

EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: DOMHCV2008/0433

Between Fitzroy Armour
Sharon John
and
Andrew Armour
Claimants
Defendant

BEFORE: Her Ladyship, the Honourable Master Agnes Actie
(A MASTER IN CHAMBERS)

MADE ON: The 28th day of February 2019

APPEARANCES:

Mr. Darius Jones of counsel for the claimants

Ms. Singoalla Blomqvist- Williams of counsel for the defendant

RULING ON APPLICATION TO SET ASIDE DEFAULT JUDGMENT

1. ACTIE M.: **The defendant's application to set aside the default judgment entered in favor** the claimant on 13th January 2009 is refused for the following reasons.

Background facts

2. The claimants filed a claim on 10th November 2008 seeking declaratory reliefs, injunctions, special damages in the sum of \$109,304.00, damages for trespass including aggravated and exemplary damages against the defendant. On 24th December 2008, a request of judgment in default of defence was made pursuant to CPR 12.10(5) for terms to be determined by the court. On 13th January 2009, Baptiste J. granted judgment in default of defence upon terms together with special damages in the sum of \$109,304.00, damages for trespass and assault and battery, including aggravated and/or exemplary damages to be assessed on March 20, 2009.
3. On 29th April 2009, the defendant made an application to set aside and/or to vary the judgment in default which was refused. On 7th May 2009, Cumberbatch J ordered by consent, that the assessment of damages be referred to mediation. On 6th June 2009, Cottle J ordered the defendant to comply with the terms of the judgment in default dated 13th January 2009 by the 13th November 2009. On 13th July 2009, judgment summons issued against the defendant was adjourned to 28th April 2009 for the cross examination of the judgment debtor.
4. On 23rd May 2016, the defendant/judgment debtor applied to set aside the default judgment made 19th January 2009. The revived application is premised on the

amendment of CPR 13.3 which now provides for the setting aside of default judgment on exceptional circumstances.

5. The defendant/judgment debtor avers that the judgment for special damages was entered without evidence to prove the amount claimed as special damages. The defendant/judgment debtor contends that the claimant was under an obligation to prove the special damages and having failed to do so the judgment in default must fail on the exceptional circumstances principle.
6. The court notes that the amendment to Part 13.3 adding the exceptional circumstances as a ground for setting aside a **judgment in default was made in 2011. The defendant's application was made in 2016, some five (5) years after the amendment. The defendant's main contention is the failure of the claimant to prove the special damages pleaded and particularized in the statement with tangible evidence.**
7. The issue now being raised in the extant application is a point which could have been raised in the first application for the setting aside/varying the default judgment made in 2009. The defendant having been dissatisfied with the orders refusing to set aside or vary the judgment in default should have appealed the court orders made in 2009. The time for appeal has long passed.
8. **I am of the view that the defendant's** application is a collateral attack on the court's orders made in 2009. Under the CPR 2000, parties are expected to conduct litigation in the most **economical fashion in order not to waste the court's limited resources.**
9. The defendant is attempting to take a second bite of the cherry on the ground of exceptional circumstances at this late enforcement stage of judgment given since in 2009. This in my view is an abuse of process. To allow the setting aside of a judgment in default retroactively for a matter decided since in 2009 under the exceptional circumstances principle would open a flood gate of new filings. There must be an end to litigation to allow parties to enjoy the fruits of their judgments. For the above reasons, the application to set aside the default judgment is refused.

IT IS ORDERED AND DIRECTED

10. The application to set aside/vary the default judgment is refused with costs to the defendant agreed in the sum of \$300.00.
11. Counsel for the judgment debtor shall have carriage of the order.

AGNES ACTIE

MASTER

BY THE COURT

REGISTRAR