THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

COMMONWEALTH OF DOMINICA

DOMHCVAP2016/0007

BETWEEN:

PUBLIC WORKS CORPORATION

Appellant

and

MATTHEW NELSON

Respondent

COMMONWEALTH OF DOMINICA

DOMHCVAP2016/0008

BETWEEN:

[1] ELTON DARWTON
[2] PUBLIC WORKS CORPORATION

Appellants

and

MATTHEW NELSON

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE	Chief Justice
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

On written submissions:

Ms. Lisa de Freitas for the Appellants
Ms. Cara Shillingford for the Respondent

2017: May 29.

Interlocutory appeals – Default judgment – Failure to file defence – Setting aside default judgment – Rules 13.3(1) and 13.3(2) of the Civil Procedure Rules 2000 ("CPR") – Exceptional circumstances – Whether there were exceptional circumstances to warrant setting aside of default judgment pursuant to CPR 13.3(2)

The learned master dismissed the applications of the Public Works Corporation ("PWC") and Mr. Elton Darwton to set aside default judgments entered against them for failure to file defences in two separate claims in the court below. PWC and Mr. Darwton appealed the master's decisions, thus giving rise to the two present appeals.

In the claim which brought about appeal no. 7 of 2016, PWC was the sole defendant. In that claim, the respondent, Mr. Nelson, sought to obtain damages against PWC, his then employer, for failing to provide, among other things, a safe system of work. On 29th October 2015, only the statement of claim was served on PWC and subsequently on 27th November 2015, the claim form and statement of claim were served together. A defence was filed by PWC in the afternoon of 13th January 2016. However, default judgment had already been entered against it the morning of that same day. In the claim which brought about appeal no. 8 of 2016, Mr. Nelson claimed against Mr. Elton Darwton, damages for assault and battery allegedly committed by him, as well as against PWC as employer of Mr. Darwton, alleging that PWC was vicariously liable for Mr. Darwton's actions in respect of said assault and battery. The claim form and statement of claim were served on Mr. Darwton on 31st October 2015 and on PWC on 27th November 2017. PWC had previously been served with the claim form only, on 29th October 2015. Although an acknowledgment of service was filed by Mr. Darwton on 16th November 2016, no defence was filed by him within the time limited by the Rules of Court. PWC had sought to file a defence on 13th January 2016; however, default judgment had already been entered against it two days before, on 11th January 2016.

PWC applied to set aside the default judgments against it in the two claims on 26th January 2016 and Mr. Darwton applied to set aside the one entered against him, on 17th March 2016. The applications to set aside were made pursuant to rule 13.3 of the Civil Procedure Rules 2000 ("CPR"), which rule speaks to the '[c]ases where the court may set aside or vary default judgment' and sets out the requirements that must be fulfilled in order to have a default judgment set aside. The basis of PWC's application to set aside (in both claims) was that it had been necessary for its Board of Directors to meet in relation to the matter so as to give instructions and certain necessary processes had to be followed in order to convene the meeting, which eventually took place on 30th December 2015. PWC further stated that on 1st July 2015, some 20 members of staff had been laid off, and this group included several persons with information of the facts and circumstances surrounding the incident, making it difficult to obtain relevant information for instructing their legal practitioners. In the circumstances, it was not possible for PWC to file a defence before 13th January 2016. PWC asserted though, that it had a real prospect of successfully defending the claim.

Mr. Darwton stated in his affidavit in support of the application to set aside that he had consulted with PWC's Human Resources Officer and had also visited its legal practitioners, but he was informed by them that they were unable to obtain instructions from PWC regarding the claim against him and it would not be possible for the matter to be dealt with until after the Christmas holidays. He stated that after making several inquiries of PWC and because of the fact that he was not receiving his salary payments regularly, he was only able to consult with another lawyer subsequently, by which time the deadline for filing a defence had expired. He was advised that due to the nature of the issues in the

claim, it would be better if his defence was filed by PWC's retained solicitor. However, when PWC filed its defence, none had been filed for him. Mr. Darwton was not aware of this. He asserted that he had a real prospect of successfully defending the claim against him.

The learned master found that it could not be said that Mr. Darwton had applied as soon as reasonably practicable to set aside the default judgment after he had become aware of it and also, that he had not provided a good explanation for failing to file his defence. Therefore, although his defence had a real prospect of success, having failed on the first and second limbs of CPR 13.3(1), the application to set aside failed, given the conjoint requirement of rule 13.3(1). In relation to PWC, although the master took judicial notice in his ruling of the fact that 'the administrative difficulties encountered by the 2nd defendant [PWC] are a reality that is common to most organizations of this nature' and '[t]he reasons proffered are therefore quite reasonable', he concluded that PWC had failed to explain why it had not taken steps to obtain an extension of time and accordingly, there was no good explanation for the failure to timely file its defence. Therefore, PWC failed to satisfy the second limb of CPR 13.3(1).

