

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity

2017/CLE/gen/00547

BETWEEN

TRACY GIBSON

Claimant

AND

NASSAU GAS AND TANKS COMPANY LIMITED

Defendant

Before: Assistant Registrar Adrienne Bellot (Acting)

**Appearances: Samuel Taylor with Lorna Longley-Rolle for the Claimant
Camille Cleare for the Defendant**

Hearing date: 9th April, 2026

RULING

The Claimant applied for leave to enter judgment in default of Defence against the Defendant. The Defendant then applied to strike out the action pursuant to Rule 26.3(1)(a) of the Supreme Court Civil Procedure Rules, 2022 by reason that the Claimant breached Rule 8.2 by not filing its Statement of Claim together with the initiating document, the Writ of Summons, which was filed under the former Rules of Supreme Court. In the alternative, the Defendant sought an order extending the time to file its Defence.

These are the Court’s reasons for (a) dismissing the Defendant’s application to strike out the action, (b) dismissing the Claimant’s application to enter judgment in default of defence and (c) extending the time for the filing of the Defence.

Introduction

1. There are now effectively three (3) extant applications before the Court:
 - a. An application filed 8th August, 2025 by the Claimant for judgment in default of defence (“the Default Judgment Application”);
 - b. An application filed 18th November, 2025 by the Defendant to strike out the proceedings (“the Strike Out Application”) and;
 - c. Alternatively in relation to (b) above, an extension of time for the Defendant to file its Defence.

Facts/procedural history

1. By Generally Indorsed Writ of Summons filed 28th April, 2017, the Claimant commenced proceedings against her former employer, the Defendant company for breach of contract and breaches of statutory and common law duties owed to the Plaintiff.
2. The Defendant entered an appearance on 14 March, 2018.
3. On 1st July, 2025, approximately seven (7) years after commencing the action, the Claimant filed her Statement of Claim.
4. On 29th July, 2025, the day on which the period for filing a Defence expired, Counsel for the Defendant e-mailed the Claimant’s Counsel seeking to extend the time to file the Defence until 26th August, 2025. The Claimant’s Counsel did not respond to the request.

5. On 8th August, 2025, the Claimant filed a Notice of Application to enter judgment in default of Defence against the Defendant. An Affidavit in response to the Claimant's default judgment application was filed on 26th August, 2025. That Affidavit exhibited a draft Defence.
6. Thereafter, the Defendant filed the Strike out Application and alternatively applied for an order extending the time for filing its Defence.

Strike out application

7. It is most comprehensive to address the Strike Out Application first since, although it was not made first in time, if the action is struck out, the Default Judgment and extension of time applications both fall away. Further and in any event, the judgment of Saunders JA (Ag.) of the St. Kitts and Nevis Court of Appeal in **St. Kitts Nevis Anguilla National Bank Ltd. v Caribbean 6/49 Limited Civil Appeal No. 6 of 2022** made it clear that an application for default judgment should not be heard before an application by the Defendant to strike out the action. At paragraph 17 of the judgment, Saunders JA (Ag.) explained that since a strike out application could potentially bring an end to the proceedings, that was sufficient in itself for that application to be heard first. Accordingly, depending on the outcome of the Strike Out Application, there might be no claim to which a default judgment may be entered in.
8. Pursuant to Rule 26.3(1)(a) of the Supreme Court Civil Procedure Rules, 2022 (“**the CPR**”) the Defendnat seeks an order for the dismissal of the proceedings on the ground that there has been a failure to comply with Rule 8.2 of the CPR. Rule 8.2 requires the claim form to be issued together with the Statement of Claim save for

the closed list of circumstances set out in Rules 8.2(1)(a) and (b) through 8.2(3), none of which apply in the instant case.

9. Rule 26.3 of the CPR gives the Court jurisdiction to strike out a statement of case. The Rule provides:

“26.3 Sanctions – striking out statement of case.

(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that –

(a) There has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings”

10. Rule 8.2 governs the requirement to file and serve the Statement of Claim with the claim form and provides the exceptions to this requirement:

“8.2 Statement of claim, etc. to be issued and served with claim form

(1) A claim form may be issued and served without the statement of claim, affidavit or other document required by rule 8.1 (2) (b) or (c) only if the –

**(a) claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9; or
(b) the Court gives permission.**

(2) In a case of emergency when it is not practicable to include in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9 or first to obtain the permission of the court a claimant may issue and serve the claim form without a statement of claim or affidavit or other document required by rule 8.1(1) (b) or (c) provided that the claimant –

(a) certifies in writing that the issue and service of the claim form is a matter of emergency, stating why; and

**(b) serves a copy of the –
i. certificate; and
ii. application for permission; with the claim form.**

(3) If a claim form is issued under paragraph (2), unless the Court otherwise orders, pending the granting of permission by the Court, the claimant may take no further steps except to serve the claim form, together with the certificate and application for permission, and to take such steps as are necessary to pursue the application for permission.”

