JERSEY / JUDGMENT

Slot -v- Shaw [2010] JRC 223A (13 December 2010)

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judgment

the deputy bailiff: 1. This is an application made by Mr and Mrs Slot (the Applicants) under Rule 2 of the Royal Court (Appeals from the Petty Debts Court) Rules 2004 for leave to appeal the refusal of Judge Shaw on the 26 th May, 2010, to set aside a default judgment obtained by Messrs Shaw & Co against them on 21 st April, 2010, in the Petty Debts Court. 2. Appeals to the Royal Court are governed by Article 3 of the Petty Debts Court (Miscellaneous Provisions)(Jersey) Law 2000 :- "3 Appeal to the Royal Court (1) If any party to any proceedings in the Petty Debts Court is dissatisfied with the decision of the Judge, he or she may, with the leave of the Petty Debts Court or the Bailiff, appeal to the Royal Court in such manner and subject to such conditions as may be prescribed by Rules of Court. (2) On hearing an appeal, the Royal Court may draw any inference of fact and may - (a) order a new hearing in the Petty Debts Court in such terms as it thinks just; (b) order any judgment to be entered for any party; or (c) make a final or other order on such terms as it thinks proper to ensure the determination on the merits of the real question in controversy between the parties. (3) The determination of an appeal by the Royal Court shall be final and conclusive, and shall not be subject to appeal to any other Court. (4) This Article is without prejudice to any right of appeal conferred by any other enactment or rule or law." 3. The applicants were given the opportunity to address me in support of their application but declined to take that opportunity prior to their departure from the Island for an extended period. I therefore dealt with the application on papers. 4. I have reviewed all the relevant documents, including the affidavit which the applicants filed in the Petty Debts Court in support of their application to have the judgment set aside, the skeleton argument filed in support, the grounds of appeal and the documents in the bundles lodged by the applicants. I have also reviewed the statement of reasons dated 26 th May, 2010, given by Judge Shaw. 5. The legal test to be applied is set out in the case of Strata Surveys Limited-v-Flaherty and Company Limited a Court of Appeal decision reported at

[1994] JLR 69 . The questions that I need to address are these:- (i) Should the exercise of discretion by the judge not to set aside the default judgment be overruled because:- (a) The applicants have a reasonably arguable defence to the claim? (b) The default did not arise through any fault on the part of the applicants? (c) There was no delay by the applicants in

applying to set aside the default judgment? (d) There would be a serious injustice done to the applicants if they were not allowed to defend the action and have the claim and its defences heard at trial? (e) The plaintiff would suffer no injustice if the default judgment is set aside? I consider each of the points in turn.

(a) Whether the applicants have a reasonable arguable defence to the claim. 6. There is no reasonably arguable defence to the claim. The application for judgment was based on a mediated settlement which includes this language:- "Now this day the parties having participated in a mediation hearing do consent to settle the action on the following terms:- That the defendant agrees to pay to the plaintiff the sum of £1,500 in full and final settlement. Any sum due under the terms of this agreement must be paid within 7 days from the date hereof failing which the plaintiff may be entitled to make application to have the agreement enforced in the Petty Debts Court. If no such application is made within the next 28 days the Court will assume that the agreement has been ratified and the action will be cassé". The agreement is dated 26 th March, 2010. It has been signed by Mr Boots on behalf of the plaintiff company, and by both the defendants, the present applicants for leave to appeal. It is countersigned by the relief Magistrate as mediator. 7. It is suggested by the applicants that there was an error made by the mediator Mr Wheeler who understood that the possible counterclaim of the applicants was time barred. It would appear that as it is a claim founded in tort, the claim is time barred in Jersey, where the limitation period is 3 years, but it may not be time barred in the United Kingdom where the limitation period is 6 years. This does not seem to me to be a basis to grant leave to appeal. First of all, the mediation agreement had been voluntarily entered into by the parties. There was no obligation upon them to do so. The assumption is that the parties recognised that there were strengths and weaknesses in their respective claims, and those were all compromised in the ultimate mediated settlement. It is too late at this stage to seek to re-open that matter. I have also noted that no steps were taken to re-open the mediation or set aside the settlement amount. 8. It is said that the applicants wish to have the case transferred to the United Kingdom. I do not think that is a course of action which can properly be followed. The plaintiffs brought proceedings against the applicants in the jurisdiction in which they live. That is entirely acceptable. There is nothing which prevents the applicants from bringing a claim in the United Kingdom if they are so minded. The present proceedings would not be transferred unless there were a forum non conveniens application. It is too late for any such application because instead the applicants participated in mediation and signed a mediation award. 9. For all these reasons I conclude that there is no arguable basis for appeal.

