

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

SAINT LUCIA

CLAIM NO. SLUHCM2025/0034

BETWEEN:

1st NATIONAL BANK ST. LUCIA LIMITED

Claimant/ Respondent

-and-

[1] OPTIPHARM INC.

[2] BENET CHORNE HENRY also called **BENET C. HENRY**
also called **BENET HENRY**

Defendants/ Applicants

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances: Mr. Travis Lay for the Claimant/ Respondent
Mr. Fidel Michel for the Defendants/ Applicants

2026: March 19 – Hearing
March 25 – Decision

JUDGMENT

Defendants' application to set aside default judgment

INTRODUCTION:

[1] **PARIAGSINGH, J:** - Before this Court is the Defendants' application to set aside a judgment in default of acknowledgment of service¹ entered on 8 October 2025.

[2] The application is made pursuant to the Civil Procedure Rules (Revised Edition) 2023² specifically CPR 13.2 and, in the alternative, CPR 13.3. The Defendants seek an order that the default judgment be set aside and that they be permitted to defend the claim.

¹ Filed on 10 October 2025.

² "CPR".

- [3] The grounds of the application, as set out in the notice of application, are threefold. First, that the judgment was wrongly entered because the acknowledgments of service were filed within the prescribed time, having regard to the effect of the long vacation. Secondly, that the Defendants have a real prospect of successfully defending the claim. Thirdly, that there are exceptional circumstances which merit the setting aside of the default judgment, arising from the real risk of the collapse of the Second Defendant's medical practice.

EVIDENCE IN SUPPORT:

- [4] The application is supported by affidavit evidence, including an affidavit sworn by Dr Benet Henry and an affidavit from the Defendants' legal assistant.
- [5] In his affidavit, Dr Henry explains the background to the lending relationship between the parties. He states that the First Defendant obtained credit facilities from the Claimant pursuant to a facility letter, and that those facilities included a refinancing arrangement which, as he understood it, replaced an earlier loan.
- [6] Dr Henry further deposes that, following a demand made by the Claimant in May 2025, he sought to engage with the Claimant with a view to clarifying the amounts said to be due and to reaching an amicable resolution. Correspondence exhibited to his affidavit reflects those efforts.
- [7] As to the procedural history, Dr Henry states that acknowledgments of service were filed on behalf of both Defendants on 30 September 2025. He maintains that those acknowledgments were filed within time on the basis that time did not run during the long vacation for the filing of such documents.
- [8] The Defendants also rely on a draft defence exhibited to their evidence. In that draft defence, the Defendants admit the existence of the lending relationship but deny that they are indebted in the amounts claimed. The Second Defendant further denies personal liability, asserting that he acted only on behalf of the First Defendant and did not assume personal obligations.

[9] The affidavit of the Defendants' legal assistant addresses the timing of the application and confirms that the application to set aside the judgment was filed promptly upon the Defendants becoming aware that judgment had been entered.

EVIDENCE IN OPPOSITION:

[10] The application is opposed by the Claimant, which relies on the affidavit of its Senior Recoveries Officer.

[11] In that affidavit, the Claimant sets out the basis of the claim, namely that credit facilities were granted to the First Defendant and secured by various hypothecary obligations, with the Second Defendant acting as surety.

[12] The Claimant's evidence exhibits the facility letter and the relevant security documents, as well as demand letters issued to the Defendants and correspondence in response.

[13] The Claimant also exhibits the procedural documents relevant to the entry of judgment, including the affidavits of service, the acknowledgments of service filed by the Defendants on 30 September 2025, the request for judgment in default filed earlier that same day, and the default judgment itself.

[14] The Claimant's evidence is directed to establishing that the Defendants failed to file their acknowledgments of service within the time prescribed by the CPR and that, accordingly, the judgment was properly entered. It also seeks to demonstrate that the Defendants are indebted under the loan facilities and that the Second Defendant is liable as surety.

AFFIDAVIT IN REPLY:

[15] In addition to the affidavit in support and the affidavit in response, the Court also had before it an affidavit in reply sworn by the Second Defendant, Dr Benet Henry, on 6 November 2025 in further support of the application.

[16] In that affidavit, Dr Henry first sought to clarify aspects of the lending history. He deposed that the facility letter was dated 16 March 2012 and that he accepted its terms on 10

April 2012 “for and on behalf of Optipharm Inc.”, and not personally. He further stated that the business loan of \$438,000.00 was understood by him to be a refinancing facility intended to replace an earlier loan granted to the First Defendant in 2009.

