EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: SVGHCV2016/0235

Between

KELLY GLASS

Claimant

-and-

NATASHA PORTER

Defendant

Appearances:
Mr. Joseph Delves of Counsel for the Claimant
Mrs. Zhinga Horne Edwards of Counsel for the Defendant

2018: October 25th
2019: March 27th

JUDGMENT

[1] MOISE, M.: The defendant in this case seeks to set aside a judgment entered in default on 18th December, 2017. Her application is filed pursuant to rule 13.3 of the CPR which states as follows:

> *13.3(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 acknowledgement of service or a defence as the same case may be; and*
>
> *(c) Has a real prospect of successfully defending the claim.*

(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. ***...***

[2] It is now well established that in order for the defendant to succeed on an application pursuant to rule 13.3(1) she must satisfy all of the requirements of that sub-rule. She must show that she applied to have the judgment set aside as soon as is reasonably practicable after finding out that judgment was entered. She must show that hers is a good explanation for her failure and that there is a real prospect of successfully defending this claim. If any one of the requirements is not satisfied, then the application pursuant to that sub-rule must fail. Despite this however, if she can show that there are exceptional reasons for setting aside the judgment, the court may do so pursuant to sub-rule (2). Before addressing the criteria under the rules it is important to assess the background of this case and the circumstances under which the judgment was entered in the first place. I would also add, for reasons which will be apparent later in this judgment, that the court has always retained an inherent jurisdiction to set aside an order if doing so serves the purpose of protecting its own process.

[3] The claimant filed a claim form and statement of claim on 29th December, 2016. This claim was amended on 11th January, 2017 and further amended on 3rd May, 2017. The amended claim was served on the defendant in February, 2017. After being further amended it was again served on the defendant out of the jurisdiction, on 5th June, 2017. Neither an acknowledgment of service, nor a defence was filed in relation to this further amended claim. The claimant initially filed a request for entry of judgment in default on 20th November, 2017. This was refused by the registrar. As a result he filed a without notice application on 28th November, 2017 seeking an entry of judgment in default for the relief sought in the claim form. The matter was listed for hearing before then acting Master Wallace on 18th December, 2017 and on that date judgment in default of defence was entered. The order does not contain a preamble which outlines the basis for the grant of the judgment. I can only assume that this was made on the application dated 28th November, 2017. As per judgment dated 18th December, 2017 it was ordered and directed that:

(a) The Defendant is estopped from denying that she agreed to transfer her shares, share, claim, interest and or claim on Convertible Holidays International Limited to the claimant;

(b) *The defendant do all such acts and execute all such documents as may be necessary to transfer her said share, shares, claim, or interest in CHIL to the claimant upon payment of US$500,000.00 less the payment made so far;*

(c) *The defendant whether by herself, her servants, agents, and successors or assigns is restrained from selling, assigning, mortgaging or in any way disposing of her share or interest I CHIL;*

(d) *As of September, 23rd 2013, the defendant held all that her claim, interest, share, shares or howsoever otherwise in CHIL, in trust for the claimant and that she forthwith sign transfer certificates to transmit her shareholding to the claimant upon payment of US$500,000.00 less the payment made to her to date;*

(e) *Prescribed costs to the claimant.*

[4] The order was merely a replication of the relief sought by the claimant in his claim form and statement of claim. I will proceed to address the application under the provisions of the rules invoked by the defendant in support of her application.

CPR 13.3(1)

[5] The first issue for consideration is whether the defendant made this application as soon as reasonably practicable after finding out about the judgment. The defendant states that she was served with the judgment on 22nd June, 2018. Her application was filed on 17th August, 2018. I note that she normally resides outside of the jurisdiction. I therefore find that a delay of less than two months in seeking to apply to set this judgment aside is reasonable and the defendant has therefore satisfied this aspect of the criteria.

[6] In my view however, it is on the issue of whether a good explanation has been provided by the defendant for her failure to file a defence that I disagree with the submissions of her counsel. The defendant states firstly that she suffered from depression after the death of her father in 2011. She states further that her son has also been engaged in substance abuse and continues to struggle with drug and alcohol addiction to this day. This, she states has compounded her emotional state. I note that this claim was filed and served on the defendant in 2017 and her father unfortunately

passed away in 2011. That was six years prior to the service of this claim form on her. She exhibits medical evidence in an attempt to substantiate her claim to be clinically depressed. However, this document does not comply with the provisions of the CPR for the introduction of expert evidence. In any event, it is a handwritten document which simply states that the defendant has been under a doctor's care for depression and anxiety disorder from 2011. Nothing in that report satisfies me that the defendant would have been unaware of her obligations in filing a defence within the requisite time. Her struggles may have been beyond the normal vicissitudes of everyday life, but I do not accept this as a good explanation for her failure to file a defence enough to be satisfied that this judgment ought to be set aside.

