

IN THE EASTERN CARIBBEAN SUPREME COURT:

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

SAINT LUCIA

Claim No: SLUHCM2025/0041

BETWEEN:

**[1] LORNE HARDER
[2] SPRINGHILL INVESTMENTS LTD
[3] HARDER INVESTMENTS LTD**

Claimants/Respondents

-and-

**[1] PANGAEA CAPITAL MANAGEMENT LTD
[2] JOYCELYN BENNETT**

First and Second Defendants/Applicants

[3] GEORGE MOLYVIATIS

Third Defendant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances:

Ms. Reneé T. St. Rose KC leading Mrs. Rochelle John – Charles and Ms. Maquia Foster for the Claimants/Respondents.

Mr. Deale Lee for the First and Second Defendants/Applicants.

2026: February 12 – Hearing
February 23, 24 – Submissions
February 24 – Decision

RULING

Application for extension of time to file defence

INTRODUCTION:

- [1] **PARIAGSINGH, J:** - This ruling concerns the First and Second Defendants (the Applicants) application, filed on 19 January 2026¹, seeking an extension of time within which to file and serve its Defence pursuant to CPR 10.3(10) of the Civil Procedure Rules (Revised Edition) 2023.²
- [2] The time prescribed by the Rules for filing the Defence expired on 31 December 2025. The Applicants now seeks an extension to 14 February 2026. The application is opposed.
- [3] The Respondents contend that the Applicants have offered no satisfactory explanation for its failure to comply with the timetable prescribed by the CPR and has failed to demonstrate that it has an arguable defence to the claim.
- [4] The main issue is how the Court should exercise its discretion where a party has permitted a clear procedural deadline to pass and thereafter seeks the Court's indulgence. The discretion must be exercised in a manner consistent with the overriding objective and the Rules.
- [5] After judgment was reserved, the Applicants without consent and without permission proceeded to file its Defence on 13 February 2026.
- [6] For the reasons set out below, I am not persuaded that this is a proper case in which to grant the extension sought based on the application I have heard. But for the late Defence filed, I would have dismissed this application with costs.
- [7] I have, however, considered the late Defence filed and whether it discloses a reasonable prospect of success in defending this claim. Whilst this late filing bridged the deficiency in the affidavit evidence, I have treated with this issue in costs.

¹ The Application is expressed as being made on behalf of the First Defendant only but at the hearing Mr. Lee for the First and Second Defendants indicated that the application ought to have been expressed to have been made on behalf of the First and Second Defendants (the Defendants).

² Referred to as "CPR".

PROCEDURAL BACKGROUND:

[8] The Applicants were served with the Claim Form and Statement of Claim in Belize on 18 November 2025. Pursuant to the CPR, they were required to file their defence on or before 31 December 2025. No defence was filed within that period.

[9] The present application was filed on 19 January 2026, nineteen days after the deadline had expired. Significantly, the Applicants at that time had neither filed a draft defence nor identified in its supporting evidence the factual or legal basis upon which it proposes to resist the claim.

[10] The Court was therefore asked to exercise its discretion in the absence of any clear articulation of the defence said to exist.

[11] As stated above, however, after the hearing on this application, when judgment was reserved, the Applicants proceeded to file a Defence.

THE LEGAL FRAMEWORK:

[12] CPR 10.3(10) provides that where the period for filing a defence has expired, a defendant must apply to the Court for an extension of time. The discretion conferred by the Rule is not unfettered. It must be exercised in accordance with the overriding objective, which requires the Court to deal with cases justly. That objective expressly includes ensuring that cases are handled expeditiously and fairly, promoting efficiency, and enforcing compliance with the Rules and court orders.

[13] The approach to applications for extensions of time after the expiry of a procedural deadline is well established. The Court will ordinarily consider the length of the delay, the reasons for the delay, the apparent merits of the proposed defence, the prejudice to the parties, and all the circumstances of the case; See **Rose v Rose**.³ These factors are not applied mechanically; rather, they guide the Court in determining whether the interests of justice favour granting relief. These factors are also not exhaustive; See **Pemberton v Brantley**.⁴

³ Civil Appeal No. 19 of 2003.

⁴ [2011] ECSCJ No. 229.

[14] The Court of Appeal has repeatedly emphasised that compliance with the CPR is not optional. A detailed explanation is not synonymous with a good explanation, and an account which reveals administrative inefficiency, lack of urgency, or internal disorganisation will seldom suffice; See **Rovika Inc et al v The Attorney General et al**.⁵ Courts must guard against the development of a litigation culture in which deadlines are treated as provisional rather than obligatory. The procedural environment demands diligence, promptness, and respect for the Rules.

