

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2025/CLE/gen/00469

IN THE MATTER of the Employment Act Chapter 321A

IN THE MATTER Public Hospitals Authority Act, 1998 Chapter 234

IN THE MATTER of Constructive and or Wrongful Dismissal

IN THE MATTER of Unfair Dismissal

**IN THE MATTER of Punitive and or Exemplary Damages for Oppressive, Arbitrary and or
Unconstitutional Breach and Termination of Contract of Employment.**

Between:

KHAULA REID

Claimant

AND

THE PUBLIC HOSPITAL AUTHORITY

Defendant

Before: Assistant Registrar Akeira Martin

**Appearances: Mr. Cyril Morris for the Claimant
Mrs. Sharon Rahming-Rolle for the Defendant**

Hearing Date: On the Papers

Ruling Date: 23rd July 2026

RULING – SETTING ASIDE DEFAULT JUDGMENT

1. This ruling determines whether the Claimant's Judgment in Default of Defence, which was entered on 8th October 2025 (the "Default Judgment") should be set aside. By the Default Judgment, the Defendant has been found to be liable for constructively and unfairly dismissing the Claimant and breaching her employment contract.

2. The Default Judgment was entered as a result of the Defendant's failure to file a Defence fourteen (14) days after it filed its Acknowledgement of Service on 27th June 2025 in response to the Claimant's Standard Claim and Statement of Case which was filed 10th June 2025 (the "Claim").
3. After being granted leave to enter the Default Judgment, the Claimant filed and served the Defendant with a Notice of Assessment on 8th December 2025 and a Directions Hearing was set for the 30th March 2026.
4. Prior to the Directions Hearing, the Defendant filed its Notice of Application as supported by its Affidavit of Antoinette Ginton on 27th March 2026 (the "Ginton Affidavit") seeking to set aside the Default Judgment (the "Set Aside Application").

The Set Aside Application

5. The Defendant's Set Aside Application is made pursuant to **Rule 13.3 of the Supreme Court Civil Procedure Rules, 2022 (the "CPR")**. It also seeks an order to extend the time to file its Defence pursuant to **Rule 10.3(8) of the CPR**. The Defendant grounds its application on experiencing an administrative error but contends that it has a good and arguable defence which is very likely to succeed.
6. More specifically, the Defendant avers that the Claimant's claim is statute barred as by para. 38 of her Statement of Claim, she stated that she was constructively dismissed on 30th April 2021 however, her action was not filed until 10th June 2025, some 3 years after the alleged cause of action arose.
7. Additionally, the Claimant was medically boarded in accordance with the Defendant's policies, the relevant Industrial Agreement and the Pensions Act and that she was not constructively or unfairly dismissed as alleged.
8. The Defendant further avers that the decision to medically board the Claimant arose as a direct result of the contents of a medical letter presented to the Defendant by the Claimant's physician who specified that the Claimant was not able to work in or near a hospital environment which was supported by Dr. Paul Hunt's ("Dr. Hunt") information form to the Defendant stating that the Claimant would never be able to return to work; details which the Defendant intends to plead in its defence.
9. The Defendant relies on **Part 13 Rules 13 (3) and 14 (4) of the CPR** which states,

"Rule 13 (3) Cases where Court may set aside or vary default judgment.

(1) If rule 13.2 does not apply, the Court may set aside a judgment entered under Part 12 only if the defendant —

- (a) applies to the Court as soon as reasonably practicable after finding out that judgment had been entered;
 - (b) gives a good explanation for the failure to file an acknowledgement of service or a defence as the case may be; and
 - (c) has a real prospect of successfully defending the claim.
- (2) In any event the Court may set aside a judgment entered under Part 12 if the defendant satisfies the Court that there are exceptional circumstances.
- (3) Where this rule gives the Court power to set aside a judgment, the Court may instead vary it.

13.4 Applications to vary or set aside judgment – procedure.

- (1) An application may be made by any person who is directly affected by the entry of judgment.
- (2) The application must be supported by evidence on affidavit.
- (3) The affidavit must exhibit a draft of the proposed defence.”

10. Further, in its draft defence it seeks to rely on the information produced by the Claimant’s Dr. Hunt who outlined the limitations of the Claimant in carrying out tasks for which she was employed. As a result, the Defendant was unable to find alternative, suitable accommodations for the Claimant who was medically boarded, being far from any wrongful or unfair dismissal. Particularly, Dr. Hunt advised that the Claimant was not able to work in or near a hospital environment and in his information form he stated that she would never be able to return to work.
11. Also in its draft Defence is the claim that the matter is statute barred based on the fact that the Defendant is a statutory body and the alleged constructive dismissal took place on 30th April 2021 notwithstanding the action was filed 10th June 2025, some three (3) years after the alleged cause of action arose.
12. The Defendant cites Lord Atkins’ findings in **Evans v. Bartlam [1937] 2 ALL ER 646 at 650**, who after discussing the requirements to be met by an applicant noted,
- “unless and until the court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure.”**
13. The Defendant also relies on **Cordelia Delores Ward et al v FML Group of Companies Limited 2022/CLE/gen/00484** where at paras. 24 and 25, Fraser J (as she then was) stated,

“In determining whether to set aside a judgment in default, the Court’s primary consideration in upholding justice is predicated upon the Defendant’s real prospect of success in defending the claim.”

14. While considering the Saudi Eagle case, Fraser J (as she then was) also noted,

“.....a Defendant must have a substantive, rather than just an arguable, defence for the Court to consider setting aside a default judgment in his favour.”

15. The Defendant relies on Klein J’s consideration of the principles in **Alpha Aviation Limited et al v Randy Larry Butler et al 2021/CLE/gen/01128** where he opined that

“.....if he has shown “merits” the “Court will not, prima facie, desire to let a judgment pass on which there has been no proper adjudication”[ibid p. 489 and per Lord Russell of Killowen at p. 482].”

