

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Common Law and Equity

2025/CLE/gen/00292

BETWEEN

LASHAN DAMES

Claimant

AND

**JOEL O. HANSEN
(t/a EXQUISITE HOMES CONSTRUCTION)**

Defendant

Before: Assistant Registrar Adrienne Bellot (Acting)

**Appearances: Bria-Tai McCartney for the Claimant
Shantelle Munroe for the Defendant**

Hearing date: 26th May, 2026

RULING

By Order dated 19th November, 2025, the Claimant was granted leave to enter Judgment in Default of Defence (“Default Judgment”) and the Defendant’s application for an extension of time to file its Defence (“EOT Application”) was dismissed. The Court refused to hear the purported EOT Application on the basis that it was not supported by an Affidavit.

Thereafter, the Defendant filed an application seeking to set aside the Default Judgment (“the Set Aside Application”) and seeking an extension of time to file its Defence. The

Court acceded to the Defendant's Set Aside Application and granted the EOT. I undertook to give my reasons for the order at a later date.

Facts/procedural history

1. By Standard Claim Form filed 17th April, 2025, the Claimant initiated these proceedings against the Defendant contractor who she hired for the completion of construction works for breach of contract.
2. The Defendant filed its Acknowledgment of Service on 26th June, 2025.
3. On 14th July, 2025, Counsel for the Claimant agreed to an extension for filing the Defence. The agreed extension was 16th July, 2025.
4. On 9th October, 2025, as the Defendant still failed to file its Defence, the Claimant filed an application for leave to enter Judgment in Default of Defence, which then prompted the Defendant's application for EOT to file its Defence filed 19th November, 2025.
5. The Default Judgment Application was heard by Registrar Renaldo Toote ("the Registrar") on 19th November, 2025. As stated, he acceded to the Claimant's Default Judgment application but refused the Defendant's EOT application, as it was deficient and therefore not properly before the Court by reason that the Notice of Application was not supported by a supporting Affidavit.
6. On 28th January, 2026, the Claimant sought to enforce the Default Judgment by Application for Order to Attend Court.
7. Also on 28th January, 2026, the Defendant filed an application seeking to set aside the Default Judgment on the basis that the Defendant has a good and arguable case

and again seeking EOT to file its Defence. The intended Defence and Counterclaim was exhibited thereto.

Law regarding setting aside Default Judgment

8. Rule 13.3 of the Supreme Court Civil Procedure Rules (“the CPR”) provides for the Court’s discretion to set aside a default judgment even if entered regularly. This discretion is separate from the requirement under Rule 13.2 for the Court to enter irregularly entered default judgments. Rule 13.3 provides the three (3) conditions for setting aside default judgment under Rule 13.3:

“(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 acknowledgment of service or a defence as the case may be;**
- c) and has a real prospect of successfully defending the claim.”**

Whether the Application was made as soon as reasonably practicable after finding out that judgment had been entered

9. Ms. Munroe for the Defendant submitted that the Application was made promptly after the default judgment – one (1) month and eleven (11) days (or one (1) month and six (6) days if account is given for the holidays) in between the default judgment on 17th December, 2025 to this Application on 28th January, 2026.
10. Both Counsel relied on the case of **North Bimini Bay Condominiums Ltd. v Myron Saunders [2024] 1 BHS J. No. 165** but with differing analyses to the facts of the instant case. Ms. McCartney distinguished **North Bimini** on the basis that Mr. Hansen was represented by Counsel at all material times unlike the defendant

in **North Bimini**. As such, says Ms. McCartney, Mr. Hansen cannot claim to be unaware of the significance of the default judgment as the defendant in **North Bimini** was able to claim as it related to service of the Writ of Summons. In support thereof, Ms. McCartney commended paragraph 16 of the ruling of Fraser SJ in **North Bimini Bay**:

“[16] Based on Mr. Saunders’ evidence, he did not appreciate the significance of a Writ of Summons being served on him. According to his evidence, he was told by the officers who served him that he only needed to “look over the writ”. It is not clear if a full explanation of the implications and consequences of service was explained to Mr. Saunders. Whereas it would have been prudent of Mr. Saunders to engage counsel to review the document and provide proper advice, it would appear that he did not understand the significance of the document placed before him.

[17] In addition, he became cognizant of the importance of the Writ only after attempting to obtain a loan from a bank and an agent of the bank informing him of the judgment made against him (filed on 30th November, 2020). He, thereafter, sought legal counsel to address the matter, thus this very application before me (filed on 9th April, 2024).

11. However, Ms. McCartney seems to have failed to consider paragraph 18 of the same ruling, which, for the purpose of the condition on promptness, is very relevant. In her ruling, immediately after finding that the defendant did not appreciate the significance of the document by virtue of not having been represented and concluding on that basis that the set aside application was made soon after the defendant realised the effect of the document, Fraser SJ reminded herself that even if the set aside application was not made promptly within the meaning of the Rule, so long as the application was made in sufficient time for it to be just that the judgment should be set aside it should be set aside. Ms. Munroe

urged the Court to consider paragraph 18 along with the paragraphs 16 and 17 commended by Ms. McCartney, which provides:

“[18] I remind myself of the following observation made in the case of Manolakaki v Constantmides (2003) EWHC 401:

“...even if the application was not made “promptly”, within the meaning of the Rule, if the defendant made it in sufficient time for it to be just that judgment should be set aside it should be set aside; provided the test set out in r.13.3(1)(2) [i.e. the Defendant has a real prospect of defending the claim] was met”

