EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT

GDAHCV2010/0382

BETWEEN:

RAELENE LAZARUS

Claimant

and

ADVOCATE PUBLISHERS (2000) INC.

Defendant

Before:
Kimberly Cenac-Phulgence Master [Ag]

Appearances:
Mr. Alban John for the Claimant
Ms. Sabrita Khan-Ramdhani for the Defendant
Claimant present
Ms. Suzanna Thompson, representative of the defendant present

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2014: May 21;
December 22.

JUDGMENT

[1] CENAC-PHULGENCE, M [AG.]: The defendant applied to this Court on 27th March 2014 for an order setting aside the default judgment entered in favour of the claimant on 16th March 2011. The application is supported by affidavit and is opposed by the claimant.

Background Facts

[2] The claimant filed a claim against the defendant on 31st August 2010 in which she claimed general, aggravated and exemplary damages for libel contained in an article of the 19th February 2010 issue of the Grenada Advocate which is a

newspaper printed and published by the defendant and which is distributed both in Grenada and Barbados. A photograph of the claimant appeared next to the article.

[3] The article in summary stated that the claimant had been fired by the Grenada Board of Tourism ("GBT") as its head of marketing after just four months on the job. The article also appeared to state that the claimant, Ms. Lazarus was appointed to the post of head of marketing of GBT in 2009, for a probationary period of six months and is reported to have been relieved of her duties effective 31st December 2009, after a low grading on her first performance evaluation. The article went on to state that according to tourism officials, the claimant's quick departure was not directly linked to the Sun Wing debacle but was because of her overall performance on the job. It stated that the claimant did not live up to expectations and that she basically failed the evaluation conducted after the first three months.

[4] The claimant contended in her claim that in their natural and ordinary meaning, the words and the article as a whole meant and were intended to be understood to mean and convey as fact to the public that (1) she was tested or evaluated for job performance while employed with GBT; (2) there was a performance evaluation after the first 3 months of her employment; (3) she was found wanting in the performance of her duties as a result of the evaluation and she received a low grading on the evaluation; (4) she was a disappointment and an incompetent, ineffective and unreliable employee and (5) in some way the claimant was responsible or caused the Sun Wing debacle.

[5] The claimant alleged that the publication seriously injured her character, credit, reputation, calling and prospects as a marketing expert and that she was brought into public odium and ridicule. The claimant also alleged that she wrote asking for an apology from the defendant prior to filing the claim and the defendant never apologised but instead, her letter which had reproduced the libelous words was circulated to various media houses thereby republishing the defamatory words.

[6] The defendant filed an acknowledgement of service on 1st November 2010 in which it indicated that it had been served with the claim form and statement of claim on 28th October 2010 and its intention to defend the claim.

[7] On 16th March 2011, the defendant having filed no defence, judgment in default of defence was entered in favour of the claimant for damages to be assessed together with interest and costs. It appears from the record and the affidavit filed on 3rd April 2011, that a copy of the judgment was sent via registered post to the defendant. On 28th April 2011, the claimant's counsel received notification from the Grenada Postal Corporation of the delivery of the letter to the defendant. It would appear that the judgment in default was also served on counsel for the defendant at the time, Henry, Henry & Bristol on 4th April 2011.[1]

[8] The hearing on the assessment of damages was heard on 7th July 2011 and judgment delivered on 8th August 2012 awarding damages of $80,000.00 to the claimant, interest at 6% from judgment to payment and prescribed costs. The judgment states in the appearances section that Mr. Anthony Bryan, representative of the defendant, and Ms. Tunial Rogers, executive secretary to the publisher of the Advocate, were in attendance.

The Application to set aside

[9] The application to set aside the default judgment entered on 16th March 2011 was filed on 27th March 2014[2] and is accompanied by an affidavit in support of Mr. Anthony Theophilus Bryan, Managing Director of the defendant.

