IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/gen/01424

B E T W E E N

SUB LIEUTENANT JAMAL TAYLOR

Claimant

AND

THE ROYAL BAHAMAS DEFENCE FORCE

First Defendant

AND

THE COMMANDER OF THE ROYAL BAHAMAS DEFENCE FORCE

Second Defendant

AND

THE ATTORNEY GENERAL

Third Defendant

Before: The Honorable Madam Carla Card-Stubbs

Appearances: Syneisha Bootle for the Claimant
Monique Millar and Sophia Thompson-Williams for the Defendants

Hearing date: May 30, 2023; May 28, 2025; June 11, 2025

RULING

Civil practice and procedure - Application for leave to enter default judgment against the Crown — Application for extension of time within which to file a Defence – Factors that a court must take into account in considering the competing applications

Application for leave to enter judgment on admission against the Crown – Nature of admissions - Whether Defendant is allowed to resile from admission on the filing of a Defence

CARD-STUBBS J.

INTRODUCTION

[1.] Pursuant to a Generally Indorsed Writ of Summons filed 13 October 2022 and an Amended Statement of Claim filed 17 January 2023, Sub-Lieutenant Jamal Taylor ("the Claimant") claims against the Royal Bahamas Defence Force ("the First Defendant"), The Commander of the Royal Bahamas Defence Force ("the Second Defendant") and the Attorney General ("the Third Defendant") (together "the Defendants") inter alia, a breach of contract and breach of statutory duty and sums due and owing as a result of back pay and overpayment of salary in the amount of $11,513.79, yearly increments in the amount of $1,200.00, and subsistence allowance in the amount of $8,500.00.

The Background

[2.] A Notice of Appearance and a Memorandum of Appearance was filed on behalf of the Defendants on 8 November 2022. On January 8, 2023 the Statement of Claim was served on the Defendant and on January 18, 2023, the Amended Statement of Claim was served on the Defendant.

[3.] On 1 March 2023, the Claimant became aware that as at that date no Defence had been filed in these proceedings on behalf of any of the Defendants.

The Applications

[4.] On March, 13, 2023, the Claimant filed an Application for Default Judgment under the Rules of The Supreme Court, 1978 ('RSC'). On May 25, 2023, the Claimant filed an application in compliance with The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR'). By that Notice of Application, the Claimant sought leave to enter Default Judgment pursuant to Rule 65.6 CPR or, in the alternative, Judgment on admissions in accordance with Rule 14.1 (2) and 14.4 (1) CPR. The Application is supported by the Affidavit of Ian Cargill filed March 13, 2023. Subsequent to the oral hearing of the matter, the Claimant also filed an Affidavit of the Claimant dated February 27, 2024 and filed February 29, 2024.

[5.] On March 21, 2023, the Defendants filed a Notice of Application for Extension of time within which to file a Defence pursuant to Rule 10.3 (8) CPR, Rule 26.1(2)k and pursuant to the inherent jurisdiction of the court. The Application is supported by the Affidavit of Luana Ingraham filed 27 March 2023.

ISSUES

[6.] The issues which arise for determination are:

a. Whether leave should be granted to the Defendants to file a Defence out of time;
b. Whether the Claimant should be granted leave to enter judgment in default of defence with damages to be assessed; or, alternatively,
c. Whether judgment on admissions should be granted.

THE LAW

Application for Default Judgment and Application for an Extension of time

[7.] The Claimant's application is premised on the default of the Defendant in complying with the procedural time limit. The Defendant has sought the court's leave to file the Defence out of time.

Extension of time for filing a Defence

[8.] It is not in issue that no Defence was filed in compliance with the timelines set by the RSC (Order 18) or by the CPR (Part 10).

[9.] Under the CPR, the period for filing a defence is governed by Rule 10.3. Rule 10.3 provides:

> **(3) The general rule is that the period for filing a defence is the period of twenty-eight days after the date of service of the claim form.**

[10.] The law allows parties a degree of autonomy in determining an extension of the period for filing a Defence. Rule 10.4 provides:

> **(4) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2) or (3).**

[11.] Where a party is noncompliant with the timeframe provided for filing a Defence, and where there is no agreement between the parties as to an extension of time, Rule 10.8 allows the party in default an opportunity to apply to the court to cure the defect. Rule 10.8 reads:

> **(8) A defendant may apply for an order extending the time for filing a defence.**

[12.] The Court's general jurisdiction to extend the time for compliance with the rules is derived from Rule 26.1 of the CPR which reads, in part:

> **Court's general powers of management.**
> **(1) Except where these rules provide otherwise, the Court may —**
> **…**
> **(k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed;**

[13.] In the case of **Caribbean Mining Group Ltd. v O'Brien et al**. SCCivApp No.181 of 2016, the Court of Appeal (The Bahamas) refused an extension of time within which to file an application for leave to appeal, finding that the delay (of over 2 years) was inordinate and that there was no reasonable explanation for the delay. That decision confirmed the factors that a court ought to take into account in making a determination on such an application. Justice Isaacs, JA, in delivering the judgment of the court, stated, at paragraph 20:

> Madam President Dame Anita Allen, writing for the Court in *Derek Turner*, outlined the factors a court must consider when faced with an extension of time application and the balancing exercise to be undertaken as it seeks to achieve justice in the case. At paragraphs 18 to 22 the learned President referred to Griffiths, LJ's and Donaldson, LJ's approach to this knotty problem:
> *"18. The classic statement of the factors relevant to the exercise of the discretion to extend time within which to appeal are as stated by Griffiths LJ in CM Van Van Stillevoldt BV v El Carriers Inc [1983] 1 All ER 699 , and are as McCowan LJ set them out in Norwich and Peterborough Building Society v Steed (1991) 2 All ER 800as: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if time for appealing is extended; (4) the degree of prejudice to the intended respondent if the application is granted.*
> *19. Moreover, Lord Donaldson of Lymington MR in Norwich and Peterborough Building Society v Steed (above) [1991] 2 All ER 800, gives guidance on how the above considerations are applied to any particular case. He said at page 888 paragraph g:*
> > *"Once the time for appealing has elapsed, the respondent who was successful in the court below is entitled to regard the judgment in his favour as being final. If he is to be deprived of this entitlement it can only be on the basis of a discretionary balancing exercise, however blameless may be the delay on the part of the would-be appellant."*
> 20. Lord Donaldson MR further demonstrated how the balance was to be achieved, by reference to two cases at different ends of the spectrum of delay. In the case of *Palata Investments Ltd. v Burt & Sinfield Ltd* [1985] 2 All ER 517 , where the delay was only three days which was

finally explained, he noted that in such circumstances the balancing exercise would be unlikely to come down on the side of refusing an extension of time, but that in an extreme case of lack of merit it could do so.

21. This was compared to the case of *Rawashdeh v Lane* (1988) 40 EG 109 where the delay was six weeks. He referred to a passage from the judgment of Glidewell LJ in that case, who after quoting a passage from Ackner LJ in Palata's case, said as follows:

> "There Ackner LJ was considering a case in which the time which had elapsed was very short; but suppose (as here), the reverse is the case. The time which has elapsed is lengthy and there is little valid explanation for it. Suppose, also that the prospective appellant (the tenant) wishes to argue that he has a good chance of success in his appeal Should the court then go on to consider how great it thinks that chance is; or, should it simply say: 'You are very much out of time. You have given so little explanation for the delay that we are not prepared to consider the chances of a successful appeal?' In my view in such circumstances it is a relevant matter for the court to consider the merits of the appeal. We are not bound to do otherwise by the decision in Palata Investments Ltd. We therefore went on to hear argument on the merits, as to which I now turn."

22. Finally, Lord Donaldson said of the two cases:

> "So it will be seen that that case (Rawashdeh) was the other side of the coin to that shown in Palata's case. In Patata's case the delay was as short as could be and was wholly excusable. The merits therefore played little part. In Rawashdeh's case the delay was very much longer- it was six weeks in fact- and was not wholly excusable. Much more merit was required to overcome it."

[14.] Having regard to the principles confirmed in **Caribbean Mining Group Ltd. v O'Brien et al**., it is apparent that a court must consider: (i) the length of the delay, (ii) the reasons for the delay, (iii) the chances of success if time for filing a defence is granted, and (iv) the degree of prejudice to the Claimant if the application is granted.

Competing Applications

[15.] In this matter, this court is also faced with the Claimant's application for a judgment in default of a defence. The applications then are competing applications because they cannot both prevail. It is useful to treat with the Claimant's application at the same time, especially having regard to the fourth factor to be considered on the Defendants' application for leave to file a Defence out of time i.e. the degree of prejudice to the

Claimant if the application is granted. A court must also bear in mind the overriding objective and so what amounts to competing applications ought to be considered and determined together.

Default Judgment Application

[16.] The Claimant makes his application for default judgment pursuant to Rule 65.6 of the CPR.

[17.] Rule 65.6 identifies the conditions to be satisfied in order for the Claimant to enter a judgment in default of Defence against the Crown.

[18.] Rule 65.6 states:

> 65.6 Judgment in default.
>
> (1) Except with the leave of the Court, no judgment in default of an acknowledgement of service or of pleading shall be entered against the Crown in civil proceedings against the Crown.
>
> (2) Except with the leave of the Court a party may not enter default judgment against the Crown in third party proceedings.
>
> (3) An application for leave under this rule may be made by interlocutory application and the same must be served not less than seven days before the return day.

[19.] The Claimant relies on the case of **Coral Beach Management Company Limited v Barefoot Postman Limited and others** [2012] 1 BHS J No. 78 in support of his application for a default judgment. In that case, the Defendants failed to file their defence in time and the court had to determine whether the Claimant was entitled to a judgment in default of defence. The Claimant's application had been brought under the RSC. In that case, the learned Justice Evans, as he then was, considered the applicable principles at paragraphs 40 to 45:

> 40 RSC Order 19 sets out the procedure for, applications in default of pleadings. Rule 1 deals with default in serving the statement of claim; rules 2 through 5 deal with default in serving a defence in relation to specific claims, that is: claims for liquidated demand, unliquidated demand, detinue and possession of land only. Rule 7, on which the plaintiff relies, deals with claims "of a description not mentioned in rules 2 through 5".
>
> 41 Rule 7(1) and provides as follows:–
>
> > "… if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under

> these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim."

