

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT LUCIA**

**CLAIM NO.: SLUHCV2020/0583**

**BETWEEN:**

**TRIDENT LIMITED**

**Claimant**

**And**

**NEW INDIA ASSURANCE COMPANY (TRINIDAD AND TOBAGO) LTD.**

**Defendant**

**Appearances:**

Mr. Thomas Theobalds of Counsel for the Claimant

Ms. Candace Fletcher of Counsel for the Defendant

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2022: September 22;  
: December 1.  
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**RULING**

- [1] **INNOCENT, J.:** On 18<sup>th</sup> December 2020, the claimant filed a claim against the defendant for damages arising from the breach of a contract of indemnity insurance in the sum of \$81,800.00. The defendants disputed the court's jurisdiction to hear the claim; and consequently, on 19<sup>th</sup> March 2020, they filed an application that the claim be struck out pursuant to CPR 9.7(6)(c).
- [2] The claimant, on 21<sup>st</sup> April 2020, that is, subsequent to the filing of the defendant's strikeout application, filed an amended claim.
- [3] The defendant's application was heard before Phillip J. on 20<sup>th</sup> May 2021. Phillip J. delivered his decision on 28<sup>th</sup> May 2021, refusing the defendant's application and directing that the defendant file its defence by 25<sup>th</sup> June 2021.

- [4] On 14<sup>th</sup> June 2021, the defendants filed an application for leave to appeal the decision of Phillip J. and the grant of a stay of proceedings pending the hearing of the appeal. The defendant's leave application was considered by Phillip J without a hearing on 6<sup>th</sup> October 2021. The defendant's leave application was granted and the proceedings before the High Court were stayed pending the filing, hearing and determination of the appeal.
- [5] The appeal was heard on 10<sup>th</sup> March 2022. The appeal was refused by the Court of Appeal. It does not appear from the Certificate of Result of Appeal or on the record of the proceedings before the Court of Appeal that any order was made with respect to the future conduct of the proceedings in the court below.
- [6] On 11<sup>th</sup> March 2022, the claimant filed a request for entry of judgment in default of defence. The default judgment was granted by the Registrar on 11<sup>th</sup> March 2022 pursuant to CPR 12.5 and was filed on 28<sup>th</sup> March 2022.
- [7] On 31<sup>st</sup> March 2022, the defendant filed an application to set aside the default judgment obtained by the claimant and for leave to file a defence to the claim. The defendant's application to set aside the default judgment was buttressed on the provisions of CPR 13.3(1) and 13.3(2).
- [8] The defendant also sought to have the default judgment set aside on the ground that it was irregular in that the request for default judgment was made and granted for a specified sum whereas the claim was one for indemnity under a policy of insurance; and therefore, any default judgment obtained ought to have been for the terms of the judgment to be determined by the court in accordance with the procedure set out in CPR 12.10(b) and CPR 16.2.
- [9] The defendant submitted that it had satisfied all the requirements of CPR 13.3(1). The claimant held a contrary view.

### **Promptitude**

- [10] According to the defendant, the application to set aside the default judgment was made as soon as reasonably practicable after finding out that judgment had been entered, the defendant having filed its application on 31<sup>st</sup> March 2021 after having learnt that default judgment was entered on 28<sup>th</sup> March 2021, a mere three days later.
- [11] The claimant argued that the defendant's application was not made with promptitude. The claimant's complaint appeared to be not so much with respect with the period of delay in making the application, which they conceded was acceptable, but rather with respect to the defendant's conduct on discovering that the claimant had filed a request for default judgment. In this regard, the claimant alluded to the fact, that the defendant instead of filing the appropriate application for an extension of time to file its defence in order to guard itself against the prospect of the judgment in default being entered against it, instead wrote to the Registrar setting out its reasons why judgment in default should not be entered against it. In the claimant's view, this conduct on the part of the defendant was inexcusable notwithstanding that the application to set aside the default judgment was filed three days after the default judgment was entered.
- [12] The court will advert its attention to the question of the propriety of the defendant's letter to the Registrar and the defendant's conduct after being put on notice that a request for default judgment was made later on in its ruling. However, the court disagrees with the claimant's contention that the application herein was not made as soon as reasonably practicable after finding out that judgment had been entered. In the circumstances, the court finds that the defendant has satisfied the first limb of CPR 13.3(1).

### **Good explanation for the failure**

- [13] The difficulty, as the court sees it, arises in relation to the question whether the defendant has a good explanation for the failure.

