

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0476

BETWEEN: PATRICE MCINTOSH

Claimant

and

CAROL MARTIN-ADAMS

Defendant

Appearances:

Ms. Jillanna Blackstock, Counsel for the Claimant

Ms. Saska Diamond, Counsel for the Defendant

2025: July 9th, 14th, 16th.

DECISION

- [1] **MICHEL, M.:** This is the Court's decision on an application filed by the Defendant on 9th May, 2025 pursuant to rule 13.3 of the Civil Procedure Rules (Revised Edition) 2023 ("**CPR 2023**") to set aside the judgment in default of defence herein dated 23rd April, 2025 entered for the Claimant against the Defendant. The Defendant's application is vigorously opposed by the Claimant.
- [2] The brief background to the matter is that the Claimant and the Defendant were involved in a motor vehicle accident on 2nd December, 2021 on Scott's Hill Road ("**the Accident**"). By claim form and statement of claim filed on 29th November, 2024 the Claimant commenced the instant proceedings against the Defendant alleging that the Accident was wholly caused by the negligence of the Defendant. The Claimant further alleged that as a result of the accident, she suffered personal injuries, and loss as her vehicle was significantly damaged in the Accident. The Claimant claimed special damages in the sum of \$41,660.00, general damages, interest and cost.
- [3] The Claimant's claim was served on the Defendant on 2nd December, 2024 and an acknowledgement of service was filed by counsel for the Defendant on 7th January, 2025. No defence was filed by the Defendant within the 28-day period limited by CPR 2023, and on 7th April, 2025 the Claimant filed a request for judgment in default of defence to be entered against the Defendant for the sum of \$44,324.25. The Claimant filed a revised request for judgment in default of defence on 17th April, 2025 abandoning her claim for damages in respect of

personal injuries and other specified sums not supported by proof. The Claimant therefore requested judgment be entered in the sum of \$35,975.41.

- [4] On the Claimant's request, the Court Office entered the judgment in default of defence dated 17th April, 2025 in the sum of \$35,975.41 in favour of the Claimant. The default judgment was filed on the E-Litigation Portal on 24th April, 2025 and was served on the Defendant personally on 1st May, 2025. On 9th May, 2025, the Defendant filed the present application to set aside the default judgment. The set aside application was accompanied by a draft defence and exhibits. The application was also supported by the affidavit of Velma Thomas, Administrative Assistant in the office of counsel for the Defendant.
- [5] The Claimant filed a notice of opposition to the Defendant's set aside application on 14th May, 2025 and an affidavit in opposition together with exhibits on 4th June 2025. On 5th June, 2025 an affidavit of the Defendant was filed in further support of her application to set aside the default judgment.
- [6] Learned Counsel for the Defendant and learned Counsel for the Claimant filed written submissions together with authorities in relation to the Defendant's set aside application on 5th June, 2025 and 17th June 2025, respectively.
- [7] It is first necessary to set out the applicable rules for the Defendant's set aside application.

Setting aside a Default Judgment under CPR 13.3

- [8] The Court has the discretionary power under CPR 13.3 to set aside a default judgment. The rule provides:-

“13.3 (1) The court may set aside a judgment entered under Part 12 only if the defendant has a real prospect of successfully defending the claim.

(2) In determining whether to set aside under paragraph (1), the court may consider if the defendant –

(a) applied to the court as soon as reasonably practicable after finding out that judgment has been entered; and

(b) gives a good explanation for the failure to file an acknowledgement of service or a defence, as the case may be.

(3) In any event, the court may set aside a judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances.

(4) Where this rule gives the court power to set aside a judgment, the court may instead vary it.”

- [9] The Court may only set aside a default judgment under CPR 13.3(1) if a defendant has a real prospect of successfully defending the claim. Thus, the starting point to any application to set aside pursuant to CPR 13.3(1) is to determine whether a defendant has met this threshold requirement for the court to exercise its discretion to set aside the default judgment.