[17] Dr Henry also addressed the dealings between the parties before proceedings were commenced. He exhibited email correspondence dated 26 June 2025 in which he sought clarification of the sums being demanded, requested discussion and document exchange, and advanced proposals aimed at an amicable resolution of the matter. His evidence was that those efforts were rebuffed and that proceedings were then instituted against both Defendants.

[18] In relation to the draft defence, Dr Henry maintained that the Defendants had a real prospect of successfully defending the claim. He stated that the First Defendant disputed the amount claimed, particularly in light of what he described as numerous payments over the period from 2012 to 2025, and that the Defendants had been left to put the Claimant to strict proof because their attempts to understand the figures claimed were unsuccessful.

[19] As to his own position, Dr Henry repeated that he had not borrowed money personally and had done no more, in his understanding, than provide land as collateral for the company’s borrowing. He stated that he had never been told that this could expose him to personal liability of the kind now asserted, and that he was never advised of that consequence by the Claimant’s lawyer, whom he says he was directed by the Claimant’s officials to engage for the mortgage documentation.

[20] The affidavit in reply also sought to strengthen the explanation for the procedural default. Dr Henry described the Defendants’ understanding regarding the long vacation as a genuine and excusable error and pointed out that the application to set aside was filed on the same day that the default judgment was filed, two days after it had been entered.

[21] Finally, Dr Henry addressed the issue of exceptional circumstances. He deposed that there is a real possibility that his medical practice could become insolvent and that his professional standing could be seriously affected by a judgment entered on a claim

which he had not had the opportunity to defend. He invited the Court to treat those matters as exceptional circumstances justifying the setting aside of the judgment.

ISSUES:

[22] The issues which arise for determination by the Court are as follows:

- 1) Whether the judgment in default of acknowledgment of service was regularly entered, having regard to the effect (if any) of CPR 3.5(1) on the computation of time during the long vacation.
- 2) If the judgment was regularly entered, whether the Defendants have demonstrated a real prospect of successfully defending the claim so as to justify the setting aside of the judgment pursuant to CPR 13.3(1).
- 3) Whether the Defendants acted promptly in making the application and whether there is a good explanation for their failure to file the acknowledgments of service within the prescribed time, pursuant to CPR 13.3(2).
- 4) Whether there exist exceptional circumstances warranting the setting aside of the judgment pursuant to CPR 13.3(3).

THE LAW:

[23] There are three gateways through which a default judgment may be set aside. The first is mandatory; the other two are discretionary. Where the requirements of Part 12 have not been satisfied and a default judgment is nevertheless entered, the Court must set it aside pursuant to CPR 13.2(1).

[24] Where, however, the conditions precedent in Part 12 CPR for the grant of a default judgment have been satisfied, the Court may set aside the judgment in the exercise of its discretion. The Court may do so only if the Defendant has a real prospect of successfully defending the claim, pursuant to CPR 13.3(1).

[25] If the Defendant satisfies the Court that there is a real prospect of successfully defending the claim, the Court may then consider whether to exercise its discretion to set aside the

judgment. In doing so, it may take into account whether the Defendant acted promptly and whether there is a good explanation for the failure to file either an acknowledgement of service or a defence, as the case may be. This is provided for in CPR 13.3(2).

[26] In addition to the mandatory and discretionary gateways above, there is a third gateway, namely where there are exceptional circumstances pursuant to CPR 13.3(3).

SUBMISSIONS OF THE DEFENDANTS (APPLICANTS):

[27] On behalf of the Defendants, it is submitted that the judgment was wrongly entered and must be set aside pursuant to CPR 13.2.

[28] The central plank of the Defendants' argument is that, by virtue of CPR 3.5(1), time did not run during the long vacation for the filing of their acknowledgments of service. It is submitted that an acknowledgment of service, while not expressly defined as a statement of case, is sufficiently connected to the defence to fall within the scope of that rule. On that basis, the Defendants contend that their acknowledgments of service were filed within time and that the conditions for the entry of default judgment were not satisfied.

[29] In the alternative, the Defendants submit that the Court should exercise its discretion under CPR 13.3 to set aside the judgment.