16. The Defendant submits that because the failure to file a defence was purely an administrative error and oversight due in part to the age of the matter and difficulty in locating all requisite records along with meeting with all relevant stakeholders it should not be punished as it has a good and arguable case with a very real prospect of successfully defending the claim.

Claimant’s Response to the Set Aside Application

17. The Claimant filed the Affidavit of Khaula Reid on 28th April 2026 and sought to rely on the same which has been considered.

18. The Claimant submits that the Set Aside Application should be dismissed as the Defendant fails to satisfy either limb of **Rule 13.3(1) of the CPR**, it is an abuse of process, and the proposed defence has no real prospect of success. **Rule 13.3(1) of the CPR** states,

“ If rule 13.2 does not apply, the Court may set aside a judgement entered under Part 12 only if the defendant –

(a) “ If rule 13.2 does not apply, the Court may set aside a judgment entered under Part 12 only if the Defendant –

(b) gives a good explanation for the failure to file an acknowledgement of service or a defence as the case may be;

and

(c) has a real prospect of successfully defending the claim.....”

19. The Claimant relies on the case of **BAF Financial & Insurance(Bahamas) Ltd v Kendal Williams Construction Ltd SCCiv & CAIS No.136 of 2022** where Barnett P (as he then was) affirmed the Learned Judge’s decision to dismiss the set aside application based upon his reliance on the **Nolan v Devonport** case where the debtor application to set aside was refused and at para. 36 sub para. 17 it was opined:

“36. In addressing the delay in Nolan v Devonport the court observed that:-

[17] In my judgment, it is clear that the real reason for seeking to set aside judgment is to frustrate enforcement. Had the real reason been that the Second Defendant had a meritorious defence, then, in all the circumstances, she would surely have wished to apply to have such a significant judgment set aside immediately. The former reason, in my judgment, is capable of being an abuse of the court’s procedure.”

20. The Claimant submits that where a debtor takes no steps until the creditor moves to enforce the judgment, and only then applies to set it aside, the application ought to be refused because the debtor’s conduct amounts to an abuse of process.
21. The Claimant also submits that a good defence must be realistic as opposed to a fanciful, prospect of success and that an “arguable” defence must carry some degree of conviction” and further relies on Barnett P’s findings in **BAF Financial & Insurance (Bahamas) Ltd v Kendal Williams Construction Ltd** where he quoted the English Court of Appeal’s decision in **R (a child) [2019] EWCA Civ 895** where it was stated at para. 41,

“.....the first limb of the relevant sub-rule is that the appeal would have a real prospect of success. As stated in Tanfern v Cameron-MacDonald (Practice Note) [2001] 1 WLR 1311 CA at [21], which itself follows Swain v Hillman [2001] 1 AER 91 CA, there must be a realistic, as opposed to fanciful, prospect of success. There is no 19 requirement that success should be probable, or more likely than not.”

22. Barnett P went on to quote from **Hanna & another v Lausten SCCivApp.No.3 of 2014** where it was stated,

“In our opinion, therefore, to arrive at a reasoned assessment of the justice of the case the Court must form a provisional view of the probable outcome if the judgment were to be set aside and the defence developed. The “arguable” defence must carry some degree of conviction.”

23. In response to the Defendant’s intended limitation defence the Claimant relies on the statutory provision of the **Limitation Act 1995 Chapter 83 (the “Act”)**, specifically **section 5 (1) of the Act** which provides that:

5. (1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say — (a) actions founded on simple contract (including quasi contract) or on tort.....”

24. The Claimant further addresses the issue of limitation by placing reliance on the case of **Amber Anderson -Thomas v Deepak Bhatnagar et al 2015/CLE/gen/00282** where Charles J (as she then was) considered, *inter-alia*, whether a litigant was statute barred from bringing a breach of employment contract action after the one-year limitation period against the Crown. At para. 45 she stated:

“45 It cannot be disputed that the limitation period for personal injuries claims is three years or the date (if later) of the plaintiff’s knowledge. For tort and breach of contract, the statutory period of limitation is six years.”

25. The Claimant goes on to submit that an employee may consider himself constructively dismissed immediately after an employer commits a repudiatory conduct and relies on **Island Hotel Company Limited v Leonardo Dean IndTribApp No.120 of 2020** where the Court of Appeal considered the issue of constructive dismissal and the Honourable Sir Michael Barnett P at para. 36 postulated:

“36. It is also settled law that if an employee wishes to treat an employer’s conduct as having repudiated the employment contract entitling him to regard himself as having been discharged, he must do so after the repudiatory conduct. If he does not do so he will be regarded as having affirmed the contract.”

26. The Claimant also submits that every employee is entitled to be given notice or payment in lieu of notice before being terminated and cites the findings of Lord Hoffmann in **Johnson v Unisys Limited [2001] UKHL 13** where he held that,

“[39] The effect of such a provision at common law was stated with great clarity by McLachlin J of the Supreme Court of Canada in *Wallace v United Grain Growers Ltd* (1997) 152 DLR (4th) 1, 39:

"The action for wrongful dismissal is based on an implied obligation in the employment contract to give reasonable notice of an intention to terminate the relationship (or pay in lieu thereof) in the absence of just cause for dismissal.... A 'wrongful dismissal' action is not concerned with the wrongness or rightness of the dismissal itself. Far from making dismissal a wrong, the law entitles both employer and employee to terminate the employment relationship without cause. A wrong arises only if the employer breaches the contract by failing to give the dismissed employee reasonable notice of termination. The remedy for this breach of contract is an award of damages based on the period of notice which should have been given."

27. Additionally, Section 29 of the Act provides a basic period of notice whereby an employee, whether line staff or management may be compensated with basic pay in lieu of notice. Section 29(1)(c)(i)(ii) of the Act provides that an employee in management is

entitled to one (1) month's basic pay in lieu of notice and one (1) month's basic pay for each year or part thereof served."

