

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 56 of 2024

BETWEEN:

GENEIEVE FROST JOHNSON CLAIMANT

AND

KERRY SMITH DEFENDANT

Appearances:

Kimberly Wallace, for the Claimant
Arthur Saldivar, for the Defendant

2024: 11th November

11th November

ORDER (An oral order reduced to writing)

Vacation of default judgment

[1] **GOONETILLEKE J.**, This matter comes up for hearing of an application filed by the defendant for the vacation of a default judgement entered against him. The default judgement was sealed by the Court office on the 8th of April 2024 and entered for the failure of the defendant to file the defence; and for the defendant to pay the claimant a sum of 40,395 dollars and 42 cents and interest there on.

[2] Both Counsel have been heard. The submission of Mr. Saldivar is that the defendant had filed this application for vacation of default judgment as soon as reasonably possible, that he has a good explanation for his failure and that he has a real prospect of success based on defence that he has filed. He further submitted that the overriding objective of Civil Procedure Rules is to deal with cases justly and that in these circumstances the default judgement ought to be vacated.

- [3] Mr. Saldivar also submits, though it is not contained in an affidavit that the defendant is amenable to resolve the outstanding disputes between him and the claimant by way of mediation.
- [4] The claimant opposes the application to vacate default judgment and has submitted that there is no evidence properly before the court in support of the application to set aside the default judgement.
- [5] It was submitted for the claimant that the purported defense was filed belatedly without the consent of court and without an application being made for relief from sanctions and that there is no ground on which the Application for vacation of default judgment can be validly considered.
- [6] The relevant facts that ought to be considered are as follows:
- a. Statement of claim was filed on 7th of February 2024.
 - b. An affidavit of service demonstrates service on the 21st of February 2024.
 - c. An acknowledgment of service was filed on the 8th March, 2024.
 - d. The Acknowledgement of service, which has been signed by the defendant states that he received the statement of claim on 21st February 2024.
- [7] It was the submission of Mr. Saldivar on behalf of the defendant that the defendant did in fact have notice of the claim but only on the day that he actually filed it in the court office; and that he had notice of the application on the 8th of March the 2024.
- [8] An application for default judgment was made on the 26th of March 2024. The default judgment was entered on the 8th of April 2024.
- [9] On that same day; 8th of April 2024, the defendant had attempted to file in the court registry a defence, which was not accepted. On the 10th of April 2024 a defense was filed in the court registry without any application supporting it for relief from sanction.
- [10] The application to set aside the default judgment was filed on the 15th of April 2024. That application is supported by an affidavit of the defendant dated the 14th of April, 2024.

Consideration by Court

- [11] Even in the event that the defendant is granted a grace period of being aware of this claim; the defendant had notice of the claim on the 8th of March 2024. 28 days therefrom would have lapsed on the 5th of April, 2024.
- [12] The purported defence has been filed in the registry on the 10th of April 2024. It is clear, therefore, that the defence has been filed out of time even on the interpretation of the date of service given by the Counsel for the defence.
- [13] The application to set aside the default judgment has been made in terms of Rule. 13.2 or alternatively Rule 13.3. The requirements under the Rule 13.3 are that;
- (A) The application to vacate the default judgment is made as soon as reasonably practicable after finding out the judgement has been entered.
 - (B) A good explanation is given for the failure to file an acknowledgement of service or defence, as the case may be, and;
 - (C) The defendant has a real prospect of successfully defending the claim.

These requirements have been held to be conjunctive and the language as it reads indicates that they are indeed conjunctive requirements.

- [14] Rule 13.4, also requires that an application to vary or set aside a judgment must be supported by evidence on affidavit. An affidavit must exhibit the draft of the proposed defence. This is a mandatory requirement, because of the use of the word “*must*” in the Rule. The defendant’s application to set aside the default judgment on the face of the application does not exhibit a defence.
- [15] Rule 30.5 of the Civil Procedures Rules requires an affidavit, which has been sworn to; containing the full name, address and qualification of the person before whom it was sworn or affirmed.
- [16] Rule 30.5 sub Rule 2, sets out that the statement authenticating the affidavit which is referred to as the Jurat must follow immediately and not be on a separate page. Again, this is a mandatory requirement because of the word “*must*” stated in the Rule. A perusal of the defendant’s affidavit

does not indicate that there is a Jurat. As such the application to vacate the default judgment is not supported by a valid affidavit.

[17] However, I will also consider whether the requirements of Rule 13.3 in regard to the vacation of default judgment have been satisfied by the defendant. The application for vacation of the default judgment has been made within a short time.

[18] The judgment was entered on the 8th of April. The application to set aside the judgement has been made on the 15th of April. Therefore, the application would satisfy the first limb of Rule 13.3. The purported affidavit contains just 11 paragraphs and the relevant explanation for the failure to file a defence is contained in paragraph 6, 7 and 8 of the affidavit, which reads as follows;

Paragraph 6 states that ; *“I took the acknowledgement of service found in the documents to the court registry and left it with a staff member who thereafter told me that I need to seek an attorney for assistance”*.

Paragraph 7; *“Then at the time of getting that advice, I quickly sought legal counsel to see what could be done”*.

Paragraph 5, also refers to the fact that the document was received on 3rd March 2024.

Paragraph 8 states that; *“I was advised and really believed that an application for relief from sanctions could be filed on my behalf if the application was granted and I could file my defence”*.

Paragraph 9 states that; *“I intend to file my defense in the matter and can do so if granted permission by the Court”*.

These several paragraphs above of the defendant’s affidavit do not indicate any good reason for not filing the defence on time.

[19] The timelines for filing the defence, even if the defence was taken to have been brought to the attention of the defendant on the 8th of March, though he states in his affidavit that he received the claim on the 3rd of March, the 28 days for filing the defence would lapse on the 5th of April. He states that after he got the information from the Court office to have the assistance of an attorney that he quickly sought legal counsel to see what could be done. That would indicate that he had legal advice on the 8th of March 2024 or thereabout. There is therefore no explanation whatsoever as to why the defence was not filed in time.

- [20] I therefore find that the 2nd limb of Rule 13.3 has not been satisfied by the defendant.
- [21] In these circumstances, I do not need to consider the third limb of Rule 13.3; as to whether the defendant has a real prospect of success. I also further note that in fact, the draft defence has not been annexed to the application itself, and that in these circumstances the Court would not be able to consider that aspect of the matter as to the impact the defence would have had.
- [22] As to the submission of counsel for the defendant that the application of Rule 1.1 of the Civil Procedure Rules to deal with cases justly; this Court considers that dealing with cases justly also requires that cases be concluded expeditiously and not be unduly held up with procedural errors. The Privy Council in the case of **AG v Universal Products Limited** [2011] UKPC 37, has also held that the purpose of the stringency of the rules is to improve the efficiency of litigation and that the overriding objective of the rules is not available to aid the correction of a clear breach of the rules. I am therefore not inclined to accept that submission.
- [23] For the reasons set out above, the application of the defendant to set aside the default judgement dated the 8th of April 2024, is dismissed with costs.

IT IS HEREBY ORDERED THAT

- A. The Application to set aside the default judgment is dismissed.
- B. The defendant shall pay the costs of claimant for this application.
- C. The costs are to be agreed or assessed.

Rajiv Goonetilleke
High Court Judge