

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVP2022/0005

BETWEEN:

STANLEY FELIX

Appellant

and

ELIZABETH DARIUS-CLARKE

In her personal capacity and representing the co-proprietors

[1] ALDITH DARIUS ALSO KNOWN AS ELIZABETH DARIUS

[2] ELIZABETH DARIUS-CLARKE

[3] STEPHEN DARIUS ALSO KNOWN AS STEPHEN FLEARY

Respondents

Before:

The Hon. Mr. Mario Michel
The Hon. Mde. Gertel Thom
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Danielia Chambers and Ms. Diana Thomas for the Appellant
Mr. Sahleem Charles for the Respondents

2022: June 8;
September 21.

Civil appeal – Default judgment – Setting aside default judgment – Civil Procedure Rules 2000 – Rule 13.3(1) – Whether there was a real prospect of successfully defending the claim – Whether learned master erred in finding that appellant did not satisfy the conjunctive requirements of 13.3(1) – Rule 13.3(2) – Exceptional circumstances – Whether learned master erred in finding that the onset of the Covid-19 pandemic was not an exceptional circumstance justifying the setting aside of the default judgment under 13.3(2) – Prescription – Whether learned master erred in failing to properly consider the issue of prescription and whether it was an exceptional circumstance justifying the setting aside or varying of the order – Rule 13.3(3) – Variation – Interest

On 29th January 2020, the respondents filed a claim seeking payment of arrears of rent from the appellant in the sum of \$81,000.00 (plus \$250.00 as the costs of a letter before action), for the period January 2012 to June 2016 (54 months). They claimed that the appellant had entered into a written lease agreement with them to occupy their premises at a monthly rental of \$1,500.00 from about June 2011. At the commencement of the tenancy, the appellant paid \$4,500.00 representing two months' rent and a security deposit. Thereafter, he paid \$5,000.00. No further payments were made towards the arrears of rent, although the respondents indicated that the appellant paid an unspecified sum towards the insurance of the property, which sum was deducted from the outstanding arrears.

The claim was served on the appellant in February 2020. He acknowledged service, indicating his intention to file a defence to the claim. However, the appellant failed to do so in accordance with time prescribed by the Civil Procedure Rules 2000 ("CPR") and the respondents therefore filed a request for default judgment. The appellant received notification of this filing through the E-Litigation Portal and filed an application for extension of time to file his defence. A default judgment was entered against the appellant in June 2020 in the sum of \$81,250.00 as the amount claimed, \$21,937.50 for pre-judgment interest, and \$1,713.00 for other incidental costs and fees. Subsequently, the appellant filed an amended application converting his application for an extension of time into an application to set aside the default judgment.

The application to set aside the default judgment was made under rule 13.3(1) and 13.3(2) of the CPR. In the court below, the learned master first considered whether the appellant had satisfied the conjunctive requirements of rule 13.3(1). In exercising her discretion, she found that while the application was made as soon as reasonably practicable, he did not have a good explanation for failing to file his defence, nor did he have a real prospect of successfully defending the claim. As he failed to satisfy all three limbs of 13.3(1), his application failed under this rule. She also did not find that there were exceptional circumstances that would justify setting aside the default judgment under rule 13.3(2). Consequently, the learned master dismissed the application.

Being dissatisfied with the learned master's ruling, the appellant appealed to this Court. The main issues for this Court's determination are: (1) whether the learned master erred in finding that the appellant did not satisfy the conjunctive requirements of 13.3(1); (ii) whether the learned master erred in finding that the onset of the Covid-19 pandemic in March 2020 was not an exceptional circumstance justifying the setting aside of the default judgment under 13.3(2); and (iii) whether the learned master erred in failing to properly consider the issue of prescription and whether it was an exceptional circumstance justifying the setting aside or varying of the order.