28. Also in **Leon Cooper v Grand Bahama Power Company Ltd SCCivApp No.178 of 2017** the Court of Appeal found that the employment contract/agreement made no provision for termination without cause and contained no greater rights than Section 29 of the Act. Delivering the appellate court's judgement, His Lordship Sir Hartman Longley P (as he then was) explained:

"32. It seems to me, therefore, that as a matter of construction or interpretation, when sections 4 and 29 of the Employment Act are read together the only possible construction or interpretation is that parliament must have intended for the Act to have an overarching application to employment contracts unless greater rights or better benefits have been conferred by individual contracts.

"33. Section 29 provides a minimum code to facilitate such a termination without cause. Once an employer complies with that provision to bring an employment to an end there is no unfair dismissal claim that would lie, unless the employee has better terms, under his contract of employment for termination without cause. This is such a case."

29. Further, the Claimant submits that every employee is entitled to not be unfairly terminated and cites **Section 34 of the Act** which provides:

"Every employee shall have the right not to be unfairly dismissed, as provided in section 35 to 40 by his employer."

30. In **B.M.P Limited D/B/A Crystal Palace Casino v Yvette Ferguson IndTribApp No.116 of 2012** the Hon. Mr. Justice Conteh JA stated at para. 37:

"In addition to the right of every employee not to be unfairly dismissed as provided for in sections 36,37,38 and 40, s.35 clearly states that subject to sections 36 to 40 (what we refer to as "statutory unfair dismissal"), the question whether the dismissal of an employee was fair shall be determine in accordance with the substantial merits of the case."

31. The Claimant additionally submits that an employer has a duty to accommodate employees with disability and that the Defendant breached its statutory duty to accommodate the Respondent's disability, rendering the "medical boarding" defence hopeless.

32. In **Island Hotel Company Limited v Cheryl Carey-Brown SCCivApp No. 3 of 2017** the Hon. Sir Michael Barnett JA (as he was then) considered the issue of whether an employer was under a duty to accommodate employees with disability and at para. 31 of the Court's judgment he reasoned:

“Unlike the English Equality Act which defined the “duty of adjustment”, the employment Act does not define or give any indication as to what is meant by the duty to accommodate. However, the concept of the duty to accommodate, employees with disability unless it causes undue hardship is not peculiar to Bahamian Law.”

His Lordship in expanding on the duty to accommodate opined para 37:

“...the duty requires more from the employer than simply investigating whether any existing job might be suitable for a disabled employee. Rather , the law requires an employer to determine whether existing positions can be adjusted , adopted or modified for the employee , or whether there are other position in the workplace that might be suitable for the employee...The case law clearly said that the employers must show that its attempt to accommodate were “serious” “conscientious” “genuine” and demonstrate its “best efforts”...employers must establish that it is “impossible to accommodate individual employees...without imposing undue hardship.”

33. In that regard, her claim that the evidence shows that she was diagnosed with Vocal Cord Dysfunction and Multiple Chemical Sensitivity from workplace exposure, that Dr. Hunt certified on the 25th August 2020 that she could not work in hospitals but that she “should be allowed to work from home”, that she holds a Masters in Health Informatics and had requested “retooling and repurposing for work”, that the Defendant rejected remote work and offered no alternative positions, only retirement and stopped her salary 1st May 2021. Additionally, that the Defendant failed to show that there was any evidence of serious, conscientious efforts or undue hardship, that its duty was breached and that its defence has no prospect.
34. Therefore, the Defendant repudiated the contract, constituting constructive dismissal and that in **Island Hotel v Dean IndTribApp 120 of 2020** it was held that an employee may treat a repudiatory conduct as a discharge. The Defendant stopped the Claimant’s pay on 1st May 2021 while the Respondent remained willing to work from home and rejected accommodation which is repudiatory. Even though the Defendant claims that it medically boarded the Claimant she was paid no salary from May 2021 and did not complete a boarding process. Accordingly, the defence contradicts the documents and carries no conviction.
35. The Claimant submits that the Defendant has provided no good explanation for its failure to defend, contrary to **Rule 13.3(1)(b) of the CPR** and that the Ginton Affidavit deposes only to “administrative oversight”.
36. The Claimant argues that the Defendant filed its Acknowledgement of Service on 27th June 2025 yet filed no Defence for over three (3) months and cited **BAF Financial & Insurance v Kendal Williams Construction Ltd SCCivApp No.136 of 2022** where it

was held that delay without detail is insufficient and that a statutory body with legal counsel cannot rely on vague oversight.

37. The Claimant adds that the Defendant's conduct amounts to an abuse of process under **Nolan v Devonport** as applied in **BAF Financial & Insurance** as it took no steps until three (3) days before the directions hearing for the assessment of damages which was scheduled for 30th March 2026 after the Default Judgment had been entered since 8th October 2025 and the Notice of Assessment had been served on 8th December 2025.
38. The Claimant suggests that the real reason for seeking to set aside the Default Judgment was to frustrate its enforcement which is what the Defendant in **BAF Financial & Insurance** was found to have done. In that vein, the Claimant adds that the timing proves the application is tactical and not meritorious.
39. The Claimant submits that the Defendant has no real prospect of successfully defending the claim, failing **Rule 13.3 (1)(c) of the CPR** as the limitation defence is bad in law. She goes on to say that by Section 5 (1) of the Act a litigant has six (6) years to commence an action for breach of an employment contract. In support, the Claimant relies on the case of **Amber Anderson-Thomas v Bhatnagar 2015/CLE/gen/00282** where the Court confirmed that for breach of contract the statutory period of limitation is six (6) years, explaining that her cause of action accrued 30th April 2021 when her salary ceased and her claim was filed 10th June 2025 within the time allotted. The Claimant also submits that the defence is fanciful as discussed in **Swain v Hillman 1 AER 91**.
40. In respect of her wrongful dismissal claim, the Claimant goes on to submit that the Defendant wrongfully dismissed her by failing to give notice. In **Johnson v Unisys UKHL 13** the House of Lords held that wrong arises only if the employer fails to give reasonable notice. Pursuant to Section 29 of the Act management was entitled to pay representing one (1) month salary in addition to 1 month per year and relies on **Leon Cooper v Grand Bahama Power SCCivApp 178/2017** where it was held that compliance with Section 29 of the Act defeats a claim, that non-compliance creates liability and that in the Claimant's case liability is established.
41. With respect to her unfair dismissal, the Claimant also submits that her dismissal was unfair contrary to Section 34 of the Act as her dismissal was due to reports of substandard practices and filing her Writ of Summons on 21st November 2014 (the "Writ of Summons") which prohibits dismissal for asserting statutory rights. The Defendant's letters show that her salary was stopped for "failure to submit a Medical Certificate" despite having Dr. Hunt's 14th January 2020 form of indefinite incapacity and cites **B.M.P. Ltd v Ferguson IndTribApp 116/2012** where it was held that fairness is determined on substantial merits. There was no investigation, no hearing and no accommodation, therefore her dismissal was unfair.
42. The Claimant goes on to say that she would suffer severe prejudice if the Default Judgment is set aside as she has been without a salary since 1st May 2021 with the exception of vacation payout to 30th November 2021 She is 53, was injured on duty and

