

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2024/CLE/gen/00588

BETWEEN

EXECUTIVE MARINE MANAGEMENT LTD

Claimant

AND

FOWLCO MARITIME & PROJECT SERVICES LIMITED

First Defendant

and

CAMPBELL MARINE LTD

Second Defendant

Before: The Honourable Madam Justice Simone Fitzcharles

Appearances: Mr Dawson Malone with Ms Syneisha Y. Bootle of Counsel for the Claimant

Mr Audley Hanna with Mrs Dennise Briggs of Counsel for the 1st Defendant

Mr Joseph J Moxey of Counsel for the 2nd Defendant

Hearing: 20 October 2025

RULING

On Application to Set Aside

Default Judgment

Introduction

1. This is my brief ruling on an application by Campbell Marine Ltd (“CML”) filed on 18 September 2025, to set aside a judgment in default of acknowledgement of service and defence which was entered against CML by the Claimant, Executive Marine Management Limited (the “**Claimant**” or “**EMM**”) on 03 September 2024 (the “**default judgment**”). The right is reserved to give further reasons for this ruling if necessary.

2. The Claimant commenced this matter by Standard Claim form filed on 5 July 2024, but joined CML as a defendant by its Amended Standard Claim Form filed on 09 August 2024 (the “Amended Claim Form”). According to the Affidavit of Leroy Ferguson filed on 29 August 2024, the Amended Claim Form was served on the registered office of CML on 09 August 2024.

3. CML filed no Acknowledgement of Service upon receipt of the Amended Claim Form although it did so for another company which was subsequently removed as a party to this action. Additionally, no defence was filed for CML. Consequently, on 03 September 2024 pursuant to a request made by the Claimant to the Court for entry of a default judgment against CML, the same was issued. The default judgment was then served on the registered office for CML on that same day.

4. On 02 October 2024, CML filed a Notice of Application to set aside the default judgment. The supporting evidence, the Affidavit of Amit Ghosh was not filed until 6 May 2025. The application was heard on 02 September 2025 and dismissed with costs to EMM, and without a substantive determination as to whether relief under Rule 13.3 of the Supreme Court Civil Procedure Rules 2022 (“CPR”) should be granted, due to procedural defects. The Court anticipated that the application could be brought again so that a substantive determination could be made and there could be a final determination of the real CPR 13.3 issue. The Court imposed a condition that the costs awarded to EMM should be paid by CML before CML could make any further application to set aside the default judgment. No party appealed that ruling.

5. CML then brought its application to set aside the default judgment on 18 September 2025. The Court has considered the pleadings filed by the Claimant, the First Defendant, Fowlco Maritime & Project Services Limited (the “**1st Defendant**”) and CML. I have also considered, amongst other evidence, the 3rd Affidavit of Miquel Cleare filed on 02 July 2025 and the Supplemental Affidavit of Rajesh J Dhadwal filed on 18 September 2025 in support of setting aside the default judgment. The Court has also read the legal submissions, both written and oral, advanced for EMM and CML.

Default Judgment Entry

6. CML contends primarily that the default judgment was wrongly entered and ought to be set aside pursuant to CPR 13.2 which provides that the Court “must set aside a judgment entered under Part 12 if judgment was wrongly entered.” The reason which underpins CML’s contention is that it ought to have received some notification from EMM that EMM applied for the entry of the default judgment.

7. According to CPR 13.2, a judgment in default of acknowledgement of service would be wrongly entered if the conditions set out in CPR 12.4 were not satisfied. These conditions have all been satisfied by the Claimant. The Claimant proved that it served the Amended Claim Form with a Statement of Claim endorsed thereon. The time elapsed for CML to file an acknowledgement of service and defence. CML did not admit or satisfy any part of the claim advanced by EMM. Similarly, pursuant to CPR 12.5, the conditions were satisfied by EMM to file a judgment in default of defence. It was done by an administrative procedure under CPR Part 12. Given the nature of the claim, the CPR did not require that a request for entry of a default judgment in this matter be served on CML prior to the entry of the default judgment. It is not, for example, a claim which falls within CPR 12.9(c)(iii) requiring a defendant to deliver goods without giving the defendant the alternative of paying their assessed value, for which the permission of the court is required before a default judgment can be entered. Such a claim must be served in accordance with the provisions of CPR 12.9. There was no such requirement to be satisfied by EMM before the default judgment could be entered against CML. This ground therefore fails as a viable challenge to the default judgment.

