

COMMONWEALTH OF THE BAHAMAS

2022/CLE/gen/FP/00056

IN THE SUPREME COURT

Common Law & Equity Division

BETWEEN

PROEX INTERNATIONAL INC.

Plaintiff

AND

**GNC COMPANY LIMITED
T/A DISCOUNT DISTRIBUTORS LTD**

Defendant

Before: The Honourable Madam Justice Ntshonda Tynes (Ag.)

Appearances: Mrs. Aisha Ferguson for the Plaintiff

Ms. Gia Moxey-Lockhart for the Defendant

Hearing Date: 14th November, 2022 (Plaintiff's Submissions 18th November, 2022; Defendant's Submissions 21st November, 2022)

ORAL DECISION

Tynes, J (Ag.)

1. At the hearing of the Defendant's application on the 14th November, 2022 to set aside the Plaintiff's default judgment, Counsel for both parties advanced oral arguments. The matter was then adjourned to allow written submissions to be forwarded for the Court's consideration. I have read and considered the Summons and Affidavit in support filed for the Defendant and the Defendant's

Submissions filed on the 21st November, 2022. I have also read and considered the Affidavits filed on behalf of the Plaintiff and the Plaintiff's Submissions filed on the 18th November, 2022.

The Application

2. The Defendant's application is brought by way of a Summons issued on the 18th August, 2022 seeking inter alia an Order setting aside the Judgment in Default of Appearance "on the grounds that it is irregular pursuant to Order 19 rule 9 of the Rules of the Supreme Court". The application is supported by an Affidavit filed on the 18th August, 2022 wherein the affiant Ryan Turnquest identifies himself as the President and a Director of the Defendant company and avers that the Writ was not served on the Defendant's Registered Office. The Defendant company's challenge to the Default Judgment relates solely to the question of service.
3. The Plaintiff's Affidavit of Service filed on the 7th July, 2022 and sworn by one Charles Watson describes the service of the Writ on Mr. Turnquest, on behalf of the Defendant. The Affidavit goes on to include a cursory reference to an attempted service on the Defendant's Registered Office situated at Suite 6 Grosvenor Professional Park and Medical Center, Grosvenor Close, Nassau, Bahamas.

The Law

4. As it relates to service of process on companies, the provisions of section 23 of the Companies Act state that "*Any writ, notice, order or other document required*

to be served upon a company may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at its registered office.”

Analysis

5. It is common ground that the Defendant has a Registered Office and that Registered Office is located at Suite 6 Grosvenor Professional Park and Medical Centre, Grosvenor Close, Nassau, Bahamas.
6. This is not a situation where the Defendant has no registered office, in which case the provisions of Order 61 rule 3 of the RSC would be applicable. Order 61 rule 3 provides that *“Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it [...] on the president of the body or the secretary, treasurer or other similar officer thereof.”*
7. It is also common ground that the Plaintiff’s Writ was not served on the Defendant at its Registered Office.
8. In light of the undisputed facts and the relevant law, it is evident that the Judgment in Default of Appearance entered by the Plaintiff in circumstances where the Registered Office was not served with the Writ is irregular. It ought therefore to be set aside.
9. However, as Plaintiff Counsel submitted in her oral arguments, the Defendant’s application is made pursuant to Order 19 rule 9 of the RSC, a rule which does not confer power on the Court to set aside Default Judgments entered for non-appearance. And, the Defendant does not in its Summons seek to invoke the

inherent jurisdiction of the court in the alternate as is often the practice in these types of applications.

10. The provisions of Order 19 rule 9 state “*The Court may on such terms as it thinks just set aside or vary any judgment entered in pursuance of this Order.*”
11. The phrase “this Order” refers to Order 19 of the RSC which is intituled and concerns “Default of Pleadings”. As stated in the Notes to the 1999 Edition of the White book at note 19/0/2, Order 19 deals with “*the consequences that may flow from a party’s failure to comply with the rules as to the service of pleadings in proceedings begun by writ.*”
12. The Plaintiff’s default judgment is not entered in default of pleadings but in default of appearance. It is unambiguous. It bears the title “Judgment in Default of Appearance” and in its body at the very beginning it clearly states “*NO APPEARANCE having been entered by the Defendant herein IT IS HEREBY ADJUDGED THAT...*”. The words “*NO APPEARANCE*” are written in block capitals.
13. The Plaintiff’s default judgment is obviously entered in pursuance of Order 13 rule 1 of the RSC. As such, the proper rule pursuant to which the Defendant’s application ought to have been made is Order 13 rule 8 and not Order 19 rule 9. That rule, Order 13 rule 8, provides that “*the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.*” In Order 13 rule 8, the words “*this Order*” refer to Order 13 which is intituled and deals with “Default of Appearance to Writ”.

Conclusion

14. In conclusion, the Defendant, having framed its application as it has, is not, as of right, entitled to the order it seeks. However in the interest of progressing the action and avoiding delay, I will set aside the Plaintiff's irregularly entered Default Judgment. Again, I do this notwithstanding my determination that the Defendant's application is not made pursuant to the pertinent rule.
15. The Defendant is granted leave as prayed to enter a Conditional Appearance and to set aside service of the Writ of Summons.
16. In the circumstances, each side shall bear its own costs of the application.

Dated this 1st day of December, A.D. 2022

**Ntshonda Tynes
Justice (Ag.)**