[10] The grounds of the application are as follows:

(1) That the claim form and statement of claim were received by Mr. Henry Moulton, the then General Manager of the defendant in October 2010 and he

[1] The firm of Henry, Henry & Bristol was removed as solicitor for the defendant by order dated 3rd May 2011.
[2] Some 3 years after the entry of the default judgment.

passed them to Mr. Bryan, the Managing Director who would have been the person to deal with this matter;

(2) At the time the documents were passed to Mr. Bryan he was dealing with personal problems, illness and rapid deterioration of his wife who was suffering from breast cancer and whom he cared for personally until her passing in May 2011;

(3) Mr. Bryan was dealing with the death of his close friend, David Thompson, former Prime Minister of Barbados in October 2010;

(4) Mr. Bryan himself became very ill thereafter and this illness lasted until October 2012 and he was not able to attend to work or business;

(5) Mr. Moulton, the General Manager had made contact with the firm of Wilkinson, Wilkinson & Wilkinson in October 2010 with a view to them representing the defendant in the claim but the firm declined citing as the reason conflict of interest;

(6) Contact was then made with the firm of Henry, Henry & Bristol in November 2010 and the defence was to have been filed but differences arose between the defendant and the firm of Henry, Henry & Bristol and an application was made removing them as solicitor for the defendant;

(7) That the facts relating to the circumstances surrounding the non-filing of the defence were not known to Mr. Bryan until recently;

(8) Mr. Moulton left the defendant in September 2011 without handing over his files including the one pertaining to this matter;

(9) Mr. Bryan did attend the assessment hearing to proffer a defence of fair comment and justification orally albeit he was still in recovery from his illness.

(10) The defendant had no communication of the judgment of Lanns M delivered on 8th August 2012 until August 2013 when the court granted an order registering the judgment in Barbados;

(11) From November 2013 when the court in Barbados granted a stay of proceedings to 15th April 2014 to allow for an application to set aside the judgment to be made in Grenada, to February 2014, counsel for the defendant sought to

make contact with Henry, Henry & Bristol so that the application to set aside could be filed but this proved futile as no response was received;

(12) Another counsel was contacted in March 2014 who agreed to make the application.

[11] Mr. Bryan in his affidavit in support states that 'had a defence been filed … then judgment would not have been entered since the defence would have been one of fair comment and justification'. He further stated that 'due to the extenuating circumstances of my personal problems and chronic illness suffered during the period 2010 until late 2012 that this Honourable Court has power to grant the application to set aside the Judgment in default of filing a defence'.[3]

[12] Mr. Bryan further states that if the application to set aside is denied, the defendant would suffer irreparable harm, loss and damage. He has not specified what that be though. He goes on say that the defendant would be put to extreme strain since the article published is one which could be defended by the defendant and that it has a real prospect of defending the claim on the grounds of fair comment and justification as there was no slander or falsehood in the story published. The injustice he says outweighs the fruits of the judgment obtained.

[13] Finally, Mr. Bryan says that court can exercise its powers to set aside the default judgment based on the exceptional circumstances of the case together with the fact that the defendant has a real prospect of successfully defending the claim.

The Claimant's reply

[14] The claimant filed an affidavit in reply to the application to set aside on 9th May 2014. The claimant says that she verily believes that the matters complained of and which are the subject of the claim originated in Grenada so that it would not have needed the personal attention specifically of Mr. Bryan to provide proper instructions to an attorney in Grenada for the purpose of defending the claim. It

[3] See para. 27 and 28 of the affidavit.

would have been easy for Mr. Bryan to delegate to persons both in Barbados and in Grenada for the purpose of defending the claim.

[15] The facts stated by Mr. Bryan in his affidavit at paragraphs 12 to 14 suggest that the defendant was in fact able and did instruct an attorney to prepare the defence and that it is for reasons other than incapacity of Mr. Bryan to function that such defence was not filed. The claimant says that what is conveyed is that the failure to file the defence was because of differences which arose between the defendant and the attorney at the time. It was these differences which gave rise to the removal of the attorney as counsel for the defendant in May 2011.

[16] The claimant contends that Mr. Bryan does not say when contact was made with the attorney in Grenada with a view to filing the set aside application. Neither does he indicate how he came to learn of the prior contact by Mr. Moulton with the firm of Henry, Henry & Bristol. These are matters which the claimant says are important for the Court to have regard to in considering the application to set aside and which have not been provided.

[17] The claimant says that no good reason has been advanced by the defendant for taking this long to file the set aside application. On the date of the assessment of damages, the defendant would have known that a judgment had been entered against it and so the inaction could not be because the defendant only became aware of the judgment in August 2013 as deposed to by Mr. Bryan. It could not be that the defendant only learnt of the judgment post its registration in Barbados. The claimant refers to emails sent by her attorney to Mr. Bryan on 22nd and 30th August 2012 forwarding an email he had sent to one Ms. Linda Straker and Ms. Sandra Clarke regarding the judgment of Lanns M and the response of Mr. Bryan on 3rd September 2012 which was a reply with no real content.

