

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
Civil Division

SAINT LUCIA

Claim No. SLUHCv2022/0002

BETWEEN:

[1] PATRICK ISAAC
[2] GABLEWOODS HOUSE INC

Claimants

-and-

LEEVIE HERELLE
Trading as
LEEVIE HERELLE & ASSOCIATES

Defendant

Before Master Alvin Pariagsingh

Appearances: Mr. Henry Joseph for the Claimants; and
Mrs. Maureen John – Xavier for the Defendant

2022: November 03 - Written submissions
December 15

DECISION

Defendant's application to set aside default judgment pursuant to
Part 13 Rule 13.2 (1) (b) CPR (judgment wrongly entered)

[1] PARIAGSINGH, M: - Before the Court is the Defendant's application to set aside a default judgment granted by the Registrar on February 09, 2022.¹

[2] The ground of the application is that judgment was wrongly entered. The Defendant contends that the request for default judgment was filed prematurely, in particular he contends it was filed before time had expired for the filing of his defence.

¹ Filed on April 19, 2022

[3] The Court must set aside a judgment entered under Part 12 CPR if it is satisfied that any of the conditions in rule 12.5² was not satisfied.³

[4] The conditions set out in rule 12.5 CPR are:

“12.5 The court office at the request of the claimant must enter judgment for failure to defend if –

- (a) (i) the claimant proves service of the claim form and statement of claim; or
(ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (c) the defendant has not –
 - (i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)); or
 - (ii) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - (iii) satisfied the claim on which the claimant seeks judgment; and
- (d) (if necessary) the claimant has the permission of the court to enter judgment.”

[5] The nub of the argument in this application centers on rule 12.5(b) CPR. The issue for determination is; when did time expire for the filing of a defence to this claim?

² Civil Proceedings Rules 2000 as amended (CPR)

³ Rule 13.2(1)(b) CPR

[6] The period for the filing of a defence is 28 days after service of a claim.⁴ In this claim there was no agreement between the parties for any extension of time nor was there any order of the Court extending time. All periods of time expressed as days are to be construed as 'clear days'.⁵ In computing clear days, the first and last day of the period is not counted.⁶

[7] It is undisputed that the Defendant was served on January 11, 2022. That means that the first day of the 28 day period would begin on January 12, 2022. The last day of the 28 day period would have expired on February 08, 2022. The last day is also not considered. The deadline for the filing of the defence would be up to the close of business on the following day, which was February 09, 2022.

[8] The request for judgment was filed at 8:14 am on February 09, 2022. That was on the last day permitted for the filing of a defence. The request was therefore premature as one of the conditions set out in rule 12.5, namely rule 12.5(b) was not satisfied. I therefore hold that the judgment in default was wrongly entered against the Claimant and is consequently set aside.

[9] On February 09, 2022 at 2:48 pm the Defendant did file a defence to this claim. This defence was filed within the permitted time.

[10] There is therefore no need to extend the time to for the filing of a defence by the Defendant.⁷ The Defendant's defence filed on February 09, 2022 is deemed properly filed.

[11] In relation to the costs of this application, the Claimant has stoutly defended the judgment. The judgment was wrongly entered. Both parties seems to have

⁴ Rule 10.3 CPR

⁵ Rule 3.2 (2) CPR

⁶ Rule 3.2 (3) CPR

⁷ Application filed on June 24, 2022 by the Defendant to extend time to file his defence and deem his defence filed on February 09, 2022 properly filed.

divergent views on the computation of time. Both parties expended equal efforts and costs in the making of the application and the defending of same. I therefore order that each party bear their own costs of this application.

ORDER:

[12] It is hereby ordered that:

1. The judgment in default of a defence dated February 09, 2022 and filed on February 28, 2022 against the Defendant is set aside;
2. The defence filed on February 09, 2022 is deemed properly filed;
3. Each party shall bear their own costs of the application filed on April 19, 2022; and
4. The Defendant's application filed on June 24, 2022 is dismissed with no order as to costs.

Alvin Shiva Pariagsingh
High Court Master

By the Court,

Registrar