42 Although paragraph (1) of Rule 7 is expressed in mandatory terms, in the case of **Wallersteiner v. Moir; Moir v. Wallersteiner and others** [1974] 3 All ER 217, Lord Denning MR explained that it is clear from the authorities that ***the word 'shall' is not imperative but directory and the Court has a discretionary power to grant judgment or to extend a party's time to plead when it is just to do so.***

43 In the case of **Gibbings v. Strong** [1884] 26 Ch. D. 66, 69, the Earl of Selborne, L.C., said:–

> "This means that the Court is to exercise some judgment in the case: it does not necessarily follow the prayer, but gives the plaintiff the relief to which, on the allegations in his statement of claim, he appears to be entitled. On a summons for judgment therefore the judgment is not given as a matter of course. The Court has to exercise some judgment.

44 In **Charles v. Shepherd** [1892] 2 Q.B. 622, 624 , Lord Esher, M.R. said:–

> "We have consulted the members of other divisions of the Court of Appeal upon the question of the construction to be placed upon Order XXVII., r. 11, and we are of opinion, upon the construction of that rule-first, that the Court is not bound to give judgment for the plaintiff, **even though the statement of claim may on the face of it look perfectly clear, if it should see any reason to doubt whether injustice may not be done' by giving judgment; it has a discretion to refuse to make the order asked for…"**

45 **Therefore just because the plaintiff's application is not opposed, does not mean that it is automatically entitled to the relief it seeks; the Court is nevertheless obliged to consider the application on its merits.**

[Emphases added]

[20.] In **Coral Beach Management Company Limited v Barefoot Postman Limited and others**, the court considered that despite the suggested mandatory phrasing of the RSC, that a court still had "***a discretionary power to grant judgment or to extend a party's time to plead when it is just to do so."***

Legal Analysis and Determinations

[21.] In making the application for leave to extend time, the Defendants have prayed in aid the overriding objective of the CPR.

[22.] Every application, whether granted or refused, must be weighed against the overriding objective provided for at Rule 1 of the Civil Procedure Rules (as amended) 2023. Rule 1 reads:-

> 1.1 The Overriding Objective.
> (1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.
>
> (2) Dealing justly with a case includes, so far as is practicable:
> (a) ensuring that the parties are on an equal footing;
> (b) saving expense;
> (c) dealing with the case in ways which are proportionate to —
> (i) the amount of money involved;
> (ii) the importance of the case;
> (iii) the complexity of the issues; and
> (iv) the financial position of each party;
> (d) ensuring that it is dealt with expeditiously and fairly;
> (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and
> (f) enforcing compliance with rules, practice directions and orders.

[23.] The overriding objective is to enable the court to "deal with cases justly and at proportionate cost". The balancing act in this case is reflected in the mandate to seek compliance with the rules but subject to dealing with a case justly**.**

[24.] The matters for this court to consider when determining whether to grant the Defendant's application for an extension of time or whether to grant the Claimant's application for judgment in default of defence, may be framed as follows:

a) Length of the Delay
b) Reasons for the delay**,** in other words, is there a good explanation as to why the Defendant has not filed the requisite pleading;
c) Whether the Defence is meritorious or discloses a prospect of success or Whether the Defence is frivolous/vexatious;
d) Whether any prejudice will occur to the Claimant as a result of granting the extension of time

e) Whether granting the application for an extension of time is in keeping with the overriding objectives of the rule and, if not,
f) Whether the Claimant's application is meritorious such that it is entitled to the relief sought, i.e. judgment in default of a defence.

Length of the Delay

[25.] The parties appear *ad idem* that the application for an extension of time, exhibiting a draft Defence, was made approximately one month after time had expired. The Claimant appears to give a reluctant concession that "some may argue that the length of the delay is not inordinately long" and that the court should take the other factors into account. I agree. In this case, I do not believe that one month amounts to be such a lapse of time that the Defendant by that factor alone ought to be debarred from relief.

Reason for the Delay

[26.] This court must consider whether there is any valid or reasonable explanation for the delay.

[27.] The Defendant's reason for the delay are set out in the Affidavit of Luana Ingraham filed 27 March 2023 at paragraphs 5, 6 and 7:

5. The defendants, being public authorities are represented by Counsel of the office of the Attorney General.
6. I am advised by Counsel who has carriage of this matter that the Defendants were unable to file a Defence within the time period prescribed by the Supreme Court Procedure Rules 2022, Statute Laws of The Bahamas, due to ongoing compilation of files, reports, and/or records by the Defendants in this matter, which has presented a logistical challenge in obtaining instructions to defend.
7. I am further advised by said Counsel that she suffered a death in the family (Mother), and was away from the office on bereavement leave.