[7] The defendant states further that she had financial difficulties and was at a low and vulnerable point in her life when she was served with the claim. The court has held in the past that impecuniosity is not necessarily a good explanation for one's failure to comply with court orders. I note that the further amended claim was served on the defendant in June, 2017 and judgment was not entered until December of that year. There was ample time for the defendant to seek an extension of time and to engage the process despite her claims of impecuniosity. I do not accept this as a good explanation for her failure to file a defence within the time prescribed by the CPR.

[8] The defendant states further that she communicated with Mr. Chris Maclean who promised to assist her with this case in Saint Vincent and the Grenadines. She states that she handed all of the documents to Mr. MacLean who in turn instructed Dr. Linton Lewis, an attorney in Saint Vincent, in order to prosecute her defence. She had a brief conversation with Dr. Lewis about 2 weeks after she was served with the claim form and was assured that he would handle this matter on her behalf. No defence was ever filed. She states that she followed up sometime in March, 2017 and was assured that an acknowledgement of service was filed and that the matter was taken care of.

[9] The claimant filed an affidavit of service claiming that the further amended statement of claim was served on the defendant in June 2017. The defendant claims no recollection of this service but states further than "even if [she] had" been served, she was of the view that Dr. Lewis was handling the matter on her behalf. She states that Dr. Lewis was never served with the amended claim or the notice of hearing date in December, 2017. I note however, that the claimant exhibited an acknowledgement of service of the initial claim which was served on her. This does not have Dr.

Lewis' chambers as an address for service. The only address contained in the document is that of the defendant in Quebec, Canada. Dr. Lewis' chambers was therefore never on record as an address for service for the defendant. As it relates to the application for judgment in default, given that what was before the court was an application made without notice, there was no need for service of that hearing on the defendant. A judgment in default of this nature is heard ex parte.

[10] The defendant also presents evidence from Mr. Neal Alan De Floro who attempts to corroborate much of what she had to say. The essence of this evidence is to show that the failure to file a defence was due to inaction from the defendant's attorney. Counsel for the defendant relies on the case of *Cuthwin Webster v. Preston Bryan*[1] to support the submission that the failure of counsel is a good explanation for the failure to file a defence on time. However, in my view, this case is distinguishable, in that it would appear that the defendant was always engaged in the matter and sought alternative representation when he observed that his counsel had not filed a defence. He attempted to seek an extension of time to file a defence even prior to the entry of judgment in default. Further, the defendant appeared to have made such attempts within a much shorter period of time than what is advanced in the present case. The defendant in that case was to have filed his defence in June, 2008 and was only aware of his counsel's negligence on 27th August, 2008. Within 2 days he instructed new counsel who was unable to file a defence until the end of the court's long vacation due to his absence from the jurisdiction. In the present case, judgment was entered in default in December, 2016 after having served the defendant with the further amended claim in June, 2016. There is no evidence here of any significant attempt on the part of the defendant to properly engage her attorneys to ensure that this defence was filed on time.

[11] The court has consistently stated in other cases, that the litigant is responsible for the prosecution of his or her case. Ultimately it is the defendant who must take responsibility for any inaction. The documents which are attached to a statement of case clearly outline the duties and responsibilities of the defendant upon service of the claim form and statement of claim; including the time period within which a defence is to be filed. I note that over 10 months elapsed between the time the defendant was first served in the matter and a judgment was entered. There was a further amended claim served on her in June, 2017. That was 6 months prior to the entry of judgment. There has therefore been no good explanation provided for her failure to file the defence within the

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[1] AXAHCV2008/0020

time prescribed by the CPR. Given that the requirements of rule 13.3(1) of the CPR are conjunctive, there is therefore no need to consider the third ground on which this application was based. The application must therefore be dismissed unless the defendant now shows that there are exceptional reasons for setting aside this judgment; given that this is a ground upon which her application was filed.

