

SAINT LUCIA

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

CLAIM NO: SLUHCV 2006/0397

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED formerly  
BARCLAYS BANK Plc.

Claimant

AND

- (1) BRANDS INCORPORATED (ST. LUCIA)
- (2) JOAN MARQUIS
- (3) JOANNA SALTON
- (4) PHILIP MARQUIS

Defendants

Appearances:

Ms. Clemar Hippolyte for the Claimant

Mr. Dexter Theodore for the Second and Third Defendants

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2011: February 2<sup>nd</sup>.  
May 4<sup>th</sup>  
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**RULING**

- [1] **WILKINSON J.:** On 16<sup>th</sup> May 2006, the Claimant filed a claim form and statement of claim claiming against the Defendants jointly and severally 2 sums (1) three hundred and seventy-nine thousand, two hundred and five dollars and twenty-five cents (\$379,205.25), and (2) six hundred and forty-nine thousand, three hundred and four dollars and twenty-six cents (\$649,304.26), together with interest at the rate of 12 percent on both sums from 6<sup>th</sup> January 2004, to the date of payment or any other interest rate as the court deems fit, costs, and other relief. The total stated as being claimed was one million, thirty-one thousand, four hundred and twenty-nine thousand dollars and fifty-one cents (\$1,031,429.51).

- [2] On 31<sup>st</sup> May 2006, the Second Defendant filed an Acknowledgment of Service which she completed at 24<sup>th</sup> May 2006, and wherein she stated (a) that she had received the claim form and statement of claim in this suit between the 16<sup>th</sup> – 17<sup>th</sup> May 2006, (b) her name was correctly stated in the claim form, (c) she did not intend to defend the claim, (d) she did not admit to the whole claim, (e) she admitted to part of the claim, being about eight hundred and fifty thousand dollars (\$850,000.00) including claim SLUHCV 2006/0383.<sup>1</sup>
- [3] On 31<sup>st</sup> May 2006, the Third Defendant filed an Acknowledgment of Service which she completed at 24<sup>th</sup> May 2006, and wherein she stated (a) that she had received the claim form and statement of claim in this suit between the 16<sup>th</sup> – 17<sup>th</sup> May 2006, (b) her name was correctly stated in the claim form, (c) she did not intend to defend the claim, (d) she did not admit to the whole claim, (e) she admitted to part of the claim, being eight hundred and fifty thousand dollars (\$850,000.00) including claim SLUHCV 2006/0383.
- [4] At 15<sup>th</sup> March 2007, the Claimant filed a request for entry of judgment in default of defence application against First Defendant. At 8<sup>th</sup> November 2007, the Registrar entered judgment in default of defence as follows:
- “NO DEFENCE having been filed by the Defendants herein, it is this day adjudged that the Defendants do pay to the Claimant the sum of EC\$1,425,053.33 together with interest at the daily sums of \$124.67 and \$213.47 on the respective amounts claimed from 14<sup>th</sup> March 2007 to the date of payment.”
- [5] At 1<sup>st</sup> April 2010, Ms. Cynthia C.F. Combie Martyr filed a notice of appointment of legal practitioner pursuant to CPR 2000 Part. 63.3 and therein she stated that she had been appointed to act as legal practitioner for the First, Second and Third Defendants, the Fourth Defendant having passed away on the 25<sup>th</sup> August 2005.
- [6] At 13<sup>th</sup> April 2010, Ms. Combie Martyr filed an amended notice of appointment of legal practitioner and therein she stated that she had been appointed to act as legal practitioner for only the

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<sup>1</sup> SLUHCV 2006/0383 First Caribbean International Bank (Barbados) Limited v. (1) Universal Brands Inv. (2) Joan Marquis (3) Joanna Salton, (4) Philip Marquis for \$58,928.90 plus court fees, and costs for a total sum of \$61,348.90.

Applicant, Mrs. Carmen Marquis in the matter. Mrs. Carmen Marquis was the wife of the deceased Fourth Defendant, Mr. Philip Marquis.