has litigated for over a decade. Vacating judgment forces re-litigation of admitted breaches, contrary to the overriding objective and finality principle.

43. Moreover, the balance of justice favours finality and suggests that the Court must form a “provisional view of a probable outcome”. The breach of Section 29 of the Act is admitted, there was no notice paid; the limitation defence is wrong in law; the duty to accommodate was breached on the documents and the medical boarding defence was unsupported. Adding that the probable outcome if the Default Judgment is set aside remains judgment in her favor and that re-opening the case would only serve as a delay.
44. Finally, the Claimant submits that the public policy protects employees injured at work and requires employers to accommodate disability. She was injured from the 22nd November 2013 due to toxic fumes. The Defendant’s Risk Manager found that ventilation was required. Instead of redeploying a qualified nurse with a Master’s Degree, the Defendant stopped her pay. There were no serious, genuine, best efforts to accommodate the Claimant. In the circumstances, to set aside judgment on an administrative oversight rewards a statutory body that ignored Section 34 of the Act and its common law duty. The Court should not exercise discretion to assist a party in breach.

Legal Analysis

45. The jurisdiction to set aside or vary a default judgment which has been entered under **Part 12 of the CPR** is found in **Part 13 of the CPR**. In the instant case, the Defendant seeks to set aside the Default Judgment which the Claimant argues should remain in place.
46. **Part 13.2 of the CPR** is not applicable in the instant case as the Defendant does not allege that any of the conditions in **rules 12.4 and 12.5 of the CPR** were not satisfied or that the Default Judgment was entered irregularly.
47. **Part 13 Rule 13.3 of the CPR** allows the Court to set aside a default judgment entered under **Part 12 of the CPR** where **Part 13.2 of the CPR** does not apply (regularly), and if the Defendant –
- (a) “applies to the Court as soon as reasonably practicable after finding out that judgment had been entered;
 - (b) gives a good explanation for the failure to file an acknowledgement of service or a defence as the case may be; and
 - (c) has a real prospect of successfully defending the claim.
- (2) In any event the Court may set aside a judgment entered under Part 12 if the defendant satisfies the Court that there are exceptional circumstances.
- (3) Where this rule gives the Court power to set aside a judgment, the Court may instead vary it.”

48. **Part 13.3 of the CPR**, has previously been considered in this jurisdiction by several justices of the Supreme Court.
49. In **Cordelia Delores Ward and another v FML Group of Companies Limited [2024] 1 BHS J. No. 215**, Fraser SJ (as she then was) (“Fraser SJ”) when interpreting **Rule 13.3 of the CPR** considered cases such as **Kenrick Thomas v RBTT Bank Caribbean Civil Appeal No 3 of 2005**, **Saudi Eagle [1986] 2 Lloyd’s Rep 221**, **Evans v Bartlam [1973] AC 473** and **ED&F Man Liquid Products Ltd v Patel [2003] EWCA Civ 472**.
50. Fraser SJ held that the three conditions under **Rule 13.3 of the CPR** were homogeneous but that the primary consideration was whether the Defendant had a real prospect of successfully defending the claim. The Defendant must have a substantive, rather than just an arguable defence for the Court’s consideration, there must not be a delay in making the application and the reason for failing to appear to defend the matter must be meritorious.
51. It follows that all three of the criteria set out at **Rule 13.3 of the CPR** must be addressed satisfactorily by a defendant wishing to set aside a default judgment.

Time of delay

52. **Rule 13.3 (1) (a) of the CPR** mandates an applicant to apply to the Court as soon as reasonably practicable after finding out a default judgment was entered against it. The Defendant filed its Acknowledgement of Service on 27th June 2025 but never filed a defence. The Default Judgment was entered on the 8th October 2025. The Notice of Assessment was served on the Defendant on the 8th December 2025. The Set Aside Application was not filed until the 27th March 2026, three days before the directions hearing for the Assessment of Damages.
53. While the delay by the Defendant is not ordinate, the Set Aside Application was not made as soon as reasonably practicable, that is, as soon as it was made aware of its being entered.

Reason for delay

54. **Rule 13.3 (1) (b) of the CPR** requires an applicant to give a good explanation for the failure to file an acknowledgement of service or a defence. In the instant case, the Defendant filed an Acknowledgement of Service but failed to file a Defence. The Defendant argues that an administrative error prevented it from filing its Defence within the time allotted by the CPR.
55. The administrative error complained of by the Defendant pertains to the lapse of time which had passed between the end of the Claimant’s employment and the commencement

of the matter and its attempts to retrieve the information from the relevant stakeholders, the latter reason being used often by the Defendant.