[30] It is argued that the Defendants have a real prospect of successfully defending the claim. In this regard, reliance is placed on the draft defence and the affidavit evidence, which it is said raise issues as to the quantum of the indebtedness and the nature and effect of the loan arrangements. It is further submitted that the Second Defendant's liability is disputed, as he acted only on behalf of the First Defendant and did not assume personal liability.

[31] The Defendants also submit that the application was made promptly and that there is a good explanation for the timing of the filing of the acknowledgments of service, namely their understanding that time did not run during the long vacation.

[32] Finally, the Defendants contend that there are exceptional circumstances justifying the setting aside of the judgment, including the potential impact of the judgment on their business operations and professional standing.

[33] The Defendants further submit that, even if they are unable to satisfy the requirements of CPR 13.2 or CPR 13.3(1), the Court should nevertheless set aside the judgment pursuant to CPR 13.3(3) on the basis that there are exceptional circumstances.

[34] In this regard, the Defendants rely on what they describe as a combination of factors. These include their bona fide interpretation of CPR 3.5(1), the fact that the acknowledgments of service were filed on the same day as the request for judgment, the promptness with which the application to set aside was made, and the existence of a defence which they say raises triable issues.

[35] They also place reliance on the personal circumstances of the Second Defendant, submitting that the entry of judgment may have serious consequences for his medical practice and professional standing. Taken together, it is submitted that these matters amount to exceptional circumstances warranting the setting aside of the judgment.

SUBMISSIONS OF THE CLAIMANT (RESPONDENT):

[36] The Claimant opposes the application and submits that the judgment was regularly entered.

[37] It is argued that CPR 3.5(1) does not apply to acknowledgments of service and that time for filing such acknowledgments continues to run during the long vacation. On that basis, the Defendants' acknowledgments of service were filed out of time, and the Claimant was entitled to request judgment in default.

[38] The Claimant further submits that the Defendants have failed to demonstrate a real prospect of successfully defending the claim. It is contended that the draft defence consists of bare denials and does not engage with the documentary evidence, including the facility letter and the security documents which establish the Defendants' liability.

[39] In particular, the Claimant argues that the Defendants' challenge to the quantum of the debt is unsupported by any particulars and amounts to no more than a general denial. It is also submitted that the Second Defendant's denial of liability is inconsistent with the documentary evidence showing that he is bound as surety.

[40] The Claimant accepts that the application was made promptly but submits that the Defendants have not provided a good explanation for their failure to comply with the Rules. It is argued that a mistaken understanding of the law does not constitute a sufficient explanation.

[41] Finally, the Claimant submits that the matters relied upon by the Defendants do not amount to exceptional circumstances within the meaning of CPR 13.3(3). It is argued that the matters identified are either ordinary incidents of litigation or matters properly falling to be considered under CPR 13.3(1), and that they cannot be elevated into exceptional circumstances merely because they are relied on cumulatively.

ANALYSIS:

Whether the default judgment was regularly entered:

[42] The first issue I must determine is whether the judgment in default of acknowledgment of service was regularly entered. That, in turn, depends on a straightforward but important question: whether, at the time the Claimant requested judgment, the period for filing an acknowledgment of service had expired.

[43] The relevant facts are not in dispute. The claim form was served on the Defendants on 10 September 2025, which was during the Court's long vacation. On 30 September 2025, at 8:57 a.m., the Claimant filed a request for judgment in default of acknowledgment of service. Later that same day, at 3:56 p.m., the Defendants filed their acknowledgments of service.

[44] The Defendants contend that the judgment was wrongly entered because time did not run during the long vacation for the filing of an acknowledgment of service. They rely on

CPR 3.5(1), which provides that, during the long vacation, time does not run for the filing or service of a statement of case, other than a statement of claim.

[45] In essence, the Defendants' submission is that, although an acknowledgment of service is not expressly defined as a statement of case, it is so closely connected to the filing of a defence that it ought to be treated as part of the same procedural stage. On that basis, they argue that time should be treated as suspended for the acknowledgment of service in the same way that it is suspended for the defence.

[46] I have considered that submission carefully, but I am unable to accept it.

[47] The issue of whether an acknowledgment of service is a 'statement of case' for the purpose of CPR 3.5(1) was considered by Periera CJ in **Adam Bilzerian v Gerald Lou Warner & Anor**³ where at paragraph 9 the Chief Justice said:

"[9] An appropriate starting point in my judgment is with the definition of a 'statement of case' in CPR 2000. CPR 2.4 says that a 'statement of case' means:

"(a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and
(b) any further information given in relation to any statement of case under Part 34 ..."