[7] At 13<sup>th</sup> April 2010, the Applicant, Mrs. Carmen Marquis filed an application seeking the following orders:

- (1) That the default judgment dated 8<sup>th</sup> November 2007, and registered at the Registry of Deeds and Mortgages in Volume 160A No. 196555 be set aside;
- (2) That the Court do regularize the proceedings and give directions as to the future or further conduct of the matter as it deems fit.
- (3) That any order as regards the Second and Third Defendants in particular, or any further order as to the Court seems just to be made.
- (4) That the Applicant be granted her costs.

There were grounds set out in the application and it was supported by affidavit. In brief the matters set out in the application and deposed to in the affidavit of Mrs. Carmen Marquis stated the Second and Third Defendants were her daughter and granddaughter respectively, the Fourth Defendant was her deceased husband, and he had passed away at 26<sup>th</sup> August 2005, which was prior to the suit being filed. She further stated that the First and Fourth Defendants were not served because of the death of the Fourth Defendant. She also said that it was at the request of her daughter, the Second Defendant, and granddaughter, the Third Defendant, that herself and her deceased husband, the Fourth Defendant, agreed to act as sureties for loans for a business operated by her daughter and granddaughter. At the time, when herself and her deceased husband, the Fourth Defendant, agreed to act as sureties, she was aware that the Second Defendant was under severe stress due to financial problems. She was informed that the default judgment entered 8<sup>th</sup> November 2007, was irregular because even though the request for default judgment was against the First Defendant only, the Court had entered default judgment against all the Defendants and this included those not served with the proceedings.

[8] At 16<sup>th</sup> June 2010, an order was made setting aside the default judgment against all the Defendants and costs in the sum of seven hundred and fifty dollars (\$750.00) was awarded to the applicant, Mrs. Carmen Marquis.

[9] At 16<sup>th</sup> June 2010, the Claimant filed a request for entry of judgment in default of acknowledgment of service against the First Defendant in the sum of one million, four hundred and twenty-five thousand, and eighty-six dollars and thirty-three cents (\$1,425,086.33), and on the same day filed a request for entry of judgment in default of defence against the Second and Third Defendants for the identical sum of one million, four hundred and twenty-five thousand, eighty-six dollars and thirty-three cents (\$1,425,086.33).

[10] On 22<sup>nd</sup> June 2010, Mr. Dexter Theodore filed a notice of appointment of legal practitioner and therein stated that he had been appointed to act as legal practitioner for the Second and Third Defendants in the matter.

[11] At 26<sup>th</sup> January 2011, the Claimant filed a discontinuance against the deceased, Fourth Defendant.

#### **The Second and Third Defendants' application**

[12] On 24<sup>th</sup> June 2010, the Second and Third Defendants filed an application seeking an order for permission to amend their acknowledgements of service filed 31<sup>st</sup> May 2006, and for an order granting an extension of time of 3 months from the date of the order within which to file and serve their defence. The grounds of the application were (a) the acknowledgements of service filed 31<sup>st</sup> May 2006, were irregular and it was unclear and uncertain as to the amount of the debt actually admitted in respect of the claim and so the acknowledgment of service could not be allowed to stand as the acknowledgment of service in the claim, (b) the Second and Third Defendants had a good defence with a reasonable chance or prospect of success, (c) the default judgment filed in the claim and registered in Volume 160A Number 196555 was set aside by the Court on 16<sup>th</sup> June 2010, and no Request for Default Judgment had been filed by the Claimant, (this was not correct) and (d) failure to allow the Second and Third Defendants to file and serve a defence would result in a grave injustice for them and it was in the interest of justice and in the furtherance of the overriding objective to allow them to file their defence.