[15] One distinguishing feature in this case and **Rovika Inc** is that no application or request for default judgment has been made by the Respondents. The CPR amendments of 2023 deliberately departed from the decision of the Board in **Lux Locations Ltd v Yida Zhang**⁶ and essentially reverted to the Court of Appeal's decision in **Glenford Rolle v Stephen Lander**.⁷ In **Rolle**, the Court held that the filing of a defence subsequent to a request for default judgment will not avail a Defendant.

[16] CPR 12.10 (3) codified **Rolle** into the new Rules. No longer is the Court required to consider a late defence in response to an application for judgment. The quandary in this case is unlike **Rolle**, there was no request or application made for default judgment. At the hearing counsel advanced that no application or request had been made as a courtesy to counsel opposite. This in my view diminishes her otherwise meritorious objection to the application. But for the Claimant's failure to file a request or application for judgment, I would have dismissed the application without hesitation as the evidence in support was fundamentally deficient to the extent that it rendered the application hopeless.

⁵ MINHCVAP2020/0004.

⁶ [2023] UKPC 3.

⁷ DOMHCVAP2013/0025A (unreported).

ANALYSIS:

Length of the Delay:

[17] The delay in this case is nineteen days beyond the deadline for filing the defence. In absolute terms, that period is not substantial, and courts are generally slow to shut out a litigant solely because of a relatively short delay.

[18] However, the delay must be considered in context. The Applicants do not merely seek to regularise a brief lapse; it seeks an extension to 14 February 2026, which would place the filing of the Defence approximately six weeks beyond the original deadline.

[19] Moreover, the significance of the delay cannot be assessed in isolation. Its weight depends upon the adequacy of the explanation provided and the presence or absence of an arguable defence. Standing alone, the length of delay would not justify refusal.

The Reasons for the Delay:

[20] The Applicants advances four principal reasons for its failure to comply with the deadline: (a) the retainer for legal representation was paid on 22 December 2025; (b) counsel's chambers were closed for the Christmas vacation until 5 January 2026; (c) the matter is complex and multi-jurisdictional; and (d) freezing measures affecting its assets impaired its ability to instruct counsel earlier. Each of these matters must be examined carefully.

[21] The Applicants were served on 18 November 2025 and therefore had approximately six weeks before the defence deadline expired. The evidence reveals that the retainer was paid on 22 December 2025, only nine days before the defence was due. What is notably absent is any detailed account of the steps taken during the intervening period to secure representation, evaluate the claim, or protect the Applicants' procedural position. No evidence from a decision-maker explains why the retainer could not reasonably have been arranged earlier.

[22] The reference to asset constraints and freezing measures is expressed in general terms and lacks particularity. The Court is not informed what assets were frozen, how those measures prevented instructions from being given, whether alternative arrangements

were explored, or why no protective application was made before the deadline expired. Moreso, as Counsel for the Respondents quite properly pointed out, although the Applicants did not make a seemingly simple application for an extension of time, it was able to brief counsel, the same firm that continues to appear in this application, and make an application to set aside or vary a freezing injunction granted prior to filing this application. This fact alone diminishes the credibility of the Applicants' explanation. To be blunt, I do not accept the reason advanced for the delay as it lacks credibility in light of the Applicants' ability to retain and instruct counsel to file an application of 13 January 2026 to set aside or vary injunctive relief previously granted by the Court.

[23] Litigation is a serious matter requiring urgency. The responsibility to secure representation rests with the litigant and delays attributable to internal financial or administrative arrangements do not ordinarily constitute a good explanation in my view.

[24] Again, in my view, the Christmas vacation does not materially advance the Applicants' position. The holiday period is a predictable annual occurrence, not an unforeseen impediment. The Applicants were served in mid-November and had ample opportunity to factor the Christmas period into its planning.

[25] Even if little substantive work could have been undertaken between 22 December and 5 January, the period between 5 January and 19 January, some two full weeks, remains largely unexplained. The affidavit provides no chronology of steps taken during that time and offers no explanation as to why, at minimum, an application for an extension was not made immediately upon the reopening of chambers. A foreseeable office closure cannot, without more, justify non-compliance.

[26] The Applicants also rely upon the asserted complexity and multi-jurisdictional nature of the matter. Complexity, however, does not excuse inaction; if anything, it underscores the need for prompt engagement. The Court is not persuaded that the nature of the matter made it impossible to file either a substantive defence or, at the very least, a concise holding defence identifying the issues in dispute. Nor is there evidence

explaining why an extension was not sought before the expiry of the deadline if additional time was genuinely required.