We are here not concerned with subparagraph (b) of this rule, but rather with subparagraph (a). **Importantly, an 'acknowledgment of service' is not caught within the definition of 'statement of case' and thus cannot be treated as or in the same way as a statement of case.** This in my view is for good reason, having regard to the object and purpose of an 'acknowledgment of service'. It is a document which serves a number of purposes:— It may give notice of an intention to defend the claim, or it may admit the whole or part of a claim with an intention to defend other parts of the claim, or, it may be a necessary precursor to disputing the court's jurisdiction. An acknowledgement of service need not be filed at all if the defendant files a defence within the time that he should have filed such acknowledgement. The mere filing of the defence within the time limited for acknowledging service serves as sufficient notice of the defendant's intention to defend the claim. **It is to me pellucid that the object and purpose of the acknowledgment of service is to put the claimant on**

³ SKBHC VAP2012/0028 (unreported)

notice as to the stance taken by the defendant in relation to the claim. It pleads nothing one way or the other.” [Emphasis Mine]

[48] I would only add that, further, when one looks at the language of the CPR, it consistently treats an acknowledgment of service as a distinct procedural step, separate from the pleadings.

[49] That distinction is not accidental. The Rules draw careful lines between different procedural steps and attach different consequences to each. Where the Rules intend to refer to an acknowledgment of service, they do so expressly. Where they refer to statements of case, they do so in different terms. It is therefore not open to the Court to collapse those categories by treating one as though it were the other.

[50] I do not consider that the Defendants’ reliance on the functional role of the acknowledgment of service assists them. It is true that an acknowledgment of service operates, in a practical sense, as a step taken before the filing of a defence. However, that does not alter its legal character. Many procedural steps are linked or sequential; that does not mean they are interchangeable. The Rules recognise the acknowledgment of service and the defence as separate steps, and the Court must do the same.

[51] In my view, the Defendants’ argument ultimately invites the Court to go beyond interpretation and to alter the scope of CPR 3.5(1). If an acknowledgment of service were to be treated as a statement of case for the purposes of that rule, it would amount to extending the rule to a category of document which it does not mention. That is not a matter of construing the rule; it is, in substance, rewriting it.

[52] In support of this argument the Claimant relies on **Dr. the Rt. Hon. Keith Mitchell v Lloyd Noel and Cayman Net Ltd**⁴. In addition to being factually distinguishable, the Defendants have stretched obiter statements to support its argument that if a rule is not clear the court may adopt a another or purposive approach. In my view that proposition

⁴ GDAHCVAP2007/0023.

is not unknown to the Court but simply does not arise based on the clear wording of CPR 3.5(1).

[53] There is also a practical difficulty with the Defendants' position which reinforces this conclusion. If time did not run during the long vacation for the filing of an acknowledgment of service, it would follow that, during that period, the time for filing an acknowledgment could never expire. In turn, that would mean that a claimant could not obtain judgment in default of acknowledgment of service at any point during the long vacation. That would represent a significant limitation on the operation of Part 12 of the CPR.

[54] Such a consequence is not a minor or incidental one. It would represent a substantial alteration to the default judgment regime. If that had been the intention of the rule-maker, one would expect the Rules to say so in clear terms. They do not. CPR 3.5(1) identifies the documents to which the suspension of time applies, and an acknowledgment of service is not among them.

[55] In those circumstances, I consider that the proper approach is to give effect to the Rules as they are written. The absence of any reference to acknowledgments of service in CPR 3.5(1) must be taken to be deliberate. It is not for the Court to fill that gap; See **Owen v Owen**⁵.

[56] It follows that time continued to run for the filing of the acknowledgments of service notwithstanding that service took place during the long vacation as stated in **Vanroy Hodge v The Anguilla Air & Seaports Authority**⁶.

[57] Under CPR 9.3, the Defendants were required to file their acknowledgments of service within 14 days after service of the claim form. On the agreed facts, that period had expired by the time the Claimant filed its request for judgment on 30 September 2025.

⁵ [2017] EWCA Civ 182.

⁶ AXAHCv2021/0042.

[58] In those circumstances, the conditions for the entry of judgment in default of acknowledgment of service were satisfied at the time the request was made. The judgment was therefore regularly entered.