[13] The joint affidavit of the Second and Third Defendants in support of their application said they were the Second and Third Defendants in 2 suits, the present suit and in **Suit SLUHCV 2006/0383 First Caribbean International Bank (Barbados) Limited v. (1) Universal Brands Inv. (2) Joan Marquis (3) Joanna Salton (4) Philip Marquis**. Both suits were served on them between 16<sup>th</sup> and 17<sup>th</sup> May 2006. At the time of service of the suits, they were unable to afford to retain the services

of counsel and it was without the benefit of counsel that they completed the acknowledgment of service and filed them at 31<sup>st</sup> May 2006. On receiving notice that there was to be a status hearing before the Master of both claims on 16<sup>th</sup> February 2007, they approached Ms. Kim St. Rose, explained their financial situation, and she agreed to represent them at the status hearing only. Ms. St. Rose was never formally on record as their legal practitioner. At the hearing before the Master, Counsel for the Claimant admitted that the Claimant had become aware that Mr. Philip Marquis, the Fourth Defendant in both suits was deceased and the Master then stated that both claims could not be proceeded with as filed. The Master also upon reviewing the Second and Third Defendants acknowledgment of service in both suits dealt with the matters as if they were consolidated and an order was made that the Claimant was to file the necessary documents for furtherance of the claim by 9<sup>th</sup> March 2007. Both suits were then adjourned to 16<sup>th</sup> March 2007. At the hearing of 16<sup>th</sup> March 2007, the Second and Third Defendants were informed by Counsel, Ms. Kim St. Rose that the Claimant had failed to comply with the Master's order and so the Master ordered that both matters be removed from the Court's list. They on that occasion left the Court with the view that additional documents would have to be filed by the Claimant in order for the Claimant to properly pursue its claim against all the Defendants. At 16<sup>th</sup> March 2007, while before the Master, they were unaware that the Claimant had actually filed earlier, that is on 15<sup>th</sup> March 2007, in both suits, a request for default judgment against the First Defendant and which application subsequently ended with the Claimant obtaining a default judgment against all of the Defendants in both suits. The default judgment in the suit before the Court was set aside (on application of Mrs. Carmen Marquis).

- [14] After consultation with their Counsel, they are now informed that their answers in the acknowledgment of service at question 9 where they stated: "*admit about eight hundred and fifty thousand dollars (\$850,000.00) including claim 2006/0393*" is flawed, irregular, and unclear and uncertain as to the amount actually admitted in respect of both claims and as such ought not to be allowed to stand as the acknowledgment of service in this claim. They believed that they have a good defence with a reasonable prospect of success and in the circumstances wished to amend their acknowledgment of service clause 6 to read "Yes" they intended to defend the claim, and delete the entire answer at clause 9 where they said "admit about eight hundred and fifty thousand dollars (\$850,000.00) including SLUHCV 2006/0383".

[15] The Second and Third Defendants exhibited a joint draft defence which denied the sums claimed, denied that any formal demand was made for the sums claimed, denied that they signed a guarantee for an unlimited amount and said that the unlimited guarantee was not enforceable under the laws of Saint Lucia, and stated that it was the duty of the Claimant and an obligatory requirement precedent to execution of any guarantee that the Claimant take all steps necessary to satisfy itself that the Defendants had received independent legal advice on matters of content, nature, consequences and risks of executing a guarantee, and stated that the Defendants were induced to execute the guarantee.