[28.] In that regard, Counsel for the Defendants submitted that "all efforts were made to comply with the law and a draft defence was filed along with the said affidavit to mitigate and prevent a default judgement being entered against the Defendants." Counsel for the Defendants submitted that "The First Defendant, the Commissioner of the Royal Bahamas Defence Force together with the Second Defendant, The Royal Bahamas Defence Force are charged with enormous responsibilities" and that "… one can appreciate that in such an environment it may be immensely difficult to coordinate the attendance of witnesses or the appropriate representative." Counsel also sought to account for further delay "due to the fact that Counsel having carriage of this matter, suffered a death in the family (Mother), and was away from the office on bereavement leave."

[29.] In response, the Claimant rejects the reasons proferred by the Defendants and views them as unsatisfactory. Counsel for the Claimant submits that there is no evidence from the Defendants to show "any attempts to obtain any files, reports and records that lend themselves to satisfying the Court that Counsel for the Defendants experienced "logistical challenges" as alleged." Counsel for the Claimant argues that the Claimant had been in discussion with both the "Royal Bahamas Defence Force and the Attorney General's Office in relation to the matter prior to the commencement of this action, therefore the issues were very well known, examined and some resolution was even agreed." The Claimant submits that "the Statement of Claim consists of essentially the same facts outlined in our letters to the Royal Bahamas Defence Force and the Attorney General's Office" and reasons that it should not have therefore taken long to get instructions and draft a defence. The Claimant notes that other colleagues of bereaved counsel ought to have been able to "step in" to meet the deadline.

[30.] The Claimant's submissions are forceful and reflect the frustration in the attempts to engage the Defendants. While I accept that the Defendants makes bald statements and have provided no evidence of attempts to secure files, reports etc. I do not think that that is fatal to the application. The court must consider the reason that a legal filing was not made in timely response to the action launched. While I accept that the Claimant had been in some discussion with the Attorney General's Office before the claim, it does not necessarily follow that that office would have had all of the instructions needed to mount a legal defence. While "logistical challenges" may be conveniently used on occasion, it is not beyond belief that there may have been some on this occasion. Indeed, in a letter dated June 10, 2022 emanating from the Attorney General's Chambers, and exhibited in the affidavit of Ian Cargill, filed by the Claimant, that letter suggests that the Attorney General's Office had not had sight of the documents from the First Respondent nor of a letter referred to by the Claimant. In the premises, I do not consider the reason for the delay in this case is to be invalid or unreasonable, especially in light of a delay of one month.

Whether the Defence is meritorious or discloses a prospect of success or Whether the Defence is frivolous/vexatious

[31.] The question for the Court is whether the pleaded case in the draft Defence is a realistic one or something merely fanciful. This Court must assess whether the assertions made in the statement of case are capable of founding a defence with a real prospect of success. While a court must be careful not to embark on a "mini trial" on the papers, a court may also take cognizance of any contemporaneous material emanating from the Defendants that would contradict the assertions made in the Defence or which would

suggest that the defence is merely "fanciful" or is vexatious or is designed to delay a resolution.

[32.] The Affidavit of Luana Ingraham, filed 27 March 2023, sets out at paragraph 9:

> 9. The Defendants have an arguable Defence and the Defence has merit. Now produced and shown to me marked "L1" is a true copy of the Draft Defence.

[33.] Counsel for the Defendants submitted that the court ought to allow the filing of a Defence in order for the Defendant to be able to "accurately respond to the Claimant's allegations, and as a matter of public interest, …allow the Court to clarify the rules governing a member of the Royal Bahamas Defence Force - a military organization - versus that of a member of the Civil Service." The Defendants also submitted that the "Draft Defence raises no new issues, it merely properly clarifies the issues in dispute regarding the allowances to which he may be entitled and the rules or guidelines which govern the payment of said allowances etc. in the Royal Bahamas Defence versus the rules which govern ordinary Civil Servants."

[34.] Counsel for the Claimant submits that the "Draft Defence gives mere admissions and denials with no evidence to prove the statements made" and has no reasonable prospect of success. The Claimant submits that the Defendants have no "arguable defence with merit" and that the draft Defence alleges that funds owed to the Claimant were paid but "fails to provide evidence as to when or how the funds were paid when the Claimants case primarily based on the fact that there are outstanding funds owed by the Second Defendant to the Claimant." Counsel for the Claimant relies on pre-action letters which she submits shows an admission by the Defendants that sums were owing and that instructions were given to pay same. Counsel submits that the Claimant has not been paid and queries why the Claimant has not been paid the sum of $200 which the draft Defence pleads is the only sum outstanding, if in fact that were the only sum outstanding.

[35.] The Claimant's claim, by its Amended Statement of Claim, is for payment of subsistence allowance in the amount of $8, 500.00, payment of yearly increments in the amount of $1, 200.00 and payment of over pay directed to be released and back pay in the amount of $11, 513.79. The claims are based on the alleged promotion of the Claimant (paragraph 5), a claim that subsistence allowance was payable for attendance at a course (paragraph 6) and that the Claimant is entitled to yearly increments (paragraph 7).