Held: dismissing the appeal; remitting the matter to a judge or master of the High Court for the assessment of arrears of rent for the period October 2012 to June 2016, the assessment of pre-judgment interest for the period January 2013 to June 2018 and the consequent variation of the judgment; and awarding costs to the respondents in the sum of \$400.00, being two-thirds of the amount awarded in the lower court, discounted by

20% to reflect the appellant's partial success; and awarding costs on the appeal to the respondent to be assessed by a judge of the High Court if not agreed within 21 days, that:

1. An appellate court should only disturb the exercise of a master's discretion if it were to conclude that the master erred in principle in his approach or has left out of account some aspect that he should have considered or considered some aspect that he should not have, and as a result, the decision exceeded the generous ambit within which reasonable disagreement is possible, or the decision is plainly wrong.

Dufour and others v Helenair Corporation Ltd and others (1996) 52 WIR 188 applied.

2. While the learned master conflated the test for real prospect of successfully defending the claim in rule 13.3(1)(c) with the test for exceptional circumstances in rule 13.3(2), this is immaterial, both factually and as a matter of law. The learned master having already concluded that the second condition of rule 13.3(1) had not been satisfied, the application was bound to fail as a matter of law. Even if the master had applied the correct test and come to a decision in favour of the appellant, the application would still have failed as the defence did not show a real prospect of successfully defending the claim.

Rules 13.3(1)(c) and 13.3(2) of the **Civil Procedure Rules 2000** applied.

3. Each instalment of rent represents a cause of action in respect of which a separate action may be brought. These actions may be joined, but the landlord's election not to do so does not constitute dividing his cause of action. In this case, the accrual of rent was not one continuing cause of action but 54 separate causes of action, some of which fall outside of the prescriptive period. The claim having been filed on 29th January 2020, and arrears of rent being prescribed by five years, no action can be maintained for any arrears of rent accrued before 29th January 2015. Therefore, the period for which rent can be claimed is January 2015 to June 2016.

Articles 2111, 2129, 2085 and 2088 of the **Civil Code** Cap. 4:01 of the Revised Laws of Saint Lucia applied; **Victor Romans v Bradley Barrett** (1976) 28 WIR 99 applied.

4. To interrupt prescription under Article 2088 of the **Civil Code**, there must be a clear and unequivocal admission of liability to pay what is alleged to be owed. All that is required is a statement by the debtor acknowledging the existence of some outstanding amount owed to the creditor. There is no requirement to admit any particular amount and a query to the creditor as to the outstanding amount is sufficient. The amount of the debt must be quantifiable or capable of ascertainment by calculation or from extrinsic

evidence. In this case, the 1st respondent's WhatsApp message on 27th October 2017 to the appellant is an unambiguous demand for the payment of arrears of rent. The appellant's response acknowledged that a debt for arrears of rent was due to the respondents, and that he had every intention to settle it. This acknowledgment of the debt was therefore capable of interrupting prescription.

Article 2088 of the Civil Code applied; **First Caribbean International Bank (Barbados) Limited v The Roserie Company Limited and others**, SLUHCV209/1067 and SLUHCV2010/0121 (delivered 30th June, 2017, unreported). applied; **Bradford & Bingley plc v Rashid** [2006] UKHL 37 applied.

5. When there has been an acknowledgment of a debt sufficient to interrupt prescription, time starts to run afresh from the date of the acknowledgment. However, any acknowledgment of the debt after the prescribed period is of no legal effect. In the instant case, arrears of rent were being claimed for the period January 2012 to June 2016. The acknowledgment of the debt was made on 27th October 2017. The respondents are therefore not entitled to arrears of rent accruing earlier than 27th October 2012. They are thus entitled to collect arrears of rent for the period October 2012 to June 2016 (44 months).

Network Construction Maintenance and Rehabilitation Limited et al v Cable & Wireless (St. Lucia) Limited SLUHCVAP2018/0024 (delivered 18th September 2020, unreported) applied.

6. An applicant who is unsuccessful under rule 13.3(1) may have a default judgment set aside under rule 13.3(2), on the basis of exceptional circumstances. What amounts to an exceptional circumstance is not defined by the CPR. It is to be decided on a case-by-case basis and an applicant must provide a compelling reason why he should be permitted to defend the proceedings in which the default judgment has been obtained. While a small portion of the claim appears to be prescribed, the judgment can be varied under rule 13.3(3) of the CPR, and the prescribed portion can be severed from the judgment. Subject to variation, it remains a regularly entered default judgment.