The appellants appealed the decisions of the master, on bases which included that he failed to give effect to the discretion of the court to set aside the default judgments when there existed exceptional circumstances which warranted the setting aside of the judgments, namely, that PWC had satisfied all three requirements of CPR 13.3(1) and that PWC's appeal would be rendered nugatory if judgment against Mr. Darwton was allowed to stand. It was also argued that the master took into account irrelevant considerations when he concluded that PWC's failure to take steps to obtain an extension of time amounted to a lack of a good explanation in failing to timely file its defence.

Held: dismissing the appeals and ordering that PWC bears the costs of both of its appeals in the sum of $1,000.00 and that Mr. Darwton bears the costs of his appeal fixed in the sum of $500.00, that:

1. The discretion granted under CPR 13.3(1) to set aside a default judgment is relatively limited. A failure to satisfy any one of the three conditions of rule 13.3(1) is fatal unless a defendant manages to bring himself within CPR 13.3(2) by demonstrating that there were exceptional circumstances warranting the setting aside of the default judgment entered against him.

   Kenrick Thomas v RBTT Bank Caribbean Limited (formerly Caribbean Banking Limited) SVGHCVAP2005/0003 (delivered 13th October 2005, unreported) cited.

2. Although it was open to the master to conclude that no steps had been taken by PWC to obtain an extension of time to file its defence, it does not follow that such a finding is in and of itself determinative of the question whether a good explanation was given for the failure to timely file the defence. The learned master fell into error in treating PWC's failure to take steps to obtain an extension of time as being synonymous with it not having a good explanation for the failure to timely

file a defence. This error allows the appellate court to look afresh at the question of whether PWC provided a good explanation.

3. Having regard to the pleaded claims of Mr. Nelson and the evidence put forward by PWC in seeking to explain its failure to timely file its defence, the administrative difficulties and deficiencies experienced by PWC, though these may be a common occurrence, do not amount to a good explanation. Furthermore, the giving of a full and detailed explanation does not thereby make the explanation one that is good, or put differently, excusable. Accordingly, PWC failed to satisfy all the conditions under CPR 13.3(1).

   The Attorney General v Universal Projects Limited [2011] UKPC 37 applied; **Michael Laudat et al v Danny Ambo** DOMHCVAP2010/0016 (delivered 15th December 2010, unreported) followed.

4. It was clearly open to the learned master to conclude that the explanation proffered for Mr. Darwton's failure to timely file his defence was not a good one. The steps taken by Mr. Darwton demonstrated an exceedingly lax approach to meeting the timeline fixed by the Rules of Court for filing his defence. Furthermore, Mr. Darwton, having applied to set aside the default judgment some seven weeks after it was served on him, and having put forward no evidence to persuade the court that he had applied to set aside the judgment as soon as reasonably practicable after finding out that it had been entered, fails to satisfy the first limb of CPR 13.3(1). Accordingly, the default judgment entered against him cannot be set aside on the basis that the criteria set out in CPR 13.3(1) have been satisfied.

5. The existence of an exceptional circumstance under CPR 13.3(2) trumps the requirement to fulfil the criteria in CPR 13.3(1). Accordingly, PWC's statement that it had satisfied the criteria under rule 13.3(1) had no bearing on it having the default judgments entered against it set aside pursuant to rule 13.3(2). Furthermore, PWC's argument that its appeal would be rendered nugatory if judgment against Mr. Darwton was allowed to stand, was not an example of an exceptional circumstance. PWC's applications to set aside the default judgments failed on their own merits. It would have been possible for PWC to defend the claim against it even if a default judgment had been sustained as against Mr. Darwton, if PWC had timeously filed its defence.

JUDGMENT

[1] **PEREIRA, CJ:** These two interlocutory appeals arise from a refusal to set aside default judgments obtained by the respondent against the appellants in two separate claims for failure to file their defences within the time provided by the Rules of Court.

