J. Smellie

15.9.94

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 508 OF 1995

BETWEEN: ISLAND COMPANIES LTD. PLAINTIFF

AND: PAUL RAMOON

(Trading as RAMOON'S CONSTRUCTION LTD.) DEFENDANT

FOR THE PLAINTIFF: Mr. Shaun McCann

FOR THE DEFENDANT: Mr. Morris Garcia

RULING

This is an application to set aside a Default Judgment. The first question which I need to determine is whether that judgment was regularly or irregularly obtained and the answer to that depends in turn on my view of hotly disputed questions of fact with regard to the service of the Writ of Summons and Statement of Claim. The Affidavit of Service on the 29th November 1995 was sworn by Mr. Renard Moxam a Director and Shareholder of the Plaintiff company. A supplemental affidavit dated 16th April 1996 was filed by him, following the defendant's denial of due service both of these documents and a letter dated 17th January 1996 from the Plaintiff's attorneys with which was enclosed a copy of the default Judgment obtained on the 15th January.

Mr. Moxam's affidavits go into considerable detail as to the circumstances of the alleged service. It is not in dispute that if what he says is true, service was affected but the defendant is denying that the encounters which Mr. Moxam describes ever took place. I am directly concerned at this time only with the service of the writ and Statement of Claim but what Mr. Ramoon the defendant has said about the later service on the 17th January 1996 goes to his credibility. He says that he was not even on the Island on the 17th January and he produced a passport showing his departure from the Island on the previous day. I examined his original passport at the hearing on the 24th April and there is indeed an exit stamp indicating that, although I was not able to find any corresponding entry stamp at any corresponding destination. What was clear from a general review of the passport was that Mr. Ramoon is a very frequent traveller indeed in and out of the Cayman Islands.

This matter of credibility caused me some concern and I adjourned the hearing to enable Mr. Ramoon to come up with further evidence confirming one way or another his whereabouts on the evening of 17th January. He has not been able to do this. All he can say is that he made a journey to Miami on the 12th and another to Jamaica on the 14th. He can enlighten me no further, in spite of being given some two weeks to do so on the reason for the exit stamp in his passport which purportedly relates to the 16th. I prefer the evidence of Mr. Moxam in this matter and conclude that the Writ of Summons and

Statement of Claim was duly served on the Defendant in the manner described by Mr. Moxam in his affidavit and that the Judgment in default was regularly obtained.

Under Order 13 Rule 9 of the Grand Court Rules the Court may on such terms as it thinks just set aside or vary any judgment entered in pursuance of that Order. An application to set aside a regular judgment where there has been a failure to give notice of intention to defend should not be granted except for some very sufficient reason unless there is an affidavit stating facts showing a defence on the merits. Disclosure by the Defendant of a defence on the merits is a major consideration. This is no more than a common sense application of the discretionary power to set aside a Default Judgment since there is no point in doing so if the Defendant has not shown that he has a defence. This defendant has not done so. It is also a matter of common sense that the Court will take into account the explanation of the Defendant as to how the default occurred. I have done that but have not accepted it. See Note 13/9/14 at pages 142-143 of the 1995 Edition of the Supreme Court Practice. See also Clarke V Harper (1979) 25 WIR.

The cases of Ebanks v. Plain 1988-9 CILR 421 and Fiduciary Management Services Ltd. v. Intermediate Securities Ltd. and anon 1992-3 CILR 541 do not assist the defendant. They are distinguishable on the facts and turn also on procedural matters which are now only of historical interest following the introduction of the Grand Court Rules 1995.

Accordingly, I dismiss the application to set aside the default judgment. The order for the examination of the Defendant as Judgment Debtor will proceed on a date to be fixed.

Costs in the sum of $500 to the plaintiff by consent.

Dated 7th May 1996

G.E. Harre

Chief Justice