

**IN THE SUPREME COURT OF BELIZE, A.D. 2018
(CIVIL)**

CLAIM No. 362 of 2018

BETWEEN:

ARTHUR SALDIVAR

CLAIMANT

AND

JOHN BRICENO

1st DEFENDANT

HENRY USHER

2nd DEFENDANT

LINSFORD CASTILLO

3rd DEFENDANT

EAMON COURTENAY

4th DEFENDANT

JOHN BERNARD WADE

5th DEFENDANT

Before: **Madam Justice Shona Griffith**

Date of Hearing: **On Written Submissions, 22nd October & 9th November, 2018
(Applicants/Defendants); 6th November, 2018 (Respondent/Claimant).
[13th November, 2018, oral ruling].**

Appearances: **Mr. Eamon Courtenay S.C for the Applicant/Defendants; Mr. Christophe Rodriguez for the Respondent/Claimant; Mr. Arthur Saldivar present.**

DECISION

Introduction

1. The Claimant Mr. Arthur Saldivar, is member of the People’s United Party (‘the Party’). The Defendants are all members of its National Executive (‘the Executive’) sued in their representative capacity on behalf of the Party as an unincorporated association. In June 2018, Mr. Saldivar instituted a claim against the named members of the Executive for breach of contract (certain terms of the Party’s Constitution), seeking a number of declarations as well as damages. The breach of contract is alleged to have arisen from disciplinary action taken against him in 2014, as a result of which he had been suspended as member of the Party. In April and May of 2018, Mr. Saldivar attempted to take part in the Party’s internal electoral process for standard bearer in his electoral constituency (Belmopan) and was prevented from doing so, initially by reason of the suspension. As part of the Claim, Mr. Saldivar filed an application for injunctive relief to restrain the Party’s internal electoral process whilst he sought to have the Court secure his rights to contest the election.

This application was however abandoned after the Executive rescheduled its Convention and allowed Mr. Saldivar to submit his name for selection as a candidate for the election. Mr. Saldivar was ultimately not approved to contest for the Belmopan Standard Bearer election and there are further events and proceedings which arose in relation to this position, however these events and proceedings are not material to issue currently before the Court. What is instead material, is that whilst the application for injunction had been abandoned, the substantive claim for breach of contract remained and the Defendants having failed to file a defence to the Claim, Mr. Saldivar filed a request for and was granted a default judgment in the Claim.

2. The Defendants filed an application to set aside the default judgment, and almost two months later the Claimant filed a notice of application for the Court to determine the terms of the default judgment which he had obtained. It is also mentioned as a fact relevant to this Claim, that the Claimant's application to contest for standard bearer in Belmopan was refused by the National Executive on the 22nd July, 2018. The Claimant then filed Claim No. 537 of 2018 in response to that refusal and his application therein for interim relief once again to restrain the Convention, was dismissed, as was that entire claim. On the 13th day of November, 2018 this Court rendered an oral decision declaring the default judgment obtained a nullity and extending the time for the Defendants to file a defence to the Claim. Following this oral decision the Claim was discontinued against all Defendants. The discontinuance of the Claim notwithstanding, the Court's oral decision is as promised, reduced into writing, as the application to set aside the default judgment raised a recurrent and vexed issue of procedure under CPR Part 12, in respect of which there have been divergent approaches emanating from different Courts. With its decision reduced into writing, the hope is that this decision serves as a platform from which the procedure is either settled whether by practice direction, higher ruling, or perhaps this being thirteen years hence, a review and revision of the Civil Procedure Rules.

Issues

3. The issues which arise, concern the interpretation of the Civil Procedure Rules as they provide for the application for and entry of default judgment under Part 12. Specifically, pursuant to Rules 12.10(4) and (5) (read together). The issues are stated as follows:-
 - (i) What is the procedure to be followed in obtaining a default judgment pursuant to Rules 12.10(4) & (5)?
 - (ii) Is the default judgment issued by the Court Office to the Claimant herein, to be classified as regular or irregular?
 - (iii) Should the default judgment be set aside by the Court?

Background

4. The procedural history of the claim is set out as follows:-
 - (i) The Claim as briefly described above was filed on 15th June, 2018 and served on the 22nd June, 2018. Along with the Claim was filed an urgent application for injunctive relief;
 - (ii) The urgent application was fixed for hearing on the 6th July, 2018. This application did not proceed;
 - (iii) The Court advised Counsel for the parties by letter via the Registrar dated the 6th July, 2018 (inter alia), that absent the hearing of the application, the matter would proceed according to the Rules for Case Management or the hearing of any applications filed;
 - (iv) On 27th July, 2018 the Claimant filed by prescribed form (with variations), a request for judgment in default of defence. A default judgment was entered by the Court Office styled as '*in terms to be determined by the Court*';
 - (v) On 14th August, 2018 the Defendants applied for the judgment to be set aside. This application was fixed for hearing on the 19th October, 2018;
 - (vi) On the 17th October, 2018 the Claimant filed an application for the terms of the default judgment entered on 27th July, 2018, to be determined by the Court pursuant to CPR Rules 12.10(4)&(5);

- (vi) As directed by the Court, written submissions were filed on behalf of both parties and with the consent of both Counsel, the Court's determination of the applications was set for consideration upon those written submissions without an oral hearing.

The Submissions of Counsel

5. The application for set aside of the default judgment was in the first instance made pursuant to Rule 13.3(1) – i.e. the set aside of a regular default judgment upon the three prescribed grounds of (i) applying as soon as possible after notification of the default judgment; (ii) having a good explanation for failure to acknowledge or defend the claim; and (iii) having a reasonable prospect of successfully defending the claim. The scope of the application was expanded in the written submissions on behalf of the Defendants, to the judgment having been irregularly entered and as such liable to be set aside as of right pursuant to Rule 13.2. The application was also expanded to in effect invoke the Court's inherent jurisdiction for the judgment to be set aside on the basis that the Claimant's conduct in pursuing the default judgment was improper and unreasonable. The first argument to be considered is the contention that the judgment was irregularly entered. The basis of this argument is that the default judgment entered on the 27th July, 2018 was administrative, having been so entered by the Court Office pursuant to Rule 12.5 upon filing of a varied form 7 request for entry of judgment in default.
6. However, the argument continued, the claim being one primarily for declarations as opposed to a money judgment, default judgment could not be obtained by a form 7 request entered by the Court Office. Instead, as the Claimant's form 7 request itself stated, the judgment was being requested pursuant to Rules 12.10(4) and 12.10(5). It is submitted that these Rules required not only the filing of a notice of application supported by evidence on affidavit, but also the Court's adjudication to determine the terms of the judgment as the Claimant may be deemed entitled to on his statement of claim.