[18] The claimant says that it is she who would suffer an obvious loss and injustice were the judgment to be set aside. It is for the defendant to show how it would suffer "irreparable harm, loss and damage" and "be put to extreme financial strain"

were the application to be granted. The defendant has not provided any evidence of this and has merely stated this in his affidavit.

[19] The claimant says further that no draft defence has been provided by the defendant by which the Court can assess the defendant's claim that it has a real prospect of successfully defending the claim. The claimant contends that the defendant has shown no cause for setting aside the judgment.

The Defendant's reply
The Straker affidavit

[20] The defendant's reply to the affidavit in reply of the claimant consisted of an affidavit of Mr. Anthony Bryan and an affidavit of Ms. Linda Kathlyn Straker, a newspaper reporter for the Grenada Advocate Newspaper, a subsidiary of the defendant which is incorporated in Barbados, both filed on 20th May 2014.

[21] Ms. Straker in her affidavit states that she is familiar with the news report which is the subject of the claim as she was the reporter who covered the events and wrote the story which was published in the Grenada Advocate. She states further she was the reporter assigned to cover the inaugural flight of Sun Wing Airlines to Grenada in December 2010. When following up the story in January 2010, she says she learnt from her sources that the claimant had been relieved from her duties and that this was related to her failure to organize the inaugural flight reception for Sun Wing Airlines. She says she was also informed that the claimant had not executed her duties in a satisfactory manner due to the failure on the claimant's part in relation to the inaugural flight and that this affected her evaluation and did not allow her to complete her probation successfully and that this resulted in her being relieved of her duties. Ms. Straker says that the details of the story were corroborated by each interviewee of the GBT and the story was solely a report of the details indicated by the interviewed sources. She goes on to say that she only wrote the article for the publication by the Grenada Advocate and not for any other media outlet.

[22] Ms. Straker says that she had received a call from Mr. Alban John, attorney for the claimant during August 2011 and she had related the information about the call to Mr. Bryan, the Managing Director immediately thereafter. She says she was aware that Mr. Bryan was sick at the time and goes on to say that she is unsure whether he understood all the particulars. Ms. Straker says that she cannot acknowledge receipt of the email sent on 8th August 2012 by the claimant's attorney as she is unable to locate a copy of the email.

The Bryan affidavit

[23] Mr. Bryan also filed an affidavit in reply. In that affidavit, he states that the matters which are the subject matter of the claim did not initially require his personal attention in his capacity as Managing Director since the Grenada Advocate newspaper is not printed by the defendant, but instead is printed and published by Advocate Publishers (2000), a business which was registered in Grenada on 15th May 2007. Mr. Bryan further states that the only reason he was handling the matter was because Mr. Moulton, the General Manager with responsibility for the publishers of the Grenada Advocate had left the job in September 2011. I pause here to note that this is the first time that evidence regarding the role of Mr. Moulton vis-à-vis the Grenada operation is mentioned and also that there was a business name, Advocates Publishers (2000) registered in Grenada. None of this information formed part of the affidavit in support of the application.

[24] Although Mr. Bryan states previously in his affidavit in reply that the matter did not initially require his attention, he says in paragraph 4 that his 'personal state of affairs uncharacteristically caused me to be unable to deal with the matter as he normally would have as the Director of the holding company …' He does not elaborate what would be considered normal in this case.

[25] Mr. Bryan further deposes that when he attended the assessment hearing still ill and without the benefit of counsel, he thought he could have offered a defence

orally and did not understand the importance of the matter until later when he says he consulted with counsel in Barbados out of concern. By his own admission in his previous affidavit filed in support of the set aside application, he had indicated there that he only became aware of the judgment when the application for registration of the judgment was made in Barbados in 2013. Mr. Bryan says that the assessment hearing proceeded without much reference to him and that is completely understood as under the Civil Procedure Rules 2000 ("CPR 2000") before it was amended in 2013, a defendant had no right to be heard at an assessment hearing. The defendant's right to be heard has now been established by the Court in the Grenadian decision of George Blaize v Bernard La Mothe (trading as "Saint Andrews Connection Radio" SAC FM RADIO)[4] but that is with regard to the quantum of damages and not to proffer a defence at that stage.