12. It follows that the principle emanating from **North Bimini Bay** is not that a defendant must not appreciate the effect of being served to have a good case to set aside default judgment entered against him. Rather, the principle is that it is favourable for the party seeking to have default judgment set aside for the set aside application to have been made promptly after the default judgment was entered. However, even if the set aside application was not “prompt”, if the Court considers that it was made in sufficient time to be considered just, it should be set aside so long as the most important consideration is met – the defendant having a real prospect of defending the claim.
13. The Court considers the set aside application was made promptly. In any event, the Court considers that the set aside application having been made a little over one (1) month after the entry of default judgment, especially having regard to the content of the intended Defence and Counterclaim, was made in sufficient time for the setting aside of the default judgment to be just.

Good explanation for not filing Defence

14. Ms. McCartney asserted that the Defendant failed to provide a good explanation as to why the Defence was not filed within the required time period or even the extension granted by the Claimant. Ms. Munroe submitted that the Defendant has a good explanation for the failure to file a Defence and points to paragraph 5 of the Affidavit of Joel Hansen filed 28th January, 2026 which provides:

“The Defence and Counterclaim were not filed as the Defendant’s attorney was unable to obtain certain information and/or instructions from certain third parties, so as to complete the same.”

15. In response thereto, Ms. McCartney submitted that the intended Defence and Counterclaim does not include third party information.

16. Additionally, Ms. Munroe herself took responsibility for failing to file the Defence in the requisite time and urged the Court not to punish the Defendant for her failure.

17. With respect to Ms. Munroe’s third party information explanation and Ms. McCartney’s submission in response thereto, a review of the draft Defence and Counterclaim reveals assertions by the Defendant that a task that was initially to be completed by him was ultimately outsourced to a third party and completed and that there were tasks completed by other vendors. I accept that some of these assertions may have required information and/or instructions from certain third parties to complete the Defence and Counterclaim. Further, I am reminded of the warning given by Fraser SJ in **North Bimini Bay** that *“discretionary powers are not to be exercised in order to punish a party for incompetence – they must be exercised in order to further the overriding objective.”*

Realistic prospect of success

18. The manner in which the Court ought to determine “realistic prospect of success” of intended defences in the context of applications to set aside default judgments has been put a few different ways, but the essence remains the same. The Court’s role in this summary process must walk the fine line of avoiding conducting a “mini-trial” yet looking beyond the Defendant’s mere assertion that the draft defence shows a realistic prospect of success and actually making the determination based on the pleadings. Sykes J of the Jamaican Supreme Court explained the test similarly in **Saunders v Green 2005 HCV 2868**:

“...real prospect is not blind or misguided exuberance. It is open to the court, where available, to look at contemporaneous documents and other material to see if the prospect is real. In ED&F Man Liquid Products v Patel the court pointed out that while a mini-trial was not to be conducted, that did not mean that a defendant was free to make any assertion and the judge must accept.”

19. The Court’s objective is to simply determine whether the defence put forth by the Defendant gives rise to triable issues:

“...the law is clear that the Defendant must demonstrate that he has a real prospect of successfully defending the case, as opposed to a fanciful one, this test is designed to eliminate trial where there are issues that should be investigated at trial. The judgment is not meant to be conducting a mini-trial on a hearing of the application to set aside a default judgment.”

20. Bearing in mind the above principles, I reviewed the draft Defence and Counterclaim alongside the Statement of Claim. Ms. Dames alleges as against Mr. Hansen partial and defective completion of the scope of contracted works, which she avers breached the contract. The intended Defence and Counterclaim denies

breach of contract, asserting instead that although Mr. Hansen became physically unable to complete a few of the contracted tasks, he saw to the completion of the works by engaging a third party. Further, Mr. Hansen alleges against Ms. Dames breach of contract. The intended Defence and Counterclaim alleges inability to complete some works caused by the Claimant's refusal to provide materials that she was required to provide under the contract as well as failure and/or refusal to permit entry to the Defendant and/or his agents and failure/refusal to facilitate completion otherwise. Mr. Hansen counterclaims for \$7,000.00 being the cost of labour and/or materials for which he was not reimbursed by Ms. Dames.

21. Ms. McCartney for the Claimant submitted that the Defendant's admission that he was unable to complete some of the tasks conclusively proves the breach of contract. With respect to the draft Counterclaim, her submission was that the alleged breaches are vague and unsupported.

22. The Court does not consider the assertions of the Counterclaim insufficiently pleaded. Pleadings themselves are particularised assertions which are to be supported later by evidence.

23. There are allegations for the Court to investigate. There appears to be serious issues to be tried.

24. As Chadwick LJ said in **Salfranz Hussain v Birmingham City Council, Coral George Coulson, Governors of Small Heath Grant Maintained [2005] EWCA**, "...litigants must always bear in mind that, when a draft defence is proffered which tends to give good reason why a defendant has a strong case which warrants investigation, all parties should be afforded an opportunity to present their respective cases at trial and the Court should accede to a legitimate application to set aside a Judgment in Default of Appearance/Defence.

25. For the above reasons, I was constrained to accede to the Defendant's Set Aside Application.

26. The costs order was that the costs of and occasioned by the Set Aside Application be costs in the cause.

Dated this 20th day of August, 2026

Adrienne N. Bellot
Assistant Registrar (Acting)