In support of the argument that default judgment in this instance required the filing of an application with affidavit, Senior Counsel for the Defendants made reference to Eastern Caribbean Supreme Court of Appeal decision **Fellows v Carino Hamilton Development Co. Ltd. & Anor**¹. This case is based on the OECS' CPR 2000 Part 12, which is almost identical to Belize's CPR Part 12. In answer to this position, Counsel for the Claimant submitted that the default judgment satisfied the preconditions of Rule 12.5 pertaining to service of the claim form and the expiry of the time limited for filing of a defence, and as such was a regular default judgment. In this regard, Counsel referred to English cases **David Nelson v Clearsprings (Management) Limited**² and **De Ferranti v Execuzen Limited**³ in support of his contention that an application to set aside a default judgment as of right (i.e. an irregular default judgment), arises only within the four corners of Rule 13.2(1). This Rule of course defines an irregular judgment with reference to compliance with the requirements of service and expiry of time limited for defence under Rule 12.5.

7. The second argument made on behalf of the Defendants in effect seeks to invoke the inherent jurisdiction of the Court. Senior Counsel for the Defendants contends that at the time the Claimant requested default judgment the claim was academic, particularly given that the root of the Claimant's complaints had been resolved by the Party re-opening its Convention process to allow him the opportunity to apply to contest the election for the office of standard bearer. Given that the Claimant's complaint had been resolved in that way, it was contended that his continuance of the claim by entry of the default judgment was unreasonable and improper. Further, that the Claimant's improper conduct was exacerbated by the filing and dismissal of Claim 527 of 2018⁴, as this claim had once again brought the Claimant's complaint re the election, before the Court without success. It was submitted that these circumstances led the Defendants to believe that the instant claim was no longer being pursued.

¹ HCVAP 2011/006

² [2006] EWCA Civ. 1252

³ [2013] EWCA Civ. 592

⁴ Para. 2, *supra*

Albeit not distinctly stated, the Court understood the Defendants' submission to be that having regard to the conduct of the Claimant, the entry of the default judgment amounts to an abuse of process and ought to be set aside under the Court's inherent jurisdiction.

8. In support of this contention, senior counsel for the Defendants referred to the case of **Roundstone Nurseries Ltd. v Stephenson Holdings Ltd.**⁵ in which the conduct of the parties in pre-trial mediation processes, became relevant on a subsequent determination of the costs of the proceedings. Counsel for the Claimant's position in relation to this argument is primarily that the inherent jurisdiction of the Court is unavailable in respect of setting aside default judgments, in light of the clear provisions of the Rules. In support of this contention, Counsel referred primarily to Privy Council decision from Trinidad & Tobago **Attorney-General of Trinidad & Tobago v Universal Projects Ltd.**⁶ In particular, Counsel referred to the judgment of the Board delivered by Lord Dyson, who in direct response to a submission countenancing the Court's inherent jurisdiction to protect its own process from abuse as a basis for setting aside a default judgment, is submitted to have decisively answered to the effect that there is no scope for recourse to the inherent jurisdiction of the Court to set aside a default judgment, as that territory is occupied by the Rules.⁷ Counsel further cited Belize Supreme Court decision **Galactic Butterfly BZ Ltd. v Tammy Lemus Peterson**,⁸ particularly the reference therein to the nature of the Court's inherent jurisdiction being limited to the court's prevention of the use of its procedure to achieve injustice and the fact that it should be applied only in exceptional circumstances. Counsel's position as illustrated by those two cases, was that the inherent jurisdiction of the court cannot be used to carry out any act which is expressly not permitted by the Rules.
9. In the alternative to both the above, the final argument for the set aside of the default judgment was made under Rule 13.3(1) – in respect of a default judgment regularly obtained.

⁵ [2009] EWHC 1431

⁶ [2011] UKPC 37

⁷ Ibid @ para. 26.

⁸ Belize Supreme Court Claim No. 547 of 2018

Firstly, the Defendants contend that their application to set aside the default judgment was made promptly, having been made approximately just two weeks after receipt of service of the default judgment. In respect of the requirement for a good explanation for not having filed the defence, the Defendants set out their position in the two affidavits of Linsford Castillo, the 3rd named defendant, filed in support of the application. The affidavits detail the Defendants' position that there was no longer a triable issue, given the events that transpired in respect of the Claimant's complaint about being prevented from applying to contest the election for standard bearer - particularly, the Party's resolution of that complaint by rescheduling its Convention and allowing the Claimant to apply. The Defendants also explain their position as having been influenced by the filing and dismissal of claim No. 547 of 2018 which concerned the same underlying issue surrounding the Claimant and the Party's Convention process.

10. On the third ground for setting aside a regularly obtained default judgment, as required by the Rules, the affidavit in support of the application appended a draft defence. This draft defence disputed the factual basis of the claim in respect of the alleged breaches of contract as pleaded by the Claimant and as such it was contended that the Defendants were able to demonstrate a reasonable prospect of successfully defending the Claim. On the whole therefore, the Defendants submit that all three grounds of Rule 13.3(1) are satisfied and the Court should accordingly set aside the default judgment. On the other hand, of the three required grounds of Rule 13.3(1), Counsel for the Claimant rejected the Defendants' contention that they have a good explanation for their failure to file a defence to the Claim. Counsel for the Claimant pointed out the several instances within the proceedings where the Defendants clearly signaled their intention to defend the matter; that the Defendants' misapprehension of whether or not the claim was at an end was irrelevant to the requirement to comply with the rules for filing a defence; and the fact that the Defendants were more than adequately represented by seasoned counsel. Counsel for the Claimant held to the view that the Defendants had no good explanation for failing to file a defence to the claim.

Discussion and Analysis

11. Of the three arguments submitted in support of the application to set aside, the Court firstly removes that made pursuant to Rule 13.3(1) from its consideration, as the Defendants would not be able to satisfy all three grounds of the Rule. Within the circumstances of this case, the Defendants face an uphill battle in relation to satisfying the requirement for there being a good explanation for their failure to file a defence. The question would not be whether it was in the circumstances reasonable for the Claimant to have entered the default judgment or for the Defendants to have presumed the matter to have been at an end. Rather, the question would be whether in the absence of an undertaking to withdraw proceedings, consent order, or any indication at all from the Claimant, signaling to the *Court* that the proceedings were no longer being pursued, it was reasonable or prudent for the Defendants to have failed to file a defence or take some other step to formally dispose of the proceedings. In circumstances such as these, the Defendants would be at the mercy of their failed assumption and not very well placed to urge upon the Court the existence of a good explanation for failing to file a defence. This Court's position in relation to what suffices as a 'good explanation' has previously been examined in **Lindsay Garbutt v Maheia's United Concrete & Supplies Ltd**⁹, with reliance therein, on **Attorney-General for Trinidad & Tobago v Universal Projects Ltd**¹⁰.
12. In respect of the remaining arguments for the set aside of the default judgment, Senior Counsel on behalf of the Defendants has contended that the default judgment is irregular and thus liable to be set aside as of right, pursuant to Rule 13.2(1). It was contended that the claim not being one for a money judgment, default judgment could not be entered by the Court Office, nor could it be entered pursuant to a form 7 request, both of which had been done in this case. Instead, the default judgment could only be entered by the Court, at the instance of a proper application (Part 11, form 6) supported by evidence on affidavit. Counsel for the Claimant countered that the scope of irregularity in Rule 13.2 was limited to a failure to satisfy the requirements of Rule 12.5 – which sets out the

