

## BRITISH VIRGIN ISLANDS COURT OF APPEAL

### ***Joseph Hyacinth -v- Allan Joseph*** **GDAHCV2015/0025**

CIVIL APPEAL - FIXED DATE CLAIM - STRIKE OUT OF DEFENCE BY JUDGE - ENTRY OF JUDGMENT IN DEFAULT OF DEFENCE - AUTHORITY OF JUDGE TO STRIKE OUT DEFENCE AND ENTER JUDGMENT IN DEFAULT ON FIXED DATE CLAIM - EXTENSION OF TIME TO APPEAL - PRINCIPLES THE COURT SHOULD CONSIDER IN EXERCISING DISCRETION TO GRANT AN EXTENSION OF TIME

In this Appeal, Joseph Hyacinth (the “Appellant”), sought an extension of time to apply for leave to appeal and for leave to appeal against the order of Mohammed J, striking out his defence and counterclaim, which was filed out of time, and entering judgment for Mr. Allan Joseph (the “Respondent”). Twenty months had elapsed between the Judge’s Order striking out the defence and the Appellant’s appeal application.

In the Court below, having struck out the defence and counterclaim, the Judgment that was entered could only have been a judgment in default of defence. In granting the Appeal, the Court of Appeal held, *inter alia*, the principle that the Court has a wide discretion to grant an extension of time to appeal when the applicant has good prospects of succeeding on appeal. Even though he or she is guilty of inordinate delay without a good explanation, this is firmly a part of the law and practice in the Eastern Caribbean. The matters which the Court will consider in the exercise of its discretion are: the length of the delay; the reasons for the delay; the chances of the appeal succeeding if the extension is granted; and the degree of prejudice to the respondent if the application is granted.

Further, an attorney’s error can be a good reason for missing a deadline. However, the applicant must show the delay was substantially due to the conduct of the attorney and litigants and must show some degree of vigilance in protecting their own interest.

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