APPLICATIONS TO SET-ASIDE A DEFAULT JUDGMENT

Cleaver Fulton Rankin recently acted on behalf of a Plaintiff defending an application to set-aside a Default Judgment, obtained in default of defence. The Defendant applied pursuant to Order 13 Rule 8 of the Rules of the Court of Judicature to have the Default Judgment set-aside on the grounds that it had a meritorious defence to the Plaintiff’s claim based on misrepresentation and undue influence. There were a number of Supporting and Replying Affidavits passing back and forth between the parties and the matter was heard by the Master in December 2013. The Master reserved his Judgment until delivering same recently.

In his Judgment the Master sets out the principles governing an application to set aside a regularly obtained Judgment. The primary issue for the Court is whether or not the Defendant can demonstrate that it has a defence to the Plaintiff’s claim, which has some prospect of success.

The principles are set out in Evans v Bartlam [1937] AC 437. These are:

1. Unless and until the Court pronounces a Judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure;

2. The Rules of Court give to the Judge a discretionary power to set aside the default Judgment which is in terms “unconditional” and the Court should not lay down rigid rules which deprive it of jurisdiction;

3. The primary consideration is whether the Defendant has a defence to which the Court should pay heed and;

4. There is no rigid rule that the Defendant must provide a reasonable explanation for delay in bringing the application but clearly this is a factor to which the Court will have regard in exercising its discretion to set aside a default Judgment.

In Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc [1986] 2 Lloyd’s rep 221, the Court concluded that to arrive at a reasoned assessment of the justice of the case the Court must form a provisional view of the probable outcome if the Judgment were to be set aside.

In McCullough v BBC [1996] NI 580, Girvan J held that the primary consideration was whether a Defendant had merits justifying the matter going to trial. However he differed slightly from the principles set out in the Evans v Bartlam case in that he saw no “compelling reason why the Court should be required to form a provisional view of the probable outcome if the Judgment were to be set aside” as the exercise would have to be carried out at an early stage on the basis of limited material.

The Master confirmed that the proper approach is for the Court to consider whether or not, taking the facts as alleged by the Defendant, those facts could give rise to a meritorious defence of undue influence or misrepresentation. Whilst this remains a relatively low hurdle to overcome those either defending applications to set-aside or taking same shall be in no doubt that the Court will thoroughly examine the basis of the Defendant’s alleged defence and whether or not the defence as alleged at its height will lead to a triable issue, thereby necessitating the setting aside of the Default Judgment.

Cleaver Fulton Rankin have a renowned Dispute Resolution Department including a dedicated Banking Litigation Team who provided legal representation in this case for the Plaintiff. Should you have any queries about the contents of this article, please do not hesitate to contact our Fergal Maguire.

Please note; the content of this article is for information purposes only and further advice should be sought from a professional legal advisor before any action is taken.

Please contact Cleaver Fulton Rankin on 028 9027 3141 or alternatively visit www.cfrlaw.co.uk