56. Notwithstanding, the CPR contains rules which allow a Defendant to apply for extensions of time to comply with the Rules which were not utilized. The delay in filing prevented the Court from adhering to the overriding objective of the CPR requiring the Court to deal with matters expeditiously.
57. Accordingly, the explanation given by the Defendant was not a good explanation and is overused by the Defendant.

Real Prospect of successfully defending the claim

58. **Rule 13.3 (1) (c) of the CPR** provides that an applicant has to show that there is a real prospect of successfully defending the claim. In order to determine whether the Defendant has a real prospect of successfully defending the claim it is crucial to consider both the Claim itself and the intended defence without forming a view of what the outcome would be at trial. The intended defence must be substantive rather than just an arguable one.
59. By her Claim, the Claimant avers that she is a 53-year-old citizen of The Bahamas who, after graduating from The College of The Bahamas (“COB”) on 29th December 2006 with an Associate of Science degree in Nursing (With Distinction) and on 17th April 2007 being admitted as a Registered Nurse under the Nurses and Midwives Act 1071, commenced her employment with the Defendant.
60. During her tenure with the Defendant she graduated from George Brown College, Toronto, Canada on 17th April 2009, after completing the Registered Nurse – Perinatal Intensive Care Nursing Program with Honours and on the 25th July 2013 graduated from COB with a Bachelor of Science Degree in Nursing (With Distinction). The Claimant also received a Master of Science Degree in Health Informatics from the University of South Florida in the United States of America (the “Master’s Degree”).
61. The Claimant was then employed at the Sandilands Rehabilitation Centre (“SRC”) until her constructive and/or wrongful dismissal by way of letter dated 30th April 2021 (the “30th April Letter”) which informed her that her pay would be discontinued as of the 1st May 2021 after thirteen (13) years and four (4) months of employment causing her damage and loss (the “Dismissal”).
62. The events which she says led to the Dismissal are as follows.
63. On the 22nd November 2013 the Claimant was exposed to toxic fumes after inhaling fresh paint at SRC and by letter of even date informed SRC of the exposure. She was seen by

Dr. Drexel Williams as a result and was off from work until the 2nd December 2013. A day later on the 3rd December 2013 the Maintenance Department again painted on her ward at SRC. The Claimant went outside to avoid the fumes but still experienced red and itchy eyes, itchy nose, coughing, a tight chest, headache and shortness of breath.

64. On the 10th December 2013, Janet Johnson, the Risk Manager at SRC in the National Insurance Employer's Report on Accident at Work (B44 Form) noted that "when painting is going on, the ward needs to be ventilated (fresh air from windows), or arrange for staff and patients to be out of the area".
65. By a memorandum dated 11th September 2014 the Claimant wrote to Herbert Brown, Managing Director of the Defendant requesting a transfer from SRC. In the memorandum the Claimant reported that she was being victimized.
66. The Claimant filed the Writ of Summons against the Defendant claiming damages for personal injuries resulting from toxic fumes at SRC.
67. The Claimant was seen by Dr. Hunt on the 16th July 2016 who diagnosed the Claimant with Vocal Cord Dysfunction precipitated by strong odors. The Claimant was then seen by Dr. Bradley J. Goldstein on the 21st August 2015 who diagnosed her with Multiple Chemical Sensitivity Syndrome.
68. On the 30th July 2019, Dr. Hunt placed the Claimant on sick leave from the 1st to 30th August 2019 to facilitate recovery. Then, on the 3rd September 2019, Dr. Hunt placed the Claimant on sick leave from the 1st to 31st September 2019 to facilitate further recovery.
69. On the 13th September 2019 the Defendant's Human Resources Manager confirmed that the Claimant was off from work due to injury from the 15th January 2014 and that she was expected to return to work on the 1st October 2019. However, on the 1st October 2019, Dr. Hunt placed the Claimant on sick leave commencing the 1st through to the 30th October 2019 to facilitate continued recovery. Dr. Hunt once more placed the Claimant on sick leave on the 29th October 2019 between the 1st to the 30th November 2019 to again facilitate recovery.
70. Subsequently, on the 12th November 2019, Mrs. Juliemae Turnquest ("Mrs. Turnquest"), the Defendant's Human Resources Manager wrote to the Claimant requesting that she complete a "Medical Review Committee Information Form" (the "Medical Form") which was completed by Dr. Hunt on the 14th January 2020 indicating, *inter alia*:
 - The Claimant was suffering from Severe Vocal Cord Dysfunction due to mechanical chemical exposure;
 - The Claimant would likely be unable to perform the usual work function indefinitely;

- It was anticipated that the Claimant would never be unable to return to work;
 - Full recovery was not anticipated.
71. Mrs. Turnquest again wrote to the Claimant on the 11th March 2020 advising her that their records reflected that the Medical Form was not returned and that the Claimant's salary may be withheld pending receipt of it.
72. Thereafter, on the 13th May 2020, Mrs. Chrislyn Benjamin, the Defendant's Assistant Director of Human Resources, wrote the Claimant advising her that her salary would be stopped as of the 1st May 2020 because she had exceeded the fifty-two (52) weeks' period for full paid sick leave.
73. The Claimant again received a letter from the Defendant by way of Ms. Lucille Delancy, Manager II, Human Resources Unit on the 20th August 2020, reminding her of a virtual meeting and claiming that the Claimant was given one month to provide a medical report from a specialist stating that she could return to work as the report from Dr. Hunt indicated that she would never be able to return to work.
74. Mrs. Turnquest then wrote to the National Insurance Board ("NIB") on 24th August 2020 informing NIB that the Claimant:
- Was employed with the Defendant as a Staff Nurse from the 1st January 2008;
 - Suffered a job-related injury on the 22nd November 2013;
 - Last day of work was 21st July 2014.
75. In a letter dated 25th August 2020 addressed to Whom Concerned (the "25th August Letter"), Dr. Hunt advised that the Claimant:
- Was initially seen on the 8th July 2024;
 - Was diagnosed with Vocal Cord Dysfunction;
 - Condition is precipitated by strong odors which causes a paradoxical closure of her vocal cords making breathing difficult;
 - Was not able to work in or near a hospital environment as a consequence of strong odors and smells associated with hospitals;
 - Developed multiple chemical sensitivities and reacts negatively to a myriad of environmental chemicals;
 - Is willing to and should be allowed to work from home.
76. The Claimant herself, by letter dated 20th August 2020 stated that Ms. Delancy was in possession of the 25th August Letter and requested being retooled and repurposed for work.