Rule 13.3(2) of the CPR **–** Exceptional reasons

[12] In the case of *Public Works v. Matthew Nelson*[2], Pereira CJ noted that exceptional circumstances ***"trumps the requirement for the fulfillment"*** of the criteria set in rule 13.3(1). It is a standalone ground on which an application may be based and it is, in all instances, based on the circumstances of the case at bar. This was introduced into the rules in order to militate against the harshness o**f rule 13.3(1). Therefore, notwithstanding the defendant's failure to satisfy the criteria in** 13.3(1) she may seek to have this order set aside on the grounds that there are exceptional reasons for doing so. It has been stated that in order for a defendant to succeed in proving that there are exceptional circumstances for setting aside a judgment entered in default, she must show that there are ***"compelling reason[s] why the defendant should be permitted to*** *defend the proceedings in which the default judgmen****t has been obtained."***[3] This principle was further addressed by Pereira CJ in the case of *Carl Baynes v Ed Meyer*[4] where she states the following:

> *I am in full agreement with the reasoning of Bannister J, as approved by this Court, that* ***it must be 'one*** *that provides a compelling reason why the defendant should be permitted to defend the proceedings in which the defau****lt judgment has been obtained'.*** *It must be something more than simply showing that a defence put forward has a realistic prospect of success. Showing exceptional circumstances under CPR 13.3(2) does not equate to showing realistic prospects of success under CPR13.3(1)(c). They are not to be regarded as interchangeable or synonymous. CPR 13.3(2) is not to be regarded as a panacea for covering all things which, having failed under CPR 13.3(1), can then be dressed up as amounting to exceptional circumstances under sub-rule (2).*

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[2] DOMHCVAP2016/0007

[3] See Bannister J in Inteco Beteiligungs AG v Sylmord Trade Inc.

[4] ANUHCVAP2015/0026

*Sub-rule (2) is intended to be reserved for cases where the circumstances may be said to be truly exceptional, warranting a claimant being deprived of his judgment where an applicant has failed, to satisfy **rule 13.3(1).** A few examples come to mind. For instance, where it can be shown that the claim is not maintainable as a matter of law or one which is bound to fail, or one with a high degree of certainty that the claim would fail or the defence being **put forward is a "knock out point" in relation to the claim; or** where the remedy sought or granted was not one available to the claimant. This list is not intended to be exhaustive.*

[13] With these principles in mind I express some concern regarding the nature of the default judgment entered in favour of the claimant. Firstly, it seems to me that orders (a) and (c) amount to injunctive relief and I entertain some doubt as to whether such relief is available to be granted in default where the court does not satisfy itself fully that there is a legal and factual basis to grant such relief. The order of the master does not contain a preamble or an explanation as to the basis upon which it was granted. Secondly, the remaining terms of the judgment appear to be the grant of orders for specific performance of an agreement between the parties for the sale and transfer of shares in CHIL. In fact, the 4th order amounts to a declaration that a trust exists over the shares in favour of the claimant and an order compelling the transfer of the defendant's shareholding to him.

[14] As I stated earlier, the claimant made a request for entry of judgment in default which was denied by the registrar for good reasons. She pointed the claimant to rule 12.10(4) and (5) of the CPR which states as follows:

(1) 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.

(2) 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.

[15] Despite the fact that this is a contractual claim, the claimant does not claim damages, but rather seeks the equitable remedies of specific performance and other injunctive relief. In accordance with rule 12.10(4) and (5) therefore, the court must satisfy itself that the claimant is entitled to the remedy and that it is appropriate to grant such a remedy given the circumstances of the case. The

claimant filed a without notice application for judgment in default of defence on 28th November, 2017. However, there are two major defects in this application. Firstly, the grounds on which the application is based merely speak to the fact that the further amended claim had been served on the defendant and there had been no reply. Secondly, the affidavit attached to the application merely outlines the dates on which the defendant was served. To my mind, given the specific nature of rule 12.10(4) and (5), this application would have fallen well short of what was required in order for the court to satisfy itself of the terms of the judgment to have been entered. The purpose of such an application is to satisfy the court that the claimant is entitled to the relief which he seeks. The evidence attached to such an application must go further than merely state that the claimant was served with the claim and failed to file a defence. It must contain evidence sufficient to satisfy the court that he is entitled to such relief and he must in his application include the grounds upon which this assertion is based.

