

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division
2021/COM/com/00043**

B E T W E E N

NAN-HUEI LEU

Claimant

AND

**YAKO MUSICAL INSTRUMENT CO. LTD (TAIWAN)
(a company incorporated in the Republic of China (Taiwan))**

First Defendant

AND

TSAI SUNG-SHAN

Second Defendant

AND

JEFF JERFU LIAO

Third Defendant

AND

LUCIA BROUGHTON

Fourth Defendant

Before: **Acting Registrar Renaldo Toote**

Appearances: Michael R. Scott, KC with Ms. Marnique Knowles of Counsel for the
 Claimant
 Travette Pyfrom of Counsel for the Defendants

Hearing date(s): 10 April & 1 May 2025

INTERLOCUTORY RULING

Strike-Out Applications – CPR Part 26.3(1) – Irregular Judgment – Conditional Appearance – Practice
Direction No. 9 of 2023 – CPR Part 13.2 and 13.3 – Default Judgment – Pending Strike-Out Application

Introduction

1. By Notice of Application filed on 9 April 2025, the First and Third Defendants (“the Defendants”) seek orders to (i) set aside a judgment in default entered on behalf of the Claimant on 23 April 2024 and (ii) for an extension of time within which to file an acknowledgment of service and defence.
2. The Defendants allege a series of procedural irregularities that strike at the very foundation of the default judgment. These include the expiry of the writ prior to service, defective service on both Defendants, and the subsistence of a conditional appearance with an unresolved strike-out application at the time judgment was entered. The Claimant opposes these applications, contending that the judgment was regularly obtained under Part 12.5 of the Civil Procedure Rules 2022 (“CPR”) and that the Defendants have failed to satisfy the requirements for discretionary relief under CPR 13.3.
3. For the reasons that follow, the Court finds that the default judgment was entered irregularly and must be set aside as a matter of law under CPR 13.2.

Factual Matrix

4. The Claimant commenced these proceedings by Writ of Summons issued on 26 July 2021 seeking declarations as to the validity of shares, rectification of the company register, restoration of the Claimant as a director, payment of dividends, damages, interest, and costs. Leave for service out of the jurisdiction was granted by Order dated 29 October 2021. An Amended Writ and Concurrent Writ were filed thereafter.
5. The Claimant deposes that personal service was effected upon the First and Second Defendants on 26 May 2022 and upon the Third Defendant on 15 December 2022.
6. On 26 January 2023, after the purported service on the Third Defendant, Deputy Registrar Edmund Turner extend the validity of the Claimants Writ of Summons pursuant to an amended *ex parte* application.
7. On 9 February 2023, Darville-Gomez, J. granted the Third Defendant leave to enter a conditional appearance to which a Notice and Memorandum of conditional appearance was subsequently filed on 24 March 2023. Pursuant to O.12 of the RSC, the Third Defendant filed a summons for an order to strike out the Claimants’ Amended Writ of Summons and Concurrent Writ of the Claimant.
8. Interestingly enough, the Claimant was granted leave to enter judgment in default against all three Defendants on 23 April 2024 despite the fact that the Third Defendant had

previously filed a conditional appearance and summons to strike out the Amended Writ which remained undetermined at the time judgment was entered.

Issues for Determination

9. Hence the following issues require determination:

1. Whether service on the Third Defendant was rendered invalid by reason of the expiry of the writ prior to service and the subsequent extension of validity.
2. Whether the default judgment was irregular by reason of the Third Defendant's conditional appearance under the Rules of the Supreme Court ("RSC").
3. Whether service on the First Defendant, a foreign corporation, was effected in compliance with the Order for service out of the jurisdiction.
4. Whether the default judgment is valid whilst the validity of the writ and service remained disputed by extant interlocutory application.
5. Whether default judgment was available in respect of the declaratory and rectification relief endorsed on the writ.
6. If irregularity is not established, whether the Defendants satisfy the criteria for discretionary relief under CPR 13.3.