- [14] The main thrust of the defendant's argument relative to the question of whether there was a good explanation for the failure to file a defence in accordance with the court's order of 28<sup>th</sup> May 2021 was that the failure was not due to any indifference to the risk that the claimant might enter judgment in default against it, but rather, arose out of the defendant's fear and apprehension that the filing of its defence within the time specified by the order would have amounted to submission to the court's jurisdiction which would have prevented it from mounting any further challenge, and by implication, would be tantamount to a waiver of its right to challenge the court's ruling on appeal.
- [15] According to the defendant, it could not have adhered to the time prescribed by the order for filing its defence since it had filed a notice of application for leave to appeal on 14<sup>th</sup> June 2021, that is, prior to the expiry of the time for filing its defence and that leave to appeal and a stay of proceedings had been granted by the court on 6<sup>th</sup> October 2021.
- [16] In light of the preceding argument, the defendant took the position that the filing of the notice of appeal and the service of the same on the claimant meant that the claimant could not have applied for and obtained judgment in default in defence as the notice of appeal was filed within the time within which to file its defence.
- [17] By way of syllogism, the defendant contended that upon determination of the appeal, there was still ample time within which to file its defence as the time prescribed by the order of 28<sup>th</sup> May 2021 had not yet expired. Assuming that this was the case this meant the defendant would have had a period of at least 11 days left to file their defence pursuant to the court's order of 28<sup>th</sup> May 2021. This argument is unsustainable. The application for the grant of leave does not operate as a stay of proceedings unless there is an order of the court granting a stay.<sup>1</sup> It is clear that the claimant having had notice of the application for leave to appeal took no further procedural steps in the matter in light of the defendant's failure to comply with the order of 28<sup>th</sup> May 2021. This may very well have been in recognition of the fact that

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<sup>1</sup> CPR 62.19

the defendant by its leave application was resolute in pursuing its challenge to the court's jurisdiction to try the claim. However, this state of affairs did not absolve the defendant from seeking an extension of time to file its defence until the hearing of the application for leave to appeal or further order of the court. This procedure was still available to the defendant at the time the application for leave to appeal was heard.

- [18] Additionally, the defendant took the position that upon determination of the appeal, no order was made by the Court of Appeal with respect to the future procedural conduct of the proceedings in the court below.
- [19] In support of this latter argument, the defendant held the view that the Court of Appeal, whether by oversight or otherwise, failed to remit the matter to the court below for case management or to grant the defendant an extension of time to file its defence as it ought to have. It is certainly the case that the Court of Appeal has all the powers and duties of the High Court including in particular the powers set out in CPR 26.<sup>2</sup> However, it appears that whether through administrative oversight or otherwise, the defendant made no application to either the Court of Appeal or the High Court to exercise any of their case management powers in relation to the future conduct of the claim at the conclusion of the appeal.<sup>3</sup>
- [20] Ultimately, the defendants argued that the claimant's request for default judgment prevented it from filing its defence. The defendant complained that the claimant's conduct in filing the request for default judgment the day following the determination of the appeal was callous and unfair and not in keeping with the overriding objectives of the CPR.
- [21] The claimant adopted the posture that the defendant's failure to file a defence was attributable to real and substantial fault on its part; and accordingly, it could not be

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<sup>2</sup> CPR 26.1(2)

<sup>3</sup> CPR 26.1(2) (k)

said that the reasons for the failure relied on by the defendant amounted to a good explanation for the failure.

- [22] The claimant characterised the defendant's procedural failure as a product of clear indifference whether default judgment would have been entered against it. Also, that the defendant's failure was the result of professional ineptitude and blatant disregard for the rules of procedure.
- [23] Alternatively, the claimant held the view that the defendant's failure was attributable to inexcusable oversight and or deliberate inaction. The claimant contended, that therefore, the defendant could not rely on the consequence of its own action or inaction as a good explanation for the failure.
- [24] The claimant also contended that the explanation for the failure proffered by the defendant pointed to a lack of diligence on the part of its legal practitioners and or sheer inadvertence which could not amount to a good explanation for the failure.
- [25] In short, the claimant argued that the defendant's failure to take any procedural steps that were available to safeguard itself from a default judgment being obtained against it amounted to an inexcusable oversight; accordingly, the reasons adduced by the defendant did not amount to a good explanation for the failure.
- [26] In reply to the claimant's submissions on the point, the defendant insisted that the failure was not deliberate; but rather, was motivated by the need to preserve the defendant's right to dispute the court's jurisdiction. The defendant relied on the provisions of CPR 9.7(3), 9.7(5) and 9.7(8) to support the argument that the defendant would have waived its right to dispute the court's jurisdiction had it sought an extension of time to file a defence prior to the expiry of time prescribed by the court's order of 28<sup>th</sup> May 2021.
- [27] The defendant quite rightly argued that any challenge to the court's jurisdiction must be done within the time prescribed for filing a defence. But as we shall see, this very prescription of the CPR defeats the defendant's proposition on this point. In the

