

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE BROWN JA**

APPLICATION NO COA2022APP00265

BETWEEN	PIONEERS CONSTRUCTION DEVELOPMENT COMPANY LIMITED	APPLICANT
AND	CLINTON ALEXANDER HUTTON	RESPONDENT

Devon Deslandes for the applicant

Miss Ashleigh Ximines instructed by Knight, Junor & Samuels for the respondent

17 April 2023

Endorsement read by Straw JA

[1] This is an application by Pioneers Construction Development Company Limited for leave to appeal the decision of Nembhard J, made on 29 November 2022, to set aside a default judgment, regularly obtained against the respondent, pursuant to rule 12.4 of the Civil Procedure Rules, 2002 ('CPR'). The learned judge exercised her discretion to do so, having considered the relevant provisions set out at rule 13.3 of the CPR. Based on the affidavit evidence and the documents placed before this court, we concluded that the application ought to be refused for the reasons set out below.

[2] Firstly, the applicant has admitted that the sum in which the judgment was entered was incorrect and would need to be adjusted. Secondly, the applicant has not satisfied this court that it has a realistic prospect of success in demonstrating that the learned judge erred in the exercise of her discretion. The evidence indicates that an accounting between the parties is required. The matter should proceed to trial in order to determine

if monies are owed by the respondent to the applicant or, if indeed, the contrary is true, based on the respondent's counterclaim.

[3] These are the orders of the court:

1. The application for permission to appeal is refused.
2. No order as to costs.