

BRITISH VIRGIN ISLANDS COURT OF APPEAL (COMMERCIAL COURT)

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2015/0026

INTERLOCUTORY APPEAL - BREACH OF STATUTORY DUTY - WHETHER BREACH OF STATUTORY DUTY WHICH PRESCRIBES CRIMINAL SANCTION MAY ADDITIONALLY GIVE RISE TO CIVIL CLAIM FOR DAMAGES IN NEGLIGENCE FOR BREACH OF STATUTORY DUTY - MOTOR VEHICLES INSURANCE (THIRD-PARTY RISKS) ACT - DEFAULT JUDGMENT - SETTING ASIDE OF DEFAULT JUDGMENT - EXCEPTIONAL CIRCUMSTANCES - WHAT AMOUNTS TO 'EXCEPTIONAL CIRCUMSTANCES' FOR PURPOSE OF CIVIL PROCEDURE RULES ("CPR") 13.3(2)

In this case the Court was being asked to consider, *inter alia*, the long elusive meaning of "exceptional circumstances" in the context of an application to set aside judgment which was obtained in default in respect of a personal injury claim, which the Appellant had brought against the Respondent. The default judgment was set aside as a result of the Learned Judge having erred in his construction of Section 3 of the *Motor Vehicles Insurance (Third Party Risks) Act* in providing that it did not give rise to an actionable wrong.

The Court recognised that the CPR did not define what amounted to "exceptional circumstances" and that each case must be decided on a case-by-case basis. It did, however, give the following guidance. First, that "an exceptional circumstance must be something more than simply showing that a defence put forward has a realistic prospect of success". The Court highlighted that the purpose of the exception provided for by CPR 13.3(2) was reserved for circumstances that could be described as "truly exceptional", thus resulting in the claimant being deprived of his judgment, where the Applicant was unable to satisfy Rule 13.3(1). The Court cited as examples of exceptional circumstances where it could be shown that the

Claim was not maintainable as a matter of law, or one which is bound to fail, or one with a high degree of certainty that the claim would fail, or the defence being put forward was certain to defeat the claim, or where the remedy sought or granted was not one available to the claimant.

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