

NOTE 11.3 SETTING ASIDE/VARYING DEFAULT JUDGMENT

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In *Kenrick Thomas v RBTT Bank Caribbean Ltd (Formerly Caribbean Banking Ltd)* (St Vincent and The Grenadines)(Civil Appeal No 3 of 2005) (13 October 2005)(decision of single judge on paper submissions) Barrow JA stated that:

[7] The appellant submitted that this provision [rule 13.3] specifies three conjunctive pre-conditions for setting aside. The submission is sound. "Only if" can only mean that if the three matters are not present then the court may not set aside a default judgment. The difference between the English equivalent and the provision in CPR 2000 lies in the discretion. The discretion in the English CPR is Rule 13.3 significantly unlimited; it specifies only one matter to which the court must have regard and does not even make fulfilment of that matter a condition that the defendant must satisfy. In contrast, the discretion in CPR 2000 is severely limited; it specifies three conditions that the defendant must satisfy before the court is permitted to set aside a default judgment.

[10] The judge dealt with reconciling this approach with the overriding objective in this way: "The overriding objective, contained in Part 1 of CPR 2000, which requires the court to apply the rules so as to deal with cases justly, is often invoked to relieve against the hardship that a strict application of the rules may cause. This court has clarified that the overriding objective does not allow the court to ignore clear rules. The language that the rule makers chose to frame Part 13.3 (1) was considered and deliberate; there is no possibility that its purport was unintended. Litigants and lawyers must now accept that CPR 2000 has gone significantly further than the English rules in the hardening of attitude towards the lax practice that previously prevailed in relation to the setting aside of default judgments which was an identified abuse that the new rules were intended to correct. The adherence to the timetable provided by the Rules of Court is essential to the orderly conduct of business and the importance of adherence is reflected in CPR 2000 imposing pre-conditions for setting aside a default judgment. If the pre-conditions are not satisfied the court has no discretion to set aside. The rule makers ordained a policy regarding default judgments. It is as simple as that."

In that case, the defendant applicant had failed to satisfy two of the three conditions: he failed to apply promptly and failed to give a good explanation for the failure to file a defence. The Court of Appeal reversed the master's decision to set aside the default judgment in.

In this connection, see also *Hyman v Matthews* (Jamaica) (Applications 72 and 80 of 2006) (SCCA 64/2003) per K. Harrison J.A.:

"The provisions of Part 13.3 are different from their English counterpart. In the U.K. the rules state that "the court may set aside a judgment ... if" whereas in Jamaica the rules state "... only if". The word "only" makes a big difference. One should therefore be careful in relying on English authorities. In considering whether to set aside a judgment entered under Part 12, the judge has no residual discretion if any of the conditions are not satisfied."

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