The Law

10. Practice Direction No. 9 of 2023 governs the transition from the RSC to the CPR. It provides that procedural steps taken prior to 1 March 2023 remain governed by the RSC, whilst subsequent interlocutory applications and filings must comply with the CPR. This bifurcated framework is material to the present applications.

Validity and Service of the Writ

11. Order 6 Rule 7(1) of the Rules of the Supreme Court 1978 provides unequivocally:

(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

12. This provision establishes a clear temporal limitation on the validity of process. A writ does not enjoy indefinite life; under the RSC, Parliament prescribed a twelve-month period within which service must be effected, failing which the writ expires and becomes ineffective.

13. Order 6 Rule 7(2), (3) and (4) are equally as important as they outline specific procedural requirements:

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any

one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

14. The language of Rule 7(2) is instructive, an application for extension must ordinarily be made **“before that day”** that is, before the writ expires. While the Court retains discretion to allow a late application “such later day (if any) as the Court may allow,” this discretion is not unfettered. The Court must be satisfied that reasonable efforts were made to serve within the period of validity.
15. Service effected after expiry and before any extension is obtained is legally ineffective and constitutes a nullity. This principle is foundational to procedural regularity and the protection of defendants’ rights.

Conditional Appearance under the RSC

16. Distinct from, but equally fundamental to the sequential process, is the procedural mechanism of conditional appearance which existed under the RSC to permit defendants to challenge jurisdiction, service, or the validity of the writ itself before engaging with the substantive merits of a claim.
17. The conditional appearance operates as a procedural safeguard, suspending the availability of default judgment until objections to jurisdiction, service, or the validity of the writ are resolved.
18. Order 12 Rule 7(1) of the RSC provides:
 - (1) A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within fourteen days after entering the appearance, apply to the Court for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave.
19. The effect of a conditional appearance is clear and unequivocal: a defendant who has entered such an appearance may apply to the Court to set aside the writ or service of the

writ. Succinctly put, no default judgment should be entered until such application is determined.

Default Judgment and Irregularity

20. The framework for default judgment and the remedies available where such judgment has been irregularly obtained are set out in the Civil Procedure Rules 2022. CPR Part 12.1 and 12.5 permit a claimant to obtain judgment without trial where a defendant fails to file an acknowledgment of service or defence, subject to compliance with prescribed conditions including proof of valid service.
21. CPR Part 13.2 mandates that the Court must set aside a default judgment where it was entered irregularly; that is, where the conditions precedent for obtaining judgment under Part 12 were not satisfied.
22. CPR Part 13.3 provides discretionary relief where a judgment was regular but the defendant demonstrates:
 - (a) a real prospect of successfully defending the claim;
 - (b) promptness in applying to set aside, and
 - (c) a good explanation for the failure to file within the prescribe time.
23. This provision is engaged only where a judgment is regular, it does not apply where irregularity vitiates the judgment *ab initio*.

Default Judgment for Non-Money Claims

24. The CPR framework governs the default judgment entered on 23 April 2024. While CPR Part 12 provides a general mechanism for obtaining default judgment where a defendant fails to file an acknowledgment or defence, the nature of the relief sought is material to whether such judgment may properly be granted. Declaratory relief and rectification orders are discretionary remedies that cannot be granted mechanically upon proof of non-response. They require the Court to be satisfied on the evidence that the claimant has established entitlement to such relief.
25. The rationale is straightforward: one cannot simply assert that the Defendant didn't show up, so give me a declaration that I own these shares. The Court must hear evidence and be satisfied that the Claimant is entitled to such declaration. A default judgment presupposes claims amenable to summary determination.
26. Simply put, a declaratory relief require judicial scrutiny.