[16] I also express some concern with respect to the pleadings which were before the court at the time the order was made. In his statement of claim the claimant asserts that the realty which was essentially the subject of negotiations between the parties was a parcel of land situated at Mayreau in Saint Vincent and the Grenadines. This property was owned by a company named Mayreau Development (Saint Vincent) Limited. In affidavit evidence attached to the application to set aside the default judgment, it is asserted that Convertible Holidays International Limited (CHIL) is a shareholder in Mayreau Development (Saint Vincent) Limited. It is this company in which the defendant's father was a shareholder. CHIL is an offshore company registered in the Cayman Islands. As I understand it, upon his death in 2011 the defendant's father left a last will and testament and made her a beneficiary thereunder. The claimant in his statement of claim acknowledges that at the time of the agreement neither he nor the defendant were fully aware of the status of the attempts to have this will probated. It was also clear that the defendant was not the sole executor and beneficiary of that estate. In fact, the evidence contained in the affidavits filed by the defendant indicate that as early as April, 2013 the defendant had relinquished her duties as co-executor with the effect that the remaining executor was solely responsible for the probate of her father's will.

[17] To my mind, even in the absence of the defendant's application and the attached affidavits, it would seem clear on the fact of the pleadings, that there would be some doubt as to her authority to isolate shares in the company and engage in negotiations regarding real property owned by Mayreau Development (St. Vincent) Limited. It is also doubtful that she would have had the authority to transfer any shares in CHIL to the claimant at the time the contract was made.

[18] Despite this, the claimant pleads in his statement of case that the defendant agreed to transfer "her interest in CHIL and/or in the said land to the claimant for a price of $500,000.00US." He goes further to say at paragraph 14 of his statement of claim that "… in consideration of and pursuant to their agreement, the defendant both in her capacity as a beneficiary of the Estate of the Tom Potter and as Co-Executor of that Estate granted Holiday Mayreau Limited, a company owned by the claimant a 15 year lease of the said land." He states further in his pleadings that the defendant gave him an irrevocable power of attorney permitting him to probate the will of Tom Potter, and to recover Tom Potter's shares in CHIL. In furtherance of what would have been, by his assertion, a $500,000.00US transaction, the claimant had, at the time of filing, paid approximately $22,700.00US of his own consideration.

[19] Attached to the defendant's application and affidavit is a legal opinion from Mr. Robinson Sheppard Shapiro who claims to be an attorney from Quebec, Canada. In reliance on this the defendant raises the issues of comparative law and seeks to argue that the transactions entered into by the defendant are not enforceable in Quebec and in the Cayman islands where CHIL is registered. For my part, even without consideration of the issues of comparative law, I express grave doubts as to whether there was sufficient evidence to satisfy the court that the remedies granted to the claimant ought to have been granted in default under the provisions of rule 12.10(4) and (5) of the CPR without proper consideration of the facts by way of affidavit evidence as was required under that rule.

[20] Firstly, the facts suggest that the property in question was owned by a limited liability company. The defendant on the other hand was merely a beneficiary in her father's estate and a co-executor of that will until sometime in April, 2013 when she relinquished this duty. It is more than doubtful that she would have had any authority to grant a lease over the property, which the claimant asserts was the main basis of the agreement between the parties in the first place. Secondly, the

defendant was not the holder of any shares in CHIL at the time of the agreement. I accept that she may very well agree to relinquish her shares whenever they were so transferred to her, but in the circumstances of this case I am of the view that the facts present a compelling reason to doubt that a default judgment in the terms entered ought to have been granted in the first place.

[21] One other issue which troubles my mind is the fact that the claimant asserts that the contract was valued at half a million US dollars and he had paid less than $23,000.00US to the defendant. There had, at that point, not been substantial performance of the contract and the court ought to have engaged in a hearing to determine whether it would have been appropriate to have granted the default judgment on the terms in which it was granted. I note that the defendant accepts that she was paid some of the money which the claimant asserts in the claim. However, the claimant does not seek to repudiate the contract and claim damages, but rather to enforce it and seeks orders which amount to specific performance and injunctive relief.