court's view, the difficulty which the defendant faced was not with the filing of a defence but instead with the period of time for filing a defence; particularly in the event that its appeal did not succeed.

[28] However, the defendant persisted in the argument that the filing of a defence would be construed as an acceptance of the court's jurisdiction; and that where a defendant intended to dispute the court's jurisdiction great care must be taken to avoid taking any steps in the proceedings that could amount to submission to the court's jurisdiction.

[29] In the court's view, there was no necessity for the defendant to have filed a defence upon the filing of a notice of application for leave to appeal. Clearly, the claimant being aware of the application for leave to appeal and the stay of proceedings took no procedural steps towards obtaining default judgment in light of the defendant not having filed a defence by 25<sup>th</sup> June 2021. The claimant was clearly aware and perhaps accepted that the defendant had not waived its right to continue to challenge the court's jurisdiction to hear the claim.

[30] However, in the court's considered view, this did not obviate the utility in the defendant making an application for an extension of time for filing its defence whether to a time after the leave application in the event of the likelihood that the application for leave to appeal was not granted. In any event, it appears that the defendant took the view that no extension for the filing of a defence was required once the leave application and a stay was granted pending the appeal.

[31] What stands out in the present proceedings is that the time for filing the defence had passed by the time that the application for leave to appeal and a stay had been granted. In the court's view, an application for an extension of time did not amount to a submission to the court's jurisdiction or acceptance of the court's jurisdiction to hear the claim; simply because CPR 9.7(3) expressly permits a defendant to make an application challenging the court's jurisdiction even if it has applied for an extension of time to file a defence.

- [32] A defendant who is appealing against a decision that the court has jurisdiction may protect itself against default judgment by applying for an extension of time to file an acknowledgement of service, a defence or a stay of proceedings. None of these procedural steps amount to a submission to or acceptance of the court's jurisdiction.
- [33] Therefore, in light of the foregoing, it appears that the defendant failed to take an important procedural step in the proceedings to safeguard against the claimant obtaining judgment in default on the determination of the appeal.
- [34] The explanation given by the defendant seems to suggest that the defendant held the view that it was guaranteed success on appeal. There is nothing that has been presented to the court to suggest that the defendant had adverted its mind to the likely eventuality of it not succeeding on the appeal. The stay of proceedings granted by the court was only operative until the determination of the appellate proceedings. At the conclusion of the appellate proceedings, the stay would no longer be operative and it was therefore opened to the claimant to obtain judgment in default as there was nothing standing in its way of doing so. The defendant simply took no procedural steps to safeguard itself against the claimant obtaining default judgment if their appeal was unsuccessful.
- [35] In the premises, the court holds that the defendant has not demonstrated that there was a good explanation for the failure; and accordingly the provisions of CPR 13.1(b) have not been satisfied. The defendant's failure to take the necessary procedural steps to safeguard itself from the claimant obtaining default judgment upon the determination of the appeal was emblematic of clear indifference and inaction on its part that went beyond just mere oversight which equated clear and substantial fault on the part of the defendant.<sup>4</sup>

### **Reasonable prospect of success**

- [36] The principled approach is that a party seeking to set aside a default judgment under CPR 13.3(1) must satisfy the conjunctive requirements of that rule. Therefore, the

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<sup>4</sup> The Attorney General v Universal Projects Limited [2011] UKPC 37



defendant having failed to satisfy the requirements of CPR 13.3(1) (b) means that the court is not required to go on to consider the requirements of CPR 13.3(1)(c). However, the court will consider for the sake of completeness the question of whether the defendant has satisfied the requirements of CPR 13.1(3) (c) that is, that it has shown demonstrably that it has a real prospect of successfully defending the claim.