Analysis and Findings

27. The chronology of events is stark:

- i. The original writ was issued on 26 July 2021 and amended on 1 October 2021.
 - ii. The Concurrent Writ was filed on 25 January 2022.
 - iii. Pursuant to Order 6 Rule 7(1) RSC, the writ expired twelve months thereafter on 25 July 2022.
 - iv. The Claimant purported to serve the Concurrent Writ on the Third Defendant on 15 December 2022 nearly five months after expiry.
 - v. Leave to extend the validity of the writ was not obtained until 26 January 2023, more than one month after the purported service on the Third Defendant.
 - vi. Default judgment against the First through Third Defendants was entered on 23 April 2024.
28. The legal consequence is inescapable. Service effected after expiry but before the extension was granted is invalid and of no legal effect. The authorities are clear and consistent on this point. In the absence of a valid writ at the time of service, no obligation to enter an appearance or file a defence arises. The purported service on the Third Defendant was a nullity.
29. The subsequent *ex parte* Order of 26 January 2023 extending the validity of the writ cannot retroactively validate service already effected. An extension granted after service has been attempted does not cure the defect; it operates prospectively only. To hold otherwise would render the twelve-month limitation meaningless and deprive the Defendants of the statutory protection that Parliament intended to confer.
30. The logic is simple but inexorable, if service is attempted on **15 December 2022** when the writ had already expired on **25 July 2022**, that service is invalid at the moment it is purportedly effected. An Order made **six weeks later** on **26 January 2023** cannot reach back in time to breathe life into a void act of service. The temporal sequence cannot be reversed; the defect is irreparable save by fresh service following extension.
31. The Claimant's submissions on this point are conspicuously deficient. No evidence has been adduced to explain the delay in seeking an extension, nor any demonstration that reasonable efforts were made to serve within the period of validity as required under Order 6 Rule 7(2). The Court is entitled to expect; indeed to demand, punctilious compliance with rules governing the temporal validity of process. These rules exist not as mere technicalities but as substantive protections ensuring that litigation is conducted within reasonable time frames and that Defendants are not ambushed or prejudiced.
32. The failure to obtain an extension before expiry followed by service during the interregnum, constitutes a material procedural irregularity.
33. This irregularity alone vitiates the default judgment entered against the Third Defendant and necessitates its mandatory setting aside under CPR 13.2.
34. A further, independent ground of irregularity arises from the Third Defendant's conditional appearance. The Third Defendant was granted leave to enter and did enter a conditional appearance pursuant to Order 12 RSC. Thereafter, the Third Defendant filed an application

to strike out the Amended Writ, which remained undetermined at the time the Deputy Registrar entered default judgment on 23 April 2024.

35. Order 12 Rule 7(1) RSC is expressive and unambiguous: where a conditional appearance has been entered, no default judgment should be obtained until the challenge to the writ or service is determined. It exists precisely to permit preliminary objections to validity, jurisdiction and service which ought to be resolved before a Defendant is compelled to engage with the substantive merits.
36. The rationale is compelling. A Defendant who enters a conditional appearance is not submitting to the jurisdiction; rather, the Defendant is asserting that the Court lacks jurisdiction or that process is defective. To permit default judgment to be entered in these circumstances would be to render the conditional appearance mechanism entirely nugatory. It would allow a Claimant to bypass preliminary objections by the simple expedient of seeking default judgment before those objections are heard, a result that is plainly contrary to the purpose of Order 12.
37. The entry of the default judgment whilst the strike-out summons remained extant was procedurally impermissible. The Court file disclosed both the conditional appearance and the summons to strike out. So, there can be no suggestion of inadvertence or oversight that might excuse this error.
38. Therefore, the Court finds that the default judgment entered against the Third Defendant is fundamentally and fatally irregular by reason of (i) the invalid service arising from the expiry of the writ, (ii) the subsistence of a conditional appearance and an extant strike-out summons at the time judgment was entered.

Service on the First Defendant: Non-Compliance with the Order for Service Out Jurisdiction

39. The Court now turns to consider service on the First Defendant, a foreign corporation incorporated in the Republic of China (Taiwan). The Order granting leave for service out of the jurisdiction authorized personal service. The Affidavit of Hsiao Chun-Yu filed 27 October 2022 discloses that the process server attended at the First Defendant's registered office, that an employee refused to accept the documents, and that the process server thereupon left the documents at the door.
40. Personal service on a corporate entity requires service upon the registered office or an officer of the company that is, a president, secretary, treasurer, director, or other officer duly authorized to accept service or service in accordance with a method expressly authorized by the Court or permitted under the law of the jurisdiction where service is to be effected (see Order 11 Rule 5 of the RSC).

