IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. H 227 OF 1995

BETWEEN	**EUNICE HOLDING**	**CLAIMANT**
AND	**YVONNE WILLIAMS**	**DEFENDANT**

IN CHAMBERS

Mrs. Sharon Gordon-Townsend for the claimant

Miss Marion Rose-Green for the defendant

November 18, December 15, 2004 and January 6, 2005

Sykes J (Ag)

APPLICATION TO SET ASIDE JUDGMENT IN DEFAULT OF DEFENCE

1. On May 31, 1995, Miss Eunice Holding, a domestic helper, received injuries from a fall in Miss Yvonne Williams' house. Miss Holding alleges that she fell because of a slippery substance on the floor of the house. She had gone there to work. She consulted Mr. Richard Brown, attorney at law, who filed a writ of summons and a statement of claim on her behalf on October 24, 1995. The defendant's address stated on the writ was 298 Eltham View, Spanish Town, St. Catherine. Miss Williams says in her affidavit, filed in support of her application to set aside the judgment in default of defence, that she received the two documents. She did not say when she received them. Before this application, she never said she lived at 295 Eltham View and not 298 Eltham View.

2. The defendant entered an appearance on November 29, 1995. Thereafter the defendant and her legal advisor went to sleep. While they were slumbering, the

claimant was busy albeit that she was ambling along at the pace of an arthritic snail. She obtained interlocutory judgment in default of defence on October 24, 2000. Five years passed before judgment in default of defence was entered. What greater opportunity could a defendant need to defend a claim? A further two years elapsed before damages were assessed on October 24, 2002. For a total of nearly seven years, the defendant sat on her rights.

3. The claimant posted by registered mail all the relevant documents including the notice of assessment and the judgment in default of defence to 298 Eltham View. There is no evidence that they were returned unclaimed.

4. The defendant wishes to avoid paying the damages assessed. She has applied to have the judgment set aside. She says that she had always intended to defend the matter but her attorney told her that the matter would not be going to trial. She says that she was told this after her attorney spoke to the claimant's attorney. She alleges further that her attorney told her that he had filed all the relevant documents. Her main point however, is that she was not served with any documents after she received the writ of summons and statement of claim. The claimant opposes the application.

5. If the defendant is to succeed, she must satisfy rule 13.3(1) of the Civil Procedure Rules 2002 (CPR), which sets out the three conditions that must be met before the judgment maybe set aside. Has the defendant brought herself within rule 13.3 (1) of the CPR?

6. Miss Rose-Green arrived with a raft of English cases. I read them all but they do not apply because the rule in Jamaica is worded differently from that in England and Wales. The policy considerations that informed the rule dealing with setting aside judgments in England/Wales and Jamaica are very different it appears. The rules in Jamaica require the applicant to (a) apply as soon as reasonably practicable after knowing about the judgment; (b) give a good explanation for the failure to file an acknowledgment of service or defence as the case may and (c) show that she

has a reasonable prospect of successfully defending the claim. It is only if these conditions are met then the judgment may, not must, be set aside. It may be that given the Court of Appeal's disquiet about delays, the Rules Committee decided to raise the bar for defendants, who whilst knowing of the action filed against them, do nothing until it is very late in the day. There is nothing inherently wrong with this. What is important is whether the defendant had a fair and reasonable opportunity to defend the claim. If he has been given that opportunity and has let it slip, why should he be given a second opportunity unless he can show very good reason why ought to be allowed back in? Defendants cannot hide behind the slothfulness of their attorneys in order to deprive claimants of their judgments. The defendant, in this case, had five years before default judgment was entered and two more, before damages were assessed to deal with this matter.

7. Within recent times, whenever these applications are made, it has become fashionable to lay the blame on the attorneys. If the attorneys are negligent, the remedy is a claim against the attorneys (see ***Wood v H.G. Liquors*** (1995) 48 W.I.R. 240 per Wolfe J.A.). Wolfe J.A. (as he was at the time) was not laying down any radical principle. He was simply reminding litigants and their attorneys of the advice of the Court of Appeal of England and Wales in ***Allen v Sir Alfred McAlpine & Sons Ltd*** [1968] 2 QB 229.

8. Miss Williams stated that she knew that Mr. Beckford had died in 2001. She did nothing to find out about her case other than to attend on Mr. Beckford's chambers after hearing of his death. She does not say what next she did.

9. Her next fit of activity was sparked by the visit of the bailiff to her house in May 2003. The bailiff was armed with a writ of seizure and sale issued by the Supreme Court. She says that she sought the advice of Miss Rose-Green. The affidavit does not say when she contacted her new attorney. The affidavit does not say what happened between May 2003, when she found out about, not only the

judgment but also about the writ of seizure and sale, and October 28, 2003, when she swore her affidavit.

10. Given the absence of any explanation for the six month delay between May 2003 and October 2003, it is my view that the claimant has failed to meet rule 13.3(1) (a) of the CPR. There is no evidential basis for me to conclude that the defendant applied to this court *as soon as reasonably practicable after finding out that judgment had been entered.* The claimant has also failed to satisfy rule 13.3(1) (b). The tardiness of her attorney is not a good reason. The third part of the rule has been met. It seems to me that the phrase "a real prospect of successfully defending the claim" in rule 13.3(1) (c) has the same meaning as the phrase "real prospect of successfully defending the claim or issue" in rule 15.2(b). If ***Swain v Hillman and another*** [2001] 1 All ER 91 is the correct interpretation of the phrase, then the threshold is very low. In that case, the phrase was being looked at from the point of view of the claimant and despite the evidential difficulties that the claimant faced, it was held that he had a real prospect of success. The expression cannot be given a different meaning simply because it is now being viewed from the standpoint of the defendant.

Conclusion

11. The defendant has not satisfied rule 13.3 (1) (a) and (b). She has met rule 13.3(1) (c). However, the requirements are conjunctive.

12. The application to set aside judgment in default of defence is dismissed with costs to the claimant to be agreed or taxed.