⁹ Belize Supreme Court Claim No. 621 of 2017 paras 22-27

¹⁰ [2011] UKPC 37 per Lord Dyson @ paras 23 et seq.

preconditions for entry of a judgment in default of defence. These preconditions relate only to service of the claim and expiry of time limited for filing a defence, which having both been satisfied in this claim, rendered the default judgment herein, regular, and as such capable of being set aside only pursuant to Rule 13.3(1). In this regard it was contended that the Defendants must fail as they could provide no good explanation for their failure to file a defence to the Claim.

13. As stated before, Counsel for the Claimant relied primarily on the case of **David Nelson v Clearsprings (Management) Ltd**¹¹. as authority for the proposition that the irregularity of a default judgment is confined to cases falling within the provisions of Rule 12.5. In his reply to the submissions on behalf of the Claimant, senior counsel for the Defendants pointed out that *David Nelson* was inapplicable to the instant case as it concerned not a default judgment, but a judgment given at trial where a defendant was absent. Further, it was contended that albeit discussed, this case did not conclude that there was no jurisdiction to set aside a default judgment as of right, outside of the defined circumstances of an irregular judgment. In examining this issue, the parameters and applicable rules which arise for consideration on the application to set aside in this case must be carefully established. The Defendants contend that the default judgment is irregular whilst Counsel for the Claimant contends that because the claim was properly served and the time limited for defence properly expired, the judgment is regular. It is clear that this is not a case concerning irregularity within the express terms of Rule 13.2 (read along with Rule 12.5). Interrogating this argument further, according to the Court's understanding - the irregularity countenanced, is to be found with the aid of the Court's inherent jurisdiction to prevent its process from abuse. Meaning in the circumstances of this claim, that because the default judgment could only have been granted pursuant to adjudication by the Court and not the administrative action of the Court Office, the default judgment obtained by the Claimant simply has to be viewed as irregular, if not unlawful.

¹¹ [2006] EWCA Civ 1252

14. The question therefore is, whether the Court's power to set aside a default judgment as irregular, is limited only to cases where a default judgment has been obtained in circumstances of a failure to comply with the terms of Rule 12.5.

If the answer to this question is in the affirmative, meaning that the Court's power is indeed so limited, a further question then arises, as to how any cases deserving of the moniker 'irregular', which fall outside the bounds of regularity as defined under Rule 13.2(1), are to be categorized, much less resolved. Do such cases fall to be dealt with under the inherent jurisdiction of the Court; or must the definition of what is irregular, by necessity, be impliedly capable of expansion, to cover such cases? In relation firstly to the scope of irregularity under Rule 13.2, the Court agrees with senior counsel for the Defendants that the authority of *David Nelson* as cited by Counsel for the Claimant is not applicable to the instant case. This case concerned an application to set aside a judgment made at a trial not attended by the defendant therein due to lack of service¹². The application in *David Nelson* was filed as an application to set aside a default judgment but the point was taken from the inception, and the application thereafter continued to determination with reference to the rule thereafter deemed applicable which was the English CPR Rule 39.3(5). This Rule concerns an application to set aside a judgment given at trial in the absence of a party, the equivalent rule in Belize is Rule 39.5.

15. The issue in *David Nelson* arose out of the fact that the claim had been served at the wrong address, as a result of which the defendant was absent from the trial and judgment was accordingly given in his absence. The question for the English Court of Appeal was whether the jurisdiction to set aside the judgment obtained at trial pursuant to their Rule 39.(3)(5) (Belize's Rule 39.5 but with slightly different grounds), properly arose, given the circumstance that the claim was not served on the defendant therein. With particular reference to this rule, the Court of Appeal discussed inter alia, the pre CPR distinction between regular and irregular judgment and the setting aside of either; the existing extensive CPR Rules providing for service of a claim;

¹² [2006] EWCA Civ. 1252 @ para 5 et seq.

and the fact that the claim was a claim (the equivalent in Belize of a fixed date claim) for possession of land in relation to which particular provisions for service applied. The Court of Appeal therein concluded that the failure to serve the defendant was an error of procedure, the judgment was in effect irregularly obtained and the error was remedied using a combination of rules enabled by the finding relating to the lack of service in the first place.

16. All this is to say, the authority **David Nelson** therefore does not assist the Claimant in the manner advanced by his Counsel. The references therein to setting aside a regular and irregular judgment were made in comparison to judgment obtained under the old English rules versus the new English CPR, and those discussions and issues therein do not apply to categorization of regular and irregular judgment under Part 12 as arises in the case at bar. That being said, the approach of the Court of Appeal in **David Nelson** and the rationale for its conclusion may be able to provide some guidance for the Court in this case. The overall approach in that case can be distilled to the effect that the context of the application of the rule enabling the set aside of a judgment obtained at trial in the absence of a defendant, presupposed the existence of valid service of the claim. Without such service, there was an error of procedure which fell to be corrected under a combination of rules deemed appropriate under the English CPR. The extent of assistance of this approach which is seen as available to this Court in resolving the issue of the scope of a judgment that is regular versus irregular, will entail examining the procedure underlying the entry of the default judgment and the consequent standing of the default judgment as entered by the Court Office.