Rule 13.3(2) of the Civil Procedure Rules 2000 applied; **Meyer v Baynes** [2019] UKPC 3 applied; **Carl Baynes v Ed Meyer** ANUHCVAP2015/0026 (delivered 30th May 2016, unreported).

7. Interest should not be awarded on the entire amount of \$81,250.00 from January 2013 as this was not the amount owed as at that date. Pre-judgment interest should be calculated on the amount of \$1,500.00, starting from the date when that payment became due, increasing by \$1,500.00 monthly, and with each interest payment being calculated based on the total amount of

rent owed at the particular time, until the date of judgment. With respect to post-judgment interest, it is settled law that a claimant cannot be awarded interest on interest. Therefore, any post-judgment interest must run from the date of the judgment to the date of payment, and the judgment must be varied to reflect this.

The Attorney General of The Federation of St. Christopher And Nevis v SKN Choice Times Limited SKBHCVAP2019/0045 (delivered 27th May 2022, unreported) applied.

JUDGMENT

- [1] **WEBSTER JA [AG.]:** This is an appeal against the decision of the learned master delivered on 6th August 2021, dismissing the appellant's application to set aside a judgment in default of defence entered against him at the request of the respondents.

Background Facts

- [2] On 29th January 2020, the respondents filed a claim form and statement of claim seeking payment of arrears of rent from the appellant in the sum of \$81,000.00 (plus \$250.00 as the costs of a letter before action), for the period January 2012 to June 2016 (54 months). They claimed that the appellant had entered into a written lease agreement with them to occupy their premises at a monthly rental of \$1,500.00 from about June 2011.
- [3] The respondents claimed that, at the commencement of the tenancy, the appellant paid the sum of \$4,500.00 representing two months' rent and a security deposit. Thereafter, he paid the sum of \$5,000.00. No further payments were made towards the arrears of rent, although the respondents indicated that the appellant paid an unspecified sum towards the insurance of the property, which sum was deducted from the outstanding arrears.
- [4] The claim was served on the appellant on 24th February 2020. On 6th March 2020, the appellant, who is an attorney at law, entered an acknowledgment of service indicating his intention to defend the claim. The defence was due for filing on 24th

March 2020. During the month of March, the appellant reached out to counsel for the respondents via telephone seeking an extension of time to file his defence. However, no definitive answer was given and there was no further communication between them.

[5] On 25th May 2020, the respondents filed a request for default judgment. The appellant received notification of this filing through the E-Litigation Portal and filed an application for extension of time to file his defence on 29th May 2020. A default judgment was entered against the appellant on 9th June 2020 in the sum of \$104,900.50; \$81,250.00 as the amount claimed, \$21,937.50 for pre-judgment interest, and \$1,713.00 for other incidental costs and fees. On 24th June 2020, the appellant filed an amended application converting his application for an extension of time into an application to set aside the default judgment.

[6] The application to set aside the default judgment was made under rule 13.3(1) and 13.3(2) of the **Eastern Caribbean Supreme Court Civil Procedure Rules 2000** ("CPR"). The interpretation and application of these rules are central to this appeal. They read –

"Cases where the court may set aside or vary default judgment

13.3(1) If Rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant –

- (a) Applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
- (b) Gives a good explanation for the failure to file an acknowledgement of service or a defence as the same case may be; and
- (c) Has a real prospect of successfully defending the claim.

(2) 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.

(3) Where this Rule gives the court power to set aside a judgment, the court may instead vary it.

*Rule 26.1(3) enables the court to attach conditions to any order."

- [7] The applicant must satisfy all three conditions of rule 13.3(1) to succeed on an application to set aside a default judgment. Failure to satisfy any one condition is fatal to the application unless the applicant can satisfy the more stringent requirement of exceptional circumstances in rule 13.3(2).¹
- [8] In the court below, the learned master first considered whether the appellant had satisfied the conjunctive requirements of rule 13.3(1). In exercising her discretion, she found that while the application was made as soon as reasonably practicable, he did not have a good explanation for failing to file his defence, nor did he have a real prospect of successfully defending the claim. As he failed to satisfy all three limbs of 13.3(1), his application failed under this rule. She also did not find that there were exceptional circumstances that would justify the setting aside of the default judgment under rule 13.3(2). Consequently, she dismissed the application and the appellant has appealed against her ruling.