The backgrounds
Claim No. DOMHCV2015/0264

[2] In the claim giving rise to appeal no. 7 of 2016, the respondent claimed damages against the appellant, Public Works Corporation ("PWC") as his employer for failing to provide, among other things, a safe system of work. While the statement of claim was served on PWC on 29th October 2015, the claim form does not appear to have been also served. In any event, PWC acknowledged service of the claim form only. It is not disputed however that the claim form was again served with the statement of claim on PWC on 27th November 2015. A defence was filed by PWC on 13th January 2016 but judgment in default had already been entered against it earlier that same day.. The default judgment was served on PWC on 19th January 2016. PWC applied on 26th January 2016 to set aside the default judgment.

Claim No. DOMHCV2015/0265

[3] In the claim giving rise to appeal no. 8 of 2016, the respondent claimed against the first appellant (Mr. Darwton), damages for assault and battery allegedly committed by him and against PWC as being vicariously liable for the actions of its employee Mr. Darwton in respect of the said assault and battery.

[4] The claim form and statement of claim were served on Mr. Darwton on 31st October 2015. He filed an acknowledgment of service on 16th November 2015. No defence was filed within the time limited by the Rules.

[5] It is not disputed that PWC was served with the claim form and statement of claim on 27th November 2015, and it had earlier acknowledged service of the claim form (but not the statement of claim) served on 29th October 2015.

[6] Default judgment was obtained against Mr. Darwton and PWC on 11th January 2016 and served on Mr. Darwton on 28th January 2016 and on PWC on 19th

January 2016. PWC, who had sought to file a defence on 13th January 2016, applied on 26th January 2016 to set aside the default judgment. Mr. Darwton applied to set aside the default judgment some seven weeks after he was served with the default judgment, to wit on 17th March 2016.

[7] PWC supported its application to set aside the default judgments in both claims by affidavits of the General Manager sworn on 26th January 2016. The bases put forward as justifying the setting aside of the default judgments are the same in respect of the application made in each claim. Essentially, PWC says that it was necessary for its Board of Directors to meet so as to give instructions and that the necessary processes for convening such a meeting was required to be followed and the Board met on 30th December 2015. He also stated that on 1st July 2015, some 20 members of the staff had been laid off and that several of the persons with information of the facts and circumstances had been laid off making it difficult to obtain the relevant information for instructing their legal practitioners and that this was only possible on 12th January 2016, leading to the filing of a defence on 13th January 2016. A copy of the defence in each claim was exhibited to the affidavit and PWC asserted that it had a real prospect of successfully defending the claims.

[8] Mr. Darwton, for his part, stated in his affidavit sworn and filed on 17th March 2016, that:

(i) he consulted with the Human Resources Officer of the PWC and thereafter visited the legal practitioners retained by PWC;

(ii) the documents were returned to him by the legal practitioners on 22nd December 2015 with the explanation that they were unable to obtain instructions from PWC regarding his claim against him and that due to the Christmas holidays he was unable to deal with the matter until after the holidays;

(iii) After making several inquiries of PWC and due to the irregularity of his salary payments he was only able to consult with another lawyer

thereafter by which time the deadline for filing a defence had expired;

(iv) he was advised that 'due to the issue of vicarious liability it was better that [his] defence be filed by the Corporation's retained solicitor';

(v) he was unaware that when PWC filed its defence none had been filed for him. He also exhibited a copy of his defence and asserted that he had a real likelihood of success.

The master's decisions

[9] The applications to set aside came on for hearing before a master on 28th June 2016. In respect of claim no.2015/0265, the learned master found as it relates to Mr. Darwton that:

(i) he applied some 49 days after he had notice of the default judgment and thus it could not be said he had applied as soon as practicable after becoming aware of it;

(ii) he had not provided a good explanation for failing to file his defence (having noted that no request for an extension of time had been made); and

(iii) although his defence had a real prospect of success, having failed on the first and second limbs of CPR 13.3(1) his application failed given the conjoint requirement of rule 13.3(1).

[10] In respect of PWC, the learned master having found that it had satisfied the first and third limbs of rule 13.3(1) of the Civil Procedure Rules 2000 ("CPR"), however concluded that no good explanation had been given for its failure to timely file its defence. The master stated in paragraph 4 of his ruling that taking 'judicial notice that the administrative difficulties encountered by the 2nd defendant are a reality that is common to most organizations of this nature … [t]he reasons proffered are therefore quite reasonable'. He then concluded that what was not explained was

why PWC had failed to take steps to obtain an extension of time and that having failed to do so there was therefore no good explanation for the failure to timely file its defence. PWC's application accordingly failed on the second limb of CPR 13.3(1).