[26] Mr. Bryan has deposed as to his illness and has exhibited two medical certificates which he says speak to his medical condition from 2010. One medical certificate is dated 3rd October 2013 from Dr. Charles G. Taylor Jr. and the other dated 16th May 2014 is from Dr. B. B. Simon. Dr. Charles Taylor saw Mr. Bryan first in early April 2012 and diagnosed that he was suffering from a number of chronic illnesses including congestive cardiac failure, type 2 diabetes mellitus and hypertension and related issues. The medical report speaks vaguely to Mr. Bryan not being able to travel at the time of the visit or for a significant period of time prior to the first encounter with this doctor. The medical doctor says it would have been ill advised for him (Mr. Bryan) to attend to business matters given his physical and physiological state. The report does not specify what the significant period of time would have been. The other medical report is very vague and devoid of any details. It simply says that Mr. Bryan was treated for stress, diabetes and peptic ulcer between July 2010 and December 2011.

[4] GDAHCVAP2012/0004 (delivered 9th October 2012, unreported).

[27] Mr. Bryan deposes that efforts were made to mount a defence and he refers to emails between Mr. Moulton and Henry, Henry & Bristol between 3rd and 10th November 2010 as proof of such efforts.

[28] In response to the claimant's evidence that the judgment was sent to Mr. Bryan and that he sent a response, albeit unclear, Mr. Bryan says that the emails were never addressed to him, nor was there any response from him and that all the email communications occurred prior to his resumption of duties on or about October 2012.

Analysis

General principles

[29] The application of the defendant does not refer to which rule in CPR 2000 it is being made pursuant to. It refers to the court having jurisdiction to exercise its discretion to set aside the judgment in default based on a consideration of the overriding objective. The principles relating to the setting aside of judgments in default are contained in Part 13 of CPR 2000. CPR 13.3(1) provides that a default judgment may be set aside if the defendant applies to set it aside as soon as is reasonably practicable after finding out that judgment has been entered, provides a good explanation for the failure to file a defence and has a real prospect of successfully defending the claim. It is clear that the application in this case is not made pursuant to this sub-rule.

[30] Counsel's presentation of the matter suggests that the application to set aside is made pursuant to CPR 13.3(2) which states that in any event the court may set aside a default judgment if the defendant satisfies the court that there are exceptional circumstances. CPR 13.4(2) and 13.4(3) set out the procedure to be followed on making an application to set aside a judgment. These rules provide that the application to set aside must be supported by evidence on affidavit and that the affidavit must exhibit a draft of the proposed defence. I note that the affidavit in support of the application did not exhibit a draft defence. The draft

defence was attached to the affidavit in reply of Mr. Bryan filed in response to the claimant's affidavit in reply which raised the issue of there not being any defence upon which the Court could assess whether the defendant had a real prospect of success.

[31] The setting aside of a regularly obtained judgment is a discretionary remedy granted by a court where the justice of the case favours giving an opportunity to a defaulting defendant to defend a claim against him which had already reached a stage of judgment and in this case assessment and final judgment on assessment. The general principle is that a party should not be deprived of the fruits of his judgment except for good reason. Although there should finality to litigation, there is need to temper this principle in exceptional circumstances.[5]

[32] In Strachan v Gleaner,[6] the Privy Council held that the fact that damages had been assessed and a final judgment entered did not deprive the court of jurisdiction to set aside a default judgment,[7] but it was highly relevant to the question of discretion. It was an aspect of, but separate from the question of delay. It could not be safely assumed in every case that any prejudice to the claimant could be met by putting the defendant on terms to pay the costs thrown away by the assessment hearing. There could be no rigid rule either way; it depended on the facts of the particular case.

What are exceptional circumstances?

[33] The term exceptional circumstances is new to CPR 2000 in the context of applications to set aside default judgments. It was introduced to, as Michel J said in Graham Thomas v Wilson Christian trading as Wilcon Construction,[8] put it:

> "… primarily to dilute the rigidity of our own Rule 13.3(1) and to bring it more in line with the English Rule by providing greater latitude to our

[5] Taylor and another v Lawrence and another, [2002] 2 All ER 353 per Lord Woolf CJ at 358.
[6] [2005] UKPC 33.
[7] See also Dipcon Engineering Services Ltd. v Bowen and another [2004] UKPC 18 (Grenada).
[8] ANUHCV2011/0629 (delivered 13th July 2012, unreported).

judges to find the justice of the case rather than merely to find the presence or absence of three set prerequisites …"

[34] The question is 'what are to be considered exceptional circumstances?' There are very few cases in which this rule has been considered by our court and in the cases where it has, the rule was not found to be applicable in the particular context of the facts being dealt with so that there is very little guidance on what would constitute exceptional circumstances.

