

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity

2017/CLE/gen/01186

BETWEEN

JONATHAN PRATT

Claimant

AND

SUN OIL LIMITED

First Defendant

AND

FOCOL HOLDINGS LIMITED

Second Defendant

Before: Assistant Registrar Adrienne Bellot (Acting)

**Appearances: Lanisha Rolle for the Claimant
Larell Hancell for the Defendants**

Hearing date: 23rd September, 2026

RULING

Pursuant to Part 12 of the Supreme Court Civil Procedure Rules (“the CPR”) the Claimant requested entry of Judgment in Default of Defence. This request was granted and Judgment in Default of Defence against the Defendants in the amount of \$866,110.81 was entered on 30th April, 2026 (“the Default Judgment”). On 25th August, 2026, the Claimant filed an Application seeking the Court’s order that the Defendants be examined as to their means to settle the purported judgment debt under the Default Judgment. The Order to Attend

Court was granted and the date for the Examination set for 23rd September, 2026. Prior to the Application for Order to Attend, however, on 19th May, 2026, the Defendants sought the set aside of the Default Judgment (“Set Aside Application”). Listed before the Court was only the Claimant’s Application for Order to Attend and the Court was not made aware of the Set Aside Application, hence the Examination hearing having been set.

On 4th September, 2026, the Defendants filed a Notice of Application pursuant to Rule 26.9 for “Relief from Sanctions” (although such an application is correctly termed “application to put matter(s) right”) (“Rule 26.9 Application”).

Once the Court was made aware of the Defendants’ extant applications: the Set Aside Application and the Rule 26.9 Application, the Court suspended the Order to Attend Court and directed that the 23rd September hearing date be used for the hearing of these extant applications instead of the Examination. After the hearing, the Court made the following ruling, the reasons for which the Court now expresses as promised:

- The Order to Attend Court is set aside;
- The Judgment in Default of Defence entered on 30th April, 2026 is set aside;
- The Defendants are to file and serve their application to strike out the Claimant’s case within seven (7) days. Should the Defendants wish to abandon the application to strike out, they are to file and serve their Defence within fourteen (14) days; and
- The Defendants are ordered to pay the Claimant’s costs thrown away in respect of the Judgment in Default of Defence, Application for Order to Attend Court and opposing the Defendants’ application to set aside the Default Judgment and for relief from sanctions – such costs fixed at \$10,000.

Facts/procedural history

1. The Plaintiff’s Generally Indorsed Writ of Summons was filed on 7th October, 2017 and its Statement of Claim was filed 7th February, 2018.

2. The Claimant filed Judgment in Default of Appearance on 6th June, 2018.
3. At a hearing before Justice Klein on 19th February, 2021, the Claimant sought leave (which was not required) to amend its Statement of Claim. The Judge noted the absence of evidence that the Defendants were served with the Writ or Statement of Claim. In response thereto, former Counsel for the Claimant stated that the Default Judgment had been withdrawn and undertook to provide His Lordship with an Affidavit of Service. The Court set a mention date for the parties (in particular the Claimant) to update the Court as to its position.
4. The Claimant then filed its Amended Writ of Summons and Amended Statement of Claim on 29th April, 2021. Also on 29th April, 2021, the Claimant filed a Notice withdrawing the Default Judgment entered on 6th June, 2018.
5. The Defendants entered an appearance on 3rd June, 2021.
6. By Summons (but without Affidavit) filed 25th June, 2021 the Defendants purported to make application to strike out the Claimant's Statement of Claim.
7. The file was transferred to Her Ladyship Justice Darville-Gomez. At hearing before her on 10th February, 2023, both Counsel agreed to adjourn the hearing. On 20th April, 2023 Her Ladyship adjourned the matter sine die due to the non-readiness of both Parties.
8. The Claimant changed his attorney formally on 27th February, 2025 and both Counsel appeared before Justice Darville-Gomez again on 26th March, 2026 during which she gave the parties directions for the progression of the matter. In particular, Her Ladyship ordered that the Defendants file their Strike Out Application together

with evidence on or before 9th April, 2026 with a view to re-appearing before Her Ladyship for her ruling.