Whether the Defendant has a Real Prospect of Successfully Defending the Claim

- [10] Guidance on the approach to determining whether a defendant has a real prospect of success can be found in the judgment of the Court of Appeal in **Sylmord Trade Inc. v Inteco Beteiligungs Ag.**¹ In considering the issue of the lower court’s finding on an application to set aside a default judgment that the appellant’s defence had no real prospect of success, Michel JA who authored the judgment of the Court stated:-

“The approach taken by our court to the issue of “real prospect of successfully defending the claim” in the case of Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste,³ [Saint Lucia High Court Civil Appeal SLUHCVP2009/0008 (delivered 11th January 2010, unreported)] albeit in the context of summary judgment, would appear to vindicate the conclusion reached by trial judge in the present case. George-Creque JA, who delivered the judgment of the Court, opined that the court had to consider the issue in the context of the pleadings and such evidence as there is before it and determine on this basis whether the defence has a real (as opposed to a fanciful) prospect of success and that if at the end of the exercise the court arrives at the view that it would be difficult to see how the defendant could establish its case then it is open to the court to enter summary judgment. In the context of rule 13.3(1), it would be open to the court to refuse to set aside a default judgment.”

- [11] The following passage of Moore-Bick J in the English case of **International Finance Corporation v Ute Africa Sprl**² is often cited by our courts offers

¹ BVIHCMP2013/0003 (delivered 24th March 2014, unreported) at para 35.

² [2001] EWHC 508 (Comm) at para. 8.

further guidance as it relates to the determination of real prospect of success on a default judgment application:-

“The fact is that in ordinary language to say that a case has no realistic prospect of success is generally much the same as saying that it is hopeless; whereas to say that a case has a realistic prospect of success carries the suggestion that it is something better than merely arguable. That is clearly the sense in which the expression was used in *The Saudi Eagle* and in my view is also the sense in which it is used in rule 13.3(1)(a). There are good reasons for that. **A person who holds a regular judgment, even a default judgment, has something of value and in order to avoid injustice he should not be deprived of it without good reason. Something more than a merely arguable case is needed to tip the balance of justice in favour of setting the judgment aside.** In my view, therefore, Mr. Howe was right in saying that the expression "realistic prospect of success" in this context means a case which carries a degree of conviction.” (Emphasis added).

[12] Applying these principles to the present case, I will first examine the Defendant’s proposed defence in the context of the Claimant’s statement of claim and the affidavit evidence.

[13] The main allegation made against the Defendant by the Claimant is pleaded at paragraph 3 of her statement of claim. The Claimant alleges that whilst she was driving south to north on Scott’s Hill Road and the Defendant was travelling north to south on the said road, the Defendant so negligently drove, managed and controlled her motor vehicle in a manner which caused the said vehicle to violently collide into the front of the Claimant’s vehicle, causing damage to the Claimant’s vehicle and person.

[14] In response to this allegation, at paragraph 3 of her draft defence, the Defendant states the following:-

“The Defendant admits paragraph 3 of the Claimant’s Statement of Claim to the extent that it alleges the Claimant was driving South to North on Scott’s Hill Road and the Defendant was travelling from North to South on the said road but puts the Defendant to strict proof that the Defendant drove negligently and or managed or controlled her vehicle in a manner which caused the said vehicle to violently collide with the front of the Claimant’s vehicle.

[15] It is noteworthy that the Defendant has simply put the Claimant to proof of an essential allegation in the Claimant’s claim. She has not denied the allegation

and thus has not given reasons for a denial and a different version of events she intends to prove.

- [16] The Defendant does, however, go on at paragraph 4 of her draft defence to state the following:-

“The Defendant asserts that as a result of the Claimant's negligence, failure to keep any or all proper look out, failure to swerve and or manage or control the vehicle, failure to stop, steer or otherwise control her vehicle so as to avoid striking the Defendant's vehicle that the Claimant caused the collision with the Defendant's vehicle.”

- [17] It is noteworthy that in resisting the Claimant's claim, the Defendant has not pleaded in her proposed defence any further facts to support the allegation at paragraph 4 of her proposed defence.