77. By email dated 24th September 2020, Ms. Delancy acknowledged the Claimant's Master's Degree. In a response email of even date, the Claimant inquired about her redeployment and reinstatement of salary and complained about apparent continued, sustained and mounted abuse.
78. On the 10th November 2020, Mrs. Benjamin wrote to the Claimant informing her that her salary had been reinstated. Months later on the 21st January 2021, Mrs. Benjamin wrote to the Claimant rejecting her work from home request, suggesting the Claimant consider retiring, informing her of vacation leave entitlement and advising the Claimant that any further communication should be directed to the Defendant's Managing Director or Administrator.
79. Thereafter on the 20th April 2021, Mrs. Benjamin wrote to the Claimant advising her that:
- Her salary would be stopped effective 1st May 2021 for failure to submit a Medical Certificate since May 2020;
 - She had 190.75 days of accumulated vacation which she could use to avert the salary stoppage provided she commence vacation on the 1st May 2021 and submit the application before the 10th May 2021.
80. The Claimant was paid her salary of \$3,270.83 which represented accrued vacation up to the period of 30th November 2021.
81. Following, on the 6th October 2024, Dr. Adrian Dean noted that the Claimant suffers from hypersensitivity to certain chemicals which could cause severe anaphylaxis and other adverse effects which could be life threatening.
82. The Claimant averred that her retirement age is sixty-five (65) with a life expectancy of 74.51 years. At the time of the dismissal she was fifty (50), earned a monthly gross pay of \$2,770.83, benefitted from a monthly uniform pay of \$250.00, benefitted from a monthly scarcity pay of \$250.00, was expected to continue working up to the age of retirement at sixty-five (65) or completion of thirty (30) years of service, was entitled to Pension upon retirement after thirty (30) years of service or age sixty-five (65) and was entitled to gratuity upon retirement after thirty (30) years of service or age sixty-five (65).
83. The Claimant also averred that the 30th April Letter amounted to constructive and or wrongful dismissal, unfair dismissal and oppressive, arbitrary and or unconstitutional breach and termination of the Claimant's employment contract after thirteen (13) years and four (4) months of employ causing her damage and loss without paying two (2) weeks basic pay in lieu of two (2) weeks' notice contrary to Section 29 (1) (b) (i) of the Act, two (2) weeks basic pay in lieu of (or part thereof) each year up to twenty-four (24) weeks being six (6) months contrary to Section 29 (1)(b)(ii) of the Act.

84. Moreover, that the Defendant failed to establish any of the misconduct against the Claimant listed in Section 32 of the Act, that there is no sufficient evidence to lead the Defendant to have an honest and reasonable belief that the Claimant had committed any misconduct, that the Defendant failed to conduct a reasonable investigation concerning any alleged misconduct by the Claimant contrary to Section 33 of the Act and failed to give adequate and proper consideration to the Claimant's injuries suffered on the job.
85. As for the particulars of unfair dismissal, the Claimant averred that the Defendant dismissed the Claimant due to her numerous reports complaining of substandard practices at SRC and because she filed the Writ of Summons, in breach of Section 34 of the Act, dismissed the Claimant without compensating her pursuant to Section 45 of the Act, dismissed the Claimant without paying the basic award pursuant to Section 46 of the Act and dismissed the Claimant without compensating her pursuant to Section 47 of the Act.
86. Moreover, that the Claimant's entitlement to Pension and Gratuity was reasonably contemplated by both the Claimant and the Defendant at the commencement of the Claimant's employment contract and termination pursuant to the Pension Act, Public Hospitals Authority Act, the 21st January Letter and other relevant documents.
87. Moreover, she averred that she suffered consequential loss as a result of the Defendant's actions, namely: -
- She lost the opportunity to continue working up to retirement age of sixty-five (65) or to complete thirty (30) years of service;
 - The Claimant lost the benefit of earning the monthly gross salary of \$2,770.83;
 - The Claimant lost the benefit of earning the monthly uniform income of \$250.00;
 - The Claimant lost the benefit of earning the monthly scarcity income of \$250.00;
 - The Claimant lost the benefit of pension upon retirement after 30 years of service or age sixty-five (65);
 - The Claimant lost the benefit of Gratuity upon retirement after 30 years of service or age sixty-five (65).
88. Lastly, that the Defendant oppressively, arbitrarily and or unconstitutionally breached and terminated the employment contract by;
- Failing to transfer and or make any efforts to transfer the Claimant from SRC where she suffered the injury to another suitable Unit within the Defendant or other Government Agency or Department;
 - Stopping the Claimant's salary in September 2020 in the height of COVID-19 pandemic without cause;

- Failing and/or refusing to give adequate consideration and or weight to the reports of Dr. Hunt dated the 16th July 2015, 14th January 2020 and 25th August 2020 which indicated that he anticipated that she would never be able to return to work in a hospital environment;
- Offering to transfer the Claimant to the Infectious Ward of the Princess Margaret Hospital notwithstanding the Reports which indicated that she would never be able to return to work in a hospital environment;
- Stopping and later reinstating her salary;
- Terminating her employment contract because she filed the Writ and wrote numerous reports about the sub-standard practices at SRC;
- Stopping her salary.

