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**JAMAICA**

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**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO: 112/96**

**BEFORE: THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MR. JUSTICE BINGHAM, J.A.**

<b>BETWEEN</b>	<b>R.B. MANDERSON-JONES</b>	<b>PLAINTIFF/APPELLANT</b>
<b>AND</b>	<b>SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS AERONAUTIQUES</b>	<b>DEFENDANT/RESPONDENT</b>

**R. Manderson-Jones for Appellant**

**Ransford Braham, instructed by Livingston, Alexander & Levy  
for the Respondent**

**February 24, 25, and April 21, 1997**

**BINGHAM, J.A.**

On 25th February after hearing arguments from counsel the Court upheld a preliminary objection taken by learned counsel for the respondent and struck out this appeal. We also awarded costs to the respondent, such costs to be agreed or taxed.

The following are our reasons for doing so.

The appeal arose out of an order made in Chambers by Cooke, J on 20th November, 1996 setting aside a judgment entered in default by the plaintiff/appellant on 7th October, 1996

The plaintiff/appellant's claim arose out of certain legal work undertaken at the respondent's request in respect of which there was a dispute as to the amount which the appellant was claiming as remuneration for his services. Failing attempts to arrive at a settlement the appellant filed suit claiming an amount as set out in particulars of claim for \$1,203,325.87 and costs.

Appearance having been entered by the Attorneys-at-law for the respondents, and while efforts were being made by them to arrive at an amicable settlement of the matter, the appellant proceeded to enter judgment in default for the sum claimed as set out in the aforementioned particulars of claim.

On 8th November 1996 the respondents filed a summons for stay and to set aside the judgment in default. This summons was set for hearing on 20th November 1996. The summons sought the following reliefs:

"That the judgment entered herein and all proceedings thereunder be set aside.

That the Defendant be at liberty to file a Defence within 7 days of the date of the order.

The Bill of Fees, the subject of these proceedings, be referred to a taxing officer for taxation pursuant to the provisions of the Legal Profession Act.

These proceedings be stayed pending the taxation of fees.

There be such further or other Directions as the Court may seem just."

The Notice of Hearing filed in the matter on 18th November, 1996 stated that at the hearing of the summons the respondent was relying on the following:

- "1. The defendant will contend that the Default Judgment is irregular.
2. In the alternative the Defendant will contend that the Defendant has an arguable defence."

Before Cooke J after hearing the argument of the plaintiff/appellant and Mr. Braham for the respondent, the learned judge upheld the contentions of the respondent and made his order setting aside the judgment in default on the ground of irregularity.

Although complaint has been made by Mr. Manderson-Jones that the learned judge was in error in amending the summons to include the irregularity ground there is no basis for this complaint. The notice of hearing having set out the grounds to be relied on by the respondent, the appellant could not validly claim that he was taken by surprise at the hearing as the notice of hearing would have alerted him as to what the respondent would be contending was the basis for its application before the learned judge.

This left as the crucial question for the judge's determination the propriety of the default judgment. The suit being in the nature of a claim for remuneration for legal services rendered, sounded more in contract than in a claim for debt or a liquidated demand for which final judgment could be entered. The learned judge was of the opinion that as the claim had a contractual basis, being one for remuneration for legal services rendered in respect of which there was an on-going dispute as to the quantum, there was no proper basis for the appellant to enter a default judgment for what was clearly an unliquidated sum.

Section 245 of the Judicature (Civil Procedure Code) Law in so far as it provided that:

" If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, file a statement of defence, and deliver a copy thereof, the plaintiff may, subject to the provisions of section 258A of this Law at the expiration of such time, enter final judgment for the amount claimed, with costs."

was inapplicable to claims of the nature as relied on by the plaintiff/appellant.

The order setting aside the judgment on ground of irregularity meant that no condition or terms could have been imposed on the respondent. (Vide order 13 rule 9(4) Supreme Court Practice 1970). Also in support *White v. Weston* [1968] 2 Q.B. 647; [1968] 2 W.L.R. 1459. This was in our opinion tantamount to granting the defendant/respondent unconditional leave to defend within the provisions of section 11(1)(b) of the Judicature (Appellate Jurisdiction) Act. That subsection reads:

"11. - (1) No appeal shall lie -  
(b) from an order of a Judge giving unconditional  
leave to defend an action;"

What the legislature is mandating by virtue of the subsection is that where such a state of affairs exists then the cause or matter is best determined by the parties proceeding to a hearing on the merits. Given the disputed nature of the claim the justice of the case demands that this was the most desirable course to be resorted to.

For these reasons we upheld the preliminary objection in terms of the order as set out at the commencement of this judgment.