

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Sylmord Trade Inc -v- Inteco Beteiligungs AG Claim No. BVIHCMAP 2013/0003

CIVIL APPEAL - COMMERCIAL LAW -
INTERLOCUTORY APPEAL - RULE 13.3 OF THE
CIVIL PROCEDURE RULES 2000 - SETTING ASIDE
A DEFAULT JUDGMENT

This was an appeal by Sylmord Trade Inc (the “Appellant”) against the decision of the Learned Commercial Judge to dismiss its application to set aside judgment in default which was entered for Inteco Beteiligungs AG (the “Respondent”) against the Appellant. The grounds of the appeal were that the Judge erred in (1) deciding that the Appellant had not advanced a good explanation for its failure to acknowledge service; (2) holding that the Appellant did not have real prospects of successfully defending the claim; and (3) finding that the commencement of proceedings in breach of contract, and an express provision which provided for arbitration, was not itself a sufficient reason to set aside the default judgment. The appeal was dismissed. The Court of Appeal’s determination in relation to grounds 1 and 3 are the most important.

In relation to ground 1, the Court held that the Appellant’s “*apparent indifference to the legal proceedings instituted in the BVI connotes real or substantial fault on its part*” and accordingly the Appellant could not be said to have offered a good explanation for its failure to file an acknowledgment of service or defending the proceedings within the time prescribed by the Rules. In seeking to determine what was a “good explanation” in the context of Rule 13.3(1), the Court stated that while it had not come across any cases from that court which defined good explanation, it found the analysis in the Privy Council case of *Attorney General -v- Universal Projects Limited* [2001] UKPC 37 of what would not constitute a good explanation in the context of a summary judgment application to be useful. At paragraph 23 of the Privy Council judgment, Lord Dyson stated that “*if the explanation for the breach ... connotes real or substantial fault on the part of the defendant, then it does not have a good explanation for the breach ... Oversight may be excusable in*

certain circumstances. But it is difficult to see how inexcusable oversight can even amount to a good explanation. Similarly if the explanation for the breach is administrative inefficiency”.

Applying the case of *Vann et al -v- Awford et al* (1986) 83 LSG 1725, the Court of Appeal also held that filing claims arising from contracts with compulsory arbitration clauses was far from being an exceptional circumstance with the meaning of CPR 13.3(2) and of itself was not sufficient reason for the Court to set aside default judgment.

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.