41. The Court observes that the Claimant's affidavit evidence is entirely silent as to what constitutes proper and lawful service upon a body corporate under the laws of the Republic of China (Taiwan). Where service is to be effected in a foreign jurisdiction, the concurrent writ must be served in accordance with the procedural requirements of the host country or through recognized treaty conventions. The Court cannot presume compliance with Taiwanese corporate service requirements in the absence of evidence addressing those requirements. The burden ordinarily rests upon the Claimant to establish that service was effected in a manner recognized as valid under "*lex loci*" the law of Taiwan or in accordance with applicable international convention.
42. No such evidence has been adduced. The Affidavit of Hsiao Chun-Yu filed on 27 October 2022 is devoid of any reference to Taiwanese law governing service on corporations, whether service by leaving documents at a registered office door is permissible under Taiwanese procedure, or whether any alternative method authorized by Taiwanese law was employed or even considered.
43. This evidentiary lacuna is critical to the Claimant's assertion of valid service. Service in a foreign jurisdiction is not a matter of unilateral action by a process server employing Bahamian concepts of service; it is a matter of compliance with the legal requirements of the host country or applicable treaty.
44. However, the First Defendant has not challenged service on this ground. The Court is mindful that it must adjudicate the issues raised by the parties before it and must exercise restraint in raising matters *sua sponte* that the parties themselves have not advanced. To do otherwise would be to risk the appearance of litigating from the bench, a course inconsistent with the judicial function.
45. More significantly, the First Defendant filed an Amended Notice of Application on 9 April 2025 seeking leave to file an acknowledgment of service out of time. This application was not filed in the alternative or subject to a challenge to service; it was filed as a substantive application seeking an indulgence to enter an appearance notwithstanding the delay.
46. By seeking leave to enter an appearance, the First Defendant has impliedly acknowledged the validity of service and submitted to the jurisdiction of this Court. An application for an extension of time to file an acknowledgment of service presupposes that service was effective and that the obligation to acknowledge has arisen; it does not challenge the foundation of that obligation.
47. In these circumstances, the Court will accept the presumption of validity of service as against the First Defendant and will not interfere with the issue of service on grounds not raised by that Defendant. The Court's role is to determine the issues properly placed before it by the parties, not to search out irregularities that the parties themselves have not advanced or may have elected to waive.
48. Accordingly, while the evidential deficiencies noted above remain a matter of concern and ought to have been addressed by the Claimant in the ordinary course, the Court will not set

aside the default judgment as against the First Defendant on the ground of defective service, given that this ground was not raised by the First Defendant and that the First Defendant's application for leave to enter an appearance out of time constitutes a submission to jurisdiction.

