



**Neutral Citation Number: [2025] CICA (Civil) 16**

**IN THE CAYMAN ISLANDS COURT OF APPEAL  
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**CICA CIVIL APPEAL No. 0002 of 2025  
(formerly G 0174 of 2023)**

**BETWEEN:**

**SADIE J. JURGENS**

**Appellant**

**V**

**CHARLES JESSOP SMITH**

**Respondent**

**Before:** The Rt Hon Sir John Goldring, President  
The Rt Sir Michael Birt, Justice of Appeal  
The Hon Clare Montgomery KC, Justice of Appeal

**Appearances:** None

**Heard:** 17<sup>th</sup> September 2025

**Judgment delivered:** 17<sup>th</sup> September 2025

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**JUDGMENT****Sir John Golding, President**

1. These are applications out of time by Mrs Jurgens for leave to appeal the order of Justice Asif of 21 January 2025, by which he made a charging order absolute in respect of 5 Radiant Lane, West Bay, Grand Cayman, and the order of Justice Carter of 24 July 2025 by which she ordered that the Respondent recover possession of the property. She also seeks leave to appeal the order of Justice Carter of 20 August 2025 by which she dismissed a summons to stay her order of 24 July. As part of her order of 24 July, the judge ordered that Mrs Jurgens give vacant possession of the property by 15 August 2025 and gave the Respondent leave to issue a writ of possession against Mrs Jurgens.
2. There was a Notice of Appeal filed on 11 February 2025 in respect of the order of Justice Asif. There was a further Notice of Appeal filed on 15 August 2025 ostensibly in respect of both of Justice Carter's orders. The present is the first application for leave in respect of all the orders (leave not having been sought from the judges below).
3. Mrs Jurgens did not vacate the property on 15 August. On 25 August I imposed a stay in respect of Justice Carter's order of 24 July pending the hearing by this court of the application for leave to appeal the orders of Justice Asif and Justice Carter. I should add that a sale had been agreed and was due for completion. The position now is that completion is to take place at the end of this month.
4. This is the second occasion on which these applications for leave have been listed before this court. The first occasion was on 15 September. Mrs Jurgens did not appear. She produced a doctor's note. He had apparently given her an injection on that date because of severe back pain and sciatica. The doctor suggested home rest until 19 September and indicated she could return to work on 20 September. When we adjourned the case, we stated that if Mrs Jurgens was not present by 9.30AM on today's date, the case would proceed in her absence. We also made it plain to Mrs Jurgens that if she wished to make further written submissions, she may do so (as to some limited extent she has). Mrs Jurgens has again not appeared. In an email to the court yesterday she has said that the neurological pain had returned. She foreshadowed having to go to hospital. Today Mrs Jurgens has informed the court that she is back in hospital awaiting a consultation. She also says she has consulted a local lawyer. She asks for a further adjournment.

5. The Court has carefully considered whether it should further adjourn the case. It has concluded it should not. Mrs Jurgens' written submissions are comprehensive. It is not a kindness to Mrs Jurgens further to prolong the inevitable. For reasons which will become readily apparent, this case now needs to be brought to an end.
6. Its history goes back some time. It was helpfully set out by Justice Asif in his judgment of 28 January 2025 when dealing with Mrs Jurgens' application to set aside a judgment in default which had been entered on 27 November 2023 and amended on 30 August 2024.
7. 5 Radiant Way was the home of Mrs Jurgens and her ex-husband, who died towards the end of 2024. There was a substantial mortgage from Fidelity Bank. It fell into arrears. By November 2022, the debt was in the order of CI\$528,938. On 28 November 2022 the Respondent, who is Mrs Jurgens' brother, orally agreed to clear the debt. No repayments were made to him.
8. On 20 September 2023 the Respondent issued a Statement of Claim in which he alleged that on 31 July 2023 he had formally demanded repayment. Mr Jurgens, in his acknowledgement of service, did not contest the proceedings. Mrs Jurgens returned no acknowledgement of service, she says because she was badly advised. Had she been properly advised, she says she would have disputed the claim. The Respondent applied for judgment to be entered in default. It was so entered on 27 November 2023 and subsequently amended on 30 August 2024.
9. Justice Asif set out what happened thereafter in his judgment: see [7]-[9]:

“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.

8.5. 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 Ms 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.”

8. The learned judge then went on to say at [11]-[17]:

“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

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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."

9. Mrs Jurgens explains the failure to apply for leave in respect of Justice Asif's order by the fact that her lawyer, having filed a Notice of Appeal, ceased thereafter to represent her. Her subsequent attempts to obtain legal advice were unsuccessful. Her failure to apply for leave in time in respect of Justice Carter's orders is similarly ascribed to the problems of representing herself and the difficulty of obtaining legal advice. Given that background, Mrs Jurgens submits the court should extend time in respect of the judgments of Justice Asif and Justice Carter and grant her leave to appeal.
10. In her submissions to this court Mrs Jurgens states she feels 'aggrieved and dissatisfied' by the judgments below. She in essence repeats the submissions she unsuccessfully advanced to Asif and Carter JJ. There was no intention, to create legal relations. This was a loan from her brother in circumstances when she was in financial difficulty and undergoing a divorce. The brother's bringing of proceedings appeared out of the blue. He was acting in bad faith. She was badly advised not to dispute the Statement of Claim. She always intended to repay the loan.
11. Before us Mrs Jurgens has gone further than previously. She suggests she is in a position to pay CI\$1,500 to 2,000 per month towards the judgment debt and to clear the whole debt "via investment and developing my property (building units for sale)." As she puts it:

"...There is evidence to support the Appellant assertion (sic) that I have an investor to develop Units on the Property, a developer with a development plan which would satisfy all of the Outstanding sums for the realistic loan without conditions attached. It was mentioned in my Affidavit and GOA, not before because just recently the viable option was Presented to me, I can submit the Plan and Proposal to this Honorable Court in due time as the Court might request.

...I humbly and kindly submit that, the Plaintiff should wait for repayment in full in six months time. He has judgment in his favour and is entitled to repayment but a reasonable approach can be used by the Court, taking into consideration that it was a voluntary loan with not agreement at all, that he paid directly to the Bank –no money was handed to us- and that was not any interest, timeline, deadline, demand clause etc attached to it, only when things were not done as the Respondent Dictated (see his Affidavit of May 2023 in this Bundle) he sent the cavalry in full throttle to take my house from me one way or the other.

...In good faith I submit that the charge to my property –hold by my brother- would be sufficient to secure it until he get refunded and the said charge removed.”

12. I of course understand the consequences for Mrs Jurgens of losing the home in which she has lived for many years. However, Mrs Jurgens is seeking to prevent the inevitable. The proposals for repayment she now makes at the very last minute are in my view wholly unrealistic and supported by no independent evidence. There is no basis for the court to interfere with the different orders previously made. Justice Asif was entitled to reach the decision he did. It would have been surprising had he reached any other decision. I would refuse to extend time to appeal that decision. Leave to appeal that order must be refused. The consequential orders of Justice Carter were inevitable. Leave to appeal those orders must be refused.

13. In the result, I would refuse these applications for leave to appeal. I would lift the stay which has been imposed with immediate effect. The sale which has been agreed may go ahead. It does not seem to me I should make a costs order in respect of these applications for leave. Although the Respondent was present and incurred costs at the first hearing, he did not need to be.

14. Completion is due at the end of the month. I would ask that Mrs Jurgens be given a little time to vacate the property.

**The Honourable Clare Montgomery JA**

I agree.

**The Honourable Sir Michael Birt JA**

I also agree.