[35] I believe that the starting point is to look at the ordinary meaning of exceptional. The online Oxford Dictionary[9] defines exceptional as unusual, not typical. In the South African case of Thulani Sifeso Mazibuko, Ambrose Simphiwe Cebekhulu v The State,[10] the court looked at the meaning of exceptional circumstances in the context of an application for bail and I find the pronouncements there to be helpful.

[36] Rall AJ when looking at the term exceptional circumstances said as follows:

> "[14] I am in respectful agreement with the approach adopted in the Mohamed case. In my opinion, in order to give a meaning to the phrase "exceptional circumstances" it is essential to ascribe a meaning to "exceptional", and a good starting point is the dictionary meaning or meanings of the word.
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> "[15] It was held by Comrie J in Mohammed's case, that "exceptional" has two shades or degrees of meaning. It can either mean unusual or different, or markedly unusual or specially different. Although Comrie J held that it was not necessary to plump for one or the other of the two shades of meaning, he appeared to place the emphasis on the degree of deviation from the usual. This is apparent from the following statement at page 515 of the judgment:
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> > "So the true enquiry, it seems to me, is whether the proven circumstances are sufficiently unusual or different in any particular case as to warrant the applicant's release. And "sufficiently" will vary from case to case."

[9] http://www.oxforddictionaries.com.
[10] (8774/09) [2009] ZAKZPHC 61; 2010 (1) SACR 433 (KZP), 19th November 2009.

> "[16] It seems to me that "exceptional" can firstly denote the rarity of something (i.e. the infrequency with which something occurs) as in "It is exceptional to find a nocturnal animal walking around during the day". Secondly, it can denote the extent or degree to which a quality or characteristic is present, as in (to use the example of Comrie, J) "The musician has exceptional talent." The two meanings are however interlinked. Once again employing Comrie J's example, the more talented a musician is, the more unusual or rare that musician would be."

Do the circumstances outlined by the defendant amount to exceptional circumstances?

[37] The defendant asks the Court to consider that the circumstances of its managing director, Mr. Bryan are exceptional in that he was ill, his wife was terminally ill and his best friend died, circumstances which caused him tremendous stress. These circumstances caused Mr. Bryan not to be able to function and as he was responsible for the day to day management of the defendant company and so he was not able to attend to company business between 2010 and 2012.

[38] I have reviewed the circumstances as outlined by Mr. Bryan and have made a few observations. In his affidavit in support of the application, Mr. Bryan says that he was responsible for the day to day management of the company and so things such as the law suit would ordinarily have been handled by him. However, in his affidavit in reply, Mr. Bryan says that the suit in this matter did not initially require his attention as it was the General Manager, Mr. Moulton who was responsible for the operations in Grenada. This evidence is contradictory to my mind.

[39] Mr. Bryan in his affidavit in reply says that efforts were made by Mr. Moulton to mount a defence and that he was in contact with attorneys in Grenada. Mr. Bryan refers to email communication between 3rd and 10th November 2010, between Mr. Moulton and Henry, Henry & Bristol evidencing the efforts of which he spoke. However, the record shows that there were other emails between Mr. Moulton and Henry, Henry & Bristol on 12th and 15th November 2010 reminding Mr. Moulton of the deadline date for the filing of a defence and the fact that he had not given further instructions to allow for the filing of the defence on the defendant's behalf.

This evidence clearly suggests that even with the circumstances which attended Mr. Bryan at that time, Mr. Moulton was the one who was seeing to the conduct of the litigation. This only proves that Mr. Bryan was not necessarily required for the conduct of the litigation.

[40] The evidence of Mr. Bryan suggests that he only became aware of the judgment in August 2013 when an application was made to enforce the judgment in Barbados. I cannot accept that evidence for the following reasons. Mr. Bryan, even though he may not have known of the default judgment initially because as he says Mr. Moulton was handling things, would certainly have been aware that there was something which was of legal importance having received the notice for the assessment hearing. That is why he would have flown from Barbados to Grenada to attend the assessment hearing. Although he may not have understood the import and the nature of the proceedings, this was an opportunity for him to seek legal advice and to advise someone to look into the matter on his behalf even if he was not completely back at work. These proceedings took place in July 2011. The judgment was delivered in August 2012 and there is evidence on the record to suggest that counsel for the claimant sent the judgment to the defendant company in Barbados by mail and that the evidence showed that it was delivered and signed for.

[41] The evidence also suggests that counsel for the claimant sent the judgment to Ms. Straker and Ms. Clarke and it was Ms. Straker who responded and indicated that this matter should be addressed to Mr. Bryan and gave an email address to which the mail could be forwarded. Ms. Straker in her affidavit in reply says that she cannot say if she received an email and she further deposes to the fact that Mr. John, attorney for the claimant had met her in the supermarket in August 2011 and after that conversation she called Mr. Bryan to tell him of the conversation. She says that she knew that Mr Bryan was gravely ill and that she was unsure 'whether he understood all the particulars'. That evidence in mind is purely speculative and I place no reliance on this.

[42] The fact that Mr. Moulton, the then General Manager seemed not to have performed his duties properly and failed to respond to Henry, Henry & Bristol thereby causing the defendant to fail to file its defence and ultimately leading to a breakdown in the relationship between the defendant and its attorney is rather unfortunate. However, I cannot see how this classes as an exceptional circumstance.

[43] Mr. Bryan in his affidavit in reply states that although he did not understand the import of the assessment hearing at the time he attended, as soon thereafter and when he learned of the import of the judgment, he sought advice on behalf of the defendant at the earliest opportunity. The assessment hearing took place in 2012 and even thereafter, there is no evidence which shows that any attempts were made to enquire of the Registry in Grenada or even through the operations in Grenada as to the outcome of the hearing. A prudent businessman would I think have made such enquiries even on his return to work. The application to register the judgment in Barbados was made in August 2013 and even at this point, there was still the opportunity to seek advice as to the judgment. The defendant did not need leave to apply to set aside a judgment of the court in Grenada and so did not have to wait until the November 2013 order was made on the application to set aside the order allowing for registration of the judgment in Barbados. I note here the case of Nolan v Devonport,[11] in which a debtor who did nothing until the creditor sought to enforce the judgment, then applied to set aside was refused permission to set aside, it being held that the debtor's conduct amounted to no more than an abuse of process.

[44] Having considered all the evidence, I find that the circumstances in relation to this application to set aside the default judgment cannot be said to be exceptional. At most I would venture to say that the circumstances are unfortunate. However, the bar is extremely high and that is particularly so the longer the period between the

[11] [2006] EWHC 2025 (QB).

grant of the default judgment and the application to set aside. In my opinion, an application to set aside a default judgment on the grounds that there are exceptional circumstances cannot be totally divorced from the question of delay in making the application to set aside a judgment. Promptness will always be a factor of considerable significance and, if there has been a marked failure to make the application promptly, a court may well be justified in refusing relief, notwithstanding the possibility that the defendant may well succeed at trial.[12]

A real prospect of successfully defending the claim

[45] Having decided that there are no exceptional circumstances which warrant the exercise of the court's discretion to set aside a default judgment, I will very briefly address the question, whether the defendant has a real prospect of successfully defending the claim. In paragraph 30 above, I made mention of the requirement under the rules for a draft defence to be exhibited to the application to set aside a default judgment and that in the present case there was no such draft defence. In the case of Vincentian case of Doreen Leslie v Bradley Davis et al,[13] Thom J considered the affidavits filed in support of the application to consider whether the defendants in that case had a real prospect of successfully defending the claim where no draft defence was exhibited to the application to set aside. In the current case, the affidavit in support of the application very broadly states that the defendant had good defences of justification and fair comment. There was nothing on the evidence presented which would allow this Court to determine whether there was a real prospect of successfully defending the claim. It was only when the claimant raised the point, that the defendant filed a reply exhibiting a draft defence.

[12] Standard Bank Plc v Agrinvest International Inc. [2010] EWCA Civ. 1400.
[13] SVGHCV1998/0047 (delivered 21st September 2006, unreported).

Conclusion

[46] I have come to the conclusion that no exceptional circumstances have been shown by the defendant to engage the court's discretion to set aside the default judgment entered on 16th March 2011.

Order

[47] The Order of the Court is as follows:

[1] The application to set aside the default judgment entered on 16th March 2011 is dismissed.

[2] Costs to the claimant to be paid by the defendant in the sum of $750.00.

[48] I wish to thank counsel for their assistance.

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Kimberly Cenac-Phulgence
Master [Ag.]