[59] It follows that CPR 13.2 is not engaged, and this ground of the application fails.

Whether the Defendants have a real prospect of successfully defending the claim:

[60] In light of my conclusion that the judgment was regularly entered, I turn to consider whether the Defendants have satisfied the requirements of CPR 13.3. The central question is whether the Defendants have demonstrated a real prospect of successfully defending the claim.

[61] The applicable test is well settled. The Court is not required at this stage to conduct a mini-trial or to determine the merits of the defence on a balance of probabilities. Rather, the question is whether the proposed defence has a realistic, as opposed to a fanciful, prospect of success; See **Swain v Hillman**⁷ and **Sylmord Trade Inc. v Inteco Beteiligungs Ag**⁸.

[62] At the same time, it is not sufficient for a defendant merely to assert a defence; See **Lindsay F. P. Grant and Jonel F. H. Powell v. Tanzania Tobin Tanzi**⁹. The Court must be satisfied that the defence is properly grounded in fact and has some substance.

[63] The Defendants rely on the draft defence exhibited to their affidavit in support. In that draft defence, the Defendants admit the existence of the lending relationship but deny that they are indebted to the Claimant in the amounts claimed, putting the Claimant to strict proof of the quantum. The Second Defendant further denies personal liability, asserting that he did not obtain any loans personally and that his involvement was limited to acting on behalf of the First Defendant. They also rely on statements made in their evidence in this application. None of these statements set out a new or different defence from the draft defence.

⁷ [2001] 1 All ER 91.

⁸ BVIHCMAP2013/0003.

⁹ SKBHCVAP2020/0004.

[64] The Defendants' submissions develop these points in two principal ways. First, they contend that there is a genuine dispute as to the amount said to be due, including issues arising from the restructuring of the loan facilities. In that regard, reliance is placed on the affidavit evidence of the Second Defendant, which asserts that the refinancing arrangement was intended to replace earlier indebtedness and raises questions as to how the Claimant has calculated the sums now claimed. Secondly, the Defendants submit that the Second Defendant's liability is not established, as he signed documentation on behalf of the First Defendant and was not properly advised that he would be personally liable.

[65] The Claimant, for its part, submits that the proposed defence does not disclose any real prospect of success. It is said that the defence consists largely of bare denials and assertions which are unsupported by particulars or evidence. In particular, the Claimant argues that the challenge to the quantum is no more than a general denial, unsupported by any explanation as to how the sums claimed are said to be incorrect. The Claimant further relies on the documentary evidence exhibited to its affidavit, including the facility letter and the hypothecary obligations, which it says clearly establish both the indebtedness of the First Defendant and the liability of the Second Defendant as surety.

[66] Having considered the draft defence, the affidavit evidence, and the submissions of the parties, I am not satisfied that the Defendants have demonstrated a real prospect of successfully defending the claim.

[67] In relation to the issue of quantum, the defence does no more than deny that the amounts claimed are due and put the Claimant to proof. There is no pleading of any positive case as to what sums are said to be due, nor any identification of specific errors in the Claimant's calculations. While the affidavit evidence refers in general terms to the restructuring of the loan and raises questions about the indebtedness, it does not engage in any meaningful way with the figures claimed or provide a coherent alternative account.

[68] A mere assertion that the claimant must prove its case, without more, does not amount to a real prospect of success. The CPR requires more than a bare denial. There must be some factual or evidential basis for the dispute. It requires all material facts to be pleaded and relevant documents identified in or annexed to the draft defence. When probed on the defence, counsel submitted that the threshold is how and essentially once the Defendants get leave to file their defence in incorporating what is in the evidence in this application into the defence, it will be more fully set out. I strongly disagree with this contention.

[69] The requirement to exhibit a draft defence is not a tactical or strategic exercise designed to place before the Court only the 'best' version of a defence, to be later supplemented or refined depending on whether permission is granted or in response to the Claimant's case. In my view, a proper and full draft defence so far as is practicable, based on the facts and documents available at the time the application is filed, must be provided. It is not sufficient to file what amounts to a holding defence in the hope of an opportunity to improve it at a later stage.

[70] In the absence of any real defence on liability, or any specific challenge to the calculation of the sums said to be due and owing, the challenge to quantum remains speculative.