Other Prospects of Setting Aside

8. The requirements for CML to set aside the default judgment are set out in CPR 13.3. Simply summarized, CML must:

- (1) show that it applied to set aside the default judgment as soon as reasonably practicable after finding out that judgement had been entered;
- (2) give a good explanation for its default in filing an acknowledgment of service and defence; and
- (3) demonstrate that it has a real prospect of successfully defending the claim.

9. A failure to adequately satisfy any one of these grounds could lead to the maintenance of a judgment in default. In assessing this matter, I turn to examine first whether CML has demonstrated that it has a real prospect of success. While all limbs of the test of CPR 13.3(1) must be satisfied, showing a real prospect of success is perhaps the weightiest factor to tip the balance in favour of the Court's exercise of discretion to discharge a default judgment. A brief look at the claim and the draft defence is therefore needful.

Snapshot of the Claim and Draft Defence

10. The amended claim against CML (which is referred to as the 3rd Defendant in the pleading) sets out, amongst others, the following averments:

- “1) The Claimant is a company incorporated under the laws of the Commonwealth of The Bahamas and doing business in the maritime industry. The Defendants are also incorporated under the laws of the Commonwealth of The Bahamas doing business in the maritime industry.

2) On or about the 19th March 2024, Starfish Construction Limited (“Starfish”), a construction company incorporated under the Company laws of the Commonwealth of The Bahamas, hired the Claimant to transport its cargo of 2000 tons of sand and 1000 tons of 57 stone (“the cargo”) from Freeport Harbour to Bakers Bay, Abaco for which Starfish paid the (*sic*) One hundred and Fifteen thousand Five hundred dollars (\$115,500.00).

3) On or about the 19th March, the Claimant hired the First Defendant for the use of their tug boat, Tugboat Heroic 1 (“the tugboat”) to transport the Claimant’s Barge, The Big Show (“the barge”) and its 60-ton grove crane (“the crane”), along with the cargo from Freeport Harbour to Bakers Bay, Abaco. In return, the 1st Defendant was paid Thirty-Nine thousand dollars (\$39,500) by cheque dated the 19th March, 2024. The First Defendant retained the Second Defendant and/or the Third Defendant [CML] to manage, operate and crew the tugboat to transport the barge, the crane, other equipment and the cargo to Bakers Bay.

...

13) It has come to the Claimant’s attention, since the filing of this action, that the 3rd Defendant may share liability for negligence.”

...

PARTICULARS OF NEGLIGENCE

- a) Failure on the (*sic*) of the captain and the crew, agents of the ...3rd Defendant, to navigate the tugboat with due care, attention and skills required of them while piloting the tugboat to Baker’s Bay, Abaco.
- b) Failure on the part of the captain and crew aforesaid to familiarize themselves sufficiently with the waters between Freeport Harbour and Baker’s Bay to ensure that they would avoid the reef which was struck.
- c) Failure to use the necessary navigational assistance equipment in the tugboat to gauge their distance from the reef before running aground.
- d) Failure by the 1st Defendant to notify the Claimant that the ...3rd Defendant were being hired to perform the terms of the contract.
- e) Failure by the Defendants to successfully remove the wreck from the reef causing the Port Department to demand the removal of the wreck by the Claimants from (*sic*) and threaten a fine/penalty to the Claimants if the wreck has not been moved by a certain deadline.”

11. In essence, EMM claims against the 1st Defendant damages for breach of contract and negligence. Against CML the Claimant seeks damages for negligence of the captain and the crew of the tugboat as agents of CML.

12. CML avers that a Standard Ship Management Agreement (referred to as the “BIMCO” Agreement) dated 10 August 2023, was entered into by the First Defendant and CML. The BIMCO Agreement showed that CML agreed with the 1st Defendant to provide a crew for the 1st Defendant’s tugboat ‘Heroic 1’ (IMO 6604781). This was the crew that managed the tug boat in transporting the barge (the Claimant’s barge, the Big Show).

13. CML in its draft defence admits that on or about 26 March 2024 the captain and crew of the tugboat lost the tow and the barge and tugboat were grounded on a reef near to Man-O-

War Cay, Abaco where the barge and the tugboat remained grounded. It was also admitted that the cargo was not delivered and the barge was damaged.