Interpretation of Part 12

17. At this juncture it is necessary to refer to and consider the applicable Rules on default judgment as contained in CPR Part 12. The entire Part 12 is extracted and appended to the judgment herein. The OECS's CPR 2000 Part 12 is also appended for comparative purposes as referred to within the Court's discussion. It is firstly acknowledged that there are uncontroverted Rules in Part 12, such as the types claims for which default judgment may not be obtained;

or some claims for which permission to obtain default judgment is required; or the requirements for filing a request for default judgment,¹³ – which need not engage the Court’s consideration herein. Before making specific reference to those Rules which do require consideration, the Court makes the following observations which the Court has determined, arise from the overall operational framework of Part 12:-

- (i) The application for and award of a default judgment may be classified according to four categories of claims:-
 - (a) claims for specified sums of money;
 - (b) claims for unspecified sums of money;
 - (c) claims for the delivery or value of goods; and
 - (d) claims for any other remedy.
- (ii) In any claim, it is possible for there to be overlap within these categories and the Rules either expressly or by implication establish how the claim is to be treated with reference to the proceedings for default judgment. For example, in respect of a claim which is both partly for a specified and an unspecified sum, the Rules expressly enable a claimant to abandon the claim for an unspecified sum and seek judgment on the claim for specified sum only¹⁴. Where however a claim for any other remedy must be established in order to facilitate any other kind of claim, by implication, the procedure applicable to a claim for any other remedy must be complied with.
- (iii) Part 12 provides for two modes of obtaining default judgment – one by filing a form 7 request for judgment (Rule 12.7); and the other by a notice of application supported by affidavit (Rule 12.10).
- (iv) The mode of application for default judgment provided in Rule 12.7 (i.e. that a party applies for default judgment by filing a request in Form 7) appears as written, to broadly apply to any kind of proceeding as categorized in (i) above;

¹³ Rules 12.2; 12.3; 12.4; 12.5 respectively.

¹⁴ Rule 12.8(3)- election between claim for specified and unspecified sum to proceed to judgment on the former.

- (v) Outside of Rule 12.7 however, the occurrence throughout Part 12 of the terms ‘apply’ and ‘application’ is such that the use of these two words do not by themselves distinguish or prescribe the form of application that is to be used in order to obtain a default judgment.

In other words, the use of ‘apply’ or ‘application’ neither invites nor precludes the use of a Form 7 request for judgment or a Form 6 (Part 11) notice of application. The distinction has to be implied from the context of the words as used in the rules.

- (v) Given that there are instances in Rule 12.10 in which an application supported by affidavit must be filed in order to obtain default judgment, this Rule in effect circumscribes any interpretation that Rule 12.7 (filing of a form 7 request for default judgment), is applicable to all categories of proceedings identified in (i) above..

18. In particular, Rule 12.10 is broken down by implication as follows:-

- (i) A Form 7 request for default judgment can be filed in respect of, and judgment may be entered by the *Court Office* for:-
 - (a) a specified sum under Rule 12.10(1)(a), for judgment in the specific amount ordered bearing in mind the definition of ‘specified sum’ in Rule 2.4;
 - (b) an unspecified sum under Rule 12.10(1)(b), for judgment in a sum to be decided by the Court;*
 - (c) on a claim for goods under Rule 12.10(1)(c)(i), for judgment requiring a defendant to elect to either deliver the goods or pay the value of the goods as assessed by the Court;
 - (d) on a claim for goods under Rule 12.10(1)(c)(ii), for judgment for payment of the value of the goods, as assessed by the Court
- (ii) By clear implication, a Form 7 request for judgment *may not* be filed for default judgment on a claim for goods under Rule 12.10(1)(c)(iii), that being where the remedy sought is delivery of the goods only – i.e. delivery of the goods *without* giving the defendant the alternative of paying the assessed value of the goods.

- (iii) Instead, by the joint effect of Rules 12.10(2) and (3), a claimant seeking default judgment for delivery of goods alone, must apply for permission from the Court. Such an application must be by way of a notice of application supported by evidence on affidavit. Further, such application must be served on the defendant notwithstanding the failure to file an acknowledgment of or defence to the claim;
- (iv) Also by way of implication, a Form 7 request for judgment *may not* be filed for default judgment on a claim for any other remedy (being a remedy besides a specified sum, unspecified sum or claim for goods, with election for delivery or assessed value or for assessed value).
- (v) On a claim for any other remedy, the joint effect of Rules 12.10(4) and (5) is that a notice of application supported by affidavit *must* be filed to obtain default judgment, and the Court will give judgment on such terms as it considers the claimant to be entitled to on their statement of claim.

Unlike the requirement for service of the application as prescribed by Rule 12.10(2) and (3), there is no requirement for service of the application on a defendant either before hearing or after the application has been disposed of.

* *For completeness it is mentioned that Rule 12.10(1)(b) (which provides for judgment to be entered by the Court Office for an unspecified sum), cross references Rule 16.2 which deals with assessment of damages. This Rule specifically provides that an application for default judgment to be entered under Rule 12.10(1)(b) must include certain information, namely, whether the Claimant is in a position to prove the amount of damages and if so, the estimate of time for dealing with the assessment. This Rule also prescribes what must be done if the Claimant is not in a position to prove damages.*

- 19. With respect to the default judgment for an unspecified sum, this Rule was referred to as part of the argument on behalf of the Defendants, as being applicable to the proceedings filed by the Claimant.

In this regard reliance was placed on **Fellows v Carino Hamilton Development Co. Ltd. & Anor**¹⁵ in which a single judge of the Eastern Caribbean Court of Appeal interpreted the corresponding Rule in the OECS CPR 2000¹⁶ to mean that an application for default judgment on a claim for an unspecified sum was required to be made by notice of application supported by affidavit. The learned justice of appeal based this decision on the language of the OECS Part 12, (which is almost identical to its Belize CPR Part 12 counterpart), insofar as the term ‘apply’ versus ‘request’ was used in relation to obtaining default judgment for an unspecified sum. This authority would not have been followed by this Court for as stated before, the use of the words ‘apply’ and ‘application’ do not determine whether a Part 11 application or Form 7 request is required under Part 12. Further, the terms of the cross referenced Rule 16.2 are as such that by the information required to be stated on the ‘application’ as well as the terminology used in that Rule, it can be concluded that the default judgment for unspecified sum is properly entered by the Court Office. The information required to be stated on the ‘application’ for entry of default judgment is evidently for administrative purposes of fixing a date for assessment of damages to be heard by the Court.

20. It is worth mentioning that the position in the OECS (from which the authority of **Fellows** arose), is now altered by way of amendment to their rules in 2014. The OECS Rule 12.10(1)(b) was updated so that it is clear that default judgment for an unspecified sum is obtained via request on a prescribed form, entered by the Court Office¹⁷. The Court views this amendment as consistent with its view that in Belize, the application for default judgment for an unspecified sum is made by request on prescribed form (still form 7 however) and entered by the Court Office. The above notwithstanding, the Court is of the opinion that the claim herein is not properly categorized as a claim for an unspecified sum. The claim is partly for an unspecified sum (damages for breach of contract), but the entitlement to damages must first be established as arising from a breach of contract in the manner alleged by the Claimant, as per the declarations sought.

¹⁵ OECS HCVAP 2011/006

¹⁶ OECS CPR 2000 R.12.10(1)(b)

¹⁷ OECS CPR 2000 Form 32 – Appendix II

Accordingly the claim is to be categorized as one for any other remedy, to which Rules 12.10(4) and (5) apply in order to obtain default judgment. The applicable rules were in fact correctly identified by the Claimant and referred to on the form 7 request as filed with adaptations.

