

CP 1

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2005/0634

BETWEEN:

KELTON DALSO

Claimant

AND

JEROME ELVIN

Defendant

Before:

Master Cheryl Mathurin

Appearances:

Ms. C Debra Burnette and Ms Jasmine Wade for the Claimant

Mr. George Lake holding papers for Mr. Asquith Fearon for the Defendant

2006: October 2<sup>nd</sup>  
November 23<sup>rd</sup>

RULING

- [1] **MATHURIN, M:** A brief chronology of these proceedings in necessary, in my opinion to put this application in perspective. The proceedings were commenced by way of an application from which an order was made by the court on the 3<sup>rd</sup> January 2006 for a warrant to be issued for the arrest of the Defendant (hereafter "Mr. Elvin") to show cause why he should not give security for the payment of \$9,000.00 plus damages or to be committed to prison. A part of the order granted by the court on that day was that the Claimant (hereafter "Mr. Dalso") was to file a claim form within 7 days.
- [2] On the 12<sup>th</sup> January 2006 the warrant was executed and Mr. Elvin entered into a bond before the Registrar of the High Court with two sureties in the sum of \$8,000.00. An Affidavit by the Bailiff of the High Court indicates that on that same day the Defendant was served with the Claim Form. Mr. Elvin took no further steps in the proceedings and on the 3<sup>rd</sup> February 2006 pursuant to a request by Counsel for Mr. Dalso, Judgment in default of

acknowledgment of service was entered against Mr. Elvin. Counsel for the Defendant filed an acknowledgment of service on the 3<sup>rd</sup> April 2006.

- [3] On the 7<sup>th</sup> April 2006, Mr. Elvin was personally served with a copy of the Judgment in Default of Acknowledgment of Service. Mr. Elvin took no further steps and on the 15<sup>th</sup> June 2006 was personally served with a copy of a Judgment Summons to attend Chambers on the 11<sup>th</sup> July 2006. On the 11<sup>th</sup> July 2006, the Defendant appeared and the matter was adjourned to enable him to respond to the Judgment Summons. The matter was subsequently listed for the 18<sup>th</sup> September 2006.
- [4] On the 7<sup>th</sup> September 2006, Mr. Elvin filed an application pursuant to Part 13 to set aside the default judgment of the 3<sup>rd</sup> February 2006. In support of the application the Mr. Elvin stated that when he was served with the Claim, he was not able to retain Counsel immediately and he left the jurisdiction and upon his return he retained Mr. Fearon as his legal representative. He then stated that he was served with a judgment summons on the 19<sup>th</sup> May 2006. Attached to the application and also filed obviously and admittedly in error was a defence.
- [5] Counsel for Mr Dalso opposed the application by way off affidavit in reply on the 14<sup>th</sup> September 2006. The bases of the objection are that Mr Elvin has failed to give a good explanation for his delay in filing the defence, that the application was not filed in a timely fashion. Mr Fearon replied that the entering of a default judgment is an administrative process with no investigation into the merits and if the judgment was not set aside, there was a potential to cause injustice. The parties were asked to make brief written submissions to assist the court in its determination.

### **The Law**

- [6] The relevant law is Part 13 Rule 3 of CPR 2000 which states;
  - “...the court may set aside a judgment entered under Part 12 only if the defendant*
  - (a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;*
  - (b) gives a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; and*
  - (c) has a real prospect of successfully defending the claim.”*

### **Defendant's submissions**

- [7] Counsel for the Defendant has submitted the following authorities in support of his submissions;

**Evans v Bartlam (1937) AC 473**

Excerpts from **Commonwealth Caribbean Civil Procedure** Gilbert Kodilinye  
**The Supreme Court Practice** 1991 London, Sweet & Maxwell