

THE HIGH COURT

[2009 No. 5405 S.]

BETWEEN

FCR MEDIA LIMITED (Formerly TRUVO IRELAND LIMITED)

PLAINTIFF

AND

ANGELA FARRELL

DEFENDANT

EX TEMPORE RULING of Mr. Justice Cooke delivered the 4th day of November 2013

1. On the 14th September, 2009, a summary summons was issued by the plaintiff claiming the liquidated sum of €38,747.76 as due and owing by the defendant. No appearance was entered and on the 21st September, 2010, a judgment in favour of the plaintiff was entered by default in the Central Office of the High Court. The defendant has now, on the 19th July, 2013, issued a notice of motion under O. 13, r. 11 to set aside that judgment.
2. In the grounding affidavit of the 26th July, 2013, and a later supplemental affidavit, the defendant raises what appear to be series of queries about the accuracy of figures in documents relating to the account her solicitors firm had with the plaintiff as publishers of the Golden Pages telephone directory. She wrote to the plaintiff's solicitors on the 1st July, 2013, asking for the agreement upon which the claim had apparently been based and requesting to be furnished with documents. In particular she now raises a series of queries as to how a figure of €84,665 appears in the documents. The subsequent exchange of correspondence indicates that no such sum was ever claimed as being due and that the balance outstanding of the account was the sum claimed in the summons.
3. What is striking, however, is that the defendant's affidavits are wholly silent as to how judgment came to be entered against her in September 2010. No explanation is given as to why no step was taken to set aside the judgment over a period of almost three years since it was entered. There is no assertion that the summary summons was not properly served. She makes no claim not to have known of the existence of the claim either before the proceedings were brought or before judgment was entered. No explanation is given for her failing to enter an appearance. No evidence is given as to when exactly she learned that judgment had been entered against her.
4. The defendant is a practising solicitor and she must, therefore, be taken as having understood the summary summons procedure and to have appreciated the implications both of failing to enter an appearance and of not moving promptly to set aside a judgment once entered.
5. In moving the present motion, the only explanation offered by the defendant was that at the time she was "inundated with other proceedings".
6. It is true, of course, that the Court has a very wide discretion in exercising its powers under O. 13, r. 11 to set aside a judgment obtained by default and perhaps especially so when it is a judgment for a liquidated sum marked in the Central Office in default of appearance. Nevertheless, there must be some evidence of facts before the Court upon which the Court can judicially exercise that discretion.
7. In particular, there must be some explanation as to how it came about that the defendant failed to enter an appearance or to defend the matter at the appropriate time. That is especially so in the case of a solicitor who is personally sued.
8. There must be evidence either that there was some irregularity in the manner in which judgment was obtained or that, if obtained regularly, the defendant's failure to enter an appearance was due to some mistake or to having been taken by surprise. Above all, there must be put before the Court some basis for a valid and bona fide defence to the claim which has a real prospect of success.
9. In the judgment of the Court, none of these ingredients is satisfied in the material place before the Court by the defendant on this motion. The most that can be said is that the defendant raises some somewhat vague queries about the accuracy of figures appearing in the documents furnished to her. There is, however, no sworn statement that she has a defence or what the basis of that defence might be. While querying the manner in which the plaintiff conducted the account or maintained its records, she does not set out what she claims to have been the terms of the contract she had with the company or what amount, if any, she maintains might have properly been due.
10. In these circumstances and having regard particularly to the exceptional and wholly unexplained lapse of time since judgment was entered, it would, in the view of this Court, be manifestly unjust now to deprive the plaintiff of the judgment it had obtained.
11. The motion is denied.