



Neutral Citation Number: [2025] CIGC (Civ) 4

Cause No: G2023-0174

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

CHARLES JESSOP SMITH

Plaintiff

-and-

(1) SADIE J. JURGENS

(2) CHARLIE B. JURGENS

Defendants

Appearances: **Mr James Kennedy of KSG for the Plaintiff**
 Ms Janet James of James Brady Attorneys for the First Defendant

Before: **The Honourable Justice Jalil Asif KC**

Heard: **21 January 2025**

Ex tempore judgment delivered: **21 January 2025**

Finalised judgment approved: **28 January 2025**

Civil procedure—debt claim—judgment in default—application for charging order—defendant’s application to set aside judgment in default—whether to set aside judgment

JUDGMENT

1. This is my judgment on the First Defendant's summons dated 17 January 2025 to set aside a judgment in default entered as long ago as 27 November 2023 and subsequently amended on 30 August 2024. So, this application to set aside judgment in default is made some 13 months after the default judgment was first entered.
2. The substantive claim in relation to which judgment in default was entered was for repayment of a debt of just over CI \$500,000 said to be owed by the Defendants to the Plaintiff, who is Mrs Jurgens' brother. I was told that the Second Defendant, who was Mrs Jurgens' ex-husband, died in the latter part of 2024.
3. The monies owed were said to have been paid on the basis of an oral agreement made on 28 November 2022 between the Plaintiff and Mrs Jurgens, by which the Plaintiff agreed to lend both of the Defendants jointly the sum of \$528,938 odd to be used to clear mortgage arrears on a property that the Defendants owned and occupied together and to repay the Defendants' mortgage with Fidelity Bank.
4. The Plaintiff made that payment on 1 December 2022 direct to Fidelity Bank. The Statement of Claim alleges the Defendants have not made any repayments to the Plaintiff, despite the Plaintiff having formally demanded repayment by letter dated 31 July 2023.
5. No acknowledgement of service form was returned on behalf of Mrs Jurgens, and the acknowledgement of service filed by Mr Jurgens indicated that he did not contest the proceedings. The Plaintiff therefore applied for judgment to be entered in default, and judgment was entered on 27 November 2023.
6. For reasons which are not apparent from the Court file, the Plaintiff applied to amend the default judgment, and the amended default judgment was filed sealed by the Court office on 30 August 2024. It is not clear to me what, if any, amendments were made to the default judgment.

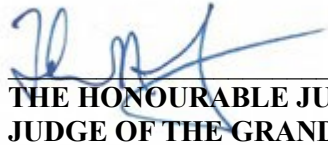
7. The Plaintiff then applied for a charging order to secure payment of the judgment debt. The Plaintiff did so by filing an originating notice of motion and commencing separate proceedings under Cause No. G2024-0264. I made a charging order nisi on 24 October 2024.
8. The matter has now been in front of me on four occasions in relation to the Plaintiff's application for a final charging order, with Mrs Jurgens represented by Ms James at each hearing.
 - 8.1 On the first occasion, on 21 November 2024, Ms James sought an adjournment on the basis that she had only recently been instructed. I adjourned the matter to 13 December 2024.
 - 8.2 On 13 December 2024, Ms James sought to argue that judgment in default ought not to have been entered and/or that Mrs Jurgens wished to defend the case on the merits. I adjourned the case to 9 January 2025 and ordered that Mrs Jurgens should file any application to set aside the judgment in default by 7 January 2025. I ordered that if that application were issued then the parties should submit a draft order for directions by email – this was with a view to the court making directions for the final disposal of the application to set aside and vacating the hearing on 9 January 2025.
 - 8.3 On 9 January 2025, Mrs Jurgens had not issued any application to set aside. Ms James sought a further adjournment, which I reluctantly granted to 21 January 2025.
 - 8.4 Having issued a summons to set aside the default judgment on 17 January 2025, the matter was listed before me on 21 January 2025. The summons is supported by an affidavit and exhibit sworn by Ms Jurgens on 17 January 2025. The Plaintiff relies on an affidavit and exhibit sworn by Ms Jade Lyn on 9 January 2025.
9. Notwithstanding that Mrs Jurgens has said in her position statement and in her affidavit there are procedural irregularities in obtaining the default judgment, I have not been able to identify any procedural irregularity. When I pressed Ms James to tell me what was the procedural irregularity that Mrs Jurgens, she was unable to do so. Instead, she sought to rely on the Plaintiff's conduct in allegedly interfering in the divorce proceedings between Mrs Jurgens and the Second Defendant. Ms Jurgens did not dispute that the Plaintiff discharged the mortgage debt – her complaint was that she did not want him to do so because it would cause complications in her divorce proceedings.

10. In my judgment any impact that the Plaintiff's actions may have had on the divorce proceedings is completely irrelevant to the current claim and does not amount to procedural irregularity in obtaining judgment in default that would give rise to a right or quasi right of Ms Jurgens to have the default judgment set aside. Indeed, on the evidence that I have seen that it is clear that the Plaintiff was fully entitled to apply for and to obtain judgment in default.
11. In those circumstances, it is incumbent on Ms Jurgens to show good reason why the default judgment should be set aside. This must address both: (1) explaining the reasons for the elapsed time before she made her application; and (2) showing that there is a substantive defence to the claim on the merits that the court should allow her to advance.
12. I have listened very carefully to everything that Ms James has said on behalf of Ms Jurgens, both as regards her explanation for not taking action to set aside the default judgment earlier, and also on the merits of her intended defence and potential counterclaim.
13. Having done so, I have not been able to identify any basis for Ms Jurgens' assertion that the Plaintiff's actions caused her detriment or put her in a worse position, such as to found a possible counterclaim against the Plaintiff. Other than this, it is very difficult for me to see what effective substantive defence she has identified to the claim for repayment of the debt.
14. I fully appreciate that Ms Jurgens complains that there was no formal agreement with the Plaintiff or that any agreement that was reached was not intended to be legally enforceable. But even if she were right on that, it seems to me that Ms Jurgens and her ex-husband received the benefit of the repayment of their loan from Fidelity Bank, and the well-established doctrine of subrogation then puts the Plaintiff in the shoes of Fidelity Bank to enforce repayment of the debt that was formerly owed by the Defendants to Fidelity Bank, whether or not there was a formal agreement between the Plaintiff and the Defendants. Further, because the Plaintiff has not sought interest from the Defendants, as he would be entitled to do under the doctrine of subrogation, the Defendants are likely to be substantially better off as a result of the Plaintiff discharging their mortgage.
15. In terms of an explanation for the delay, whilst Ms James has sought to put before me various excuses which seek to demonstrate why Ms Jurgens' attention was not engaged in dealing with these current proceedings, in my judgment, none of the matters that have been raised by Ms James amount to a proper excuse for or proper explanation why Ms Jurgens has not taken any action to apply to set aside

the default judgment until late last year at the very earliest, when she first raised that this was her intention, and secondly, on 17 January 2025 when she finally issued her summons.

16. So for those reasons, I cannot see that there is any merit in the summons, and I dismissed it with costs to be paid by Ms Jurgens to the Plaintiff, to be taxed on the standard basis if not agreed.
17. Further, having disposed of Ms Jurgens' attempt to set aside the default judgment, I will now make a charging order absolute in G2024-0264.

Dated 28 January 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**