

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**Cause No. G 212 of 2019**

**BETWEEN:**

**JOHN FELDER**

**PLAINTIFF**

**AND:**

**SANDRA HILL**

**DEFENDANT**

**IN CHAMBERS**

**Appearances:**

**Mr. James Dixon of Priestleys for the Plaintiff**

**The Defendant in Person**

**Before:**

**The Hon. Justice Robin McMillan**

**Date of Hearing:**

**12<sup>th</sup> August 2021**

**Date of Reasons for Judgment:**

**2<sup>nd</sup> September 2021**



**HEADNOTE**

*The scope and application of GCR, O.19 r.9 - The legal principles under which the discretion of the Court to set aside a Default Judgment should be exercised - The importance of recognising the substantive rights of a Plaintiff duly and properly obtained in the form of a regular Judgment*

## REASONS FOR JUDGMENT

1. On 12<sup>th</sup> August 2021 the Court heard a Summons Application dated 19<sup>th</sup> March 2021. The Application sought dismissal of a Default Judgment of McMillan J dated 29<sup>th</sup> July 2020 in these proceedings. The Court dismissing the Application, stated briefly the reasons for doing so and indicating that Written Reasons would be delivered in due course.

2. The Applicant/Defendant sought the following relief:

“1. *That the Default Judgment entered into herein dated 29<sup>th</sup> July 2020 be set aside on the grounds that:*

*(a) the Writ of Summons was defective in that the suit was brought against Sandra Hill in her personal capacity when the publications complained of were published by a limited company name Cayman Marl Road Ltd.;*

*(b) the enforcement of the Default Judgment obtained herein would result in a travesty of justice due to such procedural defect;*

*(c) the matters complained of in the Statement of Claim are not factual and the Defendant has a meritorious defence in any event;*

*(d) the Defendant should be afforded an opportunity to file an additional affidavit or affidavits to prove the factual basis of the alleged defamatory publications which form the basis of the Plaintiff's claim; and*

*(e) in all the circumstances of the case, there is a triable issue in the matter.”*

3. An Affidavit in support of the Application was sworn by the Defendant on 19<sup>th</sup> March 2021.

4. The position of the Plaintiff had already been set out in the course of these proceedings and it was supported by a very helpful Skeleton Argument dated 9<sup>th</sup> August 2021.



## THE BACKGROUND

5. A chronology of events has been put forward on behalf of the Plaintiff in relation to which no issue or dispute arises.
6. The Plaintiff filed a Writ of Summons on 27<sup>th</sup> December 2019 followed by a Statement of Claim on 29<sup>th</sup> January 2020.
7. Although an Acknowledgment of Service was filed on 14<sup>th</sup> January 2020, the Defendant failed to file a Defence.
8. On 29<sup>th</sup> July 2020, following a contested hearing of the Plaintiff's Application for Default Judgment before McMillan J, Judgment was entered by the Grand Court against the Defendant for injunctive relief and damages to be assessed for libel in respect of three articles which the Defendant published or caused to be published in December 2019 and January 2020 ("**Defamatory Articles**") on the website [www.caymanmarlroad.com](http://www.caymanmarlroad.com) ("**Website**") and associated social media platforms ("**Social Media Accounts**").
9. A damages assessment hearing was listed before the Grand Court on 25<sup>th</sup> February 2021 and was adjourned until 16<sup>th</sup> April 2021 at the Defendant's request.



## THE STATEMENT OF CLAIM

10. By way of amplification of the Plaintiff's contentions in the matter, an extremely detailed Statement of Claim dated 28<sup>th</sup> January 2019 was filed.
11. The Plaintiff is and was at all material times a well-known businessman in the Cayman Islands who had traded since around 2004 as a car dealer selling and leasing a variety of vehicles.
12. The Defendant is described as the controlling mind behind a website commonly known as Cayman Marl Road as well as a number of social media accounts.
13. It is claimed that several defamatory articles were published by the Defendant about the Plaintiff and attacking his character and his business practices. By way of example, he was described as an "*alleged fraudster*" and a "*first-rate con artist*". Reference was also made to email correspondence claiming Mr. Felder was, in fact, a "*con artist*".

14. It is unnecessary for this Court to set out in detail the full extent of the accusations. They were numerous, repetitive and inevitably harmful if in fact untrue and unjustified.
15. As we have seen, although an Acknowledgement of Service was filed, the Defendant failed to file a Defence. In addition as far as this Court can see at no material time did the Defendant provide to the public or to the Court any indications as to the nature and scope of the evidence that could support such serious allegations.
16. Instead, following the grant of a Default Judgment the matter proceeded to a damages assessment hearing listed before the Grand Court for hearing on 25<sup>th</sup> February 2021 and adjourned until 16<sup>th</sup> April 2021 at the Defendant's request as we have seen.
17. Indeed it was only at that point when the substantive hearing had been adjourned that the instant Summons dated 19<sup>th</sup> March 2021 was issued.



