IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. 7 OF 2012

BETWEEN		JAMES SAMUEL JACKSON	PLAINTIFF
AND	(1)	JAMES STEVEN JACKSON	
	(2)	JEROME STEVEN JACKSON	DEFENDANTS

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CJ
THE 4TH APRIL 2013 AND 16TH APRIL 2013

APPEARANCES: Ms. Sheridan Brooks on behalf of the Defendants/Applicants

Mr. Anthony Akiwumi and Mr. Annette of Stuarts on behalf of the Plaintiff/Respondent

JUDGMENT

1. It is with understandable incredulity that a party should be told that his opponent has been able to obtain a default judgment against him by relying upon a pleading – here a Statement of Claim – which was filed in deliberate and flagrant breach of an order of the Court.

2. Yet that is the proposition with which Ms. Brooks' clients are confronted by Mr. Akiwumi in reliance on to GCR O.2 rule 1(1), which reads as follows:

> *"Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an*

irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein."

3. The effect of that rule in the present context, says Mr. Akiwumi, is that the fact that a pleading – here his client's Statement of Claim – has been served outside of the deadline imposed by an order of the Court, will not render the service a nullity. This is so as Rule 1(1) expressly provides that any step taken in the proceedings shall not be a nullity even where done in contravention of another rule, here the GCR that requires that a properly pleaded Statement of Claim be filed and served.

4. In this respect, says Mr. Akiwumi, it is submitted that non-compliance with the GCR is indistinguishable from non-compliance with an order of the Court.

5. Mr. Akiwumi seeks to take support for this argument from the longstanding dictum of Kay J from ***Patty v Daniel** 34 1886 Ch.D. 172* where he stated that:

   "I have no doubt that the meaning of the rule (the then English equivalent of O.2 r. 1(1)) is that the Court or Judge may, after an irregular proceedings has been taken, as in this case either set it aside for irregularity or amend it, or otherwise deal with it as the Court shall think fit; but it is not to be treated as void."

6. It will be immediately apparent that even if Mr. Akiwumi's argument is correct as it relates to an irregular proceeding or step taken in a proceeding, it is in the percipient equivalency that Mr. Akiwumi seeks to draw between such an irregularity and a deliberate breach of an Order of the Court that I feel compelled to disagree.

7. First, I note that the cases relied upon by him all dealt with procedural or other remediable irregularities such as failing to meet procedural deadlines, the nomination of a wrong party, or the like. But the ultimate reason for the rejection of the argument is

that which Ms. Brooks recognises in her arguments. It is that a deliberate breach of a Court order – and here there can be no argument but that the breach was deliberate – amounts to a contempt of Court.

8. The way in which a party who is in contempt for having breached an order of the Court is to be treated is well settled at common law: he loses his entitlement to take any steps in the proceedings unless and until he purges his contempt.

9. For this reason, in my view, the Plaintiff was entitled to take no steps in the action while in breach of the time limits set by Justice Williams' Order and certainly no steps such as the filing of an application for a default judgment, involving as that did, an ex parte administrative procedure which redounded to the prejudice of the Defendants and without notice to them.

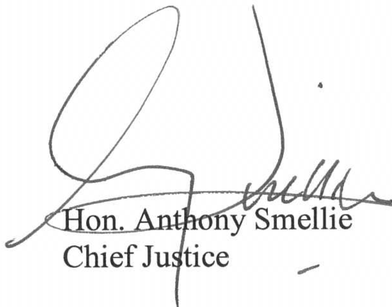
10. If I am incorrect in that view, I have no doubt that this would, in any event, be an appropriate case for the setting aside of the default judgment by the exercise of the discretion vested by GCR O.19 r.9.

11. In these circumstances, where it was known to the Plaintiff and his advisers that the Defendants intended to defend and indeed were on notice of the nature, if not of the precise terms of the defence having regard to the pleadings in a related action, I am satisfied that it would be unjust to allow the default judgment to stand. It is plain that the Plaintiff, by filing the application for default judgment in those circumstances, was merely trying to "steal a march" on the Defendants. The default judgment is set aside with leave given to the Defendants to file their defence within seven (7) days.

12. The costs of the application to set aside are to be in the Cause.

CONSOLIDATION

13. Whilst the question of whether or not the other cause – Cause 416 of 2011 – should be transferred to the FSD remains outstanding, it would be inappropriate to order its consolidation with this cause. That question seems at least arguable, having regard to the terms of GCR O.72 r. I(4)(g) and so must be first resolved.



Hon. Anthony Smellie
Chief Justice

April 16 2013