The Appeal

- [9] The thrust of the appellant's appeal was that:
- (i) the learned master erred in finding that the appellant did not satisfy the conjunctive requirements of 13.3(1) as he had a good explanation for not filing a defence and his defence disclosed strong arguments which demonstrated a real prospect of successfully defending the claim;
 - (ii) the learned master erred in finding that the onset of the Covid-19 pandemic in March 2020 was not an exceptional circumstance justifying the setting aside of the default judgment under 13.3(2); and
 - (iii) the learned master erred in failing to properly consider the issue of prescription and whether it was an exceptional circumstance justifying the setting aside or varying of the order.

¹ Kenrick Thomas v RBTT Caribbean Bank Limited SVGHCAP2005/0003 (delivered 13th October 2005, unreported).

Rule 13.3(1)

- [10] The appellant challenged the exercise of the master's discretion under rule 13.3(1). In dealing with her ruling, I note preliminarily the principles laid down by this Court in numerous decisions starting with the judgment of Sir Vincent Floissac in **Dufour and others v Helenair Corporation Ltd and others**.² The cases emphasize that an appellate court should disturb the exercise of a master's discretion only if it were to conclude that the master erred in principle in his approach or has left out of account some aspect that he should have considered or considered some aspect that he should not have, and as a result, the decision exceeded the generous ambit within which reasonable disagreement is possible, or the decision is plainly wrong.

Condition (a) - applies to the court as soon as reasonably practicable

- [11] The learned master noted that the appellant applied to set aside the default judgment some 15 days after the judgment was entered and she found that that delay was not inordinate. Accordingly, she found that the appellant satisfied this condition and there has been no counter appeal against this finding.

Condition (b) - Gives a good explanation for the failure to file a defence

- [12] At the hearing of the application, the appellant contended that he needed additional information from a third party that he could not get in time to file his defence. He also contended that he made an oral request of counsel for the respondents for an extension of time to file his defence, but he admitted that he did not hear back from counsel. The request for default judgment having been filed some two months after the oral request for an extension of time, the learned master found that it was not unreasonable for counsel for the respondents to have filed the request for judgment, nor did it fly in the face of professional courtesies. The learned master also noted that the appellant is an attorney at law who knows the rules of the court and the onus was therefore on him to obtain an agreement for an extension of time from

² (1996) 52 WIR 188.

counsel for the respondents, or to file an application for the same. Therefore, the learned master found that this limb of the test was not satisfied.

- [13] The appellant raised the same arguments on appeal but also cited the onset of the Covid-19 pandemic as the reason for being unable to move around the country to obtain the necessary information to file his defence. While this argument was well presented, I agree with the finding of the learned master. The pandemic did not rule out the possibility of either getting a written consent from counsel for the respondents or filing an application for an extension of time supported by evidence as to how Covid-19 impacted the preparation of the defence. The E-Litigation Portal was always available to him to file either the consent or the application.

Condition (c) - has a real prospect of successfully defending the claim

- [14] The appellant's position that he has a real prospect of successfully defending his claim is contained in his draft defence. In the draft defence, he denied that he was a lessee of the respondents but admits that he, along with several other persons, accessed the respondents' premises for short periods of time in 2011 and 2016 on the invitation of the then representatives of the St. Lucia Labour Party Castries Central Constituency Group. He denies that he paid \$4,500.00 'as security deposit or any deposit or any month's rent'.³ Further, that he cannot admit or deny whether the \$4,500.00 was paid and put the respondents to strict proof that the payment was made and by whom.⁴
- [15] He admitted in paragraph 6.2 of the draft defence that he paid \$5,000.00 in cash to Leo Clarke, the husband of the first respondent, not as rent but as his contribution towards having used the premises as his campaign headquarters during the 2011 elections.⁵ He denies that he admitted the debt when he spoke with the first respondent and states that any conversation with her was simply an attempt to maintain good relations with her, her husband and members of the St. Lucia Labour

³ Paragraph 6.1 of the draft defence.

