BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(Civil Division)

Claim No. 1586 of 2017

BETWEEN:

STEVE STRAUGHN **CLAIMANT**

AND

MARSHA LOUGHEED-PAIGE **DEFENDANT**

Before the Honourable Mr. Justice Cecil N. McCarthy, Judge of the High Court

Date of Decision: 2019 November 27

Mr. Steve Straughn for the Claimant

Mr. Patterson K. H. Cheltenham Q.C. in association with Ms. Richel M. A. Bowen for the Defendant

DECISION

INTRODUCTION

[1] The claimant is an attorney-at-law, who is representing himself in these proceedings. This matter concerns an application by the claimant for entry of judgement against the defendant in default of defence. The Registrar of the Supreme Court ("the Registrar") determined that a defence had been

filed within the time limited by the Supreme Court (Civil Procedure) Rules, 2008 ("the CPR") and as a result, she refused to enter judgment in default. The parties dispute whether the defence was served on the claimant. The claimant contends that the defence was not served in accordance with the CPR and submits that the Registrar was wrong to enter judgment merely on the basis that the defence was filed. The claimant argues that the defence must be filed and served within the period stipulated by the CPR. The defendant contends that the defence need only be filed within the prescribed period, and the Registrar was correct in refusing to grant the claimant judgment in default.

FACTUAL BACKGROUND

[2] On 24 October 2017 the claimant filed a claim form and statement of claim seeking damages for defamation. Both the claim form and the statement of claim gave the claimant's address for service as *"Messrs. Nelson & Wilkinson, Nellex House, 62 Tudor Street, Bridgetown".* On 2 November 2017 the defendant filed an acknowledgment of service.

[3] On 11 December 2017 the claimant filed a notice in accordance with part 10 of the CPR requesting the defendant to file a defence within fourteen days of

service of the notice. The notice was served on the defendant's attorney-at-law on 14 December 2017.

[4] On 27 December 2017 the defendant filed a defence which contained a complete denial of the allegations in the claimant's statement of case.

[5] On 15 January 2018 the claimant filed a request for default judgment, requesting that judgment be entered against the defendant in default of defence. Among other things, in the request for default judgment, counsel for the claimant deposed that no defence or counterclaim had been served on him.

[6] An affidavit of service evidencing the service of the claim form, statement of claim and take notice, was also filed by the claimant on 15 January 2018.

[7] On 27 February 2018, counsel for the defendant filed an affidavit of service in which Theresa Williams ("Ms. Williams") deposed that on *"Wednesday 28th December 2017 at approximately 3:15 p.m."* she attempted to serve the defence on the claimant at his address for service at the offices of Nelson & Wilkinson. She also deposed that she spoke with a Savonne Beckles at the said office and she (Ms. Beckles) informed her that she was not authorised to accept service of the document and that she should try to locate the claimant in the new year. Ms. Williams also swore that she sent an e-mail

attaching a true copy of the defence to the claimant *"on 27th December 2017 at 4:28 p.m"*.

[8] By supplemental affidavit of service filed 15 January 2019, Ms. Williams swore an affidavit to the effect that her previous affidavit of service contained a typographical error and that she had attempted to serve the defence *"on Wednesday 27th December, 2017"* and not Wednesday 28th December 2017 as previously stated.

[9] No doubt having been informed that the Registrar had refused to enter default judgment, Mr. Straughn on 20 March 2008 filed a 25-paragraph document headed: "Written Submissions on Request for Default Judgment". The document recited the background to the litigation and in sections headed respectively "The Law" and "The Application of the Law", he quoted **part 10.4** of the CPR which stipulates that:

"When the defendant files a defence, he must also serve a copy on every other party".

Mr. Straughn asserted that the defendant had not "filed and served" a defence within the stipulated time set out in the CPR.

[10] Mr. Straughn in his written submissions again urged the Registrar to enter judgment in default of defence.

[11] By notice dated 24 February 2018 the Registrar notified the parties that a case management conference was fixed for Monday, 23 April 2018 at 9:30 a.m.

[12] The court file first came to my attention at a case management conference of 15 October 2018. At that hearing, the claimant, among other things, acknowledged that he had received correspondence from the Registrar that a default judgment could not be entered because a defence was filed.

[13] Much to my surprise, at the said hearing the claimant alleged that he had not been served with the defence. Junior Counsel for the defendant, Ms. Richel Bowen having mentioned that she had assumed that the claimant was served with the defence, then offered to give him a copy of the defence. Mr. Straughn refused this offer.

[14] At the case management conference held on 15 October 2018, I ordered the defendant to file an affidavit of service evidencing service of the defence on the claimant. That affidavit was filed and served on 20 November 2018.

[15] The claimant contends that he had not been served with a defence and that the failure to do so was a breach of Part 10.4 of the CPR which requires that the defendant not only file a defence but also serve it.

[16] The claimant argues that the Registrar was wrong to refuse to enter judgment in default of defence, solely on the basis that a defence had been

filed. He contends that she also was required to ascertain that the defence was served.

[17] There is no dispute that the defendant filed a defence on 27 December 2017. The defendant contends that this filing was within the period for filing a defence pursuant to the CPR, and therefore, there is no basis for entry of a default judgment.