9. The Defendants sought and were granted an extension of time (one week) within which to file the Strike Out Application and failed to file the Application even in accordance with the extended deadline, 16th April, 2026. The Defendants made no filing nor extension requests.
10. By Request for Entry of Default Judgment, judgment in default of defence was entered against the Defendants on 30th April, 2026.
11. By Notice of Application supported by the Affidavit of Caryl Lashley both filed 19th May, 2026, the Defendants made the Set Aside application on the grounds that the Defendants have a real prospect of success in defending the claim and that the Claimant's claim has no real prospect of success and they intend to make the Strike Out Application.
12. The Defendants filed the Affidavit of Dexter Adderley on 20th May, 2026 and the Second Affidavit of Caryl Lashley on 21st May, 2021.
13. As stated, the Court was unaware of the Defendants' Set Aside Application.
14. The Claimant applied for an Order to Attend Court on 4th June, 2026 and the Order to Attend Court was filed 25th August, 2026.
15. On 27th August, 2026, the Defendants filed a Certificate of Urgency in respect of the Set Aside Application, certifying that the hearing of their application is urgent on the basis that the Claimant applied for and obtained a date for the Examination

of the Defendants as Judgment Debtors despite the Defendants' Set Aside Application filed prior thereto.

16. On 4th September, 2026 the Defendants made the Rule 26.9 Application

17. It was not until 10th September, 2026 that the Court was made aware of the Defendants applications. The Court suspended the Order to Attend Court/Examination and directed that the 23rd September date be used to hear the extant applications.

Preliminary note

18. Mrs. Rolle, who appeared as Counsel for the Claimant, also swore an affidavit, a practice of which courts have been consistently critical. The rationale for admonishing this practice was given by His Lordship Justice Brathwaite in **Herman Elisha Francis v The National Insurance Board 2021/CLE/gen/00319**: *“it places the court in the embarrassing position of having to decide the acceptability of an affidavit sworn by Counsel who then appears before the court.”* The importance of avoiding an advocate from being advocate and witness simultaneously is codified in Rule VIII of The Bahamas Bar Code of Professional Conduct. Paragraph 3 of the Commentary to the Rule VIII provides:

“If the attorney is a necessary witness he should testify and the conduct of the case should be entrusted to another attorney.”

19. That said, it does not necessarily follow that such an affidavit is disallowed. Further, the affidavit in question largely made assertions as to the procedural history of the matter. Even further, there are, at this stage, little to no factual disputes, which makes the affidavit inconsequential. However, in light of the above, the Court

thought it necessary to restate the importance of maintaining separation of the roles of advocate and Counsel.

Preliminary objection – Rules 12.9 and 13.2

20. Mr. Hanchell objected to the entry of the Default Judgment on the basis of damages – that the entry of Default Judgment for \$866,110.81 in damages in circumstances where the claim was for an unspecified sum could not be permitted.

21. Rule 12 which governs default judgment provides for two (2) types of default judgments. The first is default judgment provided for by Rule 12.9(1)(a) for a specified sum where the cause(s) of action and the only damages resulting therefrom are for a specified sum in that they are special damages are quantifiable as at the date of the request for entry of default judgment. The second type of default judgment is provided for by Rule 12.9(1)(b) default judgment with damages to be assessed where the cause(s) of action and/or some of the damages resulting therefrom are unspecified – they are not quantifiable as at the date of entry of default judgment.

22. It should also be noted, said Mr. Hanchell, that Rule 12.7(3) permits a Claimant whose case is partly for a specified sum and partly for an unspecified sum to abandon the unspecified claim and enter default judgment for the specified sum.

23. The essence of Mr. Hanchell's submission was that the relief sought by the Claimant (damages for defamation and alleged injury to professional reputation, wrongful dismissal, false imprisonment, exemplary damages and equitable relief) cannot be specified because the sums are subject to a Court's assessment.

