

IN THE SUPREME COURT OF THE
TURKS AND CAICOS ISLANDS

BETWEEN:

AMBERGRIS CAY COMMUNITY ASSOCIATION LIMITED
(FORMERLY THE TURKS AND CAICOS SPORTING CLUB AT AMBERGRIS CAY COMMUNITY ASSOCIATION
LIMITED)

PLAINTIFF

AND

ROSEBUD ISLAND LIMITED

DEFENDANT

BEFORE THE CHIEF JUSTICE, THE HONOURABLE MS. JUSTICE MARGARET RAMSAY-HALE
Mr. David Cadman of Griffiths and Partners for the Plaintiff
Mr. Peter McKnight of McKnights International Law Firm for the Defendant
Heard on 27 November, 2017



NOTE OF EX TEMPORE JUDGMENT

1. On the application by the Plaintiff for a Charging Order by summons dated 22nd March, 2017, a Charging Order *Nisi* was granted on 27 March, 2017. The Plaintiff's application for a Charging Order *Absolute* was met by an application by the Defendant, Rosebud Island Limited, to set aside the Default Judgment¹ entered on 17 November, 2017.
2. Under Order 13, rule 9 of the Rules of the Supreme Court, 2000, for Rosebud to succeed, it must give reasons for its delay in defending the claim and it must have a meritorious defence. If the defence is strong, the Court may disregard the lapse of time. Rosebud produced to the Court a copy of an affidavit dated 23 November, 2017 signed by Mr. Jean Charles Victor Maurice Lignel, Rosebud's representative, in support of its application to set aside default judgment. Upon Mr. McKnight's undertaking to file the original affidavit in due course, the Court treated this affidavit as filed.
3. Mr. Lignel's evidence is that he was personally bombarded with demands for payment from the Plaintiff even though the property is owned by Rosebud. As a result, he purposefully ignored correspondence from the Plaintiff.² He asserts that as Rosebud has a registered office in the Turks and Caicos Islands which is also the location of the offices of Meridian Trust Company Ltd. which

¹ The Plaintiff obtained Default Judgment against the Defendant on 8 June, 2017

² Paragraph 26 of Mr. Lignel's affidavit

provides Rosebud with registered office facilities and company management services, Meridian should have brought the proceedings to the attention of Mr. Luc Sunnen, a director of IWIC, Luxembourg, a company which manages Rosebud³ and Mr. Sunnen in turn should have brought the proceedings to his attention.

4. Mr. Lignel is not clear in his affidavit whether he did or did not receive the email notifying him of the proceedings. He simply says he cannot recall seeing that email.⁴ Whether or not he saw the email, it is clear that he was aware of the proceedings and ignored them.
5. In any event, Rosebud is the Defendant and it was served and a regular judgment obtained. Mr. Lignel was required to speak to the reasons for the delay in his supporting affidavit and no credible explanation has been given for the delay in making this application or for its failure to appear at the assessment of damages hearing.
6. Ignoring demands made by the Plaintiff and ignoring proceedings brought to his attention because of the manner in which the Plaintiff chose to proceed, is not a sufficient explanation for delay.
7. Rosebud's defence is not meritorious and has no real prospect of success. In the first instance, the defence proceeds on the basis that the agreement between the parties was not properly registered. The Court concurs with Mr. Cadman's submission that Rosebud is bound by its agreement, notwithstanding any defect in its registration, as registration is only required to bind successors in title. In addition, the defence is contradictory as it denies the enforceability of the agreement while at the same time it seeks to challenge the interest rate as being excessive and avers that it received no benefit under the agreement, averments which depend on the agreement being enforceable. This contradiction also undermines the counterclaim which requires the Court to find an enforceable agreement in order for it to succeed. Neither the defence nor the counterclaim should be allowed to proceed, as neither shows any possibility of success.
8. The application to set aside default judgment is dismissed as no sufficient explanation has been given for the delay in making the application and the defence has no real prospect of success. The Charging Order *Nisi* is hereby made *Absolute*, the Defendant having failed to show cause.

DATED 27 NOVEMBER, 2017

Adecs

CHIEF JUSTICE



³ Paragraph 12 of Mr. Lignel's affidavit

⁴ Paragraph 22 of Mr. Lignel's affidavit