14. CML further included in its draft defence a series of averments in which it neither admitted nor denied all other pleaded facts in the Amended Claim Form of EMM.

15. Materially, the main plank of the CML defence is embodied in its averment at paragraph 14 as follows:

“14. Through the Second Defendant’s agreement with the First Defendant (the Owners) the Second Defendant (the Manager) denies any and all liability of negligence as claimed by the Claimant and relies strictly on the BIMCO Agreement with respect to the same.”

16. At paragraph 13 of the draft defence, CML appears to deny that it has a share in liability to the Claimant for negligence. CML further avers that pursuant to Clause 17 of the BIMCO Agreement, as Managers, it is fully indemnified by the 1st Defendant (the Owners) to the extent set out in Clause 17. Clause 17 of the BIMCO Agreement provides:

“**Liability to Owners** (i) Without prejudice to Sub-clause 17(a), the Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in the course of performance of the Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Managers or their employees or agents, or sub-contractors employed by them in connection with the Vessel, in which case (save where loss, damage, delay or expense has resulted from the personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) the liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of ten (10) times the annual management fee payable hereunder. (ii) **Acts or omissions of the Crew** – Notwithstanding anything that may appear to the contrary in this Agreement, the Managers shall not be liable for any acts or omissions of the Crew, even if such acts or omissions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Managers to discharge their obligations under Clause 5(a) (Crew Management), in which case their liability shall be limited in accordance with the terms of this Clause 17 (Responsibilities). AND (c) **Indemnity** – Except to the extent and solely for the amount therein set out that the Managers would be liable under Subclause 17(b), the Owners hereby undertake to keep the Managers and their employees, agents and subcontractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of this Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.”

17. CML and the Claimant both appear to accept that EMM is not a party to the BIMCO Agreement. The BIMCO Agreement is an arrangement between the 1st Defendant owners of the tug boat and CML, which provided the captain and crew to manage and operate the tug boat Heroic 1. The BIMCO Agreement therefore contains no agreement by EMM to limit

liability of CML for any alleged negligent operation or management by the captain and crew of the Heroic 1 on 26 March 2024. On a close reading of the pleaded Clause 17, it appears the indemnity given by the 1st Defendant to CML is not by itself a defence to the claim made by EMM. It may mean that CML can seek reimbursement from the 1st Defendant if CML is liable, but even that indemnity has its limits. The BIMCO Agreement does not appear to answer the Claimant's allegation that CML owed and breached a duty of care. Therefore, while I am of the view that the BIMCO Agreement may provide the foundation for a claim for an indemnity or contribution from the 1st Defendant in favour of CML, I do not agree that it provides a defence to any liability that CML may have in negligence to the Claimant, EMM.

18. I must therefore consider whether the draft defence in any other way presents a defence with a real prospect of success. The same being filled with unparticularized denials or non-admissions, save for reliance upon the Clause 17(b) indemnity and exclusion of liability to the 1st Defendant, does not provide a defence of any real substance or conviction. For example, there is no explanation as to:

- (1) what CML's captain and crew did;
- (2) what navigation decisions they made;
- (3) what the weather was like during the voyage;
- (4) why loss occurred despite reasonable seamanship;
- (5) whether the tug was properly crewed, equipped and operated; and/or
- (6) whether any causation point is taken.

19. These factors would have provided more substance to the defence. As presented, the Court is not satisfied that the draft defence shows a real prospect of success against the claim set out against CML in the Amended Claim Form. As for timeliness of the application to set aside the default judgment, the first application was made within a month after the judgment was served on CML. However, it was not supported by evidence until about 8 months after the filing of the Notice of Application to set aside the default judgment. CML was therefore dilatory in proceeding with the application. On the explanation for failure to enter an acknowledgement of service in time, the Court accepted in the hearing of this application that Counsel who then had carriage of the matter was ill and receiving medical treatment abroad.

20. Weighing all factors, I am not satisfied that the judgment in default entered by the Claimant against CML ought to be set aside.

21. In the circumstances, the Court orders that the application to set aside the judgment in default of acknowledgement of service and defence be dismissed with costs to the Claimant in the amount of Seven thousand five hundred dollars (\$7,500.00).

Dated 15 June 2026



Simone I. Fitzcharles

Justice