- [37] The defendant does not dispute the existence of a contract of insurance. What they dispute is their liability to the claimant under the contract of insurance. In the proposed defence exhibited to the application to set aside the defendant denied liability under the policy on the grounds that the claimant was in breach of the terms of the policy. The defendant's intended defence was that they were entitled to rescind the contract of insurance on the basis of the claimant's substantial breach of the terms thereof.
- [38] In summary the defendant pleaded in its proposed defence that the claimant failed to provide the defendant with adequate notification of the loss in breach of the terms of the policy. The defendant pleaded that the defendant did not present its claim within 14 days of the loss as stipulated in the policy of insurance. The defendant claimed to be entitled to avoid the policy on this basis and accordingly the defendant was not liable for any loss sustained by the claimant.
- [39] The defendant also pleaded in its draft defence that the claimant, in breach of the terms of the policy, failed to take any steps to preserve the salvaged fencing and make it available to the defendant for inspection. In this regard the defendant relied on the fact that when the defendant's loss adjuster visited the claimant's property the damaged fencing was not on the site and that to date the claimant has not provided any physical evidence to substantiate the alleged damage.
- [40] In its proposed defence the defendant also alleged that the claimant failed to provide any evidence of the loss sustained to the extent of the sum quoted in the claim form submitted to the defendant. The defendant intends to plead that the claimant claimed for loss in respect of 200 feet of fencing which was valued at \$81,800.00

whereas the policy of insurance covered fencing measuring 1,941 feet with \$125,000.00 as the sum insured. Therefore, the defendant alleged that the claimant only sustained loss in respect of approximately 12% but has sought to recover a sum equivalent to approximately 72% of the sum insured.

- [41] In all the circumstances of the case, the court is prepared to hold that on the basis of the proposed defence filed by the defendant in support of its application, it has a reasonable prospect for successfully defending the claim if the matter went to trial. The court, in considering the context of the pleadings and the evidence placed before it, has determined that the defence intended to be relied on by the defendant has a real as opposed to a fanciful prospect of success. Therefore, the defendant has satisfied the requirements of CPR 13.3(1) (c).

#### **Exceptional circumstances**

- [42] The defendant also relied on the provisions of CPR 13.3(2) in that there were exceptional circumstances warranting the setting aside of the default judgment. In the court's view, what the defendant relies on as amounting to exceptional circumstances in the context of CPR 13.3(2) is the same as the grounds relied on under CPR 13.3(1) (b) and (c). The defendant's reliance on these grounds as amounting to exceptional circumstances is misguided. The defendant appears to be relying on the same grounds advanced as being a good explanation for the failure to file a defence and the reasonable prospect of successfully defending the claim in support of its contentions in relation to CPR 13.3(2).
- [43] The matters raised by the defendant in relation to good explanation for the failure and reasonable prospect of defending the claim can hardly be said to be a "knockout blow" amounting to exceptional circumstances warranting the setting aside of the default judgment pursuant to CPR 13.3(2).
- [44] An exceptional circumstance under CPR 13.2(3) must be one that provides a compelling reason why the defendant should be permitted to defend the

proceedings in which the default judgment has been obtained.<sup>5</sup> It must be something more than simply showing that a defence put forward has a realistic prospect of success. Showing exceptional circumstances under CPR 13.3(2) does not equate to showing realistic prospects of success under CPR 13.3(1)(c). They are not to be regarded as interchangeable or synonymous. CPR 13.3(2) is not to be regarded as a panacea for covering all things which, having failed under CPR 13.3(1), can then be dressed up as amounting to exceptional circumstances under sub-rule (2). Sub-rule (2) is intended to be reserved for cases where the circumstances may be said to be truly exceptional, warranting a claimant being deprived of his judgment where an applicant has failed, to satisfy rule 13.3(1). A few examples come to mind. For instance, where it can be shown that the claim is not maintainable as a matter of law or one which is bound to fail, or one with a high degree of certainty that the claim would fail or the defence being put forward is a “knock out point” in relation to the claim; or where the remedy sought or granted was not one available to the claimant.<sup>6</sup>

- [45] In the premises, the defendant cannot succeed in setting aside the default judgment on the basis of CPR 13.3(2). Whereas the defendant may have a reasonable prospect of defending the claim, this cannot amount to exceptional circumstances warranting the setting aside of the default judgment. Likewise, the matters relied in relation to the reasonable explanation for the failure do not constitute exceptional circumstances.

### **Irregularity**

- [46] Ultimately, the defendant raised the point that the judgment in default was irregular having been granted by the Registrar pursuant to CPR 12.5. The defendant contended that the claimant’s claim was not a claim for a specified sum of money and that the claimant was not entitled to enter a default judgment pursuant to CPR 12.5 and the Registrar could only have entered judgment for an amount to be determined by the court in accordance with CPR 12.10(1) (b).

