

JAMAICA

IN COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NOS. 112/07 and 114/07

**BEFORE: THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)
THE HON. MISS JUSTICE G. SMITH, J.A. (Ag.)**

C.A. NO. 112/07

BETWEEN	JAMAICA REDEVELOPMENT FOUNDATION INC.	1ST APPELLANT
AND	DENNIS JOSLIN JAMAICA LIMITED	2ND APPELLANT
AND	MESCHECK WILLIS & BEVERLY WILLIAMS-WILLIS	1ST RESPONDENTS
AND	EVETTE LORRAINE EVANS- COOMBS & CHARMAINE COORE	2ND RESPONDENTS
AND	EAGLE MERCHANT BANK OF JAMAICA LIMITED	3RD RESPONDENT
AND	ISLAND LIFE MERCHANT BANK LTD.	4TH RESPONDENT
AND	REFIN TRUST LIMITED	5TH RESPONDENT

C.A. NO. 114/07

BETWEEN	EVETT LORRAINE EVANS- COOMBS	1ST APPELLANT
AND	CHARMAINE COORE	2ND APPELLANT
AND	MESCHECK WILLIS	1ST RESPONDENT
AND	BEVERLY WILLIAMS-WILLIS	2ND RESPONDENT

PROCEDURAL APPEAL

Mr. Christopher Kelman and Miss Maliaca Wong, instructed by Myers, Fletcher & Gordon for the Appellants in C.A. No. 112/07.

Miss Georgette Scott instructed by the Caribbean Advocates for the 1st Respondents in C.A. No. 112/07 and the 1st and 2nd Respondents in C.A. No. 114/07.

Miss Tavia Dunn, instructed by Nunes, Scholefield, DeLeon & Co. for the 2nd Respondents in C.A. No. 112/07 and the 1st and 2nd Appellants in C.A. 114/07.

Miss Maliaca Wong, instructed by Myers, Fletcher & Gordon for the 5th Respondent in C.A. No. 112/07.

March 3 and 4, 2008

COOKE, J.A. (Oral Judgment)

1. This is a matter which concerns the applicability of sections of the Civil Procedure Rules, 2002 (C.P.R.). It is unnecessary for the court to advert to the substance of the claim which gives rise to the debate in this issue. Accordingly, the comments made by this court will pertain only to the procedural aspects pertinent to the claim.

2. On May 1, 2007 a Case Management Conference was held. This court, as was the position of the presiding judge in the court below, is satisfied that the requisite notice had been issued and received by all the parties. At the Case Management Conference the respondents did not attend. Consequent, upon that, and in applying rule 27.8 (5) (a) the case management judge struck out the

claim of the respondents/claimants. At that conference, the judge also acceded to the prayer that in respect of the counter-claim of the first defendant which is the second respondent in this matter, that there should be judgment on the counter-claim.

3. At this point, it is necessary to make a distinction between the striking out which had already been said is by virtue of rule 27.8 (5) and the application for judgment in default for the failure to file a defence to the counter-claim within the requisite time.

4. The court adverts to use this distinction for this reason. The order to strike out was done within the ambit of rule 27.8 (5), whereas the order was made within the powers granted by the rules which power is not included in rule 27.

5. On the 6th September, 2007 the respondents successfully persuaded another judge in the court below to set aside the orders made at the Case Management Conference. The distinction between the striking out order and the default order now becomes relevant.

6. This court accepted the submission of Miss Dunn that the order pertaining to the default judgment was not an order pursuant to or within the ambit of Case

Management Conference, but it was dealt with as a matter of convenience at the same time that the Case Management Conference was convened.

7. The importance of that distinction lies in the fact that there is a distinct procedure for challenging such an order as that is the striking out order as against challenging orders made in respect of a Case Management Conference. It is to be noted that in the affidavit grounding the application for the setting aside, there was no advertence to the judgment in default.

8. The court now turns to the essence of this case which has been described by Mr. Kelman as "jurisdictional". The Civil Procedure Rules 2002 prescribes the procedural regime to be employed in particular circumstances. In respect of any challenge to case management orders it is patently clear that rule 27.8 (6) explicitly provides the procedure to be utilized in seeking any relief from any of these orders.

9. At first Miss Scott who has displayed no little gumption in pursuing the cause of her client, attempted to submit that the effect of the striking out was the employment of a sanction and therefore the rules and in particular rule 26.8 should be applicable. Having reviewed her position over night she has with admirable candour recognised that the path which she intends to pursue could

lead her nowhere. Therefore, she has in effect conceded and in our view, rightly so. But even if there was a hint of merit in that argument the submission of Miss Dunn in respect of the striking out would have remained unchallenged.

10. There will be no order as to costs.

COOKE, J.A.

ORDER

The appeals are allowed. No order as to costs.