[2024] JMSC Civ 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV01867

BETWEEN	**JOHN THOMPSON**	**1ST CLAIMANT**
A N D	**ENA THOMPSON**	**2ND CLAIMANT**
A N D	**ARNALDO BROWN**	**1ST DEFENDANT**
A N D	**BEVERLEY SWABY**	**2ND DEFENDANT**

IN CHAMBERS (VIA VIDEO-CONFERENCE)

Mr. Lawrence Haynes & Ms. Rochelle Haynes for the Claimants

Mr. David Stone instructed by Arnaldo Brown & Co for the Defendants

HEARD: January 9 and February 1, 2024

Civil Practice and Procedure – Application to Set Aside Default Judgment – CPR Rule 13.3 – Whether or not the Defendants have a Defence with a Real Prospect of Success

Evidence – Admissibility of Without Prejudice Correspondence – Whether or not exception to general principle of inadmissibility of without prejudice documents has been established – whether or not parties had arrived at an agreement to settle.

STAPLE J

BACKGROUND

[1] The Defendants, the 1st Defendant in particular, are trying to stop the Claimants from enforcing a judgment in default obtained by them against the Defendants from as far back as the 24th September 2020. To this end they filed an application to set

aside the Default Judgment on the 20th February 2023. This application was later amended on the 19th December 2023 **subsequent** (emphasis mine) to the original date for the hearing on the 18th December 2023.

[2] The Claimants have resisted the application of the Defendants to set aside the Default Judgment.

[3] This ruling is to determine whether or not to set aside the Default Judgment so entered.

ISSUES

[4] The Claimant has rightly identified the issues to be resolved as follows:

(i) Whether or not the Defendants have a defence with a real prospect of success;
(ii) Whether or not the Defendants have applied to the Court as soon as reasonably practicable after finding out that the judgment was entered;
(iii) Whether the Defendants have given a good explanation for the failure to file a defence.

[5] The Defendants have not challenged that they were validly served with the Claim Form and Particulars of Claim as well as other supporting documents. Accordingly, they are seeking to move the Court to exercise its discretion under rule 13.3 to set aside the Default Judgment.

[6] It is important to note that the key question to ask is whether or not the Defendants have a defence with a real prospect of success. However, the Court must also consider, in accordance with rules 13.3(2)(a) and (b), whether or not the Defendants applied to set aside the judgment as soon as reasonably practicable after receiving notice of the entry of the judgment and whether or not the Defendants have given a good explanation for failing to file a defence (in this case) within the time allowed by the rules.

[7] It is not disputed that the Defendants were served on the 22nd June 2020. Accordingly, the Defence was due to be filed and served no later than September 17, 2020 (to take into account the legal vacation between August 1 2020 and September 15 2020 (during which period time would not run to serve the Defence for this particular year). It is not disputed that no defence was filed during this time and so the Judgment in Default that was entered was regularly entered.

Was the Application to Set Aside Made as Soon as Reasonably Practicable?

[8] The Court indicated that it was satisfied that the Application to Set Aside the Default Judgment was filed as soon as reasonably practicable after it was brought to the attention of the Defendants that it was entered. The Perfected Judgment in Default was served on the Defendants on the 17th February 2023 and the Application was filed on the 20th February 2023.

Was there a Good Explanation for Failing to File the Defence?

[9] The Defendants submitted that there was a good explanation provided by each of them for the failure to file their Defence. It is important to examine the application and affidavits in support of their application. The application as originally filed was firstly a joint application and supported by a joint affidavit. The Amended Application, filed on the 19th December 2023 remains a joint one, but it is now supported by separate affidavits. Indeed, the Court could not and did not consider the first "Affidavit" filed on the 20th February 2023 as it was quite irregular. It was not a sworn document as in, it did not purport that the affiants were "duly sworn" before making the affidavit nor was the full name of the Justice of the Peace set out in the jurat. As such, the Court did not have any regard to same.

[10] In their "affidavits" filed on the 19th December 2023, there is the same defect noted. The full name of the Justice of the Peace is not set out in the affidavit of Mr. Brown nor of Ms. Swaby. It is just the initials "H. Ellis". So these would not be valid

affidavits either (see rule 30.4(1)(d) of the CPR and ***National Workers Union v Shirley Cooper***[1]).

