

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP 2014/0028

BETWEEN:

MATTHEW HARRIS

Appellant

and

LINDSAY MASON

(Trading as "Tropical Home Design Construction Services")

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE  
The Hon. Mde. Louise Esther Blenman  
The Hon. Mde. Gertel Thom

Chief Justice  
Justice of Appeal  
Justice of Appeal

On written submissions:

Mr. Deloni Edwards for the Appellant  
Mr. Derick F. Sylvester for the Respondent

---

2014: October 9.

---

*Interlocutory appeal – Application to set aside default judgment – Whether the Civil Procedure Rules 2000 precludes default judgment from being entered for a specified sum of money and also for an unspecified sum of money – Rules 12.8(3) and 12.10 of the Civil Procedure Rules 2000*

On 20<sup>th</sup> February 2014 default judgment was entered against the appellant for the specified sum of \$30,976.00 and for general damages to be assessed. The appellant later sought to set aside the default judgment on the basis that the default judgment so entered was irregular.

The learned master in the lower court in his judgment found that neither rule 12.8(3) nor 12.10 of the Civil Procedure Rules 2000 precluded default judgment from being entered for a specified sum of money and also for an unspecified sum of money and on that basis the default judgment so entered was not irregular. The learned master therefore refused to set aside the default judgment. The appellant appealed the learned master's decision.

**Held:** dismissing the appeal, affirming the order of the learned master and ordering costs of the appeal to the respondent fixed in the sum of \$1,000.00, that:

1. Although, CPR 2000 does not expressly deal with default judgments in relation to mixed claims for both a specified sum of money and for an unspecified sum of money in a discrete manner, CPR 2000 has no provision that says that a default judgment cannot be entered for a specified sum of money and also for an unspecified sum of money. It is clear that the combined effect of CPR 12.8(3) and 12.10 is that a default judgment may be entered for both a specified sum of money and also for an unspecified sum of money.
2. CPR 12.8(3) is not expressed in mandatory terms and as such when entering default judgment in a claim for a specified sum of money and for an unspecified sum of money, the claimant need not abandon the claim for the unspecified sum of money and enter default judgment only for the specified sum of money. It is left completely to the claimant to decide whether he or she wishes to abandon or pursue the claim for the unspecified sum of money.

## JUDGMENT

- [1] **PEREIRA CJ:** This interlocutory appeal raises the question whether a default judgment may be entered as one for a specified sum of money and also as one for general damages to be assessed – in essence, whether a default judgment can be final as to one part and interlocutory as to the other part in the sense that an amount is to be determined or assessed.
- [2] The appellant sought to set aside the default judgment entered on 20<sup>th</sup> February 2014, which judgment was, as set out in the Request for Entry of Judgment in Default, expressed as being both a judgment for a specified sum in the total amount of \$30,976.00 and for general damages to be assessed, on the basis that the judgment so entered was irregular. The learned master, in his judgment given on 26<sup>th</sup> June 2014, in essence, found that the default judgment so entered was not irregular and refused to set it aside. It is common ground that the respondent made a claim for a specified sum in an amount of \$28,800.00,<sup>1</sup> being an amount said to be admitted as due and owing to the respondent for work done under a

---

<sup>1</sup> The total sum of \$30,976.00 included sums for court fees, costs and interests.

building contract, as well as for general damages in respect of breach of the building contract.

- [3] At paragraph 38 of his judgment, the learned master, after considering a number of provisions under the **Civil Procedure Rules 2000** ("CPR 2000"), in particular, Part 12, dealing with default judgments, concluded as follows:

"I find therefore that neither CPR 12.10 nor 12.8(3) precludes a Claimant from entering judgment for a specified sum as well as for damages to be assessed and therefore that the judgment was not irregular because it did so."

It is with this conclusion that the appellant takes issue on this appeal. The starting point, like that of the master, must be with a consideration of the relevant provisions of CPR 2000, to which I now turn.

#### **CPR 2000 Part 12.8**

- [4] CPR 12.8 deals with a claim for a specified sum of money. CPR 12.8(2) states as follows:

"(2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either the sum of money claimed –  
(a) and for interest to be assessed; or  
(b) together with interest at the statutory rate from the date of the claim to the date of entering judgment."