### **The Claimant's response**

[16] The Claimant filed on 22<sup>nd</sup> October 2010, an affidavit in response which was deposed to by Ms. Adriana Thomas. She recited therein the earlier observations about the admissions made in the acknowledgment of service filed by the Second and Third Defendants. She further stated that prior to issuance of the suit, there was an agreement between the Claimant and the Defendants whereby it was agreed that the Defendants would pay the Claimant the sum of eight hundred and fifty thousand dollars (\$850,000.00) by 17<sup>th</sup> August 2005, in full and final settlement of all indebtedness with the Bank. The Defendants failed to honour the agreement. That upon receipt of the claim form, the Defendants contacted the Claimant and sought an extension of time to make the payment and the Claimant extended the time to 31<sup>st</sup> May 2006. The Claimant believed that it was against this background that the Second and Third Defendants filed the acknowledgment of service making the particular admissions. She was advised and believed that the Second and Third Defendants having admitted part of the claim in their acknowledgment of service they were then required to file a defence in relation to the disputed sum (\$181,429.51) pursuant to the Civil Procedure Rules 2000 Rule 9.5(2), and they were informed of this requirement by Form 1A attached and served with the claim form. The acknowledgment of service appeared on the face of it to be properly completed and duly signed by the Second and Third Defendants and they had clearly indicated therein that they did not intend to defend the claim and did not file a defence. Any discrepancy as to the amount of the debt could have been resolved by a defence being filed. Between 18<sup>th</sup> May 2006, when the Second and Third Defendants were served, and 15 March 2007, when the Claimant first filed its request for default judgment<sup>2</sup>, the Second and Third Defendants did

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<sup>2</sup> The order made on this request was set aside.

not take the opportunity to file a defence or apply to the Court for an order to amend their acknowledgment of service. At the hearing on 16<sup>th</sup> February 2007, the Claimant did confirm to the Master that the Fourth Defendant was deceased, and was required to take further action pursuant to the Civil Procedure Rules 2000 Part 21 in order to proceed against the Fourth Defendant. However, there was no action required before the Claimant could continue proceedings against the Second and Third Defendants. The Claimant was of the view that since the Second and Third Defendants had counsel before the Master they ought to have been aware that the Claimant could continue the proceedings against them.

[17] Ms. Thomas further deposed that even after the default judgment was entered on 8<sup>th</sup> November 2007, and served on the Second and Third Defendants, they did not apply to have it set aside and seek leave to file their defences. She was aware that after the default judgment of 8<sup>th</sup> November 2007, had been set aside on 16<sup>th</sup> June 2010, the Claimant had filed a request for entry of judgment in default of acknowledgment of service against the First Defendant, and a request for entry of judgment in default of defence against the Second and Third Defendants. The Claimant believed that having proved service of the claim against the First, Second and Third Defendants, it was entitled to the default judgments sought.

[18] With respect to the draft defence exhibited by the Second and Third Defendants, she described it as fanciful and stated that there had been formal demand at 25<sup>th</sup> March 2002, and it was served at the post office box address provided, further the demand was acknowledged by correspondence dated 2<sup>nd</sup> April 2002, from the Second and Third Defendants. The guarantee was signed at May 2000, and it had been recommended that the Second and Third Defendants seek independent legal advice but they expressly declined to do so and willingly and knowingly signed the guarantee. The Second and Third Defendants had not made their application promptly and had not offered a satisfactory explanation for failure to comply with the Civil Procedure Rules requiring them to file a defence within a specified time.

[19] Further delay she said would be a grave injustice to the Claimant it being some 4 years since the claim had been filed and the Claimant was no closer to recovering any money.

[20] **Issues:**

1. Whether pursuant to CPR 2000 rule 21.7 the Claimant could take no further steps in the proceedings against all the Defendants or only the Fourth Defendant.
2. Whether the Claimant could make separate requests for 2 default judgments in the manner that it has, and which if both were granted could result in (a) more than one judgment in the same suit, (b) in effect could see a duplication of the sum claimed, and (c) expose the Defendants to enforcement proceedings of a sum greater than the sum claimed because of the duplication of judgments.
3. Whether there was delay by the Second and Third Defendants in making their applications to (a) amend their acknowledgment of service and (b) seek an extension of time to file their defence.

**Law:**

[21] The Civil Procedure Rules 2000 provides:

#### **Contents of acknowledgment of service**

9.5 (1) A defendant acknowledging service –

(a) may state in the acknowledgment of service that all or part of the claim is admitted;

(b) ...

(c) who admits all or part of a claim for a specified sum of money –

May file with the acknowledgment of service –

(i) details of the defendant's financial circumstances; and

(ii) proposals for payment of any sums admitted;

(d) who admits part of the claim under paragraph (a) – must state the amount admitted.

