

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Barbara Campsell -v- David Sookwa **SLUHCVAP2014/0018**

INTERLOCUTORY APPEAL - STRIKE OUT OF APPELLANT'S DEFENCE BY LEARNED JUDGE - JUDGMENT ENTERED FOR RESPONDENT IN APPELLANT'S ABSENCE - WHETHER LEARNED JUDGE FAILED TO PROPERLY EXERCISE DISCRETION PROVIDED BY CIVIL PROCEDURE RULES ("CPR") 26.2 TO MAKE ORDERS OF ITS OWN INITIATIVE

This Appeal arose out of the decision of the Learned Judge to strike out the defence of Barbara Campsell (the "Appellant") and enter judgment for David Sookwa (the "Respondent") for the sum that the Appellant allegedly owes him. The Appellant and her counsel did not attend a case management conference, and her explanation was that she assumed the hearing date had been changed and that her counsel thought that the hearing was set for another date.

The Appellant appealed against the order of the Learned Judge on grounds, *inter alia*, that the Learned Judge failed to exercise her discretion properly and exceeded the Court's power in CPR 26.2 to make an order of her own initiative striking out the Appellant's defence and entering judgment against her.

In allowing the appeal, the Court of Appeal held, *inter alia*, that CPR 26.2 expressly provides the Court with the jurisdiction to make orders of its own initiative. Where this discretion is exercised, however, the Court must give any party likely to be affected a reasonable opportunity to make representations. The draconian response of striking out a party's statement of case and denying him/ her a trial should not be the first step when that party breaches any of the rules, unless there is repeated non-compliance or his case is weak. The Learned Judge only took account of the single absence of the Appellant and her counsel in the hearing before exercising such draconian sanction, and did not take into consideration relevant factors, including the

Appellant's attendance in all previous hearings, her explanation for the absence of herself and her counsel, her *prima facie* good defence to the claim and the alternative sanctions available under the CPR. Hence, the Learned Judge erred in striking out the Appellant's defence and entering judgment for the Respondent.

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.