The appeals

[11] The appellants essentially make the following complaints:

(i) It was not open to the master to conclude that no extensions of time had been sought as there was no evidence put before him to support this conclusion;

(ii) He failed to give effect to the discretion of the court to set aside the default judgments when there existed exceptional circumstances warranting the setting aside of the default judgments, namely, that PWC had satisfied all three requirements of rule 13.3(1) and that PWC's appeal would be rendered nugatory if judgment against Mr. Darwton is allowed to stand; and

(iii) In determining whether PWC had given a good explanation for the failure to timely file its defence he took into account irrelevant considerations when he concluded that its failure to take steps to obtain an extension of time amounted to a lack of a good explanation in failing to timely file its defence.

Additionally, PWC contends that there was no basis for a differing costs order in respect of each appellant. An award of costs was made against Mr. Darwton in the sum of $400.00 whereas costs was awarded against PWC in the sum of $600.00.

The principles

[12] CPR 13.3(1) sets out three preconditions which must be satisfied before the court may set aside a regularly obtained judgment in default. It states:

> "(1) If Rule 13.2 does not apply, the court **may** set aside a judgment entered under Part 12 only if the defendant –
>
> (a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
>
> (b) **gives a good explanation for the failure** to file an acknowledgment of service or a defence as the case may be; and
>
> (c) has a real prospect of successfully defending the claim." (Emphasis added)

Additionally, CPR 13.3(2) states:

> "(2) In any event the court **may** set aside a judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances." (Emphasis added)

[13] It is now well settled that, unlike the English CPR, the discretion granted under our CPR 13.3(1) is more limited than the broad discretion which is given under the English Rules.[1] A failure to satisfy any one of the three conditions is fatal unless a defendant manages to bring himself within the rule 13.3(2) by demonstrating exceptional circumstances warranting the exercise of the discretion in his favour. A number of decisions from this Court have considered what may amount to exceptional circumstances.[2]

[14] In **The Attorney General v Universal Projects Limited**,[3] although dealing with satisfying a precondition for obtaining relief from sanctions under CPR 26.7 of Trinidad and Tobago, what was said there in respect of providing a good explanation for satisfying that requirement may be applied here in respect of providing a good explanation for satisfying the similar condition under CPR 13.3(1). There it was sought to be argued that a 'good explanation' should not necessarily require the party in default to show that he was not at fault and that

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[1] See: Kenrick Thomas v RBTT Bank Caribbean Limited (formerly Caribbean Banking Limited) SVGHCVAP2005/0003 (delivered 13th October 2005, unreported).

[2] See: Elvis Wyre (Personal Legal Representative of the Estate of Arnold Wyre, Deceased) et al v Alvin G. Edwards et al ANUHCVAP2014/0008 (delivered 3rd September 2014, unreported); Deidre Pigott Edgecombe et al v Antigua Flight Training Centre ANUHCVAP2015/0005 (delivered 26th June 2015, unreported); The Marina Village Limited v St. Kitts Urban Development Corporation Limited SKBHCVAP2015/0012 (delivered 19th May 2016, unreported); and Carl Baynes v Ed Meyer ANUHCVAP2015/0026 (delivered 30th May 2016, unreported).

[3] [2011] UKPC 37.

such things as administrative inefficiency, oversight or errors made in good faith would afford a good explanation. This was roundly rejected by the Board which had this to say at paragraph 23:

> "The Board cannot accept these submissions. First, if the explanation for the breach ie the failure to serve a defence … connotes real or substantial fault on the part of the defendant, then it does not have a "good" explanation for the breach. To describe a good explanation as one which "properly" explains how the breach came about simply begs the question of what is a "proper" explanation. Oversight may be excusable in certain circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly, if the explanation for the breach is administrative inefficiency."

Discussion

[15] In addressing the first complaint regarding the lack of evidence relating to the steps taken to obtain extensions of time, firstly, as it relates to Mr. Darwton, it is not clear that the master relied on this as his reason for concluding that he had not proffered a good explanation for his failure to file a timely defence. Secondly, it seems to me unusual that had the appellants taken steps to obtain extensions of time that such facts would have simply been left out of their evidence put before the court. Such evidence would have assisted if only by way of showing that they had not adopted the position of sitting idly by while time ran against them or to demonstrate why they could not do so within the time allowed by the Rules. The fact that no reference at all was made as to steps taken by them to obtain an extension could lead to the reasonable inference being drawn that no steps had been taken in this regard. CPR 10.3 sub rules (5), (6), (7) and (8) clearly provide for extension of time for filing of a defence by consent between the parties and thus without applying to the court. However, sub rule (8) clearly requires in such circumstance, the filing of such an agreement. Subject to the observations which I will make later, in my view, on the state of the evidence put forward or lack thereof, it was reasonably open to the master to conclude that no steps had been taken to obtain an extension. This complaint, framed as it is as a finding unsupported by evidence, is in my view unmeritorious. It may often be the case and accepted as trite law that silence as to facts which may explain a state of affairs may be the

most powerful evidence that none exists.[4]

Failure to take steps to obtain an extension of time – an irrelevant consideration?

