

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT & THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2011/0259

BETWEEN:

ISULA SHEARMAN

Claimant

and

**[1] DEVON GLASGOW
[2] PETER CAMPBELL**

Defendants

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Mr. Joseph Delves for the Claimant

2013: November 22;
2014: January 9

JUDGMENT

[1] **ACTIE, M [AG.]:** This is a matter for setting aside of a default judgment pursuant to CPR 13. 2.

[2] By claim form with statement of claim filed on 20th June 2011 together with an amended statement of claim, the claimant claims against the defendants for damages arising out of a vehicular accident.

- [3] The claimant was injured on 27th September 2010 when the motor vehicle she was driving was struck in the rear by a passenger van driven by the first defendant. The vehicle was owned by the second defendant.
- [4] Mr. Rodwell Alexander a bailiff of the high court deposed to two affidavits of personal service of the claim form, acknowledgment of service and amended claim form on the second named defendant.
- [5] Both affidavits were defective as they failed to comply with all the requirements of **CPR 2000** Part 5.5.
- [6] The claimant by application filed on 18th November 2011 made a request for entry of judgment in default against the second defendant.
- [7] The Registrar by order dated 18th November 2012 granted judgment in default of defence in the following terms: "*No defence having been filed by the second named defendant the defendants to pay an amount to be decided by the court on assessment pursuant to part 12.10(1)(b)*".
- [8] The claimant by notice of application filed on 31st July 2013 applied and the Court gave directions for the assessment of damages.
- [9] Upon further review it was discovered that the claim form, amended claim form and statement of claim were never served on the first defendant.

THE LAW

- [10] CPR 12.5 provides the conditions to be satisfied for entry of default judgment for failure to defend the claim. Proof of service of the claim form must be established before the court can grant judgment in default of defence.

CPR 12.5(1) states:-

"The court office at the request of the claimant must enter judgment for failure to defend if:-

- (a) (i) the claimant proves service of the claim form and statement of claim; or
- (b)”

[11] The court must be satisfied that there has been proof of valid service when an application for default judgment is made. In the absence of valid service of the claim a claimant is not entitled to judgment in default of appearance or defence.

[12] **CPR 2000** 12.9 provides for default of judgment against more than one defendants.

“(1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one or two or more defendants and proceed with the claim against the other defendants.

(2) If a claimant applies for a default judgment against one of two or more defendants then if the claim:

(a) can be dealt with separately from the claim against the other defendants:-

- (i) the court may enter judgment against that defendant; and
- (ii) the claimant can continue proceedings against the other defendants, or

(b) cannot be dealt with separately from the claim against the other defendants, the court –

- (i) may not enter judgment against that defendant; and
- (ii) must deal with the application at the same time as it disposes of the claim against the other defendants.”

[13] The Court may enter judgment in default against one defendant where the claim is against more than one defendant but only if the claim can be dealt with separately from the claim against the other defendants. The claim herein is for damages in negligence against the driver of a motor vehicle owned by the second defendant. The action against the second defendant, the owner of the vehicle, rests on the liability of the driver, the first defendant. The first defendant who is the main tortfeasor has not been given an opportunity to give his version of facts either by admission or filing of a defence. The claim therefore cannot be separated in the

circumstances. Further the Registrar does not have jurisdiction to determine whether the claim can be dealt with separately in a claim where there is more than one defendant. Whereas Rule 12.4 and Rule 12.5 state that the "**Court Office**"(my emphasis) at the request of the claimant must enter judgment for failure to file an acknowledgment of service or failure to defend respectively. The language in Rule 12.9 is dissimilar to Rule 12.4 and Rule 12.5 and states that "**The Court**" may enter a judgment against one of two or more defendants if the claim can be dealt with separately. "**The Court**" in such an instance means a Judge of the High Court or a Master in Chambers but does not include the Registrar.

[14] The claimant having failed to serve the first defendant, the main tortfeasor, is now seeking to enforce damages against the second defendant. The entry of judgment in default by the Registrar against the 2nd defendant is erroneous, irregular and cannot stand.

[15] CPR Part 13 provides for setting aside or varying default judgment. Rule 13.2 provides for cases where the court *must* (my emphasis) set aside default judgment. The Rule provides;

"(1) The Court must set aside a judgment entered under part 12 if judgment was wrongly entered because of:-

(a) a failure to file an acknowledgment of service, any of the conditions in Rule 12.4 was not satisfied; or

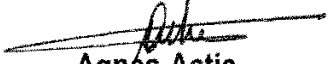
(b) judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied.

(2) The Court may set aside judgement under this rule on or without application."

[19] CPR 13.2 refers to judgment being 'wrongly entered" i.e, the judgment being irregular as in this case. The Court must set aside the wrongly entered judgment.

ORDER

- [20] For the foregoing reasons and pursuant to CPR 13.2, the judgment in default of appearance against the second defendant granted by the Registrar on 18th November 2012, being irregular is hereby set aside.


Agnes Actie
Master [Ag.]