[36.] The Draft Defence, by its paragraph 3, denies Paragraphs 5, 6 and 7. In answer, the draft Defence is that the Claimant was reclassified per instructions as set out (paragraphs 4 and 9), the Claimant is not entitled to a subsistence allowance based on instructions and RBDF policy (paragraphs 5 and 10), the Claimant has been paid all

increments due as per a Salary Progression Report (paragraphs 6 and 11). The Draft Defence also includes in its allegations that $11, 313.79 has been paid to the Claimant and that a sum of $200 is outstanding. The Draft defence therefore, in answer to the Claimant's claim is (1) of the $11, 513.79, $11, 313.79 has been paid and $200 is owing; (2) the Claimant has been paid whatever increments are due and (3) the Claimant is not entitled to subsistence allowance. The Draft Defence therefore joins issue with the Claim as a defence to an allegation of a breach of contract, breach of statutory duty and disregard of legitimate expectation.

[37.] There are several elements to the claims for payment made in the Claimant's statement of case. It is unclear that the Defence is condescending to the figure claimed for increments. The draft Defence in that regard seems to espouse a case that whatever the Claimant is entitled to, has been paid. The drafting may be faulty but that is no reason for a court to conclude that there is no proper defence with a prospect of success. Similarly, the draft Defence takes issue with the level of promotion alleged by the Claimant but seems to agree on the figure payable in salary except that the defence is that it was already paid. The draft Defence refers to a salary report that the Defendants indicate they will rely on. . Lastly, the draft Defence denies liability for the third sum claimed – namely subsistence allowance based on the instructions and policies identified in the Defence.

[38.] The Claimant submits that the Defendants fail to give the evidence on which it will rely. I note that Part 10 CPR requires a Defendant to set out its case in the Defence and, by Rule 10.5(6) must

> "identify in or annex to the Defence any document known to the Defendant which is considered to be necessary to the defence".

[39.] It is sufficient for the Defendants to identify the documents that they intend to rely on for proof of payment and the polies that they intend to rely on for refusal of payment.

[40.] At the initial hearing, Counsel for the Claimant submitted that the Defendant had not submitted proof of the payment alleged in the draft Defence and that the Defendants had indicated this to Counsel for the Claimant pre-action but had provided no proof of payment then. The Claimant has since provided proof that what the draft Defence alleged at the time of the filing of the Application for an extension of time within which to file a Defence could not have been true because payment was made subsequent to that filing.

[41.] The Claimant relies on the affidavit of Sub Lieutenant Jamal Taylor sworn on February 27, 2024 and filed on February 29, 2024. The affiant avers:

> 1. I am the Plaintiff in this matter and duly swear this Affidavit to confirm that I received a portion of the funds, which were the subject of this matter.

2. My pay slip for the month of September 2023 identified the payment of my salary arrears as PRI YR/ARR in the mount of Nine Thousand Seven hundred and Seventeen dollars and Seventy-eight cents ($9,717.78). There is now produced and shown to me marked * Exhibit JT-1" a true copy of my September, 2023 pay slip.

3. By letter dated 3rd January, 2024 the Finance Officer Royal Bahamas Defence Force Head Office advised Captain Henry Daxon of the payment of my outstanding salary arrears. The said letter was sent to my attorney on 31" January, 2024 by Counsel for the Defendants. There is now produced and shown to me marked "Exhibit JT-1" a true copy of the said letter.

4. In addition to the outstanding salary arrears my claim was for the payment of subsistence allowance in the amount of Eight thousand Five hundred dollars ($8,500.00). This payment remains outstanding.

5. The contents of this Affidavit are true and correct to the best of my knowledge, information and belief.

[42.] Exhibited to the affidavit the referenced letter from the Defendant dated. It reads:

SUB LIEUTENANT JAMAL TAYLOR PAY NO. 3089
INQUIRY INTO SALARY ARREARS

Upon salary inquisition, Sub Lieutenant Jamal Taylor received a total of Ten Thousand Six Hundred Ninety Two Dollars and Forty Three Cents ($10,692.43) which reconciled all outstanding salary arrears.

2. Sub Lieutenant Taylor was paid Nine Hundred Seventy Four Dollars and Sixty Five Cents ($974.65) in arrears for June 2022. Further in compliance with the Attorney General's ruling on the statute of limitation regarding no recovery of salary overpayment, Sub Lieutenant Taylor received an addition Nine Thousand Seven Hundred Seventeen Dollars and Seventy Eight Cents ($9,717.78) for September 2023 pay period. Hence, his current payroll salary progression results in a zero balance.

3. Forwarded for your information.

[43.] The essence of the affidavit evidence is that the element of the Claimant's claim for payment of salary arrears that was conceded by the Defendants, and which the draft Defence alleged was paid, was not in fact paid at the time of the Defendants' application.

