

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

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2012/0531

BETWEEN:

OBM DEVELOPMENT COMPANY LIMITED

Claimant

AND

STANFORD DEVELOPMENT COMPANY LIMITED

Defendant

Before:

Master Charlesworth Tabor (Ag.)

Appearances:

Mr. Septimus Rhudd with Mr. Jermaine Rhudd for the Claimant
Miss Kema Benjamin for the Defendant

.....
2012: December 11
..... 2013 January 28

REASONS FOR RULING

- [1] **TABOR, M (Ag.):** This is an application to set aside a judgment in default of defence which came before me on 11th December, 2012. After hearing oral arguments from counsel on both sides, I dismissed the application to set aside the default judgment and made an order to that effect.
- [2] On 28th January, 2013 I received correspondence from the Court of Appeal in which Her Ladyship, the Honourable Madam Louise Blenman, Justice of Appeal, on 22nd January, 2013 directed that reasons for the decision for dismissing the application to set aside the default judgment be provided.
- [3] The claimant on 1st August, 2012 filed a claim against the defendant for the sum of US\$1,345,208.43 being the balance due to the claimant under a contract for architectural and construction management services rendered by the claimant to the defendant.

[4] On 8th August, 2012 the defendant filed an acknowledgment of service. Nothing else transpired in this matter until 10th October, 2012 when the defendant filed an application and affidavit in support seeking the following order:

- (1) The claimant do within 14 days give security for the defendant's costs pursuant to CPR 24.2.
- (2) That until such security is given by the claimant all further proceedings in this matter be stayed.
- (3) The costs of this application to be in the cause.

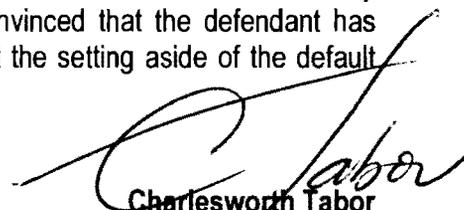
This application was heard before the Honourable Justice Pearletta Lanns in Chambers on 9th November, 2012 and the following order was given:

- (1) The applicant/defendant is granted leave to file and serve an affidavit in response to the claimant's affidavit in reply filed on 6th November, 2012 by 19th November, 2012;
- (2) Parties are to file brief submissions and legal authorities in support of application by 19th November, 2012; and
- (3) Hearing of the application adjourned to 14th December, 2012.

[5] On 29th October, 2012 the claimant filed an application for judgment in default of defence. This application went before the Registrar but was not granted immediately, since there was an issue as to whether it could be granted in light of the pending application for security for costs that was before the Court. Subsequently, the Registrar granted the application and judgment in default of defence was entered for the claimant.

[6] On 19th November, 2012 the defendant was served with the default judgment and on 21st November, 2012 the defendant filed an application to have the judgment in default of defence entered on 29th October, 2012 be set aside. The hearing of this application came before me on 11th December, 2012 and I dismissed the application after hearing oral arguments of both counsel. My reason for dismissing the application was grounded in the fact that rule 13.2 of the CPR did not apply and the defendant failed to satisfy all of the requirements stipulated in rule 13.3 (1) and (2).

[7] With respect to rule 13.3 (1)(a), while the defendant applied rather expeditiously to have the default judgment set aside after finding out that judgment had been entered; I am not convinced that the defendant provided a good explanation for the failure to file a defence as required by 13.3 (1)(b) or that there is a real prospect that the claim can be successfully defended as required by 13.3 (1)(c). Also, I am not convinced that the defendant has shown any exceptional circumstances that would warrant the setting aside of the default judgment as required by 13.3 (2).


Charlesworth Tabor
Master (Ag.)
28th January, 2013