#### **THE APPLICABLE PRINCIPLES OF LAW**

18. The power of the Grand Court to set aside a Default Judgment is found at GCR, O.19, r.9 which states:

“9. *The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.*”

19. The concept of what is just in these circumstances has been examined in a number of cases, two of which are of particular relevance and application:

“*In The Saudi Eagle [1986] 2 Lloyds Red 221, Sir Roger Omerod states that:*

“*the primary consideration is whether the defendant “has merits to which the court should pay heed” (per Lord Wright at p. 489), not as a rule of law but as a matter of common sense, since there is no point in setting aside a judgment if the defendant has no defence and if he has shown “merits” the ...court will not, prima facie, desire to let a judgment pass on which there has been no proper adjudication [ibid.p. 489 and per Lord Russell of Killowen at p. 482].*””

20. In other words, the question is whether the Defendant's case is of some merit desiring attention as distinct from no merit, and in addressing this question common sense is required. It should be stated at this point that this Court has great difficulty in finding any common sense in the actions and conduct of the Defendant.
21. Then in *Embassy Investments Limited v. Houston Casualty Company* Court of Appeal [2013 (2) CILR 212], the Court of Appeal considered the dicta in *The Saudi Eagle*, and Chadwick, P states:

*“There are, as it seems to me, a number of points which emerge from the guidance in the Saudi Eagle. First, the approach in a case where the claimant has obtained a regular judgment – a fortiori, where that judgment has been obtained after a hearing at which the defendant was represented – is not the same as that (i) in a case where the claimant is seeking summary judgment under GCR, O.14 (the equivalent of RSC, O.14 under the former Rules of the Supreme Court) and the defendant is seeking leave to defend; or (ii) in a case where the defendant (against whom no judgment has been entered) is seeking an extension of time in which to file a defence. Nor is such a case analogous with a case where one party is seeking to strike out the claim or defence of the other. The reason is that an order setting aside a regular judgment deprives a claimant of substantive rights which he has obtained in accordance with the process of the court. That should not be done unless the court is satisfied that justice requires it. It is necessary, in order “to arrive at a reasoned assessment of the justice of the case” (ibid.), for the court to form a provisional view as to the outcome if the case were to be fought at trial – the proposed defence must carry some degree of conviction. Secondly, if the application of the primary consideration – “whether the defendant has merits to which the Court should pay heed” (ibid.) - leads to the conclusion that the proposed defence does not carry the required degree of conviction, the court should not set aside the default judgment as there would be no purpose to be served by doing so. But, thirdly, in addressing the question of whether the defendant has merits to which the court should pay heed, it is appropriate for the court to take into account the circumstances in which “[the defendant] found himself bound by a judgment regularly obtained to which he could have set up some serious defence” (ibid). It is pertinent to have in mind that, in the Saudi Eagle itself, the Court of Appeal, in deciding that the defendants had not shown that they had any reasonable prospect of success, did take into account their conduct.”*

22. A number of features immediately became apparent.



23. First, in the instant case a Default Judgment has been properly obtained. Although the Defendant was not represented by counsel, she represented herself and in person. There is no respect in which the Default Judgment could be described as irregularly obtained.
24. Secondly, the Defendant has subsequently put forward in her Affidavit and argues in oral arguments as well two inconsistent and tenuous Defences. She has asserted that the publication was the responsibility of a Cayman Islands connected entity, Cayman Marl Road Ltd and not herself. The Defendant orally corrected that to state that the entity was a Delaware corporation, Cayman Marl Road LLC, after it had become clear that the offending publication had taken place before Cayman Marl Road Ltd had come into evidence on 2<sup>nd</sup> February 2021. This last date is not in dispute between the parties.
25. The alternate line of the Defence was that the Defendant had witnesses who had supplied enough information to enable her to successfully defend the Plaintiff's claim of defamation. However, at no point has any evidence of this matter been properly brought to the Court's attention. The Defendant claims that given extra time she could produce it, but given that she has so far produced absolutely nothing by this late stage the Court has no confidence in her doing do if she is permitted to delay these proceedings even more.
26. Accordingly, in relation to the issue as to whether the proposed Defence carries any degree of a conviction the Court is completely satisfied that it carries no conviction at all.
27. Thirdly, in light of this conclusion the Court must decline to set aside the Default Judgment because there would be no purpose served in doing so.
28. Fourthly, the Court is required to take into account the circumstances in which the Defendant found herself bound by a Judgment regularly obtained. The Defendant finds herself in this situation due to circumstances of her own making and with no manifested possibility of a serious Defence materializing. In deciding that the Defendant has not shown any reasonable prospect of success, the Court takes into account how the Defendant arrived at this position. There is no prospect of success and the Defendant's conduct has made her situation worse rather than better.



## THE ROLE OF THE DEFENDANT IN PUBLICATION

29. Although the Defendant has alleged that any responsibility can only be attributed to a corporate entity however it may be described, the Plaintiff contends at paragraph 12 at his Skeleton Argument that, *“the Defendant is well known in the Cayman Islands as being the controlling mind of the Website and Social Media Accounts and it is averred that (i) the Defendant is the proprietor and/or publisher and/or editor of the Website and the Social Media Accounts and/or the author of the content of the Website and the Social Media Accounts.”*
30. It is important to make this point with which the Court fully agrees, as otherwise a corporate shell can be used to promote defamatory material without any form of effective restraint or recompense. The Court accepts that in making her submissions on this point the Defendant did not purposefully intend to give herself that uncontrolled liberty, but it is a danger to which the Court must properly be alert.
31. In other words, the Defendant must be held responsible for her own words and actions in the same manner as any other citizen.

## THE SUBSTANTIVE RIGHTS OF THE PLAINTIFF

32. In addition an important observation made by Chadwick P. in the passage above is that setting aside a Default Judgment deprives a claimant of substantive rights which the claimant has obtained in accordance with the process of the Court. This should not be done unless the Court is satisfied that justice requires it taking into account the wording of GCR, O.19 r.9. The Court does not consider that it would be just to set aside its earlier Order in the present circumstances.



## CONCLUSION

Bearing in mind all of the reasons and factors set out above, the Court declines to exercise its discretion to set aside the Default Judgment in this case. Finally, as to costs the Court has ruled that cost should follow the event and costs have therefore be awarded to the Plaintiff on the standard basis.

**Dated this the 2<sup>nd</sup> day of September 2021**



**The Honourable Justice Robin McMillan  
Judge of the Grand Court**