- [18] In response to the particulars of claim pleaded at paragraph 4 of the Claimant's statement of claim, at paragraph 5 of her draft defence, the Defendant pleads that she denies paragraph 4 of the Claimant's statement of claim in its entirety. She does not plead another version of events in relation to the accident that she intends to prove, however she goes on to plead the following:-

“The Defendant avers that proceedings were held at the Magistrates Court Traffic division. The matter was disposed of as the prosecution offered no evidence on the basis of the information on file. The learned Magistrate then dismissed the matter for want of prosecution. The court record is hereto attached and marked “CMA.1”.”

- [19] The way matters are pleaded in the draft defence, it appears that the Defendant is relying on the alleged dismissal of the Magistrate's Court proceedings ‘for want of prosecution’ as the reason for her denial of the Claimant's particulars of negligence. The Defendant, however, does not specifically answer the substantive particulars pleaded by the Claimant except to say that they are denied and refer to the Magistrate's Court proceedings. It is noteworthy that the alleged determination of the Magistrate's Court proceedings was not a determination of the matter on the merits. I shall return to this point later.

- [20] At paragraphs 11 and 12 of her statement of claim, Claimant avers that there are on-going criminal proceedings against the Defendant before the Traffic Court (Magistrate's Court) resulting from the accident and that the instant proceedings were commenced due to limitation. In response to these averments, at paragraph 10 of her draft defence, the Defendant pleads that she vehemently denies that the matter was not determined at the Magistrates' Court. The Defendant alleges that the proceedings in the Magistrate's Court were

dismissed for want of prosecution, the prosecution having not offered any evidence in the matter. The Defendant further avers that as a result of such, she maintains that the matter of liability has been determined and should have been appealed or a request made for review within 7 days of the determination of the matter under the **Magistrate's Code of Procedure Act**³ by the Claimant. The Defendant further avers that this amounts to an abuse of process.

- [21] Having reviewed the affidavits filed in support of the set aside application, it is noted that no evidence is proffered by the Defendant to resist the Claimant's substantive claim in negligence. The Defendant has therefore provided no evidence to support a substantive defence to the Claimant's claim and has not pleaded facts in her draft defence which would show that she has a real defence to the substantive claim. The Defendant having put forward no positive facts and evidence to establish a case to defend the substantive claim, her pleaded defence to the substantive claim is arguable at best.
- [22] The entirety of the Defendant's affidavit evidence as it relates to the issue of the Defendant's prospects of successfully defending the Claimant's claim pertain not to the actual accident, but to the Defendant's averment that the proceedings in the Magistrate's Court were dismissed for want of prosecution and that the Claimant's claim is an abuse of process.
- [23] The only other real issue the Defendant's draft defence raises is the issue of abuse of process. The Magistrate's Court's proceedings appear to be the central plank of the Defendant's defence.
- [24] The Parties have offered two versions of how matters unfolded in the Magistrate's Court. The Defendant has asserted that the proceedings in the Magistrate's Court were dismissed for want of prosecution on 23rd April, 2024. The Claimant on the other hand asserts that the Magistrate Court's proceedings emanating from the motor vehicle accident between the Parties are on-going and were not dismissed. Two conflicting records have been produced by the Parties to support their contention.
- [25] These competing arguments cannot be resolved on the present application, although it does appear there may have been a mix up in the Magistrate's Court's records when dates stated by the Parties in their evidence is cross-referenced with dates on the records. Nonetheless, in my view, such a resolution is not necessary for the Court's consideration of this application.
- [26] Even if I were to accept that the Magistrate's Court proceedings in relation to the motor vehicle accident were dismissed for want of prosecution in April 2024

³ Cap. 255, Laws of Antigua and Barbuda.

(to be clear, I make no determination of this point), the mere fact that the Claimant subsequently commenced the present proceedings in November 2024 does not, without more, make the present proceedings an abuse of process. Abuse of process is a serious allegation in light of the general right of access of persons to the Court. An alleging party would have place material before the Court to demonstrate that the Claimant is abusing or using the court for an unintended purposed.

