IN THE COURT OF APPEAL OF BELIZE AD 2020

CIVIL APPEAL NO 23 OF 2013

(1) LEO WASSNER

(2) BELIZE YATCH CLUB

(3) ISLAND MARKETERS LIMITED

(4) CORAL SAND CONVENTION CENTER LIMITED

(5) BELIZE VACATION CLUB LTD

(6) CONCHILLA LIMITED Appellants

v

(1) ISLAND CLUB RESORT LIMITED

(2) MICHAEL SINGH Respondents

_____

BEFORE

The Hon Sir Manuel Sosa	President
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal
The Hon Mr Justice Murrio Ducille	Justice of Appeal

P Banner for the appellants.
M H Chebat SC for the respondents.

_____

3 November 2020 (On Submission in Writing)

SIR MANUEL SOSA P

[1] I am of opinion that this appeal should be allowed. I have read the judgment of Ducille JA, in draft, and concur in the reasons for judgment given and, save to the extent indicated below, the orders proposed therein. With regard to the costs order, I am unable

to agree that, not having heard the parties on costs, it is appropriate to make an order which immediately takes effect as a final order. In my respectful opinion, the costs order should be provisional in the first instance and only become a final order if no party applies for a different order. I consider that the parties should be given 10 days from the date of their receipt of this judgment in electronic form within which to make such application, by letter to the Registrar copied to all other parties. I further consider that it should be ordered that, in the event of such an application, (a) each party should have 7 days from the date of such application within which to file and deliver to the other parties his or its written submissions on costs and (b) such application should be determined on the basis of the written submissions filed and delivered as ordered.

_____
SIR MANUEL SOSA P

HAFIZ BERTRAM JA

[2] I have read in draft the judgment prepared by my learned brother Ducille, JA and I agree that the appeal should be allowed for the reasons given.

_____
HAFIZ BERTRAM JA

DUCILLE JA

Background

[3] This is an appeal of the 4th February, 2013 Order of Madam Justice Arana dismissing the Appellants' 30th November, 2012 application for an Order rectifying a Default Judgment dated 25th October, 2006.

[4] The factual background of the matter is straightforward and succinctly summarized by the Appellants.

> *"4. By Claim Form dated 24th July, 2006, the Appellants claimed against the Respondent (i) damages from the 1st Respondent for breach of contract (ii) alternatively the sum of US$400,000.00 from the 1st and 2nd Respondents, (iii) Court fees of US$200.00, (iv) Legal practitioner's fixed costs on issue US$3,750.00, (v) Interest at **15% per annum** from the 31st day of June 2005 to the date of filing and US$164 per day until payment.*
>
> *5. The Appellants filed a 'Request for Entry of Judgment in Default of Defence' dated 17th October, 2006 seeking the sum of US$493,398.00 comprising the principal amount claimed, court fees, legal costs and interest from the date of issue to the date of judgment in the sum of US$84,948.00. The Default Judgment Order dated 25th October, 2006 provided as follows:*
>
> *"The Defendants, ISLAND CLUB RESORT LIMITED AND MICHAEL SINGH not having filed a Defence after due service of the Claim Form and Statement of Claim IT IS THIS DAY ADJUDGED that the Defendants pay the sum of (US$493,398.00) plus continuing interest thereon on the principal sum at a rate of **6% per annum** and for such period as this Honorable Court deems just until settlement of the debt in full, and attorney's fees."*

[5] By way of Notice of Application dated 30th November, 2012, the Appellants sought to rectify the disparity in interest rates by seeking an Order for the substitution of 15% for

the 6% in the Order for Default Judgment. They posited that (a) there was no judicial determination by a Judge setting the rate of interest payable on the Judgment Debt as the Judgment was issued pursuant to an application for judgment in Default of Defence; (b) in the making of the application for judgment in Default of Defence, there was an accidental slip and the Order for Default Judgment when drafted did not reflect what was claimed in the Claim Form, Statement of Claim and Request for Entry of Judgment in Default which was interest at a rate of 15% as opposed to the 6%; (c) the Respondent is truly indebted to the Judgment Creditor in the amount of US$240,280.14 as this was the amount agreed by the parties; (d) the interests of justice require that the accidental slip be corrected.