[44.] In the circumstances, the Defendants were given leave to file a response by way of affidavit on the question of evidence of payment prior to the filing of their application for leave for an extension of time within which to file their defence.

[45.] The affidavit of the Claimant remains unanswered. It is therefore not in dispute that payment was made but was only made subsequent to the filing of the application and the draft Defence. Nevertheless, the proposed Defence remains unchanged and there are issues joined. This Court will address the issue of the payment made subsequent to the filing of the Defendants' application in considering the Claimant's application for a judgment on admission.

[46.] It is my determination that the draft Defence does not appear vexatious or frivolous. It answers the issues raised by the Claimant and, if the Defendants were able to supply cogent evidence of the allegations made in its Defence, the Defence would have a reasonable prospect of success. It is not the business of the court to enquire into the sufficiency of the evidence at this stage. That requires a full trial and the testing of any evidence laid. It is sufficient that I find that there are issues that remain unresolved and there is evidence which could reasonably be expected to be produced in the discovery process and at trial.

[47.] Based on the matters alleged in the Defendants' pleading, I find that the Defence has a reasonable prospect of success.

Will any prejudice occur to the Claimant as a result of a grant of extension of time?

[48.] The court, in exercising its discretion must consider any prejudice suffered by the party who is not in default.

[49.] The Claimant submits that he would suffer prejudice because he would be "deprived… of a grant of a default judgment", has had to commence legal action for funds admitted to be owing and "will be denied the use of funds owed" for a longer time.

[50.] The Defendants, relying on principles applicable to applications to allow amendments to a statement of case, submit that there will be no "prejudice or injustice that cannot be cured by compensation in costs." The Defendants submit that the Claimant will not "suffer any injustice should the Court grant leave to the Defendants as the matter has yet to reach Case Management stage; consequently, no trial date (or other dates) have been set by the Court [and] Costs can compensate for any inconvenience caused …"

[51.] It seems to me that prejudice refers to circumstances such as possible infringement of further rights, the loss of a court trial fixture and continuing damage not curable by damages or costs. A court is concerned with irremediable harm when considering the question of prejudice. There is none such here. That a party is put to trial, cannot, it seems to me, be termed a prejudice suffered. The institution of legal action by a Claimant serves

to put the issues before a tribunal with a view to proceeding to trial, unless otherwise terminated. In this case, no court fixture would be vacated because none had been set. The parties have yet to embark on the case management process. The Claimant has been put through expense and has suffered a delay in having to answer the Defendants' application for leave to file a Defence out of time. This is a suit for monetary compensation. The inconveniences suffered by the Claimant can be addressed by penalizing the Defendant in money i.e. costs.

Is granting the application for an extension of time in keeping with the overriding objectives of the rule and, if not, is the Claimant's application meritorious such that he is entitled to the relief sought, i.e. judgment in default of a defence.

[52.] A court in an instance such as this is required to perform a balancing act that leads to the best version of justice being done. This is the thrust of the overriding objective. I bear in mind that the court's integral role is the resolution of the real issues in dispute and not the punishment of litigants for procedural errors that can be cured by the discretion given to the court to do so and by virtue of the procedural rules which themselves give such litigants an avenue to approach the court for relief.

[53.] The guidelines that I have reproduced are to allow a court to objectively and fairly assess each situation on a case-by-case basis.

[54.] I bear in mind the age-old admonition as set out in the case of **Cobbold v London Borough of Greenwich** [199] Lexis Citation 1496, relied upon by the Defendants. The result of the court (Court of Appeal) was overturned for reasons not related to the dictum of Lord Justice Peter Gibson. That dictum has been relied on time and again and I will reproduce it here for good measure. Lord Justice Peter Gibson declared:

> The overriding objective is that the court should deal with cases justly. That includes, so far as practicable, ensuring that each case is dealt with not only expeditiously but also fairly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient administration of justice is not significantly harmed. I cannot agree with the judge when he said that there would be no prejudice to Greenwich in not being allowed to make the amendments which they are seeking. There is always prejudice when a party is not allowed to put forward his real case, provided that that is properly arguable.

[55.] I consider that, in the case before me, the Defendants did not delay inordinately before filing the application for leave to file out of time. The pleaded case in the draft Defence reveals issues to be tried between the parties and has a real prospect of successfully defending the claim. It is in the interest of justice that the Defendants are given the benefit of the procedural rules that allow them an opportunity to cure the default, and put forward their real case, rather than to be punished by the same rules for a default, which punishment would prevent the adjudication of the real issues between the parties. To apply the procedural rules in these circumstances to prevent the Defendants from putting forward their case, would not, in my opinion, be a just or fair disposition of the matter.

[56.] I therefore accede to the application of the Defendants for an extension of time to file the Defence. The Defendants will be at liberty to file a defence within 14 days of the date of this ruling, failing which the Claimant has leave to enter judgment in default for payment of an amount equivalent to, and certified to be, the amount outstanding after deduction of any payment received. In making this order, I take into account the further affidavit sworn by the Claimant, Jamal Taylor, on February 27, 2024 and filed on February 29, 2024.