[27] Viewed as a whole, the explanation discloses not an unforeseen obstacle but a combination of delayed retainer arrangements, a predictable holiday closure, and a lack of prompt procedural action. The Court of Appeal has cautioned that explanations revealing substantial fault on the part of a solicitor, inefficiency, mistake of the law, lack of diligence, volume of work, difficulty in communicating with the client, pressure of work on a solicitor, impecuniosity of the client, secretarial incompetence or inadvertence will not ordinarily amount to a good explanation; See **Michael Laudat & Ors v Danny Ambo**.⁸

[28] I am not satisfied that the Applicants have demonstrated a good reason for failing to comply with the CPR timetable. This factor weighs heavily against the grant of relief.

Prospects of Defence (the evidence filed at the time of hearing):

[29] A striking feature of this application is the absence of any draft defence or meaningful description of the proposed defence. The Applicants do not identify which allegations are denied, what positive case it advances, whether jurisdictional or legal challenges arise, or whether issues such as limitation, misrepresentation, or quantum are engaged. The Court is therefore left entirely uninformed as to the substance of the defence said to exist.

[30] At the hearing, Counsel for the Applicants submitted that there existed a mountain of evidence and as such the Applicants were still in the process of preparing their Defence. He contended that it would have been preferable to place before the Court a fully developed defence as the Court ought to have the benefit of the strongest possible defence rather than a holding defence. The Court does not accept that submission. The purpose of a holding defence is to ensure compliance with the procedural timetable while preserving a party's right to refine or amend its case in due course. A party cannot justify

⁸ HCVAP2010/0016 per Edwards JA.

non-compliance with the Rules by asserting that it was acting in what it perceived to be the Court's best interests.

[31] In exercising its discretion, the Court must consider whether granting relief would enable the determination of a genuine dispute on the merits. It is not sufficient merely to assert an intention to defend. There must be some material upon which the Court can assess whether that intention rests upon an arguable foundation.

[32] The absence of any indication of merit is a serious deficiency and deprives the Court of a principled basis upon which to exercise its discretion in the Applicants' favour. This factor weighs strongly against the application.

Prospects of Defence (the Defence filed after the hearing):

[33] In the Defence filed on 13 February 2026, several defences are raised. The Applicants' primary contention is that the Respondents' funds were advanced to Incorr Holdings and not to the First Defendant, Pangaea Resources Limited, nor to the Second Defendant personally. They assert that there was no contractual relationship between the Claimants and these Defendants, and that any lending relationship existed solely between the Claimants and Incorr Holdings.

[34] If established, this argument would significantly undermine the contractual basis of the claim against the First and Second Defendants. However, the Statement of Claim alleges that the Defendants made representations, entered into a promissory note arrangement, and exercised control over Pangaea as the vehicle through which the transaction was conducted. Further, the existence of a Canadian judgment imposing liability and security obligations against the First and Second Defendants weakens the assertion that they were entirely external to the relevant obligations. Accordingly, while this defence raises a triable issue, its prospects of success would be better assessed at trial.

[35] The First and Second Defendants also contend that the Claimant was a sophisticated and experienced businessman who knowingly participated in high-risk mining

investments, conducted due diligence, and obtained professional legal and technical advice. This defence is directed at undermining reliance and inducement, particularly in relation to the allegations of misrepresentation. Evidence of sophistication and independent advice may weaken claims of negligent misrepresentation or unequal bargaining power. However, such factors do not, in themselves, defeat a claim grounded in fraudulent misrepresentation or deliberate non-disclosure of material facts. The prospects of this defence succeeding are therefore a matter to be tested by evidence.

[36] A related argument made is that any representations made by the First and Second Defendants were true at the time they were made and were honestly believed to be accurate. This defence goes to the heart of the allegations of fraudulent or negligent misrepresentation. Its success will depend on findings of fact concerning what was said, what was omitted, and the First and/or Second Defendants' knowledge at the relevant times. In light of the Claimants' allegations regarding undisclosed investigations and material omissions, the viability of this defence is fact-dependent and cannot be determined without a full evidential inquiry.

[37] The First and Second Defendants further deny owing any fiduciary or advisory duty to the Claimants, asserting that they acted solely in their capacities within corporate entities and not as agents or advisors to the Claimants. If the relationship is found to have been purely commercial, this position may defeat claims grounded in negligence or breach of fiduciary duty. However, if the evidence demonstrates that the Claimants placed trust and reliance on the Defendants' expertise and representations, a duty of care may arise notwithstanding the absence of a formal advisory agreement. The prospects of success on this issue are again better suited for assessment at trial.

