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ROYAL COURT
(Samedi Division) 100.

9th June, 1992

Before: P.R. Le Cras, Esq., Commissioner,
and Jurats Hamon and Rumfitt

Between:	Takilla Limited	First Plaintiff
And:	Francis John Callaghan	Second Plaintiff
And:	Mrs. Maureen Natalie Callaghan (née Bottrell)	Third Plaintiff
And	Andrew Quentin Schofield Green	First Defendant
And:	David St. C. Morgan	Second Defendant
And:	Terence C. Robey	Third Defendant
And:	Jeffrey Greenwood	Fourth Defendant
And:	Leslie Tayler	Fifth Defendant
And:	Sidney Buchman	Sixth Defendant
And:	Brian S. Clark	Seventh Defendant
And:	David Bramson	Eighth Defendant
And:	Lawrence D. Ziman	Ninth Defendant
And:	Ronald Gulliver	Tenth Defendant
And:	Gillian Freer	Eleventh Defendant
And:	Peter Gorty	Twelfth Defendant
And:	John M. Samson	Thirteenth Defendant
And:	Andrew W. MacAdie	Fourteenth Defendant
And:	David Hartfield	Fifteenth Defendant
And:	Brook Land	Sixteenth Defendant
And:	Christopher Boddington	Seventeenth Defendant
And:	David Abram	Eighteenth Defendant
And:	Patrick C. Soares	Nineteenth Defendant
And:	David Fisher Le Quesne	Twentieth Defendant
And	Charles Malcolm Belford Thacker	Twenty-first Defendant
And:	Geoffrey Le Vesconte Fiott and David Peter Huelin practising as "Fiott & Huelin"	Twenty-second Defendants

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Application by Second Defendant, for a judgment, obtained against him by default on 15th May, 1992, be "set aside".

Advocate N.F. Journeaux for the Plaintiffs.
Advocate A.P. Begg for the Second Defendant.

JUDGMENT

THE COMMISSIONER: This is an application by Mr. D. St. C. Morgan to set aside a judgment taken by default on 15th May, 1992. Mr. Morgan is one of a large number of defendants and after receiving the summons received a letter from the plaintiffs' solicitors which reads:

> *"Re Takilla Limited.*
>
> *You have been served with an Order of Justice at the instance of my above client. Your former fellow partners have not been served.*
>
> *I am writing to inform you that our clients will not press you to file an Answer until we write to you to give you notice requiring you to file an Answer within twenty-one days thereafter subject, of course, to the usual provisions whereby you are at liberty to apply for extensions of time, etc.*
>
> *I would therefore wish to encourage you not to incur significant legal costs until such time as you receive the above mentioned notification from this firm requiring you to file an Answer. You will also be aware that under the present court rules there is a good chance that publicity to the contents of the Order of Justice will be avoided until you file an Answer".*

In consequence Mr. Morgan did not appear and judgment was taken against him by default. This application, therefore, comes before us under Rule 8/3 and is clearly a matter of discretion for the Court. Counsel for the plaintiffs in the original action put to us the cases of Godwin -v- Harvey (23rd July, 1990) Jersey Unreported, and the Act of Court of 8th May, 1992, and other documents in Wrigglesworth -v- La Pouclée Farm Developments Limited and claimed that the letter said nothing about being excused from appearing in Court. In the latter case a simple mistake was sufficient for the Court to confirm the judgment, whilst in the former the merits of any defence appear to have been to a large extent discounted.

We have no hesitation in exercising our discretion in favour of Mr. Morgan and setting aside the judgment by default and placing the action against him on the pending list. We find that he was entitled to believe as he did that nothwithstanding that the letter did not say so specifically he had no need to appear to answer formally, as required by the summons.

We should further add that it is conceded by Mr. Journeaux that there is a case to argue. In this connection we should perhaps note that argument as to the law in Godwin -v- Harvey was put by only one counsel, the applicant appearing in person and further that in that case the merits of the defence were, it would seem, discussed.

Authorities

Royal Court Rules, 1982: Rule 6/7; 8/3.

Evans -v- Bartlam [1937] AC 473.

In the matter of the dégrèvement of the immoveable property of Barker (1985-86) JLR 186 C.of.A.

Cutner -v- Green (1980) JJ 269.

Haigh -v- Haigh (1885) 31 Ch. D. 478.

Midland Bank Trust Co. Ltd & Anor. -v- Green & Ors. (No. 2) (1979) 1 WLR 460.

Atwood -v- Chichester (1878) 3 QB 722.

Schafer -v- Blyth [1920] 3 KB 140.

Anlaby & Ors. -v- Praetorius (1888) 20 QB 764.

Grimshaw -v- Dunbar [1953] 1 QB 408.

Haymen -v- Rowlands [1957] 1 WLR 317; [1957] 1 All ER 321.

Singh -v- Atombrook Ltd [1989] 1 All ER 385.

Duquemin -v- Granite Products (C.I.) Ltd (22nd April, 1982) Jersey Unreported.

Cargill -v- Herivel (1971) 259 Ex. 382.

W.A. Nicholls & Sons (C.I.) Limited -v- Thomasse (1971) 259 Ex 418.

P.G. Delauney & Son Limited -v- Taylor (1974) 261 Ex 317.

Hodson -v- Bowers (1977) Ex 300.

R.S.C. (1991 Ed.) O.19, r.9; O.13, r.9.

Godwin -v- Harvey (23rd July, 1990) Jersey Unreported.

Rahman -v- Chase Bank (C.I.) Trust Company Ltd (6th June, 1991) Jersey Unreported.

AG -v- Weston (1979) JJ 141.