(2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence. (My emphasis)

#### **Admission of part – request for time to pay**

12.6(1) This rule deals with the situation where the –

(a) defendant is an individual who has admitted liability to pay either –

(i) a specified sum towards a claim for an unspecified sum of money; or

(ii) part only of a claim for a specified sum:

(b) defendant has not filed a defence, and

(c) claimant does not accept the sum admitted.

(2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for –

(a) the whole amount of the claim for a specified sum together with interest and fixed costs under rule 65.4; or

(b) if the claim is for an unspecified sum – the payment of any amount to be decided by the court.

(3) If the defendant has requested time to pay, that request must be dealt with, if the claim is for –

(a) a specified sum – in accordance with rules 14.9 and 14.10 or 14.11;

(b) an unspecified sum – when damages are assessed in accordance with rule 16.3.

#### ... Making an admission

14.1 (1) A party may admit the truth of the whole or any part of any other party's case.

(2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.

(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.

(4) The defendant may do this in accordance with the following rules –

(a) rule 14.6 (admission of whole of claim for specified sum of money);

(b) rule 14.7 (admission of part of claim for money only); or ...

#### 14.7 Admission of part of claim for money only

14.7 This rule applies where the –

(a) only remedy which the claimant is seeking is payment of money;

(b) defendant admits a specified –

(i) sum of money; or

(ii) proportion of a claim for an unspecified sum of money;

In the acknowledgment of service or defence; and

(c) defendant has filed a defence as to the amount not admitted.

(2) The court office must serve a notice on the claimant requiring the claimant to file a notice stating that the –

(a) amount or proportion admitted is in satisfaction of the claim is accepted; or

(b) proceedings are to continue.

(3) The claimant must –

(a) file the notice under paragraph (2); and

(b) serve a copy on the defendant;

within 14 days after service of the court's notice.

(4) If the claimant does not file the notice within 14 days after service of the court's notice –

(a) the claim is stayed until the notice is filed; and

(b) any party may apply for the stay to be lifted.

(5) If the defendant has not requested time to pay under rule 14.9, the claimant may file a request for judgment in Form 7 for the amount admitted, interest and fixed costs and may specify the –

(a) date on which the judgment debt is to be paid; or

(b) time and rate at which it is to be paid by instalments.

(6) The court office must enter judgment in accordance with the request.

(7) If the claimant gives notice of acceptance of the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgment for that proportion of an amount to be decided by the court and costs.

(8) If the claimant files notice under paragraph (2) that the claim is to continue, the court office must fix a date, time and place for a case management conference.

**Proceedings against estate of deceased person**

21.7 (1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.

(2) ...

(3) The court may make such an order on or without an application.

(4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.

[22] CPR 2000 is silent on the issue of whether or not leave is required to amend an acknowledgement of service and so in this regard the Court is to be guided the decision in HCVAP 2008/037 [1] Richard Frederick [2] Lucas Frederick v. [1] Comptroller of Customs [2] Attorney General wherein George-Creque J.A said:

"[41] In my view, the silence of CPR 2000 must be treated as an inadvertent omission as it could not be intended to lead to such undesirable result. I agree with counsel for the appellants that this silence creates a lacuna in our procedure which must be cured by invoking section 11 of the **Eastern Caribbean Supreme Court (Saint Lucia) Act** and importing into our rules the relevant provision of the UK rules governing withdrawal of an acknowledgment of service. The court has sanctioned this approach to CPR in **Christenbury Eye Centre et al v. First Fidelity Trust Limited et al**<sup>3</sup>. Accordingly, an acknowledgment of service once filed, may not be withdrawn without the court's permission."

[23] The UK CPR PD 10 provides:

**"General**

5.4 An acknowledgment of service may be amended or withdrawn only with the permission of the court."

## Findings

[24] The starting point is the filing of the suit with the deceased Fourth Defendant as a party and the issue arising of whether pursuant to CPR 2000 rule 21.7 (4) the Claimant was barred from continuing proceedings against all the Defendants or only the deceased Fourth Defendant.