⁴ Paragraph 6.3 of the draft defence.

⁵ Paragraph 6.2 of the draft defence.

Party. Further, he stated that any rent claimed five years before the filing and service of the claim is prescribed under Articles 2111 and 2129 of the **Civil Code** of Saint Lucia ("Civil Code").⁶

[16] The learned master read and considered the draft defence and found it to be ambivalent at best. She did not find the defence to be so compelling as to require the allegations to be tested. At paragraph 23 of her ruling, she stated: 'I do not consider the allegations set out in the proposed Defence to be "knock-out" points or sufficiently compelling to find that the Defendant has a good Defence.' On appeal, counsel for the appellant argued that the term "knock-out points" forms part of the test used for exceptional circumstances in rule 13.3(2) and all that the learned master was entitled to consider under rule 13.3(1), was whether the appellant had a real prospect of successfully defending the claim.

[17] I agree with counsel for the appellant that the learned master appears to have conflated the test for real prospect of successfully defending the claim in rule 13.3(1)(c) with the test for exceptional circumstances in rule 13.3(2). However, this is immaterial, both factually and as a matter of law. The learned master had already concluded that the second condition of rule 13.3(1) had not been satisfied and therefore the application was bound to fail as a matter of law. Even if the master had applied the correct test and come to a decision in favour of the appellant, the application would still have failed (see paragraph 7 above).

[18] Turning to the facts I agree with the master that the defence is "ambivalent at best". In answer to a straightforward claim for arrears of rent under a lease, the appellant admits that he occupied the premises and that he made at least one payment of \$5,000.00 which he describes vaguely as a contribution for the use of the premises (see paragraph 15 above). His bare denial of the allegation that he admitted the debt does not take the defence anywhere. Applying the correct test, I find that the defence does not show a real prospect of successfully defending the claim. As a

⁶ Cap 4.01 of the Revised Laws of Saint Lucia, 2019

result, the application fails under rule 13.3(1) for not satisfying conditions (b) and (c) of the rule.

Rule 13.3(2) – Exceptional Circumstances

[19] An applicant who is unsuccessful under rule 13.3(1) of the CPR may still have the judgment set aside under rule 13.3(2). The existence of exceptional circumstances under rule 13.3(2) trumps the requirement to fulfil the conditions in 13.3(1).⁷

[20] In **Meyer v Baynes**⁸, the Privy Council reiterated and confirmed the statement of Pereira CJ in the Court of Appeal. The Chief Justice stated at paragraph 26 of her judgment⁹ that:

“What amounts to an exceptional circumstance is not defined by the Rules and no doubt, for good reason. What may or may not amount to exceptional circumstances must be decided on a case by case basis. I am in full agreement with the reasoning of Bannister J, as approved by this Court, that it 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’. 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. This list is not intended to be exhaustive.”

⁷ Per Pereira CJ in *Public Works Corporation v Matthew Nelson* (2017) ECSCJ No. 138.

⁸ [2019] UKPC 3.

⁹ *Carl Baynes v Ed Meyer* ANUHC VAP2015/0026 (delivered 30th May 2016, unreported).

Covid-19

- [21] At the hearing of the application and on appeal, counsel for the appellant argued that the onset of the Covid-19 pandemic in March 2020 was an exceptional circumstance warranting the setting aside of the default judgment. As this was not found to be a good explanation for the failure to file a defence within the prescribed period, it follows that it cannot amount to an exceptional circumstance within the meaning of the rule.