[71] As to the position of the Second Defendant, I accept that the draft defence seeks to deny personal liability on the footing that he acted only on behalf of the First Defendant. However, that assertion is not supported by any detailed pleading or by cogent evidence addressing the documents relied on by the Claimant. In particular, the Claimant has exhibited documentation indicating that the facilities were secured by obligations given by the First Defendant as principal debtor and the Second Defendant as surety.

[72] The draft defence does not grapple with those documents or explain how, in light of them, the Second Defendant can properly deny liability. Nor does it set out any legal or factual basis upon which the security arrangements are said to be ineffective or inapplicable. In those circumstances, the denial of liability is, at this stage, unsupported and lacking in substance.

[73] I have also considered the Defendants' submission that they were not properly advised as to the effect of the security arrangements. However, that contention is not developed in the draft defence and is not supported by sufficient factual detail to elevate it beyond a bare assertion. It does not, in its present form, provide a realistic basis for resisting the claim.

[74] Taking the defence as a whole, I am driven to the conclusion that it does not rise above the level of general denial. It does not meaningfully engage with the Claimant's case as presented in the pleadings and supporting documents, and it does not set out a coherent or particularised basis upon which the claim could be successfully resisted. Even taken at its highest, the defence does not disclose a coherent or legally sustainable basis for resisting the claim in light of the documentary evidence.

[75] In those circumstances, I am not satisfied that the Defendants have shown a real prospect of successfully defending the claim within the meaning of CPR 13.3(1).

Promptness and explanation for the failure:

[76] In light of my finding that the Defendants have not demonstrated a real prospect of successfully defending the claim, it is strictly unnecessary to consider the additional matters identified in CPR 13.3(2), namely whether the application was made promptly and whether there is a good explanation for the failure to file an acknowledgment of service in time. However, for completeness, I will address them briefly.

Promptness:

[77] On the issue of promptness, the Defendants rely on the case of **Jessy James Khouly et al v Mount St. John's Medical Centre Board**¹⁰. I accept the Defendants' submission that the application to set aside the default judgment was made promptly.

¹⁰ ANUHCVP2023/0034.

[78] The evidence shows that the default judgment was entered on 8 October 2025 and filed on 10 October 2025. The Defendants filed their application to set aside the judgment on the same day, namely 10 October 2025.

[79] The Defendants submit that they acted within a very short period after becoming aware of the judgment, and there is nothing before the Court to suggest otherwise. Indeed, the timing of the application supports the conclusion that it was made with expedition.

[80] In those circumstances, I am satisfied that the requirement of promptness is met.

Explanation:

[81] As to what constitutes a “good explanation”, the decision of the High Court in **Inteco Beteiligungs AG v Sylmord Trade Inc.**¹¹ is instructive.

[82] The Defendants’ explanation, as advanced in their submissions and supported by their affidavit evidence, is that they were under the impression that time did not run during the long vacation for the filing of an acknowledgment of service. On that basis, they say that their acknowledgments of service were filed within time.

[83] I am unable to accept that explanation as a good one for the purposes of CPR 13.3(2).

[84] As I have already found, the Rules do not suspend time for the filing of an acknowledgment of service during the long vacation. The Defendants’ explanation therefore amounts to a mistaken understanding of the applicable procedural rules.

[85] While the Court does not expect litigants or their legal representatives to be infallible, a misunderstanding of clear procedural provisions will not ordinarily constitute a good explanation. The Rules governing the time for filing an acknowledgment of service are straightforward, and there is no ambiguity in CPR 3.5(1) which could reasonably justify the conclusion that time was suspended in this context.

¹¹ BVIHCM120 of 2012.

[86] The Defendants have not pointed to any external factor, such as unforeseen administrative difficulty, lack of notice, or other impediment outside of their control, which prevented compliance with the Rules. Rather, the failure to file in time arose from an erroneous view of the law. It is well settled that misapprehension of the law is not a good reason to extend time; see **Richard Frederick v Owen Joseph and others**.¹²

[87] In those circumstances, I am not satisfied that the Defendants have provided a good explanation for their failure to file the acknowledgments of service within the prescribed period.

[88] Drawing these matters together, although the Defendants acted promptly in bringing their application, they have failed to demonstrate that they have a real prospect of successfully defending the claim, and they have not provided a good explanation for their failure to comply with the Rules.

[89] In those circumstances, this is not a case in which the Court should exercise its discretion to set aside the default judgment under CPR 13.3.