Declaratory Relief and Default Judgment

49. Even if my position as it relates to the validity of the foreign service is incorrect, an additional and critical irregularity arises from the nature of the relief endorsed on the writ and purportedly granted by the default judgment entered on 23 April 2024. The Claimant seeks *inter alia* declarations as to the validity of shares and rectification of the company register of shareholders and directors. These are forms of relief that require careful judicial scrutiny even under the CPR framework.
50. The default judgment entered on 23 April 2024 was obtained under the Civil Procedure Rules 2022, the CPR having come into force on 1 March 2023. The Court must therefore consider whether default judgment for declaratory and rectification relief is permissible under the CPR regime.
51. While CPR Part 12 provides a general mechanism for obtaining default judgment where a defendant fails to file an acknowledgment or defence, the availability of such judgment is not unlimited. Declaratory relief and rectification of a company register are discretionary remedies that require the Court to be satisfied on the evidence that the claimant is entitled to such relief. These are not liquidated claims or quantified damages that can be granted as a matter of arithmetic upon proof of non-response; they are judicial pronouncements as to legal rights and equitable remedies that demand the exercise of judicial discretion.
52. A declaration is a solemn pronouncement by the Court as to the existence or non-existence of legal rights. Rectification of a company register is an equitable remedy that may affect the rights and interests of third parties not before the Court. Neither can properly be granted in default, that is, without the Court hearing evidence and being satisfied on the merits that the claimant has established entitlement to such relief.
53. More fundamentally, the default judgment of 23 April 2024 was entered jointly against the First through Third Defendants. The Order does not differentiate or sever the relief granted as between the individual Defendants; it purports to grant declaratory and rectification relief against all three Defendants collectively.
54. Given the Court's findings that service on the Third Defendant was invalid by reason of the expiry of the writ, and that the conditional appearance operated as a bar to default judgment against the Third Defendant, the default judgment as against the Third Defendant is irregular and must be set aside. This finding has a necessary and inescapable consequence. As such, the default judgment cannot stand in part.
55. The declaratory relief sought as to the share validity and rectification of the register is indivisible. One cannot declare that certain shares are valid or invalid "as against the First

Defendant and not the Third Defendant,” nor can one rectify a shareholders register in part. The declaratory and rectification relief, if it is to be granted at all, must be granted as a coherent whole following a determination on the merits that encompasses all parties whose rights and interests are affected.

56. As a matter of practical necessity and legal coherence, where a default judgment grants indivisible declaratory and rectification relief against multiple Defendants jointly, and where the judgment is found to be irregular as against one of those Defendants, the judgment must be set aside in its entirety. To permit the judgment to stand as against the First Defendant while setting it aside as against the Third Defendant would be to create an incoherent and legally unsustainable state of affairs in which the same shares are simultaneously declared valid and not declared valid, and the same register is simultaneously ordered rectified and not ordered rectified. The Court cannot unpick that which was granted as an indivisible whole.
57. Accordingly, the default judgment of 23 April 2024 must be set aside in its entirety, both by reason of the irregularity as against the Third Defendant (which vitiates the judgment as a whole given the indivisible nature of the relief) and by reason of the impropriety of granting declaratory and rectification relief by way of default judgment without the Court being satisfied on the evidence of the Claimant’s entitlement to such discretionary remedies.
58. Accordingly, it is unnecessary for the Court to consider whether the Defendants would satisfy the criteria for discretionary relief under CPR 13.3 (promptness, good explanation, and real prospect of success). The Court notes however, that had discretion been engaged, the delay between entry of judgment (23 April 2024) and the filing of these applications (9 April 2025) would have required cogent explanation which is absent from the evidence.
59. For the reasons set out in this Ruling, the Court makes the following Orders:
60. The judgment in default entered on 23 April 2024 against the First and Third Defendants is **set aside** pursuant to CPR 13.2 on the grounds of irregularity, including but not limited to:
 - i. Invalid service on the Third Defendant by reason of the expiry of the writ prior to service;
 - ii. The subsistence of a conditional appearance and an extant strike-out summons at the time judgment was entered;
 - iii. The unavailability of default judgment for declaratory and rectification relief contrary to RSC Order 13 Rule 6(1); and
 - iv. The indivisible nature of the declaratory and rectification relief granted jointly against the First through Third Defendants, which cannot stand in part given the irregularity as against the Third Defendant and must be set aside in its entirety as a matter of practical necessity and legal coherence.

61. The First Defendant shall file an Acknowledgement of Service within 14 days from the date of hereof.

62. The Third Defendant's summons to strike out the Amended Writ and Concurrent Writ shall be listed for hearing before a Judge of the Supreme Court.

Costs

63. Costs of these applications are reserved and shall be costs in the cause, to be determined by the trial Judge or as otherwise directed following the hearing of the strike-out summons.

Dated: This 17th day of December A.D. 2025

[Original signed & sealed]

Renaldo Toote

Registrar