[22] As Barrow JA noted in the case of *First Caribbean Bank International (Barbados) Ltd v Bradford Noel et al*[5] ***"an order for specific performance is quintessentially a matter of discretion."*** It is an equitable remedy to which a claimant is not entitled as a matter of right unless the court satisfies itself that damages is not an adequate remedy. Reliance on rule 12.10(4) and (5) further compounds this issue for the claimant as it required the court to consider the claimant's entitlement to this remedy by way of affidavit evidence which was not available to the master at the time the judgment was granted.

[23] In the case of *British Virgin Islands Electricity Corporation v Delta Petroleum LTD*[6] Ellis J noted the following as it relates to the remedy of specific performance:

> *"case law makes it clear that any case concerning specific performance will inevitably require a consideration of these issues which may be subsumed under three main categories:*
>
> 1. *Whether damages would be an adequate remedy*
> 2. *Judicial discretion*

[5] GDAHCVAP 2007/028
[6] BVIHCV2015/158

3. Nature of the Agreement"

[24] The issue of specific performance was more recently addressed in the case of *Ramsbury Properties Limited v Ocean View Construction Limited*[7] where Baptiste JA stated the following at paragraph 12 of his judgment:

> "*With respect to specific performance, the following observations are pertinent. An order for specific performance is an order that an obligation in a contract be enforced by means of a mandatory injunction to that effect. Specific performance is a discretionary remedy; its grant or refusal remains a matter for the judge. The power to award specific performance is part of the discretionary jurisdiction of the Court of Chancery to do justice in cases in which the common law remedies are inadequate. This is the basis of the general principle that specific performance will not be ordered when damages are an adequate remedy: Lord Hoffman in Co-operative Insurance Society Ltd v Argyll Stores Holdings Ltd. Specific performance is not a cause of action; it is an equitable remedy to a cause of action for breach of contract. Specific performance is traditionally regarded in English law as an exceptional remedy, as opposed to the common law damages to which a successful plaintiff is entitled as of right.*"

[25] In my view therefore, where a claimant seeks monetary damages, the registrar may enter a judgment administratively. This may either be a judgment for a specified sum or a sum to be decided by the court depending on the circumstances of the case. Where the claim is for a remedy other than monetary damages the court must consider the claimant's entitlement to this remedy by way of affidavit evidence in keeping with the provisions of rule 12.10(4) and (5) of the CPR. Specific performance is not a remedy to which a claimant is entitled as of right and in granting such an order in default of defence, the court must still satisfy itself that such an equitable remedy is appropriate and only if damages would not be an adequate remedy. In the circumstances of the present case, there was no affidavit evidence which was sufficient to comply with the provisions of the rules in order to enable the court to embark on such an exercise. I am of the view that this is an irregularity in the process by which the judgment in default was granted in the first place. What the

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[7] SKBHCVAP2011/0020

facts show is that the claimant was granted relief on terms to which he is not entitled as of right, without full consideration of the issues.

[26] However, I wish to note that during the course of oral submissions I raised with counsel for the defendant a concern as to whether an appeal ought not to have been a more appropriate course of action for the defendant to take. I expressed this concern as in this case the judgment was not entered by the registrar but by a master and I entertained some reservation as to whether in setting aside the judgment for the reasons outlined above, the court would not be acting as an appellate body against its own decision. However, on further consideration I am of the view that this court is clothed with the power to set aside this judgment. The rules do recognize that judgments in default are normally entered ex parte. Rule 13 makes provision for a defendant, upon being served with the judgment, to make an application as soon as is reasonably practical in order to set this judgment aside. He is entitled to bring certain facts to the attention of the judge or master in order to satisfy the provisions of the rules. Such facts may not have been considered at the time the application was heard in the absence of the defendant.

[27] In her written submissions, counsel for the defendant refered to the case of *Elvis Wyre v. Alvin G. Edwards et al*[8]. In that case the court of appeal held that there were exceptional circumstances which warranted the setting aside of a judgment entered in default. One of these circumstances was the fact that the claimant was not entitled to the remedy which was granted in the default judgment. Whilst there may be some distinguishing elements between that case and the one at bar, I am of the view that the content of paragraph 43 of Webster JA's decision is applicable to the present case. He states as follows:

> **"***The issue of what amounts to exceptional circumstances within the meaning of sub-rule 13(2) will vary from case to case depending on the facts of each case. In this case we find that the two circumstances above that the appellants rely on are exceptional in that they go to the bases of the claim and if correct will result in the dismissal of most of the claim. The appellants have real prospects of successfully defending the claim and should be allowed to do so notwithstanding their delay in applying to set aside the default judgment.***"**

[8] ANUHCAP2014/0008

[28] I am of the view that, in circumstances of the case at bar, there are exceptional reasons to set aside this judgment and this court is clothed with the authority to do so. The claimant was not entitled to the remedies which he sought as of right. There is more than a real prospect of success here; at least as it relates to the request for specific performance.