[38] With respect to indebtedness, the First and Second Defendants assert that Pangaea repaid its loan to Incorr Holdings and that Incorr Holdings has already repaid CAD \$2,000,000.00 to the Claimants. This defence does not negate liability for any remaining balance but is likely to be relevant to the quantum of damages recoverable. To that extent, it has the prospects of reducing the amount recoverable if liability is ultimately established.

[39] The First and Second Defendants also contend that there was no fixed timeline for repayment and that repayment was contingent upon business conditions. The strength of this defence depends on the precise terms of the promissory note and associated agreements. If the documentary evidence specifies repayment terms, this argument may carry limited weight. Accordingly, its prospects can only be determined at trial.

[40] In response to allegations of non-disclosure, the First and Second Defendants assert that they were unaware of investigations at the time of contracting and that, once the Claimant became aware of such matters, he continued to advance funds. If established, continued investment after disclosure may undermine reliance and causation. This defence is not frivolous and will depend on the timing and materiality of the information and the Claimant's knowledge thereof, which again is a matter for trial.

[41] The First and Second Defendants further deny personal liability, asserting that all obligations were corporate in nature and that no personal guarantees were given. This defence may succeed if the corporate structure is respected and no basis exists for piercing the corporate veil. However, allegations of fraud, misrepresentation, or the use of corporate entities as vehicles for wrongdoing may expose the individual Defendants to liability. The prospects of success of this defence can only be determined at trial.

[42] Finally, the First and Second Defendants challenge the Claimants' entitlement to register and enforce the Canadian judgment in Saint Lucia. The judgment appears final and the time for appeal has expired. Absent evidence of procedural non-compliance with the statutory requirements for registration, this defence cannot be assessed at this stage.

[43] Taken together, the Defence raises several arguable issues that may affect both liability and quantum. However, the existence of a prior foreign judgment, the allegations of misrepresentation, and the factual disputes concerning the flow of funds and the parties' relationships indicate that the Defence, while not frivolous, can only be properly assessed at trial.

Prejudice and the Overriding Objective:

[44] The Applicants are entitled to the timely progression of their claim. Commercial litigation depends upon procedural certainty and adherence to timetables. To grant extensions in the absence of a good explanation and demonstrated merit risks undermining the discipline the CPR seek to promote.

[45] It is of note that prejudice was not advanced as a ground of opposition in the Respondents' Notice of Opposition. The issue was, however, raised in submissions where it was contended that the Respondents will suffer prejudice as they will be further delayed from obtaining judgment against the Applicants for no good reason.

[46] The prejudice asserted by the Respondents could have been cured by pursuing judgment in default. By not doing so, the Respondents imposed on the Court the obligation to consider the late Defence. Any prejudice to the Respondents therefore flows from its own failure to apply for default judgment.

[47] Fairness must be balanced and it includes fairness to the party who has complied with the Rules. The CPR exist to ensure fairness, efficiency, and certainty in the administration of justice, and parties who invoke the Court's jurisdiction are expected to comply with the procedural framework and act with diligence.

[48] The posture adopted by the Applicants in the conduct of this application does not sit well with this Court. The conduct of filing a defence after an application is heard and all arguments fully ventilated is not a practice which this Court condones. We still conduct litigation in an adversarial system. It is extremely unfair to the Respondents, who had the benefit of their full written and oral arguments on what was otherwise a hopeless application, for the Applicants to subsequently proceed to file a Defence and cure one of the central weaknesses of the application.

[49] Accordingly, the Applicants must pay the Respondents' costs of the application, including all costs thrown away to be assessed in default of agreement following the detailed costs assessment procedure.

Overall Assessment:

[50] Having considered all the circumstances, I accept that the delay is not lengthy when viewed in isolation. However, it is unsupported by a satisfactory explanation. These two factors weigh heavily against the grant of the application. Where the tides turn is that the Applicants have demonstrated an arguable defence. The Respondents did not “close the door” on the Court considering the late Defence by filing an application or request for default judgment. In my view the realistic prospect of the Defence weighs more than the other two factors. When considered against the overriding objective, including the fact that the Defence has already been filed, the application ought, in my respectful view, to be granted.

ORDER:

[51] For these reasons I make the following orders:

- 1) The First and Second Defendants’ application dated 19 January 2026 for an extension of time to file and serve its Defence is granted.
- 2) Time is extended for the First and Second Defendants to file their defence to 13 February 2026 and the Defence filed is deemed properly filed.
- 3) The First and Second Defendants shall pay the Claimants’ costs of the application, including all costs thrown away by the hearing on 12 February 2026, such costs to be assessed if not agreed within 21 days following the detailed costs assessment procedure.



Alvin S. Pariagsingh
High Court Judge

By the Court,

Deputy Registrar of the High Court