



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO. GC227 OF 2021

BETWEEN:

DUMYAT LTD

Plaintiff

AND

DELMIRA BODDEN

Defendant

IN CHAMBERS AS OPEN COURT

Appearances: Ms Shelly Perryman-Pollard of HSM for the Plaintiff

Ms Delmira Bodden in person

Before: Hon. Chief Justice Margaret Ramsay-Hale

Heard: 21 February 2023

Reasons for Decision Delivered: 30 May 2023

HEADNOTE

Civil proceedings - Setting aside default judgment - Requirement for defendant to show a defence with a real prospect of success - GCR O.13, r.9

JUDGMENT

Introduction

1. On the 21 February 2023, the Court dismissed the application by the Defendant, Ms Delmira Bodden, to set aside a default judgment entered by the Plaintiff, Dumyat Ltd. (“Dumyat”) on 26 300523 *Dumyat Ltd and Delmira Bodden – Reasons for Decision*

November 2021. The Court gave brief *ex tempore* reasons and promised to deliver fuller reasons in writing. This I do now.

### Background

2. The principal of Dumyat, Mr. Ross McDonough, and Ms Bodden met in 1994 at the law firm where they both worked. They had several interactions and arrangements with respect to divers property and business interests over the years.
3. In or around June 2020, Ms Bodden approached Mr. McDonough to request a loan of CI\$80,000.00 to commence a small business. Mr. McDonough agreed and advanced the monies to Ms Bodden on 4 August 2020. A promissory note acknowledging the loa of \$80,000 was executed by Ms Bodden on 22 August 2020.
4. On 3 August 2021, Mr. McDonough assigned the loan to Dumyat, which is his company. By letter dated 4 August 2021, Dumyat wrote to Ms Bodden giving notice that the debt had been assigned to Dumyat and was due and made demand for payment.
5. The monies were not repaid and on 3 November 2021, Dumyat filed a Writ to recover the sums due to them. The Writ was served on November 2021. Ms Bodden did not enter an appearance to the Writ and Dumyat successfully applied for judgment in default on 26 November 2021. The Default Judgment was served on Ms Boden on 11 December 2021.
6. Ms Bodden applied to set aside the default judgment on 25 May 2022. In a hearing before Williams J on 13 June 2022, Ms Bodden was given leave to withdraw her application and an Order in terms was made. Ms Bodden sought to reopen the application to set aside the default judgment on the grounds, *inter alia*, that she had felt constrained to withdraw the application because her evidence in support of her original application had been lost by the Civil Registry and had thus been deprived of a fair hearing. On 27 October 2022, Williams J set aside the Order on his own motion and gave Ms. Bodden leave to proceed with the original summons to set aside.

### The Law

7. The application was made to GCR O.13, r. 9 of the Grand Court Rules where it expressly states that,  
*"The Court may, on such term as it thinks just, set aside or vary any judgement entered in pursuance of this Order."*
8. The discretionary power of the Court to set aside a default judgment which has been entered regularly is unconditional. The primary consideration in exercising the discretion is whether the defendant has merits to which the court should pay heed. If the defendant has no defence, as a matter of commonsense, there is no point setting aside a judgment. If the defendant can show a defence with a real prospect of success, the Court will not let a judgment stand on which there has been no proper adjudication: see *White Book* note 13/9/18 at p160.

300523 Dumyat Ltd and Delmira Bodden – Reasons for Decision

### The Evidence

9. Ms Bodden was unrepresented. Given her complaints that she had not had the opportunity to put all matters relevant to her application before the court at the earlier hearing and the deficiencies apparent in her affidavit which was also very difficult to understand, the Court took evidence on oath, with the consent of Dumyat, to allow her to amplify or clarify the matters on which she relied and permitted cross-examination of Mr. McDonough so he could respond to any new matters raised by her.
10. Ms Bodden's position, as it emerged from the documents on file and her evidence, was that the question of whether the monies claimed in these proceedings were due and owing should be considered in the context of other dealings she had with Mr. McDonough including a loan made by him to her to her in 2011 which had been secured by charges over five (5) parcels of land owned by her in East End (the "Land").
11. Ms Bodden's evidence was that they agreed that the Land - presumably by Mr. McDonough - and they would each have a 50% share in the completed development. In consideration of this agreement, Mr. McDonough told her not to make any payments on the loan.
12. Ms Bodden alleged that, despite this representation, Mr. McDonough had gone on to recover the monies loaned to her, with interest, by selling the Land, notwithstanding the fact that their agreement to develop the Land - and, inferentially, the agreement that she not make any payments on the loan - still subsisted.
13. This breach of their agreement by Mr. McDonough and the sale of the Land was referred to by Ms Bodden as the "*Property Matter*."
14. Ms Bodden asserted that the claim for the \$80,000 had to be tried together with the Property Matter because the loan to her of a further sum of money was evidence that she had never been in default of the earlier loan secured by the Land, because as she suggested, who would lend money to a borrower already in default?
15. She also stated that, when their friendship came to an end and they were "settling up" their affairs, it was agreed that the East End property would be valued and if the value of her half share of the Land was greater than the monies owed, including the \$80,000, the loan would be extinguished and Mr. McDonough would pay her the difference; if it were less, she would have to repay the loan.
16. Mr. McDonough, in response, acknowledged that there had been an earlier loan made to Ms Bodden and that they had agreed to develop the Land but when the project was costed in 2014 it became plain that the development was not economically feasible, and the project was abandoned.
17. He denied that he had told Ms Bodden that she did not have to repay the loan which had been secured by charges over the parcels in East End. The charges all made provision for interest to be

paid on the monies lent and permitted the sale of the Land without further notice if the monies were not repaid on demand. The loan was not repaid and the Land was sold.

18. Asked by the Court why he waited so long to sell to recover the debt, he explained that he delayed because they were friends. It was also for that reason that he had made the further loan of \$80,000 to Ms Bodden.

### Decision

19. There was no challenge to the promissory note or that it was due on demand or that demand had been made.
20. None of the evidence given by Ms Bodden which was intended to show that the debt secured by the Land had not fallen due and that the Land should not have been sold - what Ms Bodden she referred to in her affidavit as her *real case* against Mr. McDonough - disclosed a defence to Dumyat's action on the promissory note to recover the debt due or a crossclaim against Mr. McDonough, as assignor, giving rise to an equitable set off which had a reasonable prospect of success.
21. The debt was admitted. Ms Bodden's answer to the action on the debt was that the Land was to be valued and, if the value were less than she owed, she would have to pay back the \$80,000 or so much of it as was not set off by the value of her share. The Land can no longer be valued. It has been sold. If there were a debt due to Ms Bodden arising from the sale of the Land, in that the sale price exceeded the debt secured by the Land, Ms Bodden would doubtless have said so and claimed a set off against the \$80,000 due under the promissory note.
22. As Ms Bodden did not have a defence on the merits, the application to set aside the default judgment was dismissed.

DATED 30 MAY 2023



Hon. Margaret Ramsay-Hale  
CHIEF JUSTICE