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**IN THE SUPREME COURT JUDICATURE OF JAMAICA**

**SUIT NO.CL2002 B176**

**BETWEEN RICHARD BECKFORD CLAIMANT**

**AND QUEST SECURITY SERVICES LTD DEFENDANT**

**Heard: 28th November & 2nd December 2003**

**Miss Kay-Ann Balli for Claimant instructed by Taylor-Wright & Company**

**Jalil Dabdoub for the Defendant instructed by Dabdoub & Dabdoub & Company**

**Sinclair-Haynes, J (Ag)**

August 2000, Richard Beckford, a security guard was dismissed by Quest Security Services Limited.

On the 14th October, 2002 he sued Quest Security Services claiming, inter alia, that he was wrongfully dismissed and defamed by it.

Quest was served with the Writ of Summons in October 2002 but failed to enter an appearance. Consequently, default judgment was entered against it and served on the 7th February, 2003.

The matter was fixed for Assessment of Damages on the 22nd July, 2003. Notice of Hearing of the Assessment was served on the 3rd July, 2003. On the 16th July, 2003 Quest applied to have the judgment set aside.

The application was heard on the 13th November, 2003 by Brooks J, who refused the application for the following reasons:

a. the defendant did not give a good explanation in accordance with rule 13.3 (1) for its failure to enter an appearance;

b. that failure precluded the court from exercising its discretion.

Reliance was placed on the case of **Totty V. Snowdon, Hewit Wirral and West Cheshire Community NHS Trust** (2001) EWCA CIV 1415.

Quest has now reapplied to have the default judgment set aside, and has supported its application by affidavit of Mr. Joseph Dibbs, dated 21st November, 2003. In the alternative, it has requested leave to appeal the decision of Brooks J.

**Submissions by Miss Kayann Balli in respect of the Court's jurisdiction to hear second and subsequent applications to set aside Default Judgment**

Miss Balli submitted that the discretion to set aside a second and subsequent application does not exist under the C P R. Such discretion was conferred by the old rules. The new rules have sought to codify the old Common Law principles under which these applications were made. The new rules are silent as to whether a second or subsequent application to set

aside default judgment can be made which suggests that those principles were not meant to be applicable to the new rules.

**Mr. Dabdoub's submissions**

Mr. Dabdoub submitted, however, that the court had and still maintains an inherent jurisdiction to hear second and subsequent applications to set aside default judgments. He cited **Granville Gordon and Adelaide Gordon v William Vickers and Lucille Vickers** (1990) 27 JLR 60 as authority for this proposition.

**Examination of Gordon and Gordon v Vickers**

The Court of Appeal in the above case held that the Court had an inherent jurisdiction to hear a second and subsequent application to set aside a default judgment and therefore a defendant against whom such a judgment has been entered can make more than one application to have it set aside.

In the decision of the court, Rowe P. relied on the reasoning of Carey J. A. in the earlier case of **Vehicles and Supplies Ltd., et al v The Minister of Foreign Affairs Trade and Industry** SCCA 10/89 in which he (Carey J A) relied upon the judgment of Lord Denning M R in **Becker v Noel and Anchor** (Practice Directions) (1971) 1 WLR 803 as follows:

> *"Not only may the court set aside an order made exparte but where leave is given exparte it is always within the inherent jurisdiction of the court to revoke that leave if it feels that it gave its original leave under a misapprehension upon*

*new matters being drawn to its attention."*

In adopting Lord Denning's position Carey J A expressed the following:

> *"It is plain therefore that a judge in the Supreme Court has an inherent jurisdiction to set aside or vary an order where leave is given exparte, he may also do so where new matters are brought to his attention either with respect to the facts or the law. The true basis, therefore of the exercise of this jurisdiction to review his own previous order is the new material produced which shows that the situation has so drastically changed that he should dissolve this order."*