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<sup>5</sup> Inteco Beteiligungs AG v Sylmord Trade Inc [2014] ECSCJ No. 151; Sylmord Trade Inc v Inteco Beteiligungs AG [2014] ECSCJ No. 61

<sup>6</sup> Per Pereira CJ at para [26] Meyer v Baynes ANUHCVP 2015/0026; [2019] UKPC 3

[47] It is indisputable that the claimant had satisfied all the requirements of CPR 12.5. However, what is in dispute is whether the claim and the request for default judgment was for a specified<sup>7</sup> or an unspecified sum of money.<sup>8</sup>

[48] A claim for a specified sum of money means a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract.<sup>9</sup> In the present case, the claim was for the recovery of loss under a contract of indemnity insurance.

### **Nature of the Claim**

[49] It is clear however, that the nature of the claim concerned a claim for indemnity under a policy of insurance. The policy of insurance was not a total loss policy. The claimant submitted a claim against the policy as a result of damage to metal chain-link fencing in the sum of \$125,000.00. The stated policy excess was in the sum of \$750.00. The claimant's chain-link fencing was damaged during a tropical storm. The claimant notified the defendant of the loss both verbally and in writing. The claimant submitted a claim form in which they declared their loss in the sum of \$82,550.00.

[50] The defendant alleged that it had subsequently informed the claimant that it had failed to adhere to the terms of the policy particularly with respect the claims policy thereunder. On the other hand the claimant alleged that the defendant had failed to furnish it with a copy of the policy of insurance or the claims procedure.

[51] The defendant having refused to indemnify the claimant in respect of its alleged loss, the claimant brought the present claim to recover the amount of its loss on an indemnity basis under the contract of insurance in the sum of \$81,000.00 together with interest at the statutory rate of 6% and costs.

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<sup>7</sup> CPR 12.8

<sup>8</sup> CPR 12.10(1)(b)

<sup>9</sup> CPR 2.4

[52] The defendant contended that the claimant having failed to annex to its claim form any evidence to substantiate its loss, coupled with the inability to ascertain the salvage value of the damaged fencing and the defendant not being in a position to assess the extent of the loss sustained due to the removal of the damaged fencing from the site, made it impossible to ascertain the quantum of the loss sustained by the claimant on an indemnity basis.

[53] In fine, the defendant contended that on the claimant's request for default judgment the Registrar was in no position to ascertain the claimant's loss recoverable under the policy of insurance as a matter of arithmetic. On that basis, the defendant took the view that the default judgment was irregular, the Registrar could only have entered judgment for an amount to be determined by the court.

[54] The default judgment was entered in the following terms:

“...it is this day adjudged that the defendant pays to the claimant the sum of \$81,000.00 with interest at the rate of 9% per annum as at the date of payment plus costs in the amount of \$2,069.00.”

The request for default judgment was in the following terms:

“We, BRICKSTONE LAW, the Claimant's Legal Practitioners hereby request entry of Judgment against the Defendant in default of –

Defence YES

Judgment should be entered for: Amount of Claim:

- (i) Amount claimed \$ 81,000.00
- (ii) (ii) Court Fees on Claim \$ 86.00
- (iii) (iii) Service Fees on Claim \$ 200.00
- (iv) (iv) Legal Practitioner's fixed costs on issue \$ 1,500.00
- (v) (v) Interest at the rate of 9% per annum - from the 18th December, 2020 (daily rate thereafter)
- (vi) (vi) Court fees on entering Judgment - \$ 33.00
- (vii) (vii) Legal practitioner's fixed costs on entering Judgment - \$ 750.00
- (viii) Total \$ 83,569.00”

[55] CPR 12.11(1) provides that a default judgment must include judgment for interest for the period claimed if the claim form includes a claim for interest; the claim form or statement of claim includes the details required by rule 8.6(4); and the request for default judgment states the amount of interest to the date it was filed. CPR

12.11(2) provides that if the claim form includes any other claim for interest, the default judgment must include judgment for an amount of interest to be decided by the court. CPR 8.6(4) provides that a claimant who is seeking interest must say so expressly in the claim form; and include, in the claim form or statement of claim, details of the basis of entitlement; rate; and the period for which it is claimed.