11. Counsel for the Defendant, Ms. Cleare, contended and Counsel for the Claimant, Mr. Taylor, did not dispute that none of these exceptions apply so as to save the Claimant from being deemed non-compliant with Rule 8.2.
12. In response thereto, however, Mr. Taylor submitted that as the action was begun by Writ of Summons and not claim form, the requirements of Rule 8.2 do not apply. Although Mr. Taylor in his submissions did not expressly tie the Writ of Summons to the fact that the action was commenced under the Rules of the Supreme Court (“**the old rules**” or “**the RSC**”), this is a fundamental question: does CPR Rule 8.2 apply although the proceedings were commenced under the RSC?
13. The CPR, by its preliminary sections, came into effect on 1st March, 2023. These rules apply to all civil proceedings commenced on or after that date. These rules also apply to civil proceedings commenced prior to 1st March, 2023 where a date had not been fixed for trial or where a trial date had been fixed but adjourned.
14. Also by the CPR’s preliminary sections, the RSC was repealed but is subject to the Savings and Transitional clause which provides for the continued application of the RSC to proceedings that had already proceeded to trial.
15. In **Stefanie Ann Schaffer et al v Clayton Patterson Smith et al 2021/CLE/gen/00708**, Card-Stubbs J dealt with the transition from the old rules to the CPR where Counsel made submissions under both the old rules and the CPR. Her Ladyship made it clear that although the action and the interlocutory application were filed under the RSC, the applicable regime in that case was the CPR since it was the regime in place at the time the application/summons was listed for hearing.

16. The decision is helpful as to the application of the transitional principles. However, the issue in the instant case seems more nuanced. In **Stefanie Ann Schaffer [supra]**, the question was which set of rules applied where the action and the interlocutory application had been filed under the RSC but where the hearing of that application occurred after the commencement date of the CPR. By contrast, in the instant case, the question is whether the requirement under the CPR to file the Statement of Claim with the claim form can be applied to the Writ of Summons that was filed under the old rules when no such requirement existed, with the effect that the Writ of Summons ought to be deemed non-compliant with the CPR.
17. There is no question that the CPR applies generally to the action at this stage. However, the question is whether the Claimant should be deemed non-compliant with the CPR for failing to file the Statement of Claim with the Writ of Summons despite there having been no similar requirement for the Writ of Summons under the RSC when it was filed.
18. In my judgment, Ms. Cleare's attempt to apply CPR 8.2 to the Claimant's Writ of Summons filed under the RSC is misconceived. Rule 8.2 governs *claim forms* exclusively. It is true that many of the actions that would have been commenced by Writs of Summons under RSC would now be filed as Claim Forms under CPR, in the same way that many actions begun by Originating Summons under the old rules would now be commenced by Originating Application under the CPR. Nevertheless, the initiating documents under the old regime are still different from those under the new regime. In my view, the CPR cannot impose a requirement relating to a Claim Form to a Writ of Summons with the effect that the action should be struck out for non-compliance with a rule that was not then in force. If the CPR intended for the requirement to file a Statement of Claim with all initiating

documents, Rule 8.2 would not have been drafted in such a way to apply to claim forms in particular.

19. It follows that the Claimant is not in breach of Rule 8.2 for failing to file a Statement of Claim with the Writ of Summons at the commencement of the proceedings. The Defendant's Strike Out Application is therefore dismissed.

Default judgment application

20. The Claimant applied for judgment in default of Defence on the basis that the time for filing passed without the Defendant filing a Defence, which the Defendant does not dispute. However, Ms. Cleare opposes the Default Judgment Application, contending that all of the requirements for judgment in default of Defence under Rule 12.5(b) have not been met. Rule 12.5 provides:

“12.5 Conditions to be satisfied – judgment for failure to defend.

The claimant may enter judgment for failure to defend if —

(a) the claimant proves service of the claim form and statement of claim or an acknowledgement of service has been filed by the defendant against whom judgment is sought;

(b) the period for filing a defence and any extension agreed by the parties or ordered by the Court has expired;

...”

21. Ms. Cleare's submission was that the condition at 12.5(b) has not been met because she wrote to Counsel for the Claimant by e-mail requesting an extension for filing the Defence and Counsel did not respond. She urged the Court to consider the timeline which she says would render entering default judgment grossly unfair – the Defendant's seven (7) day delay in filing its Defence with a valid excuse for such delay together with a meritorious draft Defence in circumstances where the Claimant herself filed the Statement of Claim out of time and without permission.