[11] But in the event that I am wrong on that score, I will examine them to see if they show evidence to support the submission that the Defendants gave a good explanation for failing to file their defences.

The First Defendant

[12] Mr. Brown said at paragraph 6 of his Affidavit that, "Subsequent to the filing of the Acknowledgment of Service, due to the Covid-19 pandemic and the increased restrictions imposed by the Orders made pursuant to the Disaster Risk Management Act (DRMA), I was unable to file a Defence within the time prescribed by the Civil Procedure Rules 2002, as amended." He went on further at paragraph 7 to say that the "throes of the pandemic" caused severe dislocation, including administrative dislocation and so the timeline for filing the defence was missed.

[13] I reject those statements as good explanations for failing to file his defence within the prescribed time. Nothing precluded him from filing the acknowledgment of service. I fail therefore to see what the restrictions imposed by the DRMA Orders, without more, had to do with the failing to file the Defence. Litigation continued in the Supreme Court and, as evidenced by the very filing of the Acknowledgment of Service, the Supreme Court remained open for business.

[14] The 1st Defendant is counsel of many years experience and so should be very much aware of the importance of complying with the rules and timelines set out therein as an officer of the Court. Even more so now that he has been sued. I find therefore that his explanations are without any merit at all.

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[1] [2020] JMCA Civ 62 per Dunbar-Green JA (Ag) (as she then was) at para 9

The 2nd Defendant

[15] From paragraphs 7-9 of her Affidavit, the Claimant provided her explanation as to why it is that she was not able to file a Defence within the time stated. Concerning paragraph 7, the pandemic is also cited as an explanation for her failure to give instructions to her Attorney-at-Law (who is the 1st Defendant) to file the Defence. She said she was highly diabetic and hypertensive. There was no evidence as to how or why these underlying conditions would have precluded her from filing her defence within the time stipulated.

[16] In paragraph 8 she said she was admitted to the hospital for 6 months and went into a coma. There is no evidence that this time of admittance to the hospital coincided with the time when she was required to file the Defence.

[17] In the circumstances therefore, I have no sufficient evidence to say that I am satisfied that the 2nd Defendant has given a good explanation for the failure to file the Defence within the time prescribed.

IS THERE A DEFENCE WITH A REAL PROSPECT OF SUCCESS

[18] For the reason outlined above, there is no affidavit before the Court for either Defendant and so there really is no defence of merit. This would put that issue to bed.

[19] However, if my interpretation of the effect of failure to comply with Rule 30.1(4) is incorrect, I will now discuss whether or not the Affidavits filed show a defence with a real prospect of success.

Did the Parties Settle Before the Suit was Filed?

[20] One of the important aspects of this case that arose is whether or not the Defendants had acknowledged the debt and agreed terms to settle the debt before the suit was filed.

[21] The question arose as the Affidavit of the 2nd Claimant in response to the first set of "Affidavits" of the Defendants filed on the 9th November 2023 exhibited email correspondence that flowed between the 1st Defendant and Mr. Lawrence Haynes, counsel for the Claimants, that suggested that there was such a settlement.

[22] It started with the letter from Mr. Lawrence Haynes dated the 2nd March 2020. I will set out the letter in full as it's terms are important to give context to the letter from Mr. Arnaldo Brown dated the 9th April 2020.

[23] Mr. Stone objected to the letter dated April 9, 2020 and the other emails being put into evidence as, he submitted, they are all "without prejudice" correspondence and so inadmissible. However, having perused the authorities[2], I will admit the documents into evidence to determine whether or not an agreement was indeed arrived at between the parties as this would fall within one of the well-known exceptions to this rule. In my view, whilst there was clearly a dispute between the parties, the evidence tends to suggest that they had concluded an agreement and so it is appropriate to determine whether this was so or not and in order so to do, I would have to examine the documents.

[24] In my view, the question of whether or not there was a concluded agreement goes to the heart of whether or not the 1st and/or 2nd Defendants have a defence with a real prospect of success. For if it is that the Court is able to say that there was a concluded agreement, then it would mean that the Defence, as filed, would not be one with a real prospect of success as the Defendants would have admitted to owing the rent and agreed terms of payment. That would be inconsistent with a Defence denying liability.