In agreeing with his reasoning Rowe P felt that Carey's J.A. guidelines can be used by the court to determine what principles it ought to apply when exercising its discretion to set aside a default judgment on a second or subsequent application. He, Rowe P., agreed with the views expressed by Master Chambers in **General Motors Corporation v Canada West Indies Corporation Company Ltd.** Essays on the Jamaica Legal Systems 1660 – 1973 by H V T Chambers, page 65, on the question of second and subsequent application and quoted the following passages:

> *"The correct principles as gathered from all the cases on the subject... are that until the matter which caused the suit to come before the court in the first instance, i.e. until the subject matter of the suit has been gone into by a court of competent jurisdiction, any judgment by default may be set aside if the proper application is made."*

> *"To put it another way, until the suit has been tried, the court can always exercise its discretion whether or not to set aside a default judgment."*
>
> *"To put it another way, the court, may in the exercise of its discretion relieve the defendant of the 'punishment' meted out to him for his omission, tardiness, negligence or what have you, provided he begs, prays or pleads in the proper manner whether it took him two or more occasions to beg or pray properly."*

Quest in its first application failed to "plead properly", as it did not satisfy one of the requirements of rule 13.3 (1) i.e. to provide the court with a good reason for its delay in entering an appearance.

It is once again beseeching the court to set aside the said judgment. The question is, Does this court have the jurisdiction to do so? The answer must be in the affirmative in light of the well reasoned decision of Rowe P in **Gordon v Vickers.**

**Issue: Whether Quest provided the Court with new material which amounts to good reasons**

The issue now to be determined is whether Quest has now rectified its failure to provide good reasons.

Miss Kayann Balli submitted it has not. She argued that the reasons advanced before Brooks J remain the same, i.e., the fire, at the defendant's premises which has now merely been expanded upon. Can the mere expanded reason amount to new material, which the court may consider?

In his affidavit in support of the first application, Joseph Dibbs on behalf of Quest deponed:

> *"That all the defendant's records were kept at their King Street office, where there was fire shortly after this suit was served, and as result of which there was a delay in retrieving the files and information regarding the claimant hence, the delay in filing a defence."*
> *"That after the file was found, the secretary having conduct of the matter went on maternity leave and so the matter was inadvertently not followed up."*

Brooks J held the view that merely to say there was a fire at the premises was not sufficient explanation as to the failure to file a timely Appearance, as the fire did not affect the premises where service was to be effected.

In support of his renewed application Mr. Joseph Dibbs averred that upon receipt 'of some sort of legal document' they did not recognize the claimant's name. They contacted their attorney who requested the file. However, those records were kept at the King Street office where there was a fire shortly after they were served. As a result, it took months to identify the claimant and to retrieve and reconstruct the file.

Consequently, the file was not forwarded to the attorney until July 2003. He further averred that Quest did not know they could have entered an appearance without knowing who the claimant was.

I am of the view that the amplified version of Mr. Dibbs' affidavit provides the court with a good reason why the company failed to enter an appearance.

Brooks J was of the view that the defendant has a real prospect of successfully defending the claim. With this I agree. Quest has produced a signed copy of the Contract between the parties. They have alleged that the claimant was dismissed for cause. In its response to the claimant's claim for damage to his reputation and that as a consequence, he was refused employment, it has alleged that the claimant has obtained several jobs since. If believed, the defendant would surely have a good prospect of successfully defending the claim.

Quest claims that it became aware that judgment had been entered against it on the 3rd of July, 2003. On the 16th of July it applied to the court to set aside the default judgment. In those circumstances, it has satisfied the requirements of rule 13.3.1 (a) i.e., to apply to the court as soon as reasonably practicable after finding out that judgment had been entered.

Accordingly, Interlocutory Judgment in default of appearance entered herein on the 10th of October, 2002 is set aside and Defendant is at liberty to file a defence within 21 days of the date hereof.

Costs in the sum of $8000.00 to the claimant. Cost of this Application together with costs awarded by Brooks J to be paid within 21 days of the date hereof.