EXCEPTIONAL CIRCUMSTANCES:

[90] For completeness, I should also address the Defendants' reliance on the exceptional circumstances gateway under CPR 13.3(3).

[91] The Defendants submit that, even if they fail under CPR 13.2 and CPR 13.3(1), the Court retains a separate discretion to set aside the default judgment where exceptional circumstances exist. In their written submissions they rely on **Carl Baynes v Ed Meyer**¹³ to the effect that what amounts to exceptional circumstances must be assessed case by case and must provide a compelling reason why the defendant should be permitted to defend proceedings notwithstanding the failure to satisfy the ordinary gateway.

[92] The Defendants say that such circumstances are present here. They rely not only on the asserted risk to Dr. Henry's medical practice and professional standing, but also on

¹² St Lucia Civ App No. 32 of 2005 (unreported) 16/10/06 at paragraph 15.

¹³ ANUHCVP2015/0026.

what they describe as the cumulative effect of several matters: their bona fide interpretation of CPR 3.5(1), the filing of the acknowledgments of service shortly after the long vacation, the speed with which the application to set aside was made, the existence of a defence said to raise triable issues, the alleged absence of advice to Dr. Henry as to the personal consequences of the mortgage documentation, and the risk of collapse of his medical practice and livelihood.

[93] The Claimant opposes that submission. Its position, in substance, is that the matters relied on by the Defendants do not rise above the ordinary consequences of judgment and default and cannot properly be treated as exceptional circumstances within the meaning of the rule.

[94] I am unable to accept the Defendants' submission on this issue.

[95] In my view, CPR 13.3(3) is plainly intended to be a narrow and residual gateway. It is not a means by which matters that fail to satisfy CPR 13.3(1) may simply be repackaged and advanced under a different label. The authorities cited by the Defendants themselves make that plain: exceptional circumstances must be something more than a defence said to have some merit and must disclose a compelling reason for depriving a claimant of a regularly obtained judgment.

[96] Looked at in that way, the matters relied on here do not meet the threshold. The Defendants' interpretation of the long vacation rule, even if genuinely held, is still no more than an error as to the procedural effect of the CPR. Their promptness in applying to set aside is relevant and I have accepted it, but promptness is an ordinary discretionary factor under CPR 13.3(2); it does not, without more, become exceptional. The same is true of the asserted merits of the defence. If the defence does not meet the real prospect threshold, it cannot be elevated into an exceptional circumstance merely by being repeated under CPR 13.3(3).

[97] Nor, in my view, does the evidence concerning Dr. Henry's medical practice and professional standing carry the matter far enough. I accept that a judgment of this nature may have serious financial and personal consequences for a defendant. But those are,

regrettably, the ordinary potential consequences of litigation and judgment, especially in a commercial debt claim. The evidence does not disclose something so out of the ordinary, or so compelling, as to justify setting aside a regularly entered judgment in circumstances where the ordinary grounds for doing so have not been made out.

[98] The same applies to the complaint that Dr. Henry was not advised of the full effect of the security documentation. That complaint has already been considered in the context of the proposed defence. On the material before the Court, it does not assume a separate character capable of amounting to an exceptional circumstance. It remains part of the merits case the Defendants wish to advance, rather than an independent and compelling reason under CPR 13.3(3).

[99] Taking all of the matters relied on by the Defendants cumulatively, I am still not satisfied that this is one of those rare cases in which exceptional circumstances are shown. The matters relied on are either ordinary incidents of the case or matters that properly fall to be considered under the other gateways and do not succeed there.

[100] I therefore conclude that CPR 13.3(3) is not engaged and this ground also fails.

COSTS:

[101] The general rule is that costs follow the event. The Defendants have failed on all grounds advanced. There is no good reason to depart from the general rule. The Defendants must therefore pay the Claimant's costs.

[102] Given that this is an interlocutory application, costs are to be summarily assessed by this Court if not agreed between the parties within 21 days.

ORDER:

[103] For the reasons set out above, I make the following orders:

- 1) The Defendants' application to set aside the judgment in default of acknowledgment of service entered on 8 October 2025 is dismissed.

- 2) The judgment in default of acknowledgment of service shall stand.
- 3) The Defendants shall pay the Claimant's costs of the application, such costs to be summarily assessed by this Court if not agreed within 21 days.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court