The rule following 12.8 (2), which is subrule (3), then goes on to state as follows:

"(3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.<sup>2</sup>"

- [5] Unlike the old pre-CPR regime,<sup>3</sup> CPR 2000, apart from the reference to a claim which is partly for a specified sum and partly for an unspecified sum as set out in 12.8(3), does not expressly deal with a default judgment in respect of such a mixed claim in a discrete manner as was done under the old pre-CPR regime. Rather, CPR 12.10(1) then states that a:

---

<sup>2</sup> Rule 2.4 defines "claim for a specified sum of money".

<sup>3</sup> The Rules of the Supreme Court 1970.

- (1) "Default judgment on a claim for –
  - (a) a specified sum of money – must be judgment for payment of that amount ...
    - (i) ...
    - (ii) ...
  - (b) an unspecified sum of money – must be judgment for the payment of an amount to be decided by the court ..."

[6] Nowhere does CPR 2000 say that a default judgment cannot be entered for a specified sum and also for an unspecified sum. Further CPR 12.8(3) is not couched in mandatory terms. This is for good reason. It would not be right as a matter of law or fairness to force a claimant to abandon a perfectly good claim for an amount to be assessed merely because that claimant wishes to have a final judgment by default in respect of a perfectly good claim for a specified sum. CPR 8.4 makes expressly clear that a claimant may include in a claim form all or any other claims which may be conveniently disposed of in the same proceedings. This is also for good reason, not the least of which is the saving of time and expense. It would be incongruous to encourage such an approach in the making of all your claims in one proceeding, only to be forced to abandon one or more claims, because of a defendant's default, in obtaining judgment against the defaulter.

[7] The learned master opined at paragraphs 26 and 27 as follows:

"[26] In any negligence action, therefore, it would not be unusual for a claimant to be in a position to enter default judgment for a specified sum (receipted medical expenses and the like) as well as for damages to be assessed (general damages for pain and suffering etc) in respect of the same cause of action. If the Defendant in this matter is correct, such a judgment would not [be] permissible and a Claimant would be required to enter judgment for the special damages for which receipts have been attached and abandon the claim for general damages, or vice versa.

[27] These considerations lead me inexorably to the conclusion that I cannot accept the Defendant's submissions on this issue."

With the master's opinion I respectfully agree.

- [8] In having regard to the **The Supreme Court Practice 1999**,<sup>4</sup> of which the old pre-CPR rules were fashioned, in setting out discrete provisions dealing with claims for a specified sum, claims for an unspecified sum and mixed claims, there appears this note:

"Where the defendant is in default of giving notice of intention to defend, the plaintiff may enter –

- (1) **final judgment** when the writ is indorsed
  - (a) for a liquidated demand (r. 1).
  - (b) ....
- (2) **interlocutory judgment** when the writ is indorsed
  - (a) for unliquidated damages (r. 2)
  - (b) ....
  - (c) ....
- (3) **final and interlocutory judgment** when the writ is indorsed with mixed claims ... . The judgment may be final as to part and interlocutory as to part, or both combined ..."

- [9] Notwithstanding that CPR 2000 no longer contains such discrete provisions, it becomes readily apparent that the conjoint effect of CPR 12.8(3) and 12.10(1) is that a default judgment may be entered for both a specified sum of money and an unspecified sum of money. It is left completely to the claimant to decide whether he/she wishes to abandon the claim for an unspecified sum. Where the specified sum claimed is, in essence, equivalent to the damages which may be obtained for breach of contract as is the case here, the claimant may very well consider that it is not worth the trouble to pursue the claim for further damages which may incur further time and expense.

---

<sup>4</sup> (The White Book) (Sweet & Maxwell 1999), para 13/0/2, 137.

**Conclusion**

[10] For the foregoing reasons I would dismiss this appeal and affirm the order of the learned master. I would award costs of this appeal to the respondent fixed in the sum of \$1,000.00.

**Dame Janice M. Pereira, DBE**  
Chief Justice

I concur.

**Louise Esther Blenman**  
Justice of Appeal

I concur.

**Gertel Thom**  
Justice of Appeal