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[2] See the cases of *Leeroy Clarke et al v Life of Jamaica Limited* SCCA 59/2008, August 12, 2008 per Morrison JA and *Winston Finzi et al v JMMB Merchant Bank Ltd.* [2016] JMCA Civ 34

[25] Here is the letter from Mr. Haynes:

LAWRENCE L. HAYNES LL.B
ATTORNEY-AT-LAW

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2 Duke Street, Kingston
Jamaica W.I.
Tel: 922-5150
Fax: 967-2358
e-mail: llhaynes55@gmail.com

Shop #6
St. Thomas Farm Court Yard
Morant Bay, St. Thomas
Jamaica, W.I
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March 2, 2020

Arnaldo Brown
East Central St. Catherine
Constituency Office

Beverley Swaby
1642 Carlisle Avenue
Greggory Park P.O.
Portmore, St. Catherine

Dear Sirs,

Re: Rent owed in respect of premises situate at Shop #9, Upstairs Jet Plaza, Lot 21 Cedar Manor in the parish of St. Catherine

I act for and on behalf of John Thompson and Ena Thompson, the owners of the captioned premises.

I am instructed by my clients that from November 25, 2017, you were let the aforementioned premises which you currently occupy as tenants, for monthly rent of Fifty Thousand Dollars **($50,000.00)**. However, despite repeated requests to do so, you have failed and/or neglected to pay the rent, and the sum of One Million Three Hundred and Fifty Thousand Dollars **($1,350,000.00)** remains due and owing to my client.

I HEREBY DEMAND THAT YOU REMIT THE SAID SUM OF ONE MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS ($1,350,000.00) TO MY CLIENT WITHIN TWENTY-ONE (21) DAYS OF THE DATE HEREIN.

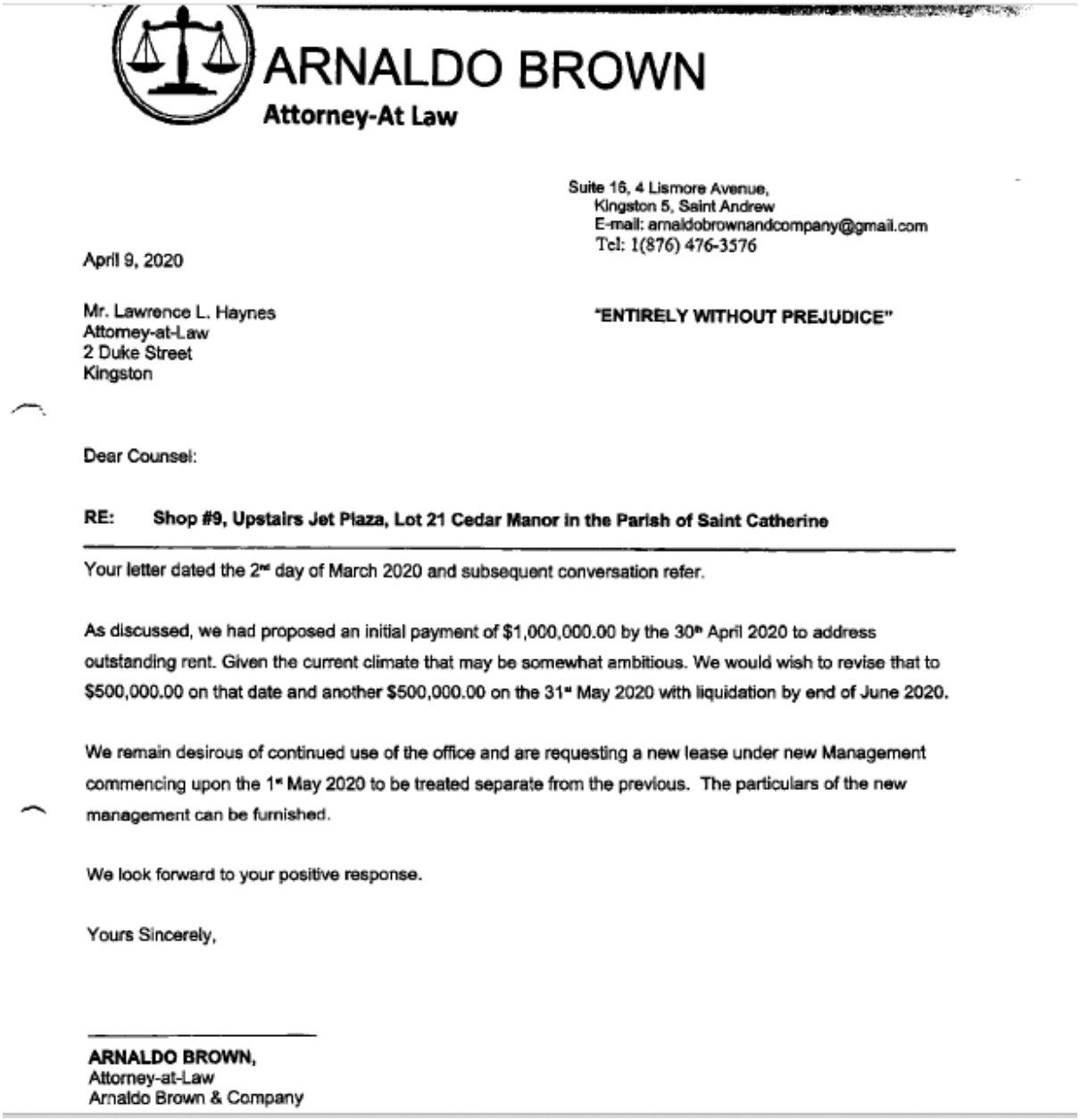
If you fail to pay the said sum as aforesaid, my unequivocal instructions are to institute legal proceedings without further notice to you.