[27] Further, if the Defendant's case as pleaded in her defence on the issue of abuse of process is taken at its highest that the Magistrate's Court proceedings were dismissed for want of prosecution, it would mean that there was no determination of the Magistrate's Court proceedings on the merits of the case.

[28] The Defendant pleaded in her draft defence that the matter was disposed of as the prosecution offered no evidence on the basis of the information on file. At paragraph 6 of her affidavit filed on 5th June, 2025 the Defendant deposed that on 10th August, 2022 she attended the Magistrate's Court presided over by a magistrate and that a police prosecutor was present and that when the Magistrate asked for the measurements relating to the matter, the prosecutor was not in possession of them. She then deposed that they were provided by the Claimant (who would have been the virtual complainant). The Defendant then went further to outline alleged failings by the police prosecutors to produce the file. Thus, when the Defendant's pleadings and evidence are considered, it does no more than support the conclusion that the matter was dismissed for want of prosecution and was not heard and determined on its merits after a trial on the evidence. Accordingly, taking the Defendant's case at its highest, it would not support the averment that liability was determined in the Magistrate's Court.

[29] In any event, even if there had been a finding by the Magistrate's Court that the Defendant was not guilty of the offence of driving without due care and attention by the Magistrate's Court, it would not follow, *without more*, that the Claimant could not subsequently pursue a claim in negligence against the Defendant at the High Court. I have been presented with no authority to show otherwise. But in any event, the Defendant's case is not that she was found not guilty by the Magistrate's Court.

[30] All the Defendant's evidence indicates is that the matter was not diligently prosecuted by the police in the Magistrate's Court. There would have been no trial on the evidence. In my view, when the Defendant's draft defence in relation to abuse of process is considered in the context of the evidence, it is no more than arguable.

[31] Accordingly, I am of the considered view that the Defendant has not demonstrated that her defence, whether a substantive defence or a defence on

the basis of abuse of process, has a real prospect of success. This conclusion is sufficient to dispose of the Defendant's application as the Defendant has failed to satisfy CPR 13.3(1). However, for the sake of completeness, I will consider the matters under CPR 13.3(2) which the Court may consider in deciding whether to set aside the default judgment under CPR 13.3(1). I will so briefly consider exceptional circumstances under CPR 13.3(3).

Whether the Defendant applied to the Court as soon as Reasonably Practicable after Finding out that Judgment had been Entered

- [32] The default judgment was filed on the E-Litigation Portal on 24th April, 2025 and the Defendant was personally served with the default judgment on 1st May, 2025. The Defendant does not say exactly when she found out that the judgment had been entered. The Defendant having been represented by counsel, at the earliest, the Defendant would have found out that the default judgment had been entered when the default judgment was filed and served on the E-Litigation Portal. The Defendant applied to set aside the default judgment on 9th May, 2025 about two weeks after the default judgment was filed and therefore served on the E-Litigation Portal and eight days after it was served on her personally. I am of the considered view that in the circumstances of the case, the Defendant would have applied to set aside the default judgment as soon as reasonably practicable after finding out that judgment had been entered.

Whether the Defendant has Given a Good Explanation for the Failure to File a Defence

- [33] The explanation provided for the Defendant's failure to file a defence is set out at paragraph 10 of the affidavit of Velma Thomas, Administrative Assistance in the office of counsel for the Defendant. Ms. Thomas deposed:-

"That I am advised and do verily believe that the failure to file the Defence was not intentional but that the Defendant had by then become very frustrated by the process itself having received the letter of counsel for the Claimant dated the 2nd day of December, 2024 and the Claim and Statement of Claim on the 5th day of December, 2024. That I am further advised and do verily believe that the failure of the Defendant to pass on the requisite instructions and comply with the instructions of the office to have the matter filed soonest resulted in the entering to the Default judgment. However, I am further advised and do verily believe that the Defendant's frustration of the handling of the matter by the court and the disingenuous approach by the court caused the Defendant severe stress and inability to cope with the progressing of the matter."

