

COMMONWEALTH OF DOMINICA
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO DOMHCV2010/0068

BETWEEN:

TROY LOUIS

Claimant

AND

[1] CONSTABLE GLENDON SAMUEL
[2] THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
Defendants

Appearances:

Mr Stephen Isidore for Claimant
Ms Tameka Hyacinth of the Chambers of the Attorney
General for the Defendants

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2011: February 10: October 17
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Decision

- [1] **LANNS, M:** This is an application by the Defendants under CPR 13.3 to have a default judgment entered against them on 26th April 2010, set aside. The application was filed on 1st June 2010 and is supported by an affidavit sworn by Ms Sherma Dalrymple of the Chambers of the second named Defendant. The application is opposed.
- [2] The claim is for damages for personal injuries sustained and consequential loss or damages suffered as a result of the negligent driving of the first named Defendant on 18th October 2010.
- [3] The filings show that the Claim Form, Statement of Claim and other documents were served personally on both Defendants on 18th March 2010.

- [4] An Acknowledgement of Service was duly filed on behalf of the Defendants on 1st April 2010 wherein the Defendants indicated that they did not admit any part of the claim and that they intend to defend the claim.
- [5] The Defence should have been filed by 15th April 2010, but no Defence was filed by the Defendants on that date. Thus, on 26th April 2010, the Claimant requested and obtained Judgment in Default of Acknowledgement of Service and /or Defence for special damages in the sum of \$4,581.00 and general damages and costs to be assessed.
- [6] The filings show that the first named Defendant was personally served with a copy of the judgment on 7th May 2010. The second Defendant was served on 10th May 2010, by leaving a copy of the Judgment with Ms Ann-Marie Joseph, Secretary to the second Defendant
- [7] On 1st June 2010, a Notice of application to set aside the default Judgment and for an extension of time within which to file a Defence was filed on behalf of the Defendants. A copy of the proposed Defence was exhibited.
- [8] Both parties filed written submissions and on 30th June 2009, when the applications came on for hearing, both parties addressed the court.
- [9] Before considering the application, under rule 13.3 I should point out certain irregularities which I have observed from a perusal of the documents filed:
- (a) Whilst there is a Rule 9.3 (1) Notice on file informing that an acknowledgement of service had been filed, it appears from the request for judgment that the Claimant was not so informed, or that he failed to take appropriate steps, before filing the request for judgment, to confirm whether or not the Defendant had acknowledged service. I say this because the request which was filed on 26th April 2010 was for judgment in default of acknowledgement of service and

defence, when an acknowledgement of service had been filed since 6th April 2010.

- (b) The Registrar failed to ascertain whether or not an Acknowledgement of Service was filed, within the time specified by the Rules; and as such he erroneously entered judgment in default of "acknowledgement of service and/or defence" instead of Judgment in default of Defence.

Here is the Default Judgment:

"No acknowledgement of service and/or defence having been entered by the Defendants herein, it is this day adjudged that the Defendants do pay the Claimant special damages in the sum of \$4,581.00.

"IT IS FURTHER ADJUDGED that general damages and costs are to be assessed by a Judge or Master as the case may be."

"Dated 26th April 2010"

Registrar"

- (c) The Registrar failed to appreciate that the claim was for specified as well as unspecified sums of money and that in such a case the judgment should have been entered for an amount to be decided by the court.
- (d) Additionally, the Registrar failed to appreciate the definition of "claim for specified sum of money" set out in Rule 2.4, and as such, erroneously entered judgment for payment of the sum of \$ \$4,581.00, for special damages, although neither the claim form nor statement of claim was accompanied by any receipted bills evidencing the \$4,581.00 for which judgment was entered.

Bases for setting aside default judgment

- [10] Where a Defendant can establish that the correct procedures have not been followed in obtaining judgment, the Defendant can have judgment set aside as of right without the requirement of establishing a Defence to the Claimant's claim. Here the court may set aside the judgment on or without an application (Rule 13.2).
- [11] I feel deep sympathy for the Claimant who has sustained serious injuries. However, I am of the view that the errors outlined above (in particular in paragraph [9] (c) and (d) above) are substantial errors warranting the setting aside of the Default judgment for irregularity under Rule 13.2.
- [12] In the circumstances, the judgment in default entered on 26th April 2010 be and the same is hereby set aside on ground of irregularity. The Defendant is granted leave to file and serve a Defence within 7 days of today's date, failing which judgment will be entered for the Claimant in an amount to be decided by the court upon assessment. All further proceedings shall be in accordance with the CPR 2000.
- [13] The point on which the default judgment is set aside was not taken by the Defendants. Additionally, considering that the errors were mainly administrative errors, there shall be no order as to costs.
- [14] Order accordingly.
- [15] Having ruled as I have, it is not necessary for me to consider the applications by the Defendants under CPR 13.3.



Pearletta E. Lanns
Pearletta E. Lanns
Master