Yours faithfully

LAWRENCE L. HAYNES

cc. **John Thompson**
Ena Thompson

[26] The letter in response from Mr. Brown is set out below:



ARNALDO BROWN
Attorney-At Law

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April 9, 2020

Mr. Lawrence L. Haynes
Attorney-at-Law
2 Duke Street
Kingston

"ENTIRELY WITHOUT PREJUDICE"

Dear Counsel:

RE: Shop #9, Upstairs Jet Plaza, Lot 21 Cedar Manor in the Parish of Saint Catherine

Your letter dated the 2nd day of March 2020 and subsequent conversation refer.

As discussed, we had proposed an initial payment of $1,000,000.00 by the 30th April 2020 to address outstanding rent. Given the current climate that may be somewhat ambitious. We would wish to revise that to $500,000.00 on that date and another $500,000.00 on the 31st May 2020 with liquidation by end of June 2020.

We remain desirous of continued use of the office and are requesting a new lease under new Management commencing upon the 1st May 2020 to be treated separate from the previous. The particulars of the new management can be furnished.

We look forward to your positive response.

Yours Sincerely,

ARNALDO BROWN,
Attorney-at-Law
Arnaldo Brown & Company

[27] What is clear from the letter is that there was a conversation between the 1st Defendant and Mr. Haynes after the March 2, 2020 letter and the content of that conversation cannot be speculated on. What can be inferred is that the debt was agreed and terms were being settled.

[28] What cannot be inferred is whether or not the debt was agreed to be on behalf of the 1st and 2nd Defendants or just on behalf of the 2nd Defendant (as said by Mr. Brown in his affidavit filed on the 19th December 2023). Importantly, Mr. Stone submitted that it was the case that the settlement was in reference to the 2nd Defendant and not the 1st and 2nd Defendants jointly.

[29] This question is not in any way clarified by the exhibits to the Affidavit of Ms. Thompson filed on the 9th November 2023. All those exhibits do, in my view, is to confirm that Mr. Brown was acknowledging the debt, had agreed terms of payment, but was extending the time within which to make the initial payment. But it is not, in my view, proof that this arrangement was being agreed on his and the 2nd Defendant's behalf.

[30] It is my finding that the debt was agreed, but I can only say that it was at least agreed on behalf of the 2nd Defendant. The question as to whether it was agreed with the 1st Defendant is a matter that is more appropriate for a trial and not a question on whether or not to set aside default judgment. Therefore, the documents are admissible only as against the 2nd Defendant and not against the 1st Defendant.

Is there a Defence with a Real Prospect of Success?

The 1st Defendant

[31] The 1st Defendant, in his "affidavit" sworn on the 19th December 2023, said that he is but a licensee of the 2nd Defendant and that he did not enter into any lease arrangement with the Claimants.

[32] There is no evidence of a written and executed lease agreement. This was simply an oral arrangement. What is also true, is that there was no evidence of the 2nd Claimant having had any direct dealing or conversation with the 1st Defendant in coming to this arrangement. The arrangement was made with the 2nd Defendant only.