The Interpretation of Part 12 explained

21. The Court's interpretation of Part 12, particularly Rule 12.10, does not arise from an express position set out by the Rules, but by necessary implication. The Court's interpretation is assisted by the regime of the English CPR Part 12 on default judgments. The English Part 12 is at first glance considerably different from Belize's CPR Part 12 in its layout and also in its terms. However, when read as a whole, it becomes clear that there is parity between the two sets of rules, in terms of their categorisation of default judgment being available in respect of proceedings falling into two classes. It is considered useful to extract the following introduction to default judgments from Blackstone's Civil Procedure (emphasis mine):-

"Failure to file an acknowledgment or a defence within the time limits laid down in the CPR may result under Part 12 in the claimant entering judgment in default, that is, judgment without a trial of the claim. In most cases the entry of judgment in default is a purely administrative act, not involving any judicial determination on the merits of the claim.

There are two mechanisms under the rules for entering default judgment:

(a) A simple request for judgment under Part 12 is available in money claims (r.12.4(1)), which include claims for specified sums, claims for unquantified damages and some other types of claim. Under this procedure, judgment is entered over the counter on filing a request for default judgment, without any consideration of the merits of the claim...This will apply in the overwhelming majority of cases.

(b) In a claim for a remedy other than a money claim, in a claim only for costs (other than fixed costs) and in certain other cases set out in r.12.10, an application for judgment must be made using the Part 23 procedure...On an application for the entry of a default judgment there will be a hearing and the court will give 'such judgment as it appears to the court that the claimant is entitled to on his statement of case'...In this case, then, the court will, in a limited way, consider the merits of the claim."

22. In relation to this excerpt, it is observed that the English Rule 12.4(1) is deliberate and clear in its categorization of claims for specified amounts of money, an amount of money to be determined by the court, delivery of goods where the defendant is given the

alternative of paying for the value of the goods, or any combination of these remedies. In relation to this category, any one or combination of these remedies may clearly and expressly be obtained by filing a request for judgment in default (by prescribed form), then entered as an administrative act over the counter. In relation to Belize's Part 12, this categorization and its treatment within the Rule, are essentially the same as set out by the Court in paragraph 18(i) above. Thereafter, the English Rule 12.4(2) is also clear, and expressly states that a Part 23 (Belize equivalent of Part 11, Form 6 application), **must** be filed on a claim which consists of or includes a claim for any other remedy, or claims for costs other than fixed costs or certain other specified kinds of proceedings (English rr. 10.12(9)&(10)). The corresponding practice directions on the English CPR Part 12 continue the very clear divide between the two definitive mechanisms for obtaining default judgment – by over the counter request, and by application for judgment to be determined by the Court, on the statement of case. The layout of the Rule in Belize is different, as is the degree of specificity demarcating the two distinct mechanisms for obtaining default judgment. However, this Court is of the firm view, that the underlying separation of two categories comprising claims in respect of which default judgment can be obtained purely by administrative entry by the Court Office; and claims requiring adjudication by the Court upon application supported by affidavit, are the same in Belize as provided for in the English CPR.

The status of the default judgment issued to the Claimant

23. Having classified this claim as one in respect of which default judgment must be determined by the Court pursuant to application supported by affidavit, the status of the default judgment issued by the Court Office on the 27th July, 2018 must be determined. Thereafter, the respective positions of the parties vis-à-vis that status, must also be established. On this issue, the Court agrees with senior counsel for the Defendants that there has been no default judgment issued in respect of this claim. By the separation of classes of claims into the two categories in which judgment is either entered by the Court Office or adjudicated by the court - in respect of the latter, unless and until such a determination is made by the Court, there is no default judgment.

Whereas senior counsel for the Defendants makes this very point, the Court differs only in respect of its conclusion on the consequence which follows from the entry by the Court Office of the default judgment. It is in this respect that the approach identified in **David Nelson** as stated above, is of assistance to the Court. Much like the application to set aside the judgment therein presupposed the validity of service, in the instant case, the operation of Part 13 presupposes compliance with the regime set out in Part 12.

24. There must obviously be a reason which accounts for the fact that the Court Office is able to enter judgment only for claims for a specified, unspecified sum or partially on a claim for delivery of goods, as opposed to in respect of claims for ‘any other remedy’, as categorized in Part 12. The Court reverts to the learning in Blackstone’s Civil Procedure on default judgments, which clearly explains the two mechanisms by which default judgments are obtained. The first mechanism of entry of default judgment by the court office occurs without determination of the merits of the claim; the second by means of adjudication by the court, with some determination of the merits with reference to the statement of claim. It is considered that in the case of the former mechanism, the entitlement to judgment is concluded by *verification* of supporting documentation which can be administratively determined. In the latter case however, the *entitlement* to judgment in the first place, can only be ascertained by application of law upon due consideration by the Court of legal principles derived or construed from facts pleaded. The instant case being of the latter category, and there having been no determination as to the entitlement to judgment as evident from the statement of claim herein, the Court finds that there was no judgment issued as required by Rules 12.10(4)&(5). The default judgment issued on the 27th July, 2018 was a nullity, accordingly there is no judgment for the Court to set aside.

The position of the parties

25. The determination that there was no valid default judgment issued raises the question as to the relative position of the parties. Are the Defendants entitled to file their defence in light of the fact that a default judgment has not been entered?

Given that the Claimant invoked his right to apply for default judgment, the Court finds that the Defendants are not entitled to simply file a defence. Instead, the Defendants are obliged to obtain the Court's permission for an extension of time within which to file a defence. Had the Claimant made no intervention at all in relation to seeking default judgment, the position would have been that the Defendants were free to file defence.¹⁸ The grant of permission to extend time can be made pursuant to the Court's general power to extend time under Rule 26.1(2)(c) or Rule 10.3(8). Neither of these Rules, sets out any factors or grounds for the Court to consider when granting an extension of time to file a defence. Whilst there have been no grounds set out in the respective Rules, there have been established by case law, 'judge made grounds'¹⁹, which governed the exercise of the Court's discretion to extend time, prior to the new CPR. These grounds have been adjudged still relevant to the exercise of the Court's general discretion to extend time as part of its case management powers. Particularly, the application to extend time must (i) made without delay and if there was delay there should be good reason for the delay, (ii) the applicant must have a reasonable prospect of success in his/her claim, (iii) there must be a good explanation for the failure to comply with whatever rule or order was not complied with, and (iv) there must be consideration of prejudice to the other side.²⁰

26. In assessing whether they have satisfied these grounds, It can firstly be accepted that the Defendants acted promptly after receiving the default judgment – at least in relation to the application being treated as an application to extend time. With respect to whether the Defendants have a reasonable prospect of success, the draft defence in paragraph 12, sets out an alternative view of the facts which if proven could amount to a successful defence of the claim. On the authority of **Swain v Hillman**²¹ and **Alpine Bulk Transport Co. Inc v Saudi Eagle Shipping Co.**²², the Court acknowledges that when assessing a defendant's prospect of success whether on an application to set aside judgment or to

¹⁸ This is the position taken by this Court in Supreme Court Claim No. 395 of 2016, *Alain Langlois v Wilbur Baharona*, relying on *Attorney General of Trinidad & Tobago v Matthews* [2011] UKPC 38;

¹⁹ *Nevis Island Administration v La Copropriete Du Navire J31* Civ. App. No. 7 of 2005 per Barrow JA

²⁰ *C.O. Williams Construction Co. Ltd. v Inter Islands Dredging Co. Ltd.* HCVAP 2011/017 @ paras 48-49.