Prescription

- [22] The learned master did not fully consider the issue of prescription, which was raised by the appellant in his defence, in determining whether exceptional circumstances existed. It is settled law in Saint Lucia that when a claim is prescribed, both the right and the remedy are extinguished.¹⁰ This, to my mind, would certainly be a ‘knockout point’ as the claim would not be maintainable as a matter of law. At paragraph 26 of her ruling, the master noted that the appellant ‘may be able to successfully raise the principle of prescription, but only in relation to a portion of the claim.’ However, she did not go on to consider what, if any, portion of the claim was actually prescribed.
- [23] The following provisions of the **Civil Code** are relevant to the issue of prescription in this case. Article 2111 states that ‘all arrears of rents, including life rents, all arrears of interest, of house rent or land rent, and generally all fruits natural or civil are prescribed by five years.’ Article 2129 provides that the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired. Article 2085 states that ‘a judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption.’ Furthermore, Article 2088 states that ‘prescription is interrupted civilly by renouncing the benefit of a period elapsed,

¹⁰ See *Norman Walcott v Moses Serieux* SLUHCVP1975/0002 (delivered 15th October 1975, unreported).

and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs.’

[24] The claim was filed by the respondents on 29th January 2020. At paragraph 5 of the statement of claim, counsel for the respondents annexed the letter before action which stated that rent was being claimed for the period January 2012 to June 2016 (54 months).

[25] I am guided by the ruling of the Court of Appeal of Jamaica in **Victor Romans v Bradley Barrett**¹¹ which states that ‘each instalment of rent represents a cause of action in respect of which a separate action may be brought. These actions may be joined, but the landlord’s election not to do so does not constitute dividing his cause of action.’ This to me suggests that the accrual of rent in the present case was not one continuing cause of action but 54 separate causes of action, some of which fall outside of the prescriptive period. The claim having been filed on 29th January 2020, and arrears of rent being prescribed by five years, no action can be maintained for any arrears of rent accrued before 29th January 2015. Therefore, the period for which rent can be claimed is January 2015 to June 2016 (18 months).

[26] However, learned counsel for the respondents contended that there was an acknowledgment of the debt by the appellant which would have been an interruption to prescription under Article 2088 of the **Civil Code**. Regrettably, learned counsel did not support his position with authorities and the analysis that follows is based on the Court’s research.

[27] In **First Caribbean International Bank (Barbados) Limited v The Roserie Company Limited and others**,¹² the court relied on **Bradford & Bingley plc v**

¹¹ (1976) 28 WIR 99.

¹² SLUHCV2009/1067 and SLUHCV2010/0121 (delivered 30th June, 2017, unreported).

Rashid¹³ in which the House of Lords examined the concept of acknowledgment at common law for the purpose of interrupting the Statute of Limitation in England. Examples were provided of what constitutes such acknowledgment. Lord Hoffman explained that references to "outstanding balances" and "outstanding amounts" are plain acknowledgments of the existence of a debt and nothing more is needed. He also noted that all that is required is an acknowledgment and there is no requirement to admit a specific amount.

[28] Counsel for the respondents submitted that there was a clear acknowledgment of the debt for arrears of rent based on the contemporaneous correspondence that was attached to the statement of claim. The correspondence included a WhatsApp message from the 1st respondent to the appellant on 27th October 2017 stating:

“Stanley I have not heard back from you. It was my sincere intention to resolve this outstanding rent owed to my family estate as amicably as possibl[e]. Clearly from your actions and inactions this is not your intention. In this regard I will advise the Estate to proceed with whatever actions it deems fit in recovering these monies.”

To which the appellant replied:

“Liz, contrary to your conclusion re: outstanding rent, it is not, and never has been my intention not to resolve this outstanding issue. In this regard, could you advise as to the outstanding amount, and what would suffice by way of settlement?”

[29] At paragraph 7 of his draft defence, the appellant denies that he admitted the debt or that he rented the premises. He contended that his communication with the first respondent was in his capacity as Chairman of the St. Lucia Labour Party Castries Central Constituency Group. However, counsel for the respondents emphasized that the issue before the court is one concerning a judgment in default of defence. No defence having been properly filed, the court is constrained to consider the claim on its face.

¹³ [2006] UKHL 37.