[56] In the present case, the claim form and the amended claim form does not include the details of any interest claimed. In the prayer to the statement of claim and the amended statement of claim details of the claim for interest in the following terms: "Interest pursuant to Article 1008 et seq. of the Civil Code Cap. 4.01 of the Revised Laws of Saint Lucia at the rate of 6% per annum."

[57] Accordingly, there were no details of the interest being claimed at the rate of 9% except as stated in the request for default judgment. Therefore, it does not appear that the Registrar when entering the default judgment had before him details of the basis of entitlement; rate; and the period for which interest was claimed at the rate of 9%. In any event, there clearly was a breach of the Rules in respect of the claim for interest which rendered the default judgment irregular or defective as the case may be. The Registrar was simply not entitled to enter default judgment in favour of the claimant in the terms that she did as it related to interest.

[58] The request for default judgment filed by the claimant was in form 7. There was no compliance with CPR 12.10(1) (b) and CPR 16.2. Therefore, the Registrar having been faced with the administrative task of entering judgment in default for a specified sum could not have been in a position to grant the default judgment where the claimant's loss was incapable of being ascertained as a matter of arithmetic. The claimant was at that time in no position to prove its actual financial loss as the particulars of actual loss were not specified in the claim and copies of estimates, receipts and bills for the amount claimed was not attached to the claim form or statement of claim.<sup>10</sup>

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<sup>10</sup> CPR 8.7

- [59] Thus, the claim made by the claimant was not a claim for a specified amount of money. It therefore must be treated as a claim for an unspecified sum of money. As such it required to be proceeded with as a request under CPR 12.10(1) (b) in Form 7 for judgment in Form 32 for the payment of an amount to be decided by the court. This is a judicial process, and not an administrative one as it is when the Form 7 procedure is followed under CPR 12.5. Therefore, the defendant is correct in its submission that the default judgment that was entered in the claimant's favour was an irregular and ought to be set aside.
- [60] CPR 13.2(1) sets out the circumstances under which the court must set aside a default judgment and provides that the court must set aside a judgment entered under Part 12 if judgment was wrongly entered because in the case of a failure to file an acknowledgment of service any of the conditions in rule 12.4 were not satisfied; or in the case of judgment for failure to defend any of the conditions in rule 12.5 were not satisfied. The court may set aside judgment under this rule on or without an application.<sup>11</sup> In the court's view CPR 13.2(1) does not apply to the present proceedings.
- [61] The provisions of CPR 12.7 brings into play the provisions of CPR 16.2 which sets out additional information that must be provided where the claim is for an unspecified sum of money. CPR 16.2 provides that an application for a default judgment to be entered under rule 12.10(1) (b) must state whether the claimant is in a position to prove the amount of the damages; and, if so the claimant's estimate of the time required to deal with the assessment; or that the claimant is not yet in a position to prove the amount of the damages. In the premises, the provisions of CPR 12.5 has to be read in conjunction with CPR 12.10(1) (b) and CPR 16.2.<sup>12</sup>
- [62] CPR 16.2 also provides the subsequent procedure by which a hearing for the judge or Master to assess damages will be fixed. It will be on an application without notice. The application will be heard by the judge or a Master in the usual way, and the

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<sup>11</sup> CPR 13.2(2)

<sup>12</sup> Dr. Miranda Fellows v Carino Hamilton Development Company Limited and another [2012] ECSCJ No. 406

terms of the default judgment settled. This is a judicial process, and not an administrative one as it is when the Form 7 procedure is followed.

[63] The court has considered the question of whether the irregularity can be cured by variation of the default judgment to bring it into conformity with CPR 12.10(1) (b) and CPR 16.2. In the court's view, neither CPR 13.2 nor CPR 13.3(3) permit the court to make such a variation.

[64] Therefore, in the court's considered view, the irregularity although it may be regarded as only procedural is also substantive. Accordingly, such irregularity is sufficient to set aside the default judgment and the court will so order.

### **Order**

[65] In light of the foregoing reasons, the court's order is as follows:

1. The judgment in default of defence granted on 11<sup>th</sup> March 2022 and filed on 28<sup>th</sup> March 2022 and granted pursuant to CPR 12.5 is hereby set aside.
2. The Defendant shall file and serve its defence to the Claimant's claim within 14 days of the date of this order.
3. The matter is remitted to the Master for Case Management to a date to be fixed by the Court Office.
4. The court makes no order as to costs.

**Shawn Innocent**  
High Court Judge

**By the Court**



**Dp. Registrar**