[16] Having concluded that the master could find that no steps for obtaining an extension had been taken, it does not follow that such a finding in and of itself is determinative of the question of whether a good explanation for failure to timely file one's defence was given. Evidence showing that steps were taken to obtain an extension of time would no doubt show that the time allowed by the Rules was insufficient for one or more reasons so as to avoid default but may not necessarily afford a good reason for a default.

[17] The gravamen of PWC's complaint is that the master, having found by use of judicial notice that the administrative difficulties encountered by PWC were 'quite reasonable', contends that all three conditions of CPR 13.3(1) had been fulfilled and therefore it was wrong to go further and have regard to the fact that PWC had not taken steps to obtain an extension of time and to treat this fact as amounting to a lack of a good explanation. I agree. The failure to take steps to obtain an extension of time for filing a defence and the lack of a good explanation for failing to timely file a defence are not one and the same although the reasons put forward for one may invariably shed some light on the other. To my mind an error occurred in treating one as synonymous with the other. Having accepted that the administrative difficulties encountered by PWC were quite reasonable it was not open without more to treat the failure to take steps to obtain an extension of time as determinative of whether a good explanation had been proffered for the failure to timely file.

[18] This error allows this Court to look at the question of whether PWC provided a

[4] See judgment of Baptiste JA in the appeal Tyrone Burke (Chief Personnel Officer) v Otto Sam (SVGHCVAP2014/0002 (delivered 15th September 2015, unreported)) wherein "The Wisniewski principle", mentioned in the English Authority of Western Trading Ltd v Great Lakes Reinsurance (UK) PLC [2015] EWHC 103 QB, was set out at para. 23 of the judgment.

good explanation afresh. The administrative difficulties relied on by PWC seems to me to be a resort to administrative inefficiency of the kind which was rejected by the Privy Council in **Universal Projects** as affording a good explanation. Counsel for the respondent contends that PWC ought not to be permitted to rely on its status as a statutory corporation to flout the Rules. Indeed the Rules must apply to it as it does to everyone else. I agree. Further, she points to the fact that as early as 17th November 2015, PWC had instructed counsel who filed an acknowledgement of service in which it stated its intention to defend. That fact, coupled with the fact that in claim no. 264, the incident complained of by the respondent allegedly occurred in 2013 (giving PWC ample opportunity to obtain information from its employees) and in claim no. 265, information about the alleged assault and battery could have been obtained from Mr. Darwton who was at all material times employed by PWC, do not lend credence to the explanations put forward by PWC.

[19] There is much force in the arguments put forward by the respondent on this issue. I am satisfied, having regard to the pleaded claims of the respondent and the evidence put forward by PWC in seeking to explain its failure to timely file its defence, that its administrative difficulties or deficiencies, though they may be a common occurrence, do not amount to a good explanation. As this Court reminded in **Michael Laudat et al v Danny Ambo**:[5]

> "[C]ounsel do not have a good explanation which will excuse non-compliance with a rule or order, or practice direction where the explanation given for the delay is misapprehension of the law, mistake of the law …, lack of diligence, volume of work, difficulty in communicating with client, pressure of work on a solicitor, impecuniosity of the client, secretarial incompetence or inadvertence."

In short, the giving of a full and detailed explanation does not thereby make the explanation one that is good or, put differently, excusable. PWC in my view, for the reasons given, fails on this second limb of rule 13.3(1).

[20] In respect of the explanation given by Mr. Darwton for his failure to timely file his

[5] DOMHCVAP2010/0016 (delivered 15th December 2010, unreported).

defence, it was clearly open to the master to conclude that the explanation proffered for his failure was not a good one. The steps taken by Mr. Darwton demonstrate, in my view, an exceedingly lax approach to meeting the timeline fixed by the Rules for putting his defence before the court even though he appeared to be cognizant of the deadline, seemingly content to transfer the responsibility for so doing to someone else, namely his employer PWC notwithstanding that the claim made against him is in respect of an assault and battery allegedly committed by him.