[57.] In the circumstances, the filed application of the Claimant to enter a judgment in default is dismissed.

Judgment on Admissions

[58.] In the alternative to an order for Default Judgment, the Claimant has also asked the Court to consider the grant of a judgment on admissions pursuant to Rule 14.1 (2) and Rul2 14. 4(1) of the CPR. Rule 14.1 provides:

> 14.1 Making on admission.
>
> (1) A party may admit the truth of the whole or any part of any other party's case.
>
> (2) A party may do this by giving notice in writing, such as in a statement of case or by letter, before or after the issue of proceedings.
>
> (3) A defendant may admit the whole or part of a claim for money by filing an acknowledgement of service containing the admission.
>
> (4) The defendant may do this in accordance with the following rules —
> (a) rule 14.6;
> (b) rule 14.7; or (c) rule 14.8.

(5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.

Rule 14.4 provides:

14.4 Admission by notice in writing – application for judgment.
(1). Where a party makes an admission under rule 14.1(2), any other party may apply for judgment on the admission.

(2) The terms of the judgment must be such as it appears to the Court that the applicant is entitled to on the admission.

[59.] An admission may be made in pleadings or in documents such as letters written before the action was brought. The admission must be clear and unambiguous: **Forbes v Ferguson and another [2010] 2 BHS J No.5.**

[60.] The effect of a clear admission of the whole or part of a claim is that the Defendant cannot, and should not, mount a defence to that claim, or that part of the claim, admitted. An admission is an admission as to liability. There may also be an admission as to quantum. If a specific sum is claimed, the admission may be to the specific sum or part thereof. When an admission is made, no issues are joined between the parties in that regard and therefore that part of the claim may be summarily disposed of. Such a disposition saves time and costs. Such a disposition effects a resolution, in part or in whole, for the affected parties.

[61.] Having regard to the effect of an admission, a court must consider (1) whether there is in fact a clear and unequivocal statement that amounts to an admission of the claim or part of the claim and (2) whether, in the circumstances, it would be just to grant such order "as it appears to the Court that the applicant is entitled to on the admission."

[62.] In this case, the Claimant claims, by way of the Amended Statement of Claim filed January 6, 2023:

WHEREFORE THE PLAINTIFF CLAIMS:

~~1. Payment of back pay -$11,000.00.~~
2. Payment of subsistence allowance -$8,500.00.
3. Payment of overpay directed to be released and back pay- $11,513.79
4. Payment of early increments-$1,200.00

5. ~~Payment of lump sum customarily paid by the First Defendant to successful officers upon completion of the course~~.
6. Interest.
7. Cost.

[63.] The Claimant relies on a letter dated June 10, 2022 emanating from the Third Defendant. That letter was a response to a letter of demand from the Claimant's counsel. The response by letter served to communicate that the Third Defendant had communicated with the First/Second Defendant and had come to the conclusion that "there was really no legal issue on which our office needs to advise". The letter goes on to direct counsel to correspond with the First Defendant. To my mind, that statement does not amount to an admission of liability. The context of the letter is that the First Defendant had reviewed the matter and the suggestion is that the First Defendant would likely make good on the demand. The response is that there was no "legal issue" which required the involvement of the Third Defendant. This does not, in my view, constitute an admission of the case of the Claimant. The June 10, 2022 letter was written as counsel for the First and Second Defendants and Counsel determined that their involvement was not necessary. The suggestion is that the First and Second Defendants would likely make good on the demand but that cannot be construed as an acknowledgment or admission of the truth of the case of the Claimant.

[64.] The Claimant also relies on a letter, appeared to be written on behalf of the First and Second Defendants, dated July 22, 2022, addressed to counsel for the Claimant and captioned "SUB LIEUTENANT JAMAL TAYLOR'S BACK PAY ENTITLEMENT & CORRECTION OF SENIORITY". In that letter, the Respondents write:

> 'I am directed to acknowledge receipt of your correspondence dated 20 July 2022 reference Sub Lieutenant Jamal Taylor and further offer sincere apologies for not providing his salary progression in the time frame promised.
>
> 2. The Enclosed salary progression for Sub Lieutenant Jamal Taylor is forwarded for your information and review to confirm your agreement of the same.
>
> 3. Our tabulations for the adjustments in Sub Lieutenant Jamal Taylor's salary since his reclassification to Midshipman on 5 September 2016 and subsequent promotions to Acting Sub Lieutenant on 5 September 2016 and Sub Lieutenant on 1 March 2019 respectively totals ten thousand nine hundred and fifty five dollars and forty five cents ($10,955.45).
>
> 4. Following your concurrence the requisite approval will be requested and the payment expedited in the shortest possible time to conclude this long withstanding matter.
>
> 5. Again we offer sincere apologies for the undue delay.

