

BRITISH VIRGIN ISLANDS COURT OF APPEAL (COMMERCIAL COURT)

***The Marina Village Limited -v- St Kitts
Urban Development Corporation Limited
SKBHCVAP 2015/0012***

INTERLOCUTORY APPEAL - DEFAULT JUDGMENT
- SETTING ASIDE DEFAULT JUDGMENT -
WHETHER THE LEARNED TRIAL JUDGE
PROPERLY EXERCISED HER DISCRETION IN
REFUSING TO SET ASIDE DEFAULT JUDGMENT
RULE 13.3 OF THE CIVIL PROCEDURE RULES,
2000 ("CPR")

This was an Appeal against the decision of the Court below refusing to set aside judgment entered in default against the Marina Village Limited (the "Appellant") on the basis that the Appellant had offered no good reason for not acknowledging service of the Claim in time, that the Appellant had no real prospect of success on the Claim and there were no exceptional circumstances for setting aside the Default Judgment.

The Respondent served the Appellant by prepaid post at its registered address. The Appellant alleged that service by prepaid post at a post box was not a permissible method of service under the CPR. The Court did not accept this submission and confirmed that the service method used by the Respondent was permissible because it was served on an address stated by the Appellant's Director as being the registered office. The explanation offered by the Appellants for not responding to the Claim in time was because this was a post office box that was not regularly checked. The Court held that the failure to have adequate administrative arrangements in place to access correspondence in a timely matter could not constitute a good explanation for failing to acknowledge service on time. In support of this conclusion, the Learned Justice of Appeal referred to the requirement in St Kitts for every company incorporated there to have a registered office and it being the place at which the public is able to communicate with the public.

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