22. In relation to Rule 12.5(b), it must be noted that while the Defendant's Counsel *sought* an agreement with the Claimant's Counsel, the parties had not actually agreed to an extension of time for the filing of the Defence.
23. However, the Court agrees with Ms. Cleare that seeking to enter judgment in default of defence so soon after the deadline for filing where the default judgment applicant herself is guilty of a significant seven (7) year delay in filing a statement of claim seems unreasonable.
24. I further agree with Ms. Cleare that the Defendant's good faith and intention to progress the proceedings was demonstrated by the unanswered request for an extension made on the day of the expiration of the period for filing the Defence. The Ruling of Adderley J in **Gonzalez Brothers Furniture Exchange Limited v Chipman-Godet [2007] 5 BHS J No 25** is helpful in considering the customary courtesy between Counsel and its importance to administering justice expeditiously, economically and fairly. This mandate was set out initially by Order 31A of the RSC and is now set out in the overriding objective of the CPR. At paragraph 15, Adderley J said:

"15. Counsel for the Defendant drew attention to the evidence that counsel for the plaintiff did not write counsel for the defendant in what she described as "the usual customary courtesy reminder letter advising that the time limited for entering a defence had expired and giving seven (7) days to enter a defence". While I agree with counsel for the plaintiff that this is not mandatory I note Rule XVI 3 of the Code of Professional Conduct reads in part as follows:

"...Where the attorney knows that another attorney has been consulted in a matter he should not proceed by default in such matter without enquiry or warning..."

This is particularly germane now in light of the philosophy of the new Case Management Order 31A of the Rules of the Supreme Court aimed at ensuring the fair, expeditious and economic trial of the issues as it can in most cases save costs and time and, where the delay is not undue, do so without any real prejudice to the other party."

25. On the facts of **Gonzalez Brothers Furniture Exchange Limited [supra]**, Adderley J observed that as no Memorandum of Appearance had been filed, it was not clear to Counsel for the Claimant that the Defendant had Counsel to whom he could have warned or enquired with. The same cannot be said by the Claimant in this case. As the objective of Order 31A under the RSC was effectively the same as the overriding objective of the CPR, the reasoning of Adderley J is perfectly applicable. The delay on the part of the Defendant was not undue and its Counsel sought an extension from the Claimant's Counsel. In the circumstances, it seems unnecessarily costly for the Claimant to apply to enter judgment in default of Defence.
26. It is well-established that where a defendant opposes default judgment and there is material before the Court showing that it is likely that the default judgment may be set aside under Rule 13.3 would be satisfied, it would be a waste of resources, and wrong in principle for the Court to enter default judgment. The just course in such circumstances is for the Court to exercise its discretion to decline entering default judgment notwithstanding that strictly speaking, the conditions have been met.
27. Moreover, if a Defence has been entered, even if it was done so irregularly, its merit ought to be considered by the Court in exercising discretion as to whether it should allow default judgment. The merits of the Defence is a relevant consideration to deciding whether to allow a default judgment just as it is a relevant consideration when deciding whether to set aside a default judgment, since the court will not enter a judgment which it would afterwards set aside on proper grounds being shown. See **Lux Locations Ltd. v Yida Zhang [2023] UKPC 3** where the Privy Council gave

direction as to the proper course where a defendant opposes a claimant's default judgment application:

“66. If at the hearing of an application for the court to determine the terms of a default judgment under rule 12.10(4) it can be seen on the material before the court that the conditions in rule 13.3(1)(b) and (c) are satisfied, it is a waste of resources, and in the Board's view wrong in principle, for the court to enter a judgment which proper grounds have already been shown for setting aside. The just and expedient course in such a case is to exercise the court's discretion to decline to enter judgment in the first place.

67. This is also how historically the matter has been approached. In *Gibbings v Strong* (1884) 26 Ch D 66 a defence was delivered late but before the hearing of a motion for judgment under Order XXIX, rule 10 (quoted at para 53 above). The judge refused to look at the defence and gave judgment for the relief claimed in the statement of claim. The Court of Appeal held that this was a wrong approach. The Earl of Selborne LC said, at p 69, that:

“if a defence has been put in, though irregularly, I think the Court would do right in attending to what it contains. If it were found to contain nothing, which, if proved, would be material by way of defence, the Court would disregard it. If, on the other hand, it discloses a substantial ground of defence, the Court will not take the circuitous course of giving a judgment without regard to it, and obliging the defendant to apply ... to have that judgment set aside on terms, but will take steps to have the case properly tried on the merits.”

28. The Defendant exhibited to the Affidavit of Samovia Miller filed 26th August, 2025 a draft Defence, the contents of which satisfy this Court that the Defendant has a good and arguable Defence. As such, I hereby dismiss the Claimant's application to enter judgment in default of Defence and order the Defendant to file and serve its Defence no more than seven (7) days from the date of this Ruling.

Conclusion

29. The Claimant prompted this hearing by applying for default judgment in circumstances described hereinbefore. The Defendant also filed its own Strike Out Application, an application that was also unsuccessful. The Defendant successfully obtained leave to file its Defence out of time, but as it was out of time, the Defendant ought not be rewarded with costs. Both sides disproportionately magnified minor issues. I hereby order that the costs of these applications be costs in the cause.

Dated this 29th day of April, 2026



Adrienne Bellot

Assistant Registrar (Acting)