²¹ [2001] 1 All ER 91

²² [1986] 2 Lloyds Rep 221

extend time for filing a defence, the purpose at this stage of the proceedings is not to engage in a mini trial of the facts. The facts asserted by the draft defence, can if taken at their highest, afford the Defendants a defence to the claim. In the circumstances it is accepted that the Defendants have demonstrated a reasonable prospect of success of defending the claim. As regards the third factor, of whether the Defendants possess a good explanation for failing to file a defence - the Court is not of the opinion that there is a good explanation provided by the Defendants. The explanation provided amounts essentially to a misapprehension of counsel as to the Claimant's intentions in continuing the claim, after the occurrence of a turn of events that in their opinion rendered the claim moot.

27. The Court repeats its position regarding the absence of a good explanation in these circumstances, based upon application of the dictum of Lord Dyson in ***AG for Trinidad & Tobago v Universal Projects Limited***.²³ Additionally, the Court refers to the authority of ***Roundstone Nurseries Ltd. v Stephenson Holdings Ltd.***²⁴ which senior counsel for the Defendants cited in support of the Defendants having a good explanation for their failure to file a defence. The case is cited with specific reference to the conduct of the claimants therein having led to the defendants failing to file a defence. In like manner, senior counsel for the Defendants herein seeks to attribute the Claimant's conduct in relation to the Party's Convention process and circumstances surrounding the claim as having influenced their handling of the Claim. Additionally, the fact of the Claimant having filed a new claim involving the Convention and that claim being dismissed is also cited by the Defendants as a factor relevant to their failure to file a defence to the claim. The Court however distinguishes ***Roundstone*** from the instant case as there had been mediation proceedings and formal court connected attempts at settlement prior to the entry of a judgment in default of defence in that case. There was no such formal mediation or settlement process in these proceedings.

²³ *n. 11 supra* per Lord Dyson @ paras 23 et seq.

²⁴ [2009] EWHC 1431

28. In this regard, it is stated that whilst the Defendants' apprehension as to the continuance or viability (or not) of the claim may be considered reasonable, the failure to take any steps to safeguard their legal position might not be so considered. The Court is thus constrained to the view that the Defendants do not have a good explanation (as judicially interpreted), for failing to file the defence to the Claim. Unlike an application to set aside a regular default judgment however, the satisfaction of all the grounds referred to above is not a prerequisite for the exercise of the Court's discretion in favour of the Defendants. The factors must be weighed and considered as a whole. The final factor for consideration is the question of prejudice to either side. If not permitted to defend the Claim the Defendants will clearly be prejudiced. On the other hand, the Claimant's position at this stage of the proceedings is not of a party possessed of a default judgment, but of a party holding the right to have judgment decided with reference only to his statement of claim, there being no defence filed to the Claim. In such circumstances the Court finds that the Defendants would suffer the greater prejudice if not permitted to defend the Claim.
29. How then does the Court balance all of these factors? Considering the circumstances of the claim as described above against the factors as individually reckoned, the Court finds that the explanation for failing to file a defence, whilst found wanting legally, was nonetheless not unreasonable. This is so, given that the claim filed does appear to have been triggered by the Claimant having been refused the right to apply to contest the standard bearer elections in his district – versus almost four years having elapsed without protest of the breach of contract complained of in the Claim. As a result, when coupled with the finding of the Defendants having applied promptly to address the entry of the default judgment, there being a reasonable prospect of success, and the Defendants likely to suffer the greater prejudice if not allowed to defend the Claim, the balance of the factors is tipped in favour of the Defendants being permitted to defend the Claim.

Conclusion and Disposition

30. Having regard to the Court's determination that the default judgment is a nullity resulting in there being no judgment to set aside, there is no need to embark upon any discussion as to the Court's inherent jurisdiction to set aside a default judgment.

There is also no need to determine, at least not in this claim, whether the judgment is to be regarded as regular or irregular, as defined by Rule 13.2(1) for purposes of its set aside. At the conclusion of the Court's oral ruling delivered on 13th November, 2018, the Defendants gave notice of their intention to file an application to strike out the claim. Since that time the Claimant has discontinued the claim, the notice of discontinuance was filed on the 20th November, 2018. The Court's reasons disposing of the application to set aside the default judgment are concluded in the following terms:-

- (i) The Claim being for declarations for breach of contract and damages, the Claimant was obliged to apply for default judgment pursuant to CPR Rules 12.10(4) & (5) by filing a notice of application supported by affidavit. Upon the application the Court was to have determined the terms of the judgment to which the Claimant was entitled on his statement of claim;
- (ii) The default judgment issued by the Court Office pursuant to a form 7 request, in favour of the Claimant on the 27th July, 2018 is declared a nullity and of no effect;
- (iii) The Defendants' application to set aside the default judgment filed on 14th August, 2018 is treated solely as an application to extend the time limited for filing a defence, to be determined pursuant to the Court's power to extend time pursuant to Rule 26.2(c) and Rule 10.3(8);
- (iv) The Defendants' application for an extension of time within which to file a defence is granted and the Claimant's application for default judgment is accordingly refused.
- (v) There is no order as to costs.

Dated this 8th day of January, 2019

Shona O. Griffith
Supreme Court Judge, Belize.

APPENDIX I (Belize Civil Procedure Rules 2005)

PART 12 DEFAULT JUDGMENTS

Contents of this Part Scope of this Part.....	Rule 12.1
Claims in which default judgment may not be obtained.....	Rule 12.2
Cases in which permission is required.....	Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service.....	Rule 12.4
Conditions to be satisfied – judgment for failure to defend.....	Rule 12.5
Admission of part – request for time to pay.....	Rule 12.6
Procedure.....	Rule 12.7
Claim for specified sum of money.....	Rule 12.8
Claim against more than one defendant.....	Rule 12.9
Nature of default judgment... ..	Rule 12.10
Interest	Rule 12.11
Costs.....	Rule 12.12
Defendant’s rights following default judgment.....	Rule 12.13

Scope of this Part. 12.1 (1) This Part contains provisions under which a claimant may obtain judgment without trial where a defendant –

(a) has failed to file an acknowledgement of service giving notice of intention to defend in accordance with Part 9; or

(b) has failed to file a defence in accordance with Part 10.