[33] This only serves to strengthen the case for the 1st Defendant. The 2nd Claimant, in her 2nd Affidavit filed on the 29th December 2023, exhibited several receipts purportedly issued in the name of East Central St. Catherine Constituency. This was purportedly done on the instructions of the 2nd Defendant purportedly on behalf of the 1st Defendant. However, this was denied by the 1st Defendant.

[34] Much of the contents of the initial conversation between the 2nd Claimant and the 2nd Defendant will be matters to be tested at a full trial for their meaning and effect. Was she acting as the agent for the 1st Defendant, for herself alone, or some combination of both? This is a matter for trial.

[35] The 2nd Claimant went further in her affidavit at paragraph 15 to indicate that she had conversations with the 1st and 2nd Defendants subsequent to entering into the lease arrangement and that neither took issue with the monthly figure for rent or that they were her tenants. Again, this is a matter for trial as it relates to the 1st Defendant.

[36] I have also examined the exhibited draft defence of the 1st Defendant and it accords with what he stated in his affidavit.

[37] In the circumstances, given the absence of any evidence at this preliminary stage that would have clearly and irrefutably destroyed the evidence of the 1st Defendant that he was a licensee of the 2nd Defendant, I find that he has a defence with a real prospect of success.

The 2nd Defendant

[38] The 2nd Defendant, however, is not in a similar position. Firstly, the 1st Defendant, on the face of it, has essentially stated that the negotiations mentioned above, were done by him with Mr. Lawrence on the behalf of the 2nd Defendant as his client. The 2nd Defendant herself, in her Affidavit filed on the 19th December 2023, has stated that the 1st Defendant was her licensee. Therefore, as I have found, the 1st Defendant has bound his client to having accepted that she owes the rent and

there have now been terms agreed as to its payment. It is simply for the 2nd Defendant to begin paying the money.

[39] What is more, the 2nd Defendant, in her "affidavit" has not disputed that she was in occupation of the premises as a tenant of the Claimants. She is disputing the amount for which the premises was rented per month. However, she herself has not asserted what amount she was in fact paying for rent. I do not find that the defence is satisfactorily identified.

[40] In setting out one's defence, Rule 10.5 is the applicable rule and must be complied with. The relevant portions are set out below:

> **10.5 (1) The defence must set out all the facts on which the defendant relies to dispute the claim.**
> **…**
>
> **(3) In the defence the defendant must say –**
>
> **(a) which (if any) of the allegations in the claim form or particulars of claim are admitted;**
> **(b) which (if any) are denied; and**
> **(c) which (if any) are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove.**
>
> **(4) Where the defendant denies any of the allegations in the claim form or particulars of claim –**
>
> **(a) the defendant must state the reasons for doing so; and**
> **(b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.**
>
> **(5) Where, in relation to any allegation in the claim form or particulars of claim, the defendant does not –**
> **(a) admit it; or**
> **(b) deny it and put forward a different version of events,**
>
> **the defendant must state the reasons for resisting the allegation.**
>
> **…**

[41] At paragraph 13 of the affidavit sworn on the 19th December 2023, the 2nd Defendant said that she was not occupying for $50,000.00 a month. That is a clear denial. A bare denial is not a sufficient pleading in a defence under the Civil Procedure Rules. If there is a denial, there must be a reason and/or an alternate version of the facts.

[42] This alternate version of facts and/or reason for denial must be put in evidence in the affidavit of merit, otherwise it fails as an affidavit of merit. This point is so trite that I hardly need to cite authority for same. However, I will simply note the cases of ***Fiesta Jamaica Ltd. v National Water Commission***[3] and ***B & J Equipment Rental Limited v Joseph Nanco***[4]*.*

[43] I find therefore that it was the duty of the 2nd Defendant to set out in her affidavit her statement of what the rent was she was paying at the time. If it wasn't $50,000.00, then what was it? If she did not owe the sum claimed, then how much was she owing specifically from her calculation? It was not her evidence, from the affidavit, that she owed **no rent at all**. As a consequence, failing to put forward her version of the events is fatal to this affidavit being an affidavit of merit.