89. As a result of the breaches the Claimant seeks the following amounts;

- \$19,160.22 representing two weeks' basic pay in lieu of two weeks' notice for her thirteen (13) years and ten (10) months' employment for constructive or wrongful dismissal;
- \$27,016.52 representing the basic three weeks' pay award pursuant to Section 46 of the Act for her thirteen (13) years and ten (10) months employment for unfair dismissal;
- \$48,000.00 representing consequential loss for uniform allowance at \$250.00 per month for sixteen (16) years;
- \$48,000.00 representing consequential loss for scarcity allowance at \$250.00 per month for sixteen (16) years;
- \$166,687.40 representing reduced pension;
- \$55,562.45 representing gratuity;
- \$500.00 for filing fees;
- Interest pursuant to the Civil Procedure (Award of Interest) Act at 6.275%.

90. By the draft Defence, the Defendant intends to admit paras. 1 – 3, 6, 10 – 12, 22 – 25, 30 – 33, 3, 36, 39, 27 – 28 as it relates to the contents of the correspondences only but makes no admission that the allegations made in the correspondences were factual and puts the Claimant to strict proof along with para. 37 save and except that the Defendant was medically boarded in accordance with the Defendant's policies, the relevant industrial agreement and the Pensions Act as opposed to being constructively or unfairly dismissed as alleged and puts the Claimant to strict proof of her allegations.

91. The Defendant also intends to plead that it cannot admit nor deny the allegations contained in paras. 4, 5, 7, 8, 13 – 21, 26, 29 and 34 because they do not know whether the allegations are true as they do not have sufficient information to admit or deny them in relation to the Claimant's education, injuries, treatment, expenses, sustained

impairment, feelings, abilities, and/or limitations and unsupported claims of correspondences and puts the Claimant to strict proof.

92. The Defendant intends to deny the allegations as follows:

- Para. 9 and sub paras. 9.1 and 9.2 save and except on 28th November 2013 when the Claimant reported that she experienced chest tightness six (6) days earlier on the 22nd November 2013. The Defendant adds that the Claimant reported no other incident and put her to strict proof;
- Paras. 40 – 46 and 41 as the Claimant was medically boarded in accordance with the Defendant's policies, the relevant Industrial Agreement and the Pensions Act and not constructively or unfairly dismissed. Adding that the decision to medically board the Claimant arose as a direct result of the contents of a medical letter dated 25th August 2020 presented to the Defendant by the Claimant's physician Dr. Hunt, specifying that she is not able to work in or near a hospital environment and Dr. Hunt's information form to the Defendant stating that the Claimant would never be able to return to work. Additionally, that the Claimant has not suffered any loss, consequential or otherwise, as a result of any breach by the Defendant and again puts the Claimant to strict proof of the allegations.
- Para. 38 including sub paras. 38.1 – 38.11 and avers that the letters of Mrs. Benjamin did not amount to any breach or termination of contract or any dismissal.
- Para. 38.7 and avers that the Claimant was not dismissed in retaliation or otherwise and that she was not medically boarded until 4th October 2021, almost seven (7) years after she filed the initial Writ of Summons.
- Para 41.1 and avers that efforts to transfer the Claimant to the Male Ward and to the Princess Margaret Hospital were rejected by the Claimant, and the reports provided by the Claimant stated that she was unable to work inside of a Hospital or clinic setting but fully capable of working remotely from home.
- Paras. 42 – 42.9 of the Claimant's entitlement to enumerated damages.

93. In **Carl Frampton v. Nico Leonard Van Der Horst [2024] NI Master 17**, Master Harvey considered an application by the Defendant to set aside the default judgment entered against him following his failure to enter a memorandum of appearance. In relation to what an arguable defence was he stated,

“Meritorious defence

[7] In the event the court determines the judgment was irregular, the judgment will be set aside and that is the end of this interlocutory matter. However, if the judgment was regular, the second issue to be decided is whether the defendant has an arguable defence. In *Bank of Ireland v Mervyn Coulson* [2009] NIQB 96, Gillen J referred to this as a "meritorious defence" and set out the legal principles in relation to the meaning of that expression:

"[34] The principles to be derived from these authorities are these. First, the procedure for marking judgment in default is not designed to punish the defendant by destroying his right to a fair and full hearing in relation to the plaintiff's claim but rather as part of the disciplinary framework established by the rules of the court which are designed to ensure proper and timeous conduct of litigation (see McCullough's case at p. 584a)

[35] Courts must be wary to form provisional views of probable outcomes which experience has shown can readily be shown to be fallacious when the matter is tried out. In essence I think that Lord Wright at p. 489 in Day's case captured the approach that the courts should adopt when he said: "In a case like the present there is a judgment which, though by default, is a regular judgment, and the applicant must show grounds why the discretion to set aside should be exercised in its favour. The primary consideration is whether he has merits to which the court should pay heed; if merits are shown the court will not ... desire to let judgment pass and which there has been no proper adjudication ..."

[8] In *Bank of Ireland (UK) plc v Eugene Jones and Eamon Jones* [2014] NIQB 93, Weatherup J dealt with an application to set aside default judgment, and assessed whether it is necessary to establish a serious issue to be tried in advancing such an application. He helpfully set out the merits threshold for a defendant:

"(i) In order to set aside a judgment it is necessary that a defendant establishes that there is an arguable defence.

(ii) It is not necessary that a defendant establishes that the defence has a real prospect of success.

(iii) It is not necessary for the Court to form a provisional view of the probable outcome of the case.

(iv) The Court will not set aside a judgment if there is no defence to the claim apparent from the materials before the Court. The merits threshold will require the defendant to establish an arguable defence. This has also been expressed as

a prima facie defence, a serious defence, a real triable issue, a defence with merits to which the Court should pay heed."

[9] In *Quinn v McAleenan and McConville* [2010] NIQB 31, Gillen J held that:

"[17] If a judgment is regular, then there is an almost inflexible rule that there must be an affidavit of merits i.e. an affidavit stating facts showing a defence on the merits (*Farden v Richter* (1889) 23 QBD 124 and *Evans v Bartlam* (1937) AC 473.