(2) Such a judgment is called a **“default judgment”**.

Claims in which default judgment may not be obtained. 12.2 A claimant may not obtain default judgment where the claim -

(a) is a fixed date claim;

(b) is an admiralty claim *in rem*; or

(c) a claim in probate proceedings²⁷.

- Cases in which Permission required.** 12.3 (1) A claimant who wishes to obtain a default judgment on any claim which is²⁸ –
- (a) a claim against the Crown in any relevant enactment relating to Crown immunity; or
 - (b) a claim against a minor or patient as defined in Rule 2.4;²⁹
- must obtain the court’s permission.
- (2) A claimant who wishes to obtain judgment in default of acknowledgement of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain court’s permission.
- (3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.
- Conditions to be satisfied – judgment for failure to file acknowledgment of service.** 12.4 The court office, at the request of the claimant, must enter judgment for failure to file an acknowledgment of service, if -
- (a) the claimant proves service of the claim form and statement of claim³⁰;
 - (b) the period for filing an acknowledgment of service under Rule 9.3 has expired;
 - (c) the defendant has not filed -
 - (i) an acknowledgment of service; or
 - (ii) a defence to the claim or any part of it;
 - (d) the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it, where the only claim is for a specified sum of money, apart from costs and interest;
 - (e) the defendant has not satisfied in full the claim on which the claimant seeks judgment; and

²⁷ Rule 67.6 deals with probate proceedings. Rule 69.26 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

- (f) the claimant has permission to enter judgment (where necessary).

Conditions to be satisfied – judgment for failure to defend.

12.5 The court office must enter judgment for failure to defend at the request of the claimant -

- (a) the claimant proves service of the claim form and statement of claim; or
- (b) an acknowledgment of service has been filed by the defendant against whom judgment is sought; and
- (c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired; and
- (d) the defendant has not -
 - (i) filed a defence to the claim or any part of it (or such defence has been struck out or is deemed to have been struck out under Rule 22.1(6)); or
 - (ii) where the only claim is for a specified sum of money, filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - (iii) satisfied the claim on which the claimant seeks judgment; and
- (e) the claimant has the permission of the court to enter judgment (where necessary).

²⁸ Rule 12.9 (2) contains restrictions on a default judgment where it is sought against some but not all defendants.

²⁹ Part 59 deals with proceedings by and against the Crown; Part 23 deals with proceedings involving a minor or patient.

³⁰ Rules 5.5, 5.11, 5.12, and 5.15 deal with how to prove service of the claim form and statement of claim.

Admission of part – request for time to pay

- 12.6 (1) This Rule deals with the situation where -
- (a) The defendant is an individual who has admitted liability to pay either -
 - (i) part only of a claim for a specified sum; or
 - (ii) a specified sum towards a claim for an unspecified sum of money; or
 - (b) the defendant has not filed a defence; and
 - (c) the claimant does not accept the sum admitted.
- (2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for –
- (a) the whole amount of the claim for a specified sum together with interest and fixed costs under Rule 64.4, or
 - (b) where the claim is for an unspecified sum, the payment of an amount to be decided by the court.
- (3) If the defendant has requested time to pay, that request must be dealt with –
- (a) if the claim is for a specified sum, in accordance with Rules 14.9, 14.10, and 14.11; or
 - (b) if the claim is for an unspecified sum, when damages are assessed, in accordance with Rule 12.63.

Procedure Form 7.

12.7 A claimant applies for default judgment by filing a request in Form 7 ³¹.

Claim for specified sum of money

- 12.8 (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money
- (2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either –
- (a) the sum of money claimed together with interest at the statutory rate from the date of the claim to the date of entering judgment; or

(b) the sum of money claimed and for interest to be assessed.

(3) Where a claim is partly for a specified sum and partly for an unspecified sum, the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.³²

Claim against more than one defendant.

12.9 (1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of two or more defendants –

(a) if the claim can be dealt with separately from the claim against the other defendants –

(i) the court may enter judgment against the defendant; and

(ii) the claimant may continue the proceedings against the other defendants; or

(b) if the claim cannot be dealt with separately from the claim against the other defendants –

(i) the court may not enter judgment against that defendant; and

(ii) the court must deal with the application at the same time as it disposes of the claim against other defendants.

(3) Where a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgment for delivery entered under this Part against a defendant unless –

³¹Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.

³²Rule 2.4 defines the expression “claim for a specified sum of money”.

- (a) the claimant has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or
- (b) the court gives permission.

**Nature of
Default
Judgment.**

- 12.10 (1) Default judgment -
- (a) on a claim for a specified sum of money, shall be judgment for payment of that amount or, where part has been paid, the amount certified by the claimant as outstanding-
 - (i) (where the defendant has applied for time to pay under Part 14) at the time and rate ordered by the court; or
 - (ii) (in all other cases) at the time and rate specified in the request for judgment,³³
 - (b) on a claim for an unspecified sum of money, shall be judgment for the payment of an amount to be decided by the court³⁴,
 - (c) on a claim for goods shall be –
 - (i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;
 - (ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or
 - (iii) if the court gives permission, a judgment requiring the defendant to deliver the goods without giving him the alternative of paying their assessed value.
- (2) An application for permission to enter a default judgment under paragraph (1)(c)(iii) must be supported by evidence of affidavit.

³³ Rule 2.4 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim. Part 64 deals with the quantification of costs.

³⁴ Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.

- (3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgment has been sought even though that defendant has failed to file an acknowledgment of service or a defence.
- (4) Default judgment where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the statement of claim.
- (5) An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and Rule 11.15 does not apply.

- Interest.** 12.11 (1) A default judgment shall include judgment for interest for the period claimed where –
- (a) the claim form includes a claim for interest;
 - (b) the claim form or statement of claim includes the details required by Rule 8.6(3); and
 - (c) the request states the amount of interest to the date it was made.
- (2) If the claim includes any other claim for interest, default judgment shall include judgment for an amount of interest to be decided by the court.

- Costs.** 12.12 (1) A default judgment shall include fixed costs under Rule 64.4 unless the court assesses the costs.
- (2) An application to assess costs must be on notice to the defendant.³⁵

³⁵ Rule 64.12 deals with the assessment of costs.

Defendant's Rights following Default Judgment. 12.13 Unless the defendant applies for and obtains an order for the judgment to be set aside³⁶, the only matters on which a defendant against whom a default judgment has been entered may be heard are -

- (a) costs;
- (b) the time of payment of any judgment debt;
- (c) enforcement of the judgment; and
- (d) an application under Rule 12.10(2).