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<sup>3</sup> HCVAP2007/014 (St. Christopher and Nevis – unreported)

- [25] To this Court, the simple answer must be that the Claimant is barred from continuing proceedings against all of the Defendants because firstly, the rule does not qualify or dissect or dismember its application so as to say the Claimant cannot continue proceedings only in relation to the deceased party but can continue proceedings against any other party, and secondly, should the court continue with proceedings at the behest of the Claimant against the other Defendants it could very well find itself rendering a decision which impacts the unrepresented deceased party's estate. Clearly that would be an injustice. While it could be true that some deceased parties estates may not be impacted by the Claimant pushing for continuance of proceedings against other parties, until the rule qualifies its application, this Court is of the view that rule 21.7(4) applies to all the parties in the suit and so the Claimant cannot proceed until there is the appointment of a representative of the Deceased or as happened in this suit, the Claimant discontinues its claim against the Deceased.
- [26] At the time when the Claimant filed this suit on 16<sup>th</sup> May 2006, the Fourth Defendant was already deceased. Indeed the Fourth Defendant died at 26<sup>th</sup> August 2005. It is beyond doubt that it was the Claimant's responsibility to know the status of the Defendants before filing suit. As this Court sees it, the Claimant could not continue proceedings from as early as when it filed the suit at 16<sup>th</sup> May 2006, since rule 21.7(4) would apply forthwith to the circumstances of the Fourth Defendant and the status quo was to remain until 26<sup>th</sup> January 2011 when the Claimant discontinued its claim against the Deceased.
- [27] While rule 21.7(4) says the Claimant may take no further steps in the proceedings, it does not say that Second and Third Defendants in the suit may take no action. Having not stated outright that the proceedings are stayed (a common enough provision<sup>4</sup>) thus barring further action by both the claimant and other defendants, it appears to the Court that the Second and Third Defendants could so far as possible continue to act in the proceedings. In the instant case that would have meant filing an acknowledgment of service, filing a defence and or application. No doubt the matter would be stopped at this juncture because pursuant to rule 21.7(4) the Claimant could not respond. The Second and Third Defendants did file an acknowledgment of service each and though they both admitted to owing a sum less than the sum claimed they never filed a defence for the disputed sum

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<sup>4</sup> See CPR 2000 rule 14.7 (4) (a); rule 23.3 (3); rule 24.5 (a) and rule 35.11 (1)

pursuant to rule 9.5(2) or asked for time to pay and so but for the Claimant being barred by rule 21.7(4) it could have pursued judgment pursuant to rule 12.6(2)(a).

[28] Presuming that the Court is wrong in its determination of rule 21.7 (4), there is the second issue of the 2 requests for default judgments filed by the Claimant. As it stands the 2 separate requests filed the same date 16<sup>th</sup> June, 2010 both seek judgment in identical sums of one million, four hundred and twenty-five thousand, eighty-six dollars and thirty-three cents (\$1,425,086.33) each, and so if for a moment both requests were successful, then the Claimant would secure 2 judgments for identical sums in 1 claim. In this instance, while the Claimant would be entitled, if successful in its request to a judgment of one million, four hundred and twenty-five thousand, eighty six dollars and thirty-three cents (\$1,425,086.33), on obtaining 2 judgments if successful, the Claimant would have secured for itself under the 2 judgments a sum totaling two million, eight thousand fifty thousand, one hundred and seventy-two dollars and sixty-six cents (\$2,850,172.66). These are judgments which would be enforceable.

[29] Clearly the Claimant's 2 requests for identical judgments in default is an abuse of process and cannot stand. Since, even if, the Court was wrong in its determination of rule 21.7(4) and the Claimant was entitled to continue proceedings against the Second and Third Defendants, the 2 requests for judgments in default could not stand and it not for the Court to choose which request must be pursued, the request for judgment in default against the First Defendant, and the request for default judgment against Second and Third Defendant must be struck out and are both struck out.