(b) Did the fault did not arise through any fault on the part of the applicants 10. I note that the default did arise through the failure of the applicants to attend in Court on 21 st April when the judgment was given. I have also noted from the file that Mr and Mrs Slot contacted the Court prior to 21 st April, and that on 20 th April the senior proceedings officer wrote to them to confirm that the plaintiff had given adequate notice of his intention to enforce the agreement on 21 st April, and that their attendance in Court was necessary and would provide them with an opportunity to resist a judgment being recorded against them. The

Court proceedings officer confirmed that if they were unable to attend Court they should try to secure an adjournment by agreement or if not arrange legal representation, but he completed his letter with a statement that "failure to take timely and appropriate action may result in a judgment being recorded against you". In fact the applicants took no further action and a judgment was so obtained. I do not regard this default as significant however as these were litigants in person and it is not the substantial basis for my view of this application.

(c) Delay 11. I accept there was no initial delay, or at least no initial unreasonable delay, on the part of the applicants in seeking to set aside the default judgment. However, there has subsequently been delay. 12. On 19 th August, 2010, I indicated that I would allow the applicants to address me in chambers on whether or not leave to appeal would be given but directed that they must make application to Bailiff's Judicial Secretary within 21 days if they wished to do so. 13. On 11 th October, 2010, the applicants set a date for that leave hearing, namely 19 th November, 2010. Later the same day they wrote seeking an adjournment of that hearing to January 2011, on that basis they would be in Spain from November until the New Year. On 12 th October, the applicants were accordingly advised that I would hear their application at 4.45pm on 13 th October, prior to their intended departure on 14 th October. The applicants indicated that they would not attend as they had an appointment with a planning officer that afternoon. The same day they wrote to advise they were leaving for England that evening. They were advised that in those circumstances they should attend on 19 th November, 2010, as previously fixed. They did not do so. 14. In the circumstances I refused leave to appeal on the papers. The reasons would not have included delay in the first instance but the applicants' delay since August 2010 is excessive, given the original dispute goes back in excess of 5 years, and does afford an additional ground for refusal of leave.

(d) Serious injustice to the applicants 15. I do not consider that serious injustice would be done to the applicants if they were not allowed to defend the action and have the claim to its defence heard at trial. The mediated settlement is perfectly clear and there is no basis upon which it should be re-opened.

(e) Injustice to the plaintiff 16. By contrast, the plaintiff will suffer an injustice if the default judgment is set aside because it has already settled its claim for a mediated amount which is considerably less than the amount claimed, and it is entitled to see the fruits of that settlement paid to it in early course. 17. I am therefore satisfied that no leave to appeal should be given. A review of the decision of Judge Shaw shows that she addressed all the correct legal matters and properly exercised her discretion. In my view, the decision of Judge Shaw is not only one with which I should not intervene but is also right. Authorities Royal Court (Appeals from the Petty Debts Court) Rules 2004. Petty Debts Court (Miscellaneous Provisions)(Jersey) Law 2000. Strata Surveys Limited-v-Flaherty and Company Limited

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Prepared on 26 October 2026 · Esheria