³⁶ Part 13 deals with setting aside or varying default judgments.

APPENDIX II (Eastern Caribbean Civil Procedure Rules 2000)

Part 12 – Default Judgments

Contents of this Part

Scope of this Part	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Cases in which permission required	Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service	Rule 12.4
Conditions to be satisfied – judgment for failure to defend	Rule 12.5
Admission of part – request for time to pay	Rule 12.6
Procedure	Rule 12.7
Claim for specified sum of money	Rule 12.8
Claim against more than one defendant	Rule 12.9
Nature of default judgment	Rule 12.10
Interest	Rule 12.11
Costs	Rule 12.12
Defendant’s rights following default judgment	Rule 12.13

Scope of this Part

12.1 (1) This Part contains provisions under which a claimant may obtain judgment without trial where the defendant has failed to file –

(a) a defence in accordance with Part 10; or

(b) an acknowledgment of service giving notice of intention to defend in accordance with Part 9.

(2) Such a judgment is called a “default judgment”.

Claims in which default judgment may not be obtained

12.2 A claimant may not obtain default judgment if the claim is-

- (a) a claim in probate proceedings;
- (b) a fixed date claim; or
- (c) an admiralty claim in rem.

- Rule 68.6 deals with probate proceedings.
- Rule 70.22 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

Cases in which permission required

12.3 (1) A claimant who wishes to obtain a default judgment on any claim which is a claim against a –

- (a) minor or patient as defined in rule 2.4; or
- (b) State as defined in any relevant enactment relating to state immunity;

must obtain the court's permission.

- Part 59 deals with proceedings against the Crown.
- Part 23 deals with proceedings involving a minor or patient.

(2) A claimant who wishes to obtain judgment in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the court's permission.

(3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.

• Rule 12.9(2) contains restrictions on a default judgment where it is sought against some but not all defendants.

Conditions to be satisfied – judgment for failure to file acknowledgment of service

12.4 The court office at the request of the claimant must enter judgment for failure to file an acknowledgment of service if –

- (a) the claimant proves service of the claim form and statement of claim;
- (b) the defendant has not filed –

- (i) an acknowledgment of service; or
- (ii) a defence to the claim or any part of it;
- (c) the defendant has not satisfied in full the claim on which the claimant seeks judgment;
- (d) the only claim is for a specified sum of money, apart from costs and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (e) the period for filing an acknowledgment of service under rule 9.3 has expired; and
- (f) (if necessary) the claimant has the permission of the court to enter judgment.

· Rules 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and statement of claim.

Conditions to be satisfied – judgment for failure to defend

12.5 The court office at the request of the claimant must enter judgment for failure to defend if –

- (a)
 - (i) the claimant proves service of the claim form and statement of claim; or
 - (ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (c) the defendant has not –
 - (i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)); or
 - (ii) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - (iii) satisfied the claim on which the claimant seeks judgment; and
- (d) (if necessary) the claimant has the permission of the court to enter judgment.

Admission of part – request for time to pay

12.6(1) This rule deals with the situation where the –

- (a) defendant is an individual who has admitted liability to pay either –
 - (i) a specified sum towards a claim for an unspecified sum of money; or
 - (ii) part only of a claim for a specified sum;
- (b) defendant has not filed a defence; and
- (c) claimant does not accept the sum admitted.

(2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for –

- (a) the whole amount of the claim for a specified sum together with interest and fixed costs under rule 65.4; or
- (b) if the claim is for an unspecified sum – the payment of an amount to be decided by the court.

(3) If the defendant has requested time to pay, that request must be dealt with, if the claim is for –

- (a) a specified sum – in accordance with rules 14.9 and 14.10 or 14.11;
- (b) an unspecified sum – when damages are assessed in accordance with rule 16.3.

Procedure

12.7 A claimant applies for default judgment by filing a request in Form 7.

· Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.

Claim for specified sum of money

12.8 (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.

(2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either the sum of money claimed –

(a) and for interest to be assessed; or

(b) together with interest at the statutory rate from the date of the claim to the date of entering judgment.

(3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.

·Rule 2.4 defines “claim for a specified sum of money”.

Claim against more than one defendant

12.9 (1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) If a claimant applies for a default judgment against one of two or more defendants, then if the claim –

(a) can be dealt with separately from the claim against the other defendants –

(i) the court may enter judgment against that defendant; and

(ii) the claimant may continue the proceedings against the other defendants;

(b) cannot be dealt with separately from the claim against the other defendants, the court

(i) may not enter judgment against that defendant; and

(ii) must deal with the application at the same time as it disposes

of the claim against the other defendants.

(3) If a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgment for delivery entered under this Part against a defendant unless the –

(a) claimant has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or

(b) court gives permission.

Nature of default judgment

12.10(1) Default judgment on a claim for –

(a) a specified sum of money – must be judgment for payment of that amount or, a part has been paid, the amount certified by the claimant as outstanding –

(i) if the defendant has applied for time to pay under Part 14 – at the time and rate ordered by the court; or

(ii) in all other cases – at the time and rate specified in the request for judgment;

· Rule 2.4 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.

· Part 65 deals with the quantification of costs.

(b) an unspecified sum of money – must be judgment for the payment of an amount to be decided by the court and must be in Form 32.

· Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.

(c) goods – must be –

(i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;

(ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or

(iii) (if the court gives permission) a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

(2) An application for permission to enter a default judgment under paragraph (1) (c) (iii) must be supported by evidence on affidavit.

(3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgment has been sought even though that defendant has failed to file an acknowledgment of service or a defence.

(4) Default judgment where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the statement of claim.

(5) An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 does not apply.

Interest

12.11 (1) A default judgment must include judgment for interest for the period claimed if the –

- (a) claim form includes a claim for interest;
- (b) claim form or statement of claim includes the details required by rule 8.6(4); and
- (c) request for default judgment states the amount of interest to the date it was filed.

(2) If the claim form includes any other claim for interest, the default judgment must include judgment for an amount of interest to be decided by the court.

Costs

12.12 (1) A default judgment must include fixed costs under rule 65.4 unless the court assesses the costs.

(2) An application to assess costs must be on notice to the defendant.

- Rule 65.11 deals with the assessment of costs.

Defendant's rights following default judgment

12.13 Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are –

- (a) the assessment of damages, provided that he or she has indicated that he or she wishes to be heard by filing a Notice in Form 31 within seven [7] days after service of the claimant's submissions and witness statements on the defendant pursuant to Rule 16.2(2);
- (b) an application under Rule 12.10(4);
- (c) costs;

- (d) enforcement of the judgment; and
- (e) the time of payment of the judgment debt.

- Part 13 deals with setting aside or varying default judgments”