[44] Concerning her counterclaim, the 2nd Defendant has supplied not one receipt to buttress her claim for having incurred any expense. She has not even stated one defect or improvement that she had to make as an illustration and exhibited a receipt. A counterclaim must be set out similarly to a claim. It must have the relevant supporting documents and the facts must be precisely and concisely set out. She has simply made a bald assertion that I spent $500,000.00 on repairs and improvements without any supporting details or documents. This is not a claim with a real prospect of success.

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[3] [2010] JMCA Civ 4

[4] [2013] JMCA Civ 2 per Morrison JA (as he then was)

[45] In the draft defence and counterclaim, the Claimant makes further claims such as loss of bargain of $100,000.00 monthly from date of re-entry to date of judgment. I am not certain of the evidential basis for this claim for loss of bargain or that such a claim has been properly made out on the evidence in the affidavit.

[46] She also made a claim for the return of JUTC equipment being hosted at the property without itemizing what this equipment was. This was absent from both the Affidavit as well as the draft defence and counterclaim. Interestingly, the draft counterclaim makes no reference to the laptops, the folding chairs, the printer or the goods and items for sale or their value.

[47] In all the circumstances, the Defence and the counterclaim by the 2nd Defendant are not supported by an affidavit of merit.

[48] Consequently, I do not find that there was any merit to her defence to the claim filed.

Should the Default Judgment Against the Defendants be Set Aside in All the Circumstances?

[49] In my view, the Default Judgment should not be set aside against either Defendant for the reason that they have no valid affidavits before the Court setting out the merits of their respective defences.

[50] However, if the affidavits are deemed valid, it is my view that the 1st Defendant is the only one of the two that has a defence with a real prospect of success. This is dispositive of the matter as against the 2nd Defendant as, since I do not regard her as having a defence with a real prospect of success, she would not have met the requirement under rule 13.3(1).

[51] In this regard, for the 1st Defendant, I would then have to consider whether he had a good explanation for failing to file his defence in time since I was satisfied that he filed the application to set aside within a reasonable time after being notified of

the entry of the default judgment. In my view, he provided no valid explanation for this failure.

[52] There have been instances where, even where the Defence is one with tremendous merit, the Court has still refused to set aside a regularly entered judgment in default on account of inexcusable explanations for lack of compliance with the rules.

[53] One ready case that comes to mind is ***Ameco Caribbean Inc v Seymour Ferguson***[5]*.* In that case the Respondent had filed a claim against the Appellant and obtained a regular judgment in default. Two years after being served with notice of the Judgment in Default, the Appellants unsuccessfully applied for the judgment in default to be set aside. They did not appeal from that ruling and the matter proceeded to an assessment of damages scheduled for May of 2017. However, the day before the assessment of damages, the Appellant filed a second application to set aside the judgment in default. On this second Application, Stamp J ruled that he would not exercise his discretion to set aside the judgment in default as, essentially, though there was a defence on the merits, the lengthy delay in filing the second application to set aside, the poor explanation for same as well as the fact that the Claimant's claim would now be statute barred, militated against him exercising his discretion in favour of the Appellant.

[54] On Appeal, the Court of Appeal agreed with the decision of Stamp J and refused to set aside the judgment in default, even in the face of a Defence with tremendous merit.

[55] Edwards JA, in delivering the opinion of the Court said as follows:

> *[78] It is clear, therefore, that on great authority, both pre and post CPR, delay is a significant factor to be weighed in the balance in the circumstances of a particular case. The statement by Phillips JA in*

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[5] [2021] JMCA Civ 53

Rohan Smith *(at paragraph [39]) that delay was merely a factor to be borne in mind and ought not by itself to be determinative of the application, on which the appellant relies, is a correct statement of the principled approach the court should take in determining the application to set aside. It is true that delay by itself, is not a determinative factor. It is a factor to be considered and weighed in the balance with all the other relevant factors in the case. Reliance on this, however, does not assist this particular appellant in the circumstances of this case.*

[79] In the instant case, the inordinate delay, which has boldly and frankly been conceded to by counsel for the appellant, the lack of explanations, and the consequent risk of prejudice to the respondent, are circumstances which would necessarily have "featured prominently" in the learned trial judge's consideration of whether to set aside the judgment. The weight to be accorded to that delay and the concomitant prejudice caused to the respondent therefrom, had to be balanced against the weight to be accorded to the merits of the defence.

[80] The learned judge correctly identified and considered the relevant factors and in so doing took the correct approach. Having done a thorough analysis of the authorities submitted by both parties, he rightly considered the authorities which demonstrated that rule 13.3 must be interpreted and applied in keeping with the overriding objective. He recognised the paramountcy of a good defence with a real prospect of success and weighed that against the possible prejudice to the respondent.

[81] Having taken that approach, the learned judge's finding that "where grave and irremediable harm may be done to a claimant if a judgment is set aside, any inordinate delay without good and satisfactory explanation is a material factor to be considered in the exercise of the discretion to set aside, even if the proposed defence may seem impregnable on paper" (see paragraph [33]), cannot be faulted. This is a necessary conclusion that arises from a proper application of the overriding objective to rule 13.3. In that regard, the learned judge did not say, as asserted in the grounds of appeal, that delay is only excusable if supported by a good explanation, but rather, that the particular circumstances of the case before him called for one. Furthermore, the only way the court could be placed in a position to assess whether an applicant had applied "as soon as reasonably practicable" in the circumstances of the case, is if the applicant provides an explanation as to the circumstances it faced at the material time that may or may not have prevented it from applying sooner.

[56] In that case, the delay in question had to do with the delay in applying to set aside the Judgment in Default. In this case, the delay has to do with the delay in filing the defence. The Claimants, in this case, are at the stage of obtaining a Final Attachment of Debt Order. They have a thing of value – a judgment from the Court. They are about to enforce same. This judgment was obtained from some 3 years ago.

[57] The 1st Defendant, an attorney-at-law of many years standing, ought to be aut fait with the Civil Procedure Rules. Yet he took no steps to regularize his standing before the Court. I find, on the balance of probabilities, that the 1st Defendant knew that the Defence was to be filed within the time prescribed and provided no explanation as to why he took no steps to check on the status of the matter or filed an application to extend the time within which to file his defence. In my view counsel at the bar ought to be held to a higher standard when it comes to the conduct of their own litigation as they are officers of the Court and should endeavour to uphold the rules of the court when they are dealing with matters before the Court whether on behalf of themselves or others.

[58] Indeed, his dilatory conduct on behalf of his client, the 2nd Defendant, has exposed his client to a judgment. Which judgment I am not minded to set aside.

[59] The overriding objective requires that in interpreting and exercising my discretion under these rules I should seek to deal justly with the case. Dealing justly with the case includes, among other things, ensuring that the case is dealt with expeditiously and fairly. The 1st Defendant has failed to demonstrate that in his conduct of the defence, as counsel, he has dealt with the prosecution of his and the 2nd Defendant's defence expeditiously.

[60] If the judgment is set aside as against the 1st Defendant now, the Claimants will likely have a very long wait for a trial in this matter. This would also delay any enforcement against the 2nd Defendant. I was advised that trials are now being set for as far down the road as 2029. When one considers that much of this case will

depend on the memory of witnesses – elderly witnesses at that, as there is no written lease agreement, the prejudice to both sides, looms large.

[61] It might be that an earlier date could be set for trial, but then what of the other litigants before the Court who are diligently pursuing their matters? The Court cannot allot to a case more than its fair share of resources. Put another way, the Court should be careful not to allot to a case extra resources to the detriment of other litigants especially where the litigants seeking to benefit from the extra allotment were dilatory in their conduct. Rule 1.2(e) is the appropriate rule here.

[62] I also bear in mind that we are now in a new era of criminal and civil litigation in the Courts of Jamaica. We now have an agreed time standard in the Supreme Court of 2 years from filing to completion. This means that we have agreed that 2 years is a sufficient allocation of resources to each case, **properly prepared (emphasis mine)**, for it to be disposed. Conduct of litigants or counsel or both which causes or is likely to cause a case to fall outside of that time standard should not be countenanced unless the justice of the case requires it. I recognise that there are exceptions to every rule, but it cannot be that the exception becomes the rule. In my view the overriding objective in Rule 1 must be interpreted and applied in light of the time standards set by the policy of the Judiciary.

[63] In those circumstances, I would not be minded to set aside the Default Judgment against the 1st Defendant either.

CONCLUSION

1. **The Amended Application for Court Orders filed on the 19th December 2023 is refused.**

2. **Costs to the Claimants on the application to be taxed if not agreed.**

3. **Claimants Attorneys-at-Law shall prepare, file and serve this Order on or before the 9th February 2024 by 4:00 pm.**

……

D. Staple, J