[65.] This letter specifically refers to the issue of salary due and owing since the Claimant's reclassification and promotion. The letter also advises that a sum of $10,955.45 is payable and would be paid. I find that letter to be a clear and unambiguous admission of the truth of part of the Claimant's case as filed. The Claimant's case is that certain back pay is owing amounting to $11, 513.79. The Defendants admit backpay owing amounting to $10, 955.45. This is a clear concession and admission of the truth of part of the Claimant's case. This admission was made in writing on July 22, 2022 prior to the institution of an action and prior to filing of an application for leave to file a Defence out of time. It satisfies the requirements of Rule 14.1 CPR.

[66.] In this case, the question is raised as to whether allowing the Defendants to file a Defence would allow them to resile from the admission. The Claimant submits that the Defendants ought not be allowed to resile from their admission and relied on the case of **Bird v Birds Eye Wall Ltd** The Times 24th July 1987. That case considered whether a Defendant ought to be allowed to resile from previous admission of liability after pleadings had been filed. I do not think that that is the case here.

[67.] This is a claim for breach of contract, statutory duty, legitimate expectation and the relief sought is payment of sums said to be due and owing. The pleaded Defence is "payment already made". That a contractual or statutory obligation has been satisfied, must, to my mind, be a valid defence. In this case, it is the Claimant's case for payment and the Defendant's case is that the payment has already been made. It follows that it must be part and parcel of such a defence that there is an admission that sums were due and payable. That defence does not represent a movement from an admission of liability to pay.

[68.] The Defendants have sought leave to file a Defence out of time, which for the reasons already stated, this court has granted. I do not consider that the Draft Defence will allow the Defendants to resile from their admissions. However, the nature of the Defence will no doubt affect the court's exercise of its jurisdiction to give leave to the Claimant to enter a judgment on admissions.

[69.] A judgment on admissions is a judgment on its merits. It is a judgment made after the court has assessed the nature of the admissions made and determined what relief is just on the admissions made. It is my view, for that reason, that a court cannot ignore the pleading of a Defendant which pleads, in effect, that restitution has already been made.

[70.] It seems to me incongruous to grant a judgment on admissions because an obligation is admitted when the very defence of the party making the admission is that the admitted obligation has already been met. In this case, there is an admission that certain sums were payable. At the time of the filing of the application to extend time within which

to file a defence, there was no demurrer that a payment was to be made but, instead, the Defendants' case was that the payments were already made.

[71.] The uncontroverted evidence set out in the affidavit of Sub Lieutenant Jamal Taylor sworn on February 27, 2024 and filed on February 29, 2024 and reproduced above is that payment was made subsequent to the filing of the respective applications under consideration. Counsel for the Claimant contends that had the Defendants been truthful in the filed application for an extension of time within which to file a defence and in their draft pleading, then the Claimant would have been entitled to a judgment on admissions on that element of the claim. I accept that this is so. However, the position now is that the Defence as pleaded in the draft is made out – which is that payment has been made and because payment has been made, there can be no judgment on admissions in respect of that element. If the sums due have already been paid, it would not be just to grant a judgment, the purpose of which is to order relief, and in the case of liquidated damages, the payment of a sum. The claim on that element has been satisfied and therefore there is no judgment to which the Claimant is entitled.

[72.] For these reasons, this court refuses to exercise its discretion to grant a judgment on admissions.

[73.] This Court records the resistance of the Defendants to the Claimant's consistent assertion that the Claimant had not been paid. It was within the Defendants' ability to confirm whether the Claimant had in fact been paid in accordance with the draft pleadings and the records referred to in its pleadings. That they did not do. Bearing in mind the conduct of the Defendants, the Claimant is awarded the costs of this application.

COSTS

[74.] I am cognizant that the applications were brought about because of the initial default of the Defendants. The Defendants did not wait an inordinately long time to file their application but it was filed after the application for default judgment was filed. Further, the Defendants advocated a position which was not true at the time that these applications were filed although the issue was subsequently rectified. While the justice of the case demands that the Defendants be given an opportunity to be heard at a trial, the Claimant ought to be compensated in costs given the timing of the Defendants' application. It is also my determination that the Defendants ought to be sanctioned in costs given their conduct described above.

[75.] This court orders that the Defendants pay the costs of the applications and I award same to the Claimant.

CONCLUSION

[76.] The application of the Defendant to file a Defence out of time is granted. The Defendants must file and serve a Defence within 14 days of the date of this ruling, failing which the Claimant has leave to enter judgment in default for an amount that is to be certified by the Claimant as outstanding.

[77.] The application of the Claimant for judgment in default is dismissed.

[78.] The application of the Claimant for judgment on admission is dismissed.

[79.] The Defendants are to pay the costs of the applications to the Claimant.

ORDER

[80.] The order of this Court is THAT:

1. The Defendants are granted leave to file and serve a defence within 14 business days of the date of this ruling, failing which the Claimant has leave to enter judgment in default for the amount certified by the Claimant as outstanding.

2. The application of the Claimant for judgment in default is dismissed.

3. The application of the Claimant for judgment on admission is dismissed.

4. Costs of and occasioned by the Claimant be paid by the Defendants, such costs to be assessed if not agreed.

Dated the 27th day of June, 2025

Carla Card-Stubbs
Justice