[21] Furthermore, even if an error may be said to have occurred, in having regard to the fact that no steps had been taken to obtain an extension of time, Mr. Darwton would still have faced the hurdle of satisfying the first limb of CPR 13.3(1) which has simply not been addressed. No evidence was put forward to show that some 47 days after becoming aware of the default judgment was the reasonably practicable time in which Mr. Darwton could have made his application to set it aside.

[22] The consequence is that neither of the appellants have satisfied all the conditions of CPR 13.3(1) which allows for the discretion to be exercised in their favour. The next stage then is to consider whether either appellant has shown that exceptional circumstances exist warranting the setting aside of the default judgments.

Exceptional circumstances

[23] Above, I referred to some decisions of this Court in which exceptional circumstances were considered. What amounts to an exceptional circumstance requires a case by case inquiry. Mr. Darwton has not put forward any circumstance which may be considered to be exceptional. PWC says that exceptional circumstances exist because it has satisfied all the criteria set out in CPR 13.3(1). I have concluded above that this is not the case. In any event an exceptional circumstance contemplates the existence of circumstances which, though failing to satisfy the criteria set out in rule 13.3(1), trumps the requirement

for the fulfilment of those criteria.

[24] PWC in its skeleton arguments says additionally that if the judgment is permitted to stand it will not have an opportunity to be heard on the claim made by the respondent. This is a different twist to what is set out in the grounds of appeal which state that the second appellant's appeal would be rendered nugatory if the judgment against the first appellant is permitted to stand. I shall nonetheless address each of the propositions in turn.

The opportunity to be heard on the claim

[25] It is of the very essence of a default judgment that the defaulting party has lost the opportunity to attack the merits of a claim as it relates to liability. There is nothing unusual or disproportionate about that. It cannot be said that PWC has been deprived of an opportunity to be heard. Rather, it is the case that PWC has simply failed to make use of its opportunity to be heard. The default judgment may be said to be nothing more than the price one pays for one's failure to defend. Timelines must be imposed to regulate the time frame within which a party must be made to answer to a claim failing which the claimant is entitled to treat his claim as no longer being open to dispute. Were this not the case claims would be left hanging without resolution, whether by default or otherwise, in an indefinite comatose state which does nothing for the promotion of certainty and the finality of disputes. The fact that PWC has lost its opportunity due to its own default does not give rise to an exceptional circumstance.

The judgment standing against the first appellant

[26] I am unable to follow this line of argument put forward by PWC, not least because its appeal (assuming it is a reference to this appeal) is here being considered on its merits and has not been rendered nugatory. PWC's applications to set aside the default judgments failed on their own merits. So too, the application of Mr. Darwton. Suffice it to say that a default judgment against Mr. Darwton does not automatically give rise to a default judgment against PWC. Indeed a default

judgment could be sustained as against Mr. Darwton, whereas PWC would have been able to defend the claim against it, grounded in vicarious liability, had it timeously put forward its defence. Neither scenario comes anywhere close to demonstrating exceptional circumstances. I would also dismiss this ground of appeal.

The costs orders

[27] In claim no. 264 PWC was ordered to pay costs in the sum of $500.00 following its unsuccessful application to set aside the default judgment. Their complaint is in relation to the disparate costs orders in relation to applications to set aside the default judgment in claim no. 265 in which costs against the first appellant was in the sum of $400.00 but as against PWC, was in the sum of $600.00. PWC says the sum of $600.00 is excessive in the circumstances as $400.00 is the standard costs order in applications of this nature. Further, it says that he gave no reasons for the discrepancy in treatment. I have been shown no decisions supporting the position that $400.00 is the standard costs order for applications of this nature. The respondent has not addressed this point but points out that the court's discretion in relation to costs awards is a broad one and, in order for an appellate court to interfere, a party will have to show that the costs order was wholly outside that generous ambit within which reasonable disagreement is possible. While the master gave no reasons for treating the appellants differently, it appears on the applications that PWC pressed the setting aside of the default judgment not only pursuant to 13.3(1) but also pressed its case for setting aside pursuant to CPR 13.3(2). In exercising my discretion I would have had regard to this additional basis on which PWC sought to set aside the default judgment and award a higher sum in a similar amount as ordered by him. I would accordingly allow the costs order against PWC to stand.

Conclusion

[28] For the reasons given I would dismiss the appeals and order that the appellant PWC bears the costs of both its appeals in the sum of $1,000.00 and Mr. Darwton bears the costs of his appeal fixed in the sum of $500.00.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar