from Halsbury's one could add "nor could a second judgment be entered on the same claim."

[8] The fact is that on the 9th day of June 2005 the Claimant in this case entered Judgment in Default of Acknowledgement of Service against the Defendant in this case in respect of the claim made in the Claim Form and Statement of Claim filed on 15th July 2004. Then on the 12th day of April 2010 the Claimant in this case purported to enter Judgment in Default of Acknowledgement of Service against the Defendants in this case in respect of the claim made in the Claim Form and Statement of Claim filed on 15th July 2004. The fact that the person named as Defendant in the 2005 Default Judgment is different from the persons named as Defendant in the 2010 Default Judgment is of no consequence, because the Defendants (properly so called) in 2010 are merely the executors of the now-deceased Defendant of 2005 substituted by the Court to replace the deceased. The evidence is that after Master Mathurin had on 20th October 2009 ordered the substitution of Clement Samuel and Megan Samuel-Fields as the Defendants in the matter, the Defendants were served in February 2010 with the Order of the Master and with copies of the Judgment in Default of Acknowledgement of Service dated 9th June 2005. Then on 12th April 2010 a further request for entry of judgment in default was filed by the Claimant, with no evidence of service of this request on the Defendants, and a second Judgment in Default of

Acknowledgement of Service was entered on that day. What is that the Defendants were supposed to have acknowledged service of in default of which judgment was entered against them, when what they were served with is an order substituting them as Defendants and a Judgment in Default of Acknowledgement of Service entered on 9th June 2005?

[9] In the circumstances, there was no claim form and statement of claim that the Claimant had served on the Defendants which the Defendants had failed to acknowledge in default of which judgment was entered against them, as provided for in Rule 12.4 of the CPR. The only claim form and statement of claim in this case were served on the original defendant, who had judgment in default entered against him for his failure to acknowledge the service thereof. When Clement Samuel and Megan Samuel-Fields were substituted as defendants in this case (as executors and trustees of the estate of the original defendant) they became liable to having the Judgment in Default of Acknowledgement of Service of 9th June 2005 enforced against them, not to having another Judgment in Default of Acknowledgement of Service entered against them in respect of the same claim. If they had then attempted to file an Acknowledgement of Service of the Claim Form and Statement of Claim (even though they were not served on them) their attempt to do so would have been declined by the Registry on the basis that there was already a Judgment in Default of Acknowledgement of Service of the aforesaid Claim Form and Statement of Claim following a request by the Claimant. The Registry would have been required to decline to file the Acknowledgement of Service by virtue of Rule 9.3 (4) of the CPR.

[10] The Judgment in Default of Acknowledgement of Service dated 12th April 2010 is accordingly a nullity and is struck out by the Court.

[11] No leave can be granted though to the Defendants to file a defence to the Claimant's claim, because the claim has already resulted in a judgment dated 9th June 2005, which judgment is still subsisting and no application has been made to interfere with it.

[12] No order is made as to costs.