

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Matthew Harris -v- Lindsay Mason **GDAHCVAP 2014/0028 (October 2014)**

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

This is an Appeal by Matthew Harris against the refusal by the Learned Master to set aside judgment in default entered against him on the basis that the Judgment was irregular because it included judgment for a specified sum of money and for an unspecified sum of money. The Court of Appeal dismissed the Appeal and held that although *English Civil Procedure Rules, 2000* ("CPR") 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 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.

The Court also held it was clear the combined effect of CPR 12.8(3) and 12.10 was that a default judgment may be entered for both a specified sum of money and also for an unspecified sum of money and that CPR 12.8(3) was not expressed in mandatory terms. As a result, 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.

The Court observed that 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. Since the CPR makes it 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 proceeding, it would be incongruous to encourage such an approach, only to be forced to abandon one or more claims, because of a Defendant's default in obtaining judgment against the defaulter

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