24. The relief sought in Claimant's Amended Writ of Summons filed 29th April, 2021 is reproduced below:

**“1. Damages for injury to professional and Defamation;
2. Damages for wrongful dismissal severance pay, pay in lieu of notice;
3. ~~Damages for unlawful imprisonment and unlawful imposition of constraints
of another’s freedom of movement from a particular place;~~
4. Exemplary Damages;
5. Equitable Relief;
6. Costs;
7. Any other or further relief the Honourable Court deems just in the
circumstances.”**

25. The relief sought in the Claimant’s Amended Statement of Claim filed 29th April, 2021 is reproduced below:

**“1. Damages for breach of contract;
2. Damages for injury and damage to professional reputation \$500,000.00;
3. Damages for wrongful dismissal \$122,110.81 severance pay for 30 years
\$236,900.00, pay in lieu of notice \$7,100.00;
4. Exemplary Damages;
5. Equitable Relief;
6. Costs;
7. Any other or further relief the Honourable Court deems just in the
circumstances.”**

26. I agree with Mr. Hanchell that the Default Judgment was wrongfully entered for lack of compliance with Rule 12.9 on the nature of default judgments.

27. Notwithstanding that the Claimant inserted \$500,000 as damages for injury and damage to professional reputation, such damages are unspecified in nature. These are general damages, which can only be determined by a Court on an assessment of damages where both Parties make submissions as to an appropriate award supported

by case law and other legal authority with relevant and similar cases for the Court's consideration. See **Angelina Turnquest v Stephen Rahming BS 2022 SC 023** where Charles J explained that general damages are calculated by using comparable awards in similar jurisdictions together with English awards and Kemp and Kemp on Damages.

28. Similar reasoning applies to the sums asserted in relation to wrongful dismissal, severance and pay in lieu of notice damages. The Statement of Claim does not demonstrate how the sums calculated or whether the wrongful dismissal claim is grounded in common law or statute. Accordingly, these damages are also unspecified.

29. None of the Claimant's claims are specified claims and was wrongfully entered for the specified sum of \$866,110.81. Mr. Hanchell urges the Court that it must, in accordance with rule 13.2 set aside the Default Judgment. Rule 13.2 applies to cases where the Court *must* set aside default judgments, a Rule to be distinguished from Rule 13.3 which grants the Court discretion to set aside or vary default judgments:

“(1) The Court must set aside a judgment in default entered under Part 12 if the judgment was wrongly entered because, in the case of –

...

(b) judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied”

(2) The Court may set aside a judgment under this rule on or without an application.”

30. As the incorrectness of the Default Judgment lies in the damages and not the conditions required for entering judgment in default of defence, I do not consider that the Default Judgment *must* be set aside under 13.2, but rather that the Court

ought to exercise its discretion under 13.3 to vary the Default Judgment from judgment in default of defence for a specified sum to judgment in default of defence with damages to be assessed by reason that the Default Judgment is non-compliant with Rule 12.9.

31. As this was merely the Defendants' preliminary/alternative position, the Court will go on to evaluate the question of whether, pursuant to Rule 13.3, the Court ought to exercise its discretion to set aside the Default Judgment.

Law on discretion to set aside default judgment

32. 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

33. The Parties agree that the Set Aside Application was made reasonably soon after the Default Judgment, as it was made four (4) days after service of the Default Judgment.

Realistic prospect of defence

34. 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.”

35. 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 weak 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.”

36. The Amended Statement of Claim alleges as against the Defendants wrongful dismissal by reason that he was wrongfully having been accused of theft by reason of employment at a staff meeting, suspended from work for a period of time before being invited back. The Claimant averred that upon returning to work, he communicated to his employer the need for vindication in order to effectively work. Having felt ignored, the Claimant's position is that he was constructively dismissed and therefore resigned in writing.

37. Mrs. Rolle incorrectly stated that the Defendants have not filed a draft Strike Out Application. The Notice of Application and supporting affidavit are exhibited to the Lashley Affidavit filed 21st May, 2026. The evidence in support of the draft Strike Out Application controverts the Claimant's contention that his employment was terminated and generally denies termination on the basis that the Claimant resigned and was paid what he was entitled.

38. In my judgment, read together, the Amended Statement of Claim and the Lashley Affidavit intended to support the Strike Out Application has the effect of demonstrating a realistic prospect that a Strike Out Application would be successful.

Good explanation for not filing Defence

39. Mr. Hanchell conceded that the extension to file the Strike Out Application granted by Justice Darville-Gomez was missed. According to him, the failure was inadvertence caused entirely by the Defendants' Counsel and not the Defendants themselves and not deliberate and urged the Court to evaluate the full procedural history instead of the failure to file the Strike Out Application on its own. Mr. Hanchell communicated that the Defendants offer the Claimant's reasonable wasted costs and would submit to immediate peremptory timetable.