[6] The application to rectify was dismissed by the learned trial judge at the hearing of the same. Madam Justice Arana concluded as follows:

> *"I have listened to the submissions made by the Applicant and Respondent on this application to vary the interest rate on this Order. I find that this error is an error of substance in that the court is being asked to vary interest rate from 6% to 15% and this materially affects the amount of money that the Defendants are being asked to pay. I rule that this is not an error which can be corrected under section 42. 10. The application is therefore denied."*

[7] Leave to Appeal was granted by the learned trial judge on the 3rd July, 2013. By way of Notice of Appeal dated 5th July, 2013 the Appellants filed the following grounds of appeal:

"a. Madam Justice Arana erred and/or misdirected herself in determining that the error stated in the Notice of Application dated 30 day of November 2012 was an error of substance and not an error of form capable of rectification under the slip rule.

b. Madam Justice Arana erred and/or misdirected herself in dismissing the Appellant's Notice of Application dated 30th November, 2012.

c. The decision was unreasonable and could not be supported having regard to the evidence."

The Appeal

[8] The Appellants' contend that the 6% interest rate recorded in the Default Judgment is an error of form and not substance and as such can be amended under the slip rule provided for in *Rule 42.10 of the Supreme Court (Civil Procedure Rules 2005) ("SC CPR 2005")*. They posit that the interest rate of 6% reflected in the Default Judgment was clearly an error on the part of the Appellants' Counsel. The parties, the Appellants assert, contractually agreed to interest at 15% and as such the Claim Form sought an interest of 15%. The sole reason the Court issued an Order with an interest rate at 6%, the Appellants argue, is simply because Counsel for the Appellants erroneously stated 6% on the draft Order instead of 15%. There was no judicial determination or consideration on which the reduction from 15% to 6% is based. In light of these factors and in particular the fact that the exclusion of the interest at the agreed rate of 15% was an accidental slip, the Court accordingly has a discretion to amend the Order under the slip rule.

[9] Reliance was placed on *George Moundreas and Company SA v Navipex Centrala Nevala [1983] WL 217131* to establish that the jurisdiction exists for a court to invoke the slip rule in respect of a default judgment where the error in the judgment was an error of the attorney and not of the Court. Further reliance was placed on *L Shaddock & Associates Pty Ltd v Parramatte City Council (No. 2) [1982] 151 CLR 590* a case from the High Court of Australia to demonstrate that the Court has an inherent jurisdiction to correct

a miscalculation of interest or to include interest in an order where such interest has been excluded by inadvertence.

[10] Needless to say the Respondents disagree with the Appellants' view that the insertion of 6% in the Default Judgment as opposed to 15% is an error that can be corrected under the slip rule. In the Respondents view the error is one of fact and therefore of substance and not form and as such the learned trial judge was correct to conclude that the Default Judgment cannot be amended by virtue of the slip rule.

[11] The Respondents argue that, "the slip rule permits the Court to correct a failure to accurately record a Judge's intention at the time that she/he promulgates a decision. The only material before the Court at the time of granting the Default Judgment Order would have been the Request for Entry of Judgment in Default of Defence and the Draft Order submitted by the Appellants. The Court's intention could not have been otherwise than that expressed in the Default Judgment Order. … The case before the court however arises neither from a miscalculation of interest or through inadvertence. The Appellants' attorney-at-law requested that Default Judgment be entered for the Appellants and asked the court to award interest at the rate of 6% on the sum claimed. There is no evidence before the court to support the contention that the 6% interest was the result of an accident or arose from a clerical mistake."

The Law

[12] *Rule 42. 10 of the SC CPR, 2005* makes provision for the correction of mistakes and errors found in judgments or orders which arise from an accidental slip or omission. The rule provides as follows:

> *"42.10 (1) The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.*
>
> *(2) A party may apply for a correction without notice."*

[13] Both parties placed before this Court the Eastern Caribbean Supreme Court Decision of *Saint Christopher Club Ltd v Saint Christopher Club Condominiums et al (Civil Appeal No. 4 of 2007)* at paragraphs 21 & 23 of the judgment Rawlins, CJ stated as follows:

> *"21. The Green Book 2005 states as follows:*
>
> *Only genuine slips or omissions in the wording of the sealed judgment or order made by accident may be corrected by this rule; for example, the misdescription of a party or the incorrect insertion of a date; any substantive mistake (such as a mistake of law) by the judge may only be corrected by way of an appeal … The rule allows the court to amend the terms of a decision to give effect to its original intention but the rule does not enable the court to have second or additional thoughts: …*
>
> *22. …*
>
> *23. It is not always easy, however, to determine what constitutes an accidental slip or omissions as the present matter shows. Thus the commentary on the slip rule contained in the White Book 2007 states as follows:*
>
> *"The so called 'slip rule' is one of the most widely known but misunderstood rules. The rule applies only to an "accidental slip or omissions in a judgment or order." Essentially it is there to do no more than correct typographical errors (e.g. where the order says claimant when it means defendant; where it says 70 days instead of seven; where it says 'January 2001 instead of January 2002. Of course, such errors ought not to occur in important documents like a court order but they are regrettably common). … the rule is limited to genuine slips and cannot be used to correct an error of*

substance nor in an attempt to get the court to add to its original order (e.g. to add a money judgment where none was sought, and none was given at the trial). … The slip rule cannot be used to enable the court to have second thoughts or to add to its original order … A judge does have the power to recall his order before it is issued but not afterwards. Once the order is drawn up, judicial mistakes have to be corrected by an appellate court. However, the court has an inherent jurisdiction to vary its own order to make the meaning and intention of the court clear and can use the slip rule to amend an order to give effect to the intention of the court."

[14] The learned trial judge concluded that the, "… *error is an error of substance in that the court is being asked to vary interest rate from 6% to 15% and this materially affects the amount of money that the Defendants are being asked to pay.*" It is regrettable that the learned trial judge did not provide further insight into the basis for her conclusions. As demonstrated by the 1st March, 2004 Agreement and the Claim Form the parties agreed that interest would be paid at 15%. The Respondents' did not at any stage prior to these proceedings deny or seek to dispute that the interest owed to the Appellants was at the rate of 15%. The Respondents agreed to pay 15% interest and were asked by the Appellants in its Claim Form to pay the said 15% the only time this figure changed was in the draft Default Judgment which was subsequently perfected.

[15] In view of the above and on a consideration of the evidence provided and all the circumstances of the case it is clear, in my view, that the insertion of 6% was a genuine mistake on the part of Counsel for the Appellants. There was no judicial determination or consideration underpinning the grant of the 6% interest. It is well established that the Default Judgment process is very much an administrative one. While it is correct to assert that the Default Judgment is reflective of the Court's intention, the formulation of the intention cannot, as demonstrated in *George Moundreas and Company SA v Navipex Centrala Nevala [1983] WL 217131*, be separated from the error.

[16] In *George Moundreas and Company SA v Navipex Centrala Nevala [1983] WL 217131*, the principal question before the Court of Appeal was whether the trial judge had the power to amend a default judgment properly obtained against the defendants for over $1,000,000.00 by reducing it by $63,000.00. The reduction of the Default Judgment was necessary as Counsel for the Plaintiff failed to inform the Court that two items included in the claim were no longer effective and accordingly the default judgment should not have included the aggregate of the two items. The trial judge and the Court of Appeal both asserted that error was capable of correction under the slip rule. Ackner, LJ opined:

> *"In my judgment, the administrative officer made the order which he intended to make, when he was so requested by the plaintiff's advisers. However, there was an accidental omission on their part not to ask for judgment in the sum claimed in the writ to be reduced by the elimination of items 2 and 5. Because of that accidental omissions on their part, the administrative officer did not make the order which he would have made if that accidental omissions had not occurred. Accordingly, there was in my judgment jurisdiction to amend the order …"*

[17] A similar reasoning applies in the present circumstances. The inclusion of 6% interest in the final Default Judgment was simply because it was mistakenly included in the draft Default Judgment. Because of this error on the part of Counsel for the Appellant the Court did not make the order it would have made if the accidental inclusion did not occur. On this basis I am of the view that the Default Judgment ought to have been amended pursuant to the slip rule enshrined in *Rule 42.10 of the SC CPR, 2005*.

[18] In the premises I propose:

(i) That the appeal be allowed;

(ii) That the decision of the learned trial judge be set aside;

(iii) That the Default Judgment dated 25th October, 2006 be

amended to provide interest to accrue at the rate of 15% per annum; and

(iv) That the costs of the appeal and below be the Appellants' to be taxed if not agreed.

_____
DUCILLE JA