[18] Thus for the purpose of setting aside a default judgment, the defendant must show that he has an arguable case which carries some degree of conviction (see *Day v RAC Motoring Services Limited* (1999) 1 AER 1007. At page 1013H Ward LJ said: "... The arguable case must carry some degree of conviction but judges should be very wary of trying issues of fact on evidence where the facts are apparently credible and are to be set aside against the facts being advanced by the other side. Choosing between them is the function of the trial judge, not the judge on the interlocutory application, unless there is some inherent improbability in what is being asserted or some extraneous evidence which would contradict it."

94. It follows that as a judicial officer determining an interlocutory application, while I must examine the defence, I need only to decipher whether it is arguable, well-reasoned and plausible in response to the Claim. My deciphering should not include whether the Defendant may or may not be successful at trial.
95. By the Claim, the Claimant pled that she became sick and unable to work as a result of repeat exposure to toxic fumes during the course of her employment at SRC. The exposure led to the Claimant being on extended sick leave and the eventual medical recommendation by her doctor, Dr. Hunt, that she should would no longer be able to return to work in a hospital. To that effect, the Claimant requested an office job with the Defendant as a result of the Masters Degree she had attained, yet was offered to be transferred to two different hospital wards inside the hospital.
96. By its intended Defence, the Defendant stated that the Claimant was medically boarded and that prior to that they attempted to transfer her to two different areas in the hospital as a result of the recommendation by her doctor, Dr. Hunt, that she would not be able to return to work in a hospital or clinic setting, only from home. The Defendant also argues that it has a limitation defence it should be able to put forth.

97. Taking the three grounds of a set aside application together, while the time of the delay was not inordinate, the reason for the delay is one often used by the Defendant which suggests a serious gap in communications within its organization; one which should not be continuously used and accepted in order to forego the compliance of the timelines set in the CPR.
98. The crux of the case is whether the Claimant frustrated her employment contract with the Defendant and if she did whether the Defendant accommodated her as it was legally required to do. In legal terms, the medical boarding of an employee, which the Defendant intended to plead is, in law, known as frustration of contract. When an employee is unable to perform the obligations he/she contractually agreed to as a result of some mental or physical disability, the employer must attempt to accommodate the employee, only if doing so would not cause undue financial hardship to the employer.
99. As for whether there is a realistic prospect of the Defendant successfully defending the claim, when considering the legal principles relative to frustration of an employment contract, without indicating that they were or were not followed or that the Claimant was unfairly or wrongfully dismissed, I do not think that the Defence is well reasoned or arguable in response to the Claim.
100. In relation to the limitation defence raised by the Defendant, I am guided by Knowles J's decision in **E v Franks [2018] 1 WLR 4647** where she allowed an appeal from the lower Court who had denied an application to set aside a default judgment. It was held,

“allowing the appeal, that the question whether to exclude a time limit pursuant to section 33 of the Limitation Act 1980 could be determined at trial or as a preliminary issue or at an interlocutory stage, and no particular procedure was required before section 33 could be considered; that whether it was appropriate to consider section 33 at an interlocutory stage would depend upon the facts and the prima facie expiry of the time limit could not by itself justify the setting aside of a judgment in default; that it had therefore been open to the master as a matter of principle to consider section 33 on the application to set aside the default judgment; that the discretion under section 33 was not to be exercised simply by assessing comparative scales of hardship but instead involved asking whether it would be equitable overall to disapply the limitation provisions having regard to the balance of potential prejudice weighed with regard to all the circumstances of the case, including those specifically mentioned in section 33(3); that the reason why the claim had been brought outside the relevant time limit was a central consideration in relation to section 33 and the evidence of the claimant was very important on that issue; that the burden, which was a heavy one, lay on the claimant to demonstrate that it would be equitable under section 33 to exclude the section 11 time limit, with the question for the master being

whether there was a real prospect that the claimant would fail to demonstrate that it was equitable to exclude the time limit having regard to the factors set out in section 33; that the master had erred in her consideration of section 33 by failing to take into account the factors which she was required to consider and her decision would accordingly be set aside; that in the absence of any evidence from the claimant explaining and justifying his conduct and his reasons for not issuing the claim sooner, an application under section 33 to exclude the time limit would not definitely succeed, and thus the defendant had a real prospect of defending the claim; and that, accordingly, the default judgment would be set aside and relief from sanctions and leave to file and serve a defence granted to the defendant.”

101. Accordingly, at this interlocutory stage, I am permitted to consider whether the Defendant’s limitation defence holds any force. A litigant has six (6) years to commence a claim where a breach of an employment contract is alleged as previously decided cases have found that employment contracts fall within the contracts referenced in Section 5 of the Act.
102. In the current case, by the Claimant’s Claim she was given the 30th April Letter in 2021 and her pay was stopped on the 1st May 2021. Even if this is inaccurate and she was not medically boarded until 4th October 2021 as the Defendant intends to aver, the commencing of the Claim on the 10th June 2025 keeps the Claim within the six (6) year period to commence an action for breach of an employment contract.
103. In totality, as pled, the particulars of the intended Defence are not sufficient to persuade me that a full blown trial is warranted and by extension to set aside the Default Judgment and cause any further delay to the Claimant by preventing her from receiving the fruits of her labor. Moreover, the Defendant would not lose the benefit of a limitation defence as the Claim was brought within the statutory time period.
104. In the instant case, I do not consider the intended Defence to be an arguable case, which would warrant undergoing a full trial between the parties. Accordingly, the Set Aside Application is hereby dismissed.
105. The Claimant is awarded her costs to be summarily assessed and shall provide a Statement of Costs for my assessment, within (six) 6 weeks of the delivery of this Ruling.
106. The Notice of Assessment shall proceed with a directions hearing which shall be set on a date which is mutually convenient for all parties.

Dated this 23rd day of July 2026


Akeira D. Martin
Assistant Registrar