40. In response thereto, Mrs. Rolle submitted that the only reason provided for the failure to file the Strike Out Application was inadvertence, which is insufficient to satisfy the second condition at 13.3(1)(b). She commended **Hyman v Matthews**, in particular the requirement that the failure to file the defence be due to extraneous circumstances. Further, said Mrs. Rolle, courts have emphasised time and again the importance of satisfying all three (3) conditions for setting aside default judgment and in support thereof relied on **Kenrick Thomas v RBTT Bank Caribbean Limited** where the Eastern Caribbean Court of Appeal reversed the decision of the lower court to set aside the judgment, reasoning that notwithstanding the draft defence disclosed a good defence, the Court was still required to be satisfied as to all three (3) requirements. Two (2) conditions was insufficient for the court to have set aside.

41. The Court finds it necessary to restate that the document that the Defendants failed to file in the instant case was the complete Strike Out Application, not a defence. Mr. Hanchell urged the Court to distinguish **Hyman v Matthews** from the instant case. In that case, the explanation for the failure to file a defence characterised as untenable by the appeal court was that Counsel assumed that the defence of the First Defendant would cover both the driver and owner of the vehicle and he was unaware of the availability of a defence or the necessity to have explored the availability of a good defence.

42. Having considered all of the affidavit evidence together with the time after the expiration of the time extended to file the Strike Out Application but before the filing of the Set Aside Application, the Court accepts the explanation proffered by the Defendants. Further, I am reminded of the warning given by Fraser SJ in **North Bimini Bay Condominiums Ltd. v Myron Saunders [2024] 1 BHS J. No. 165** 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.”

Exceptional circumstances under Rule 13.3(2)

43. Further and in any event, Mr. Hanchell argued, even if the Court is not convinced that the Defendants satisfy the requirements to exercise its discretion to set aside the Default Judgment under 13.3(1), the instant case presents exceptional circumstances to justify setting aside under 13.3(2), which provides:

“(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.”

44. The exceptional circumstances proffered by Mr. Hanchell that I agreed amount to exceptional circumstances when taken together:

- The entry of the default judgment for a specified sum despite the claims being of an unspecified nature contrary to Rule 12.9(1)(a) and (b);
- The absence of logical quantification of the sum of damages for which default judgment was entered;
- The affidavit evidence discloses a reasonably good defence to the claim.
- Despite the argument made by Mrs. Rolle that this matter has lingered for nine (9) years due to the Defendants’ delays, I agree with Mr. Hanchell that the age of the file is not the fault of the Defendants entirely, or even mostly. Both sides made errors and delayed in progressing the matter to trial. The Claimant’s previous Counsel improperly entered default judgment in June 2018 without having filed an Affidavit of Service, withdrew the default judgment and took no further steps until April 2021 when it amended both the Writ of Summons and Statement of Claim. The Defendants’ Counsel made an error in failing to support its initial purported Strike Out Application in June 2021 and failed to file its Strike Out Application even after obtaining

an extension and took no steps until prompted by the entry of the Default Judgment.

Rule 26.9 Application

45. The effect of setting aside the Default Judgment (which I have already done) is the same as acceding to the Defendants' Rule 26.9 Application to put matters right since the relief sought thereunder is that the Default Judgment be set aside. The necessity to consider this application therefore falls away.

Costs

46. As stated, the Defendants offered (which I thought was reasonable) to pay the Claimant's reasonable costs thrown away to be assessed if not agreed. At the hearing, I ordered the Defendants to pay the Claimant's costs thrown away by obtaining the Default Judgment, applying for the Order to Attend Court and opposing the Set Aside and Rule 26.9 applications in the amount of \$10,000.

47. The costs order is, in my judgment, justified having regard to the Defendants' failure to comply with the timetable set by Justice Darville-Gomez and the entry of default judgment was warranted (though not in the form that it was entered nor the Claimant's continued efforts to have the Examination heard despite having been aware of the Set Aside Application).

Dated this 20th day of October, 2026

Adrienne Bellot
Assistant Registrar (Acting)