[30] The Court having ruled as it has on both the interpretation of rule 21.7(4) and the 2 request for judgment in default, the Court now looks at the Second and Third Defendants' application to (a) amend their acknowledgments of service, and (b) extension of time to file their defence. As stated prior, this Court has ruled that the Claimant was not at liberty to continue proceedings against any of the parties while the deceased Fourth Defendant was still an unrepresented party in the suit but that the Second and Third Defendants could have acted, no doubt in circumscribed circumstances.

[31] The Claimant said that the Second and Third Defendants were informed by way of prescribed notes served on them that they must defend in regard to the sum not admitted. Form 1A Notes for Defendant states:

## "Notes for Defendant

....

## WHAT YOU CAN DO

You can

A...

C. Admit part of the claim and defend the rest

If you would like to do this you must:

- Complete the form of acknowledgment of service stating how much you admit and return it to the court office so that they receive it within 14/21 days of the date on which you receive this form AND complete the form of defence as under section A above
- You may also: –
- Pay the amount that you admit direct to the claimant OR apply to pay that sum by instalments. If so you should follow the procedure indicated under B."

[32] The Second and Third Defendants state that due to lack of financial resources they completed and filed the acknowledgment of service themselves and held the belief from the hearings before Master that the action was stayed. It is not this Court's view that the Master's order prevented the Second and Third Defendants from say filing their defence or making the very applications before the Court. The Master's order at 16<sup>th</sup> February 2007 read:

" IT IS HEREBY ORDERED  
Claimant to file necessary documents for the furtherance of the claim 9/3/07.  
Adjourned 16/3/07"

The order at 16<sup>th</sup> March 2007 read:

"IT IS HEREBY ORDERED  
Matter taken off List".

It is still a truism that ignorance of the law is no excuse.

- [33] The Court therefore finds that the Second and Third Defendants though armed with Form 1A Notes to Defendant, which described clearly what they had to do, they failed to act, and so there was undue delay.
- [34] The admission by the Second and Third Defendants in their acknowledgment of service and which admissions seeks to speak to 2 suits, the Court believes that had the Second and Third Defendant done as required, filed a defence contesting the sum denied, that the issue would have been resolved. Indeed by the filing of a defence the Second and Third Defendants would have triggered rule 14.7(2) whereby the Court Office would have been bound to send to the Claimant a notice inquiring whether they accepted the sum offered or wished to continue with proceedings. Further it is not unheard of for a party to set up one scenario in an acknowledgment of service and with greater clarity coming with time to "shift gears" so to speak in a defence. Unfortunately, a party's lack of financial resources does not stop the "wheels" of the Court from rolling.
- [35] Nonetheless, given the Claimant's own undue delay of more than four and one half (4 1/2) years in acting in this matter as regards the Fourth Defendant, and then compounding the situation by abusing the process by the filing of 2 identical requests for judgment in default which if they were successful could see the Claimant making unfair gain in the suit, the Court is hard pressed in all circumstances to find that the Second and Third Defendants who were without Counsel were in any better position to act more promptly in the proceedings and in particular with their applications for leave to amend their acknowledgment of service and an extension of time to file their defence. The Court will therefore grant the Second and Third Defendants leave to amend their acknowledgments of service, and an extension of time to file their defence since the Claimant has only seen it fit as of 26<sup>th</sup> January 2011, to put itself in the position of being able to take steps in the proceedings.

**Order:**

1. The request for entry of judgment in default of appearance filed 16<sup>th</sup> June 2010, against the First Defendant is struck out.
2. The request for entry of judgment in default of defence filed 16<sup>th</sup> June 2010, against the Second and Third Defendants is struck out.

3. The Second and Third Defendants are granted leave to amend their acknowledgment of service filed on 31<sup>st</sup> May 2006, within 14 days of the making of this order.
4. The Second and Third Defendants are granted leave to file their defence within 21 days of the making of this order.
5. No costs is ordered.

Rosalyn E. Wilkinson

High Court Judge