- [30] To interrupt prescription under Article 2088 of the **Civil Code**, there must be a clear and unequivocal admission of liability to pay what is alleged to be owed.¹⁴ All that is required is a statement by the debtor acknowledging the existence of some outstanding amount owed to the creditor. There is no requirement to admit any particular amount and a query to the creditor as to the outstanding amount is sufficient. The amount of the debt must be quantifiable or capable of ascertainment by calculation or from extrinsic evidence.
- [31] Applying these principles to the facts of this case, the 1st respondent's WhatsApp message on 27th October 2017 to the appellant is an unambiguous demand for the payment of arrears of rent. The appellant's response acknowledges that rent is due and queries the amount due and how it can be settled. This is a clear acknowledgment by the appellant that a debt for arrears of rent was due to the respondents, and that he had every intention to settle it. He did not say in the correspondence that the arrears were due from a third party. This was raised for the first time in the draft defence lodged almost three years later.
- [32] I am satisfied that there was an acknowledgment of the debt capable of interrupting prescription.
- [33] Having determined that there was an acknowledgment of the debt, I must now determine how much of the judgment is in fact prescribed. When there has been an acknowledgment of a debt sufficient to interrupt prescription, time starts to run afresh from the date of the acknowledgment. However, as was stated in **Network Construction Maintenance and Rehabilitation Limited et al v Cable & Wireless (St. Lucia) Limited**,¹⁵ any acknowledgment of the debt after the prescribed period is of no legal effect.

¹⁴ Network Construction Maintenance and Rehabilitation Limited et al v Cable & Wireless (St. Lucia) Limited SLUHCVP2018/0024 (delivered 18th September 2020, unreported).

¹⁵ Ibid.

- [34] In the instant case, arrears of rent were being claimed for the period January 2012 to June 2016. The acknowledgment of the debt was made on 27th October 2017. The respondents are therefore not entitled to arrears of rent accruing earlier than 27th October 2012. They are thus entitled to collect arrears of rent for the period October 2012 to June 2016 (44 months).
- [35] Having considered the point of prescription raised by the appellant, I do not find it to be an exceptional circumstance warranting the setting aside of the default judgment. While a small portion of the claim appears to be prescribed, the judgment can be varied under rule 13.3(3) of the CPR, and the prescribed portion can be severed from the judgment. Subject to variation, it remains a regularly entered default judgment.

Interest

- [36] The issue of interest arose at the hearing of the appeal and presented another ground on which the judgment ought to be varied. In the request for default judgment filed on 25th May 2020, the respondents listed the amount claimed as \$81,250.00 together with interest at the rate of 6% per annum from January 2013 to June 2018, amounting to \$21,937.50 as at the date of the request.
- [37] In accordance with the finding of this Court in **The Attorney General of The Federation of St. Christopher And Nevis v SKN Choice Times Limited**,¹⁶ interest cannot be awarded on the entire amount of \$81,250.00 from January 2013 as this was not the amount owed as at that date. Pre-judgment interest should be calculated on the amount of \$1,500.00, starting from the date when that payment became due, increasing by \$1,500.00 monthly, and with each interest payment being calculated based on the total amount of rent owed at the particular time, until the date of judgment.

¹⁶ SKBHCVP2019/0045 (delivered 27th May 2022, unreported).

[38] With respect to post-judgment interest, there is an obvious error in the default judgment. It provides that the appellant is to pay to the respondents the sum of \$104,900.50 (arrears of rent plus interest at the rate of 6% per annum from January 2013 to June 2018) together with interest on said sum at a rate of 6% per annum from January 2013 to the date of payment. It is settled law that a claimant cannot be awarded interest on interest. Thus, any post-judgment interest must run from the date of the judgment to the date of payment, and the judgment must be varied to reflect this.

Disposal

[39] For all the reasons mentioned above, I make the following orders:

- (1) The appeal against the decision of the learned master refusing the application to set aside the default judgment is dismissed.
- (2) The matter is remitted to a judge or master of the High Court for the assessment of arrears of rent for the period October 2012 to June 2016, the assessment of pre-judgment interest for the period January 2013 to June 2018 and the consequent variation of the judgment.
- (3) Costs are awarded to the respondents in the sum of \$400.00, being two-thirds of the amount awarded in the lower court, discounted by 20% to reflect the appellant's partial success.

I concur.
Mario Michel
Justice of Appeal

I concur.
Gertel Thom
Justice of Appeal



By the Court

Chief Registrar