[34] This in my view is not a good explanation for the failure of the Defendant to file her defence. To simply state that the Defendant was frustrated by the handling of the matter cannot, to my mind, excuse non-compliance with the rules of court.

[35] What makes matters more glaring is that Ms. Velma Thomas goes at paragraph 11 of her affidavit to state:-

“That I am advised and do verily believe that after the Defendant became aware of the Default Judgment being entered the Defendant then ensured that she followed the necessary instructions to have the matter dealt with immediately given the implications of the making of the judgment and the serious adverse financial implications on the Defendant. As the Judgment requires the Defendant to compensate the Claimant for an accident to which she cannot be held liable and for a matter that she was aware had already been determined by the court below.”

[36] What the above excerpts demonstrate is that the Defendant’s failure to file her defence was deliberate and that it was only when the Defendant realised the implication of the failure— that default judgment had been entered against her – that she sought to remedy the situation by making the present application to set aside the default judgment. A defendant cannot deliberately ignore the rules of procedure and then ask the court to find that it has a good explanation for its failure comply with the rules.⁴

[37] The Defendant was served with the Claimant’s claim on 5th December, 2024 which no doubt would have been accompanied by the notes to the Defendant warning of the consequences if nothing was done. The Defendant’s legal Counsel filed an acknowledgement of service on the Defendant’s behalf on 7th January, 2025. Thus, from at the latest, 7th January, 2025 the Defendant would have been represented by legal counsel who would not doubt be aware of the consequences of the failure to file a timeous defence. The Defendant chose not to take the steps to have her defence filed. The Claimant did not request judgment until more than three months after the acknowledgement of service was filed by the Defendant’s Counsel.

[38] Considering all the circumstances above, I am of the view that the Defendant has not given a good explanation for her failure to file a defence.

[39] Had the Court found that the Defendant had a real prospect of successfully defending the claim, the absence of a good explanation for her failure to file a

⁴ See: *Dominica Agricultural & Industrial Development Bank v Mavis Williams* Commonwealth of Dominica Civil Appeal no. 20 of 2005 (delivered 18th September 2006, unreported).

defence would certainly have been weighed in the balance against the Court's exercise of its discretion to set aside the default judgment. In any event, in light of my earlier finding that the Defendant has not demonstrated that she has a real prospect of successfully defending the Claimant's claim, the Court's discretion to set aside the default judgment under CPR 13.3(1) is not engaged and the Claimant's application pursuant to this rule accordingly fails.

Exceptional Circumstances

[40] As it relates to exceptional circumstances under CPR 13.3(3), no argument was made to the Court that there were exceptional circumstances warranting the setting aside of the default judgment. In any event, considering the guidance provided by Pereira CJ in the judgment of the Court Appeal in **Carl Baynes v Ed Meyer**⁵ on what amounts to 'exceptional circumstances' which was affirmed by the Judicial Committee of the Privy Council in **Meyer v Baynes**,⁶ I am unable to discern any exceptional circumstances in the present case.

Disposition

[41] In light of the foregoing, I would dismiss the Defendant's application to set aside the default judgment.

[42] The Claimant having successfully resisted the Defendant's set aside application, is entitled to her costs. I would summarily assess those costs in the sum of \$1,500.00 to be paid by the Defendant to the Claimant within 28 days of the date of this Order.

[43] I would therefore make the following orders:-

1. The Defendant's application filed on 9th May, 2025 to set aside the default judgment herein is dismissed.
2. The Defendant shall pay costs to the Claimant in the sum of \$1,500.00 on or before 14th August, 2025.
3. The Defendant shall draw, file and serve this Order.

⁵ ANUHCv2015/0025 (delivered 30th May 2016, unreported) at para. 26.

⁶ [2019] UKPC 3.

[44] I wish to thank learned Counsel on both sides for their impressive oral and written submissions.

Carlos Cameron Michel
High Court Master

By the Court



Registrar