[29] In the event that I am wrong in finding that there are exceptional circumstances upon which to set this judgment aside, **I would have also considered the court's** powers to do so ex debito justitiae pursuant to its inherent jurisdiction. The exercise of this jurisdiction was explained in the case of *Deidre Pigot Edgecomb et al v. Antigua Flight Training Center*[9] where Pereira CJ noted as follows:

Although the appellants claim to be invoking CPR 13.3(2), in reality the essence of their complaint is that the judgment should be considered as a nullity or one which is irregular ***and thus liable to be set aside ex debito justitiae pursuant to the Court's inherent*** *jurisdiction as applied in Lazard. This would not be a matter of discretion but rather an imperative in much the same way as the imperative under CPR 13.2. This is quite different from setting aside a judgment which is considered to be regular under CPR 13.3 which assumes the existence of a regular judgment and requires the court to exercise a discretion, having regard to various factors, in determining whether or not to set it aside. CPR 13.2, in contradistinction to CPR 13.3, deals with default judgments which must be set aside for irregularity based on the non-fulfilment of the conditions set out in sub paragraphs* ***(a) and (b) of sub rule (1). However, the mere fact that no mention is made of the court's*** *power to set aside an otherwise irregular judgment or one which may be considered a nullity under rule CPR 13.2, does not mean that such a jurisdiction does not exist. It does not take away from the Court, its inherent jurisdiction, which it has always had and maintains for the purpose of protecting its process.*

[30] **To my mind there is a material irregularity here given the glaring deficiencies in the claimant's** application filed on 28th November, 2017. It must be underscored that what rule 12.10(4) and (5) requires is a formal hearing on the appropriateness of the relief which the claimant seeks and

[9] ANUHCVAP2015/0005

whether he is, on the face of the statement of claim, entitled to that relief. In order to comply with that rule, the claimant must file affidavit evidence sufficient to address this specific requirement. In cases such as the present case for example, where the remedy involves as least two companies, with their own shareholdings and directors, who are effectively third parties to such transactions, the court must satisfy itself that the grant of injunctive relief and specific performance are remedies to which the claimant was entitled or whether damages would be a more appropriate remedy; bearing in mind the effect this judgment may have not merely on the defendant but on the companies in question and the persons who may be involved with them. I am satisfied that the failure to properly comply with rules 12.10(4) and (5) is a ground on which the order ought to be set aside ex debito justitiae **under the court's inherent jurisdiction to protect its own process.**

[31] I make one further observation. I have considered the provisions of rule 13.3(3) where it states that ***"w****here this Rule gives the court power to set aside a judgment, the court may instead vary it***." It seems to me that there clearly was an agreement between the parties and that there has been payment of a certain sum of money to the defendant. The doubts that I express relate to the **defendant's authority to enter into the transaction and the appropriateness of the remedies sought** by the claimant. As such, it may be open to the court to vary the order by entering judgment in favour of the claimant and setting this matter down for consideration of the terms of the order in keeping with rule 12.10(4) and (5). However, this exercise would necessitate consideration of whether damages would be an adequate remedy instead of granting the relief which the claimant seeks. The claimant does not seek damages. Given the concerns I expressed as to the appropriateness of the remedy I would therefore set the judgment aside in its entirety and grant leave for the defendant to file a defence. I am of the view that this is the most equitable approach to take and the court must in all instances seek to do justice as its overriding objective.

[32] I therefore make the following orders and declarations:

(a) The judgment entered on 18th December, 2017 is set aside;
(b) The defendant is granted leave to file and serve a defence within 14 days from the date of delivery of this decision;
(c) The matter will thereafter take the normal course of case management in accordance with the CPR;

(d) Each party will bear his/her own costs.

[33] In closing, I note that oral arguments were made in this matter on 25th October, 2018. The court is only now rendering its decision. In these circumstances I offer an apology to the parties for the delay in delivering this decision and any inconvenience that this may have caused to those involved.

Ermin Moise
Master

By the Court

Registrar