

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2011/0046

BETWEEN:

ANTIGUA FLIGHT TRAINING CENTER

Claimant

and

DIEDRE EDGEcombe
NORDEL EDGEcombe

Defendants

Appearances:

Mr. A. Greer for the Claimant

Mr. J. Hewlett for the Defendant

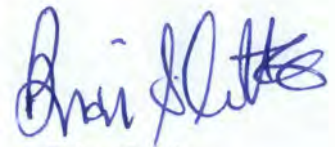
2015: March 20

Reasons for Decision

- [1] **Cottle, J.:** The claimant filed a claim form on 22nd January, 2014. It was served on 19th February, 2014. On 24th March, 2014 the claimant applied for judgment in default of acknowledgement of service. The court office entered judgment for the claimant for failure to file any Acknowledgement of Service on 21st August, 2014. The judgment was served on the defendants on 17th September, 2014 and 22nd September, 2014 respectively. On 14th November, 2014 the claimant sought to have the defendants committed for failure to pay the judgment debt. That notice of committal motion was served on the defendants on 8th December, 2014.

- [2] On 12th January, 2015 the defendants applied to set aside the judgment in default. The grounds of the application were that the claimant is not a legal personality and does not exist as a matter of law and is incapable of giving instructions. The second ground was that the judgment is contrary to law as the claimant is not a party and cannot as a matter of law initiate a claim and obtain judgment on the same.
- [3] Counsel for the applicant contended that these constituted exceptional circumstances warranting setting aside the judgment. He sought to fix counsel for the claimant with liability in costs as having acted without authority.
- [4] The application was supported by an affidavit of the first defendant. She swore that there was no company incorporated in the name Antigua Flight Center Inc until six months after the claim was filed.
- [5] The claimant filed an affidavit in reply. It was deposed that Antigua Flight Training Center is a business name registered with the Antigua and Barbuda Intellectual Property and Commerce Office since 29th August, 2011 and Grace Norman is the sole trader doing business under that name.
- [6] At the hearing of the application, counsel for the applicants/defendants considered CPR 2000 part 22.2. He agreed that the rule contemplated litigation by entities other than natural and legal persons.
- [7] Given this concession that there was no legal requirement that only natural persons and registered companies are capable of being litigants and as this objection was the basis for the application to set aside the judgment, the application to set aside was not granted.
- [8] It is to be pointed out that under CPR 2000 13.3 (1) the defendants did not apply to the court as soon as reasonably practicable after finding out that judgment had been entered. They gave no explanation for failing to enter acknowledgement of service. They did not exhibit a draft defence showing any real prospect of successfully defending the claim.

- [9] Instead counsel sought to persuade the court that the fact that the claimant is an unincorporated entity, by itself, constituted exceptional circumstances warranting the setting aside of the default judgment.
- [10] I had regard to CPR 22.2 (2) which allows for suit by a person in his or her business name. Such a claim is to be treated as a claim by a partner under CPR 22.1.
- [11] I therefore declined to grant the application.



Brian Cottle
High Court Judge