[18] The claimant submits that there was no service of the defence on him and this is a breach of the CPR which requires that judgment in default of defence be granted.

[19] On 2 May 2019 the claimant filed an affidavit in which he deposed, among other things, to matters concerning whether a defence was served on the claimant.

[20] On 27 May 2019 Ms. Williams, an administrative assistant employed at the chambers of Mr. Patterson K. H. Cheltenham QC, gave evidence on oath concerning the service of the defence.

THE EVIDENCE

[21] The parties were invited to give evidence with respect to the service of the defence.

[22] Mr. Straughn filed an affidavit on 2 May 2019 in which he deposed that Ms. Savonne Beckles was employed as an office secretary at the offices of Nelson & Wilkinson, attorneys-at-law.

[23] In the said affidavit, Mr. Straughn said he did not give any type of instruction with respect to the collection of legal documents at the law chambers of Nelson & Wilkinson.

[24] In the affidavit Mr. Straughn revealed that Savonne Beckles was dismissed in January 2018. He also alleged that for the duration of Ms. Beckles' employ at Nelson & Wilkinson, court documents were accepted on behalf of *"Mr. Steve Straughn".*

[25] In the said affidavit Mr. Straughn deposed that in December 2017 neither the defendant nor her legal representative made any attempt to contact him via telephone, fax, or ordinary mail.

[26] In respect of the attempt to effect service via e-mail, Mr. Straughn recited the provisions of the CPR which apply where a party chooses an alternative method of service and alleged that the defendant did not follow the said procedure.

[27] In the affidavit the claimant alleges that if a defendant chooses to file a defence by electronic mail he/she must comply with the provisions of **Part**

5.13 of the **CPR** (these provisions are set out in full at paragraph 48 of this judgment).

[28] It is based on the failure to comply with **Part 5.13** that Mr. Straughn alleges that he was not served with a defence.

[29] Ms. Williams swore two affidavits, one on 27 February 2018 and the other on 15 January 2019.

[30] In the affidavit of 27 February 2018 she deposed as follows:

> *"1. I did on Wednesday, 28th December 2017 at approximately 3:15 p.m attempt to serve the Claimant at the registered offices of Messrs. Nelson & Wilkinson, Tudor Street in the city of Bridgetown with the Defence filed in this Court on 27th December 2017 on behalf of the Defendant.*
>
> *2. That upon my arrival I spoke with Ms. Savonne Beckles at the registered offices of Nelson & Wilkinson indicated the Claimant does not have a secretary and she is not authorised to accept of the document. Ms. Beckles suggested that I should try to locate the Claimant in the New Year. In the circumstances, I left the premises without serving the said document.*
>
> *3. I subsequently sent an email attaching a true copy of the Defence to the Claimant on the 27th December 2017 at 4:28p.m. A true copy of the email and 'Successful Mail Delivery Report' is appended and marked "TW1" and "TW2" respectively."*

[31] In the second affidavit, Ms. Williams corrected her previous affidavit to reflect that it was on Wednesday 27 December 2017 and not Wednesday 28 December 2017 that she attempted to serve the defence at the offices of Nelson & Wilkinson, Tudor Street.

[32] On 27 May 2019, Ms. Williams gave oral testimony essentially confirming the contents of the affidavits filed.

[33] In respect of the service of the documents and the sending of the e-mail she said that she had been acting under the instructions of Mr. Patterson Cheltenham QC.

[34] She was positive that she sent an e-mail on Wednesday 27 December 2017 to the e-mail address which was supplied by Mr. Straughn in the documents he filed with the court.

[35] Ms. Williams testified that the defence was attached to the letter which she sent to the claimant's e-mail address. That letter also represented that the original defence would be sent by post and Ms. Williams swore that as far as she was aware the defence was also posted to the claimant.

[36] Ms. Williams was subjected to cross-examination by Mr. Straughn and she stuck to her account of the service of the documents as reflected in her affidavit evidence.

[37] I had an opportunity to assess the evidence of Ms. Williams and I have formed the view that she was a truthful witness.

[38] Having considered the evidence of Ms. Williams as well as the affidavit sworn by Mr. Straughn I have determined that on a balance of probabilities

the defendant has discharged the evidential burden of proving that a defence was served on the claimant.

[39] However, I have concluded that there was not a strict compliance with **Part 5.13** of the CPR.

[40] In arriving at its decision the court took into account that the affidavit filed by the claimant never denied that the defendant sent an e-mail message on 27 December 2017 but instead focused on non-compliance with the procedures set out in the CPR for persons who choose to resort to using alternative methods of service such as electronic mail.

[41] I also accept the evidence of Ms. Williams that she was informed by Savonne Beckles that she was not authorised to accept service of documents on behalf of Mr. Straughn.

THE CLAIMANT'S SUBMISSIONS

[42] As a response to the Registrar's denial of his request for default judgment, Mr. Straughn filed written submissions on 20 March 2018.

[43] In those submissions Mr. Straughn addressed the issue of service of the defence. He cited **Part 10.4** of the **CPR** which provides:

"when the defendant files a defence, he must also serve a copy on every other party".

[44] Mr. Straughn also referred to Part 12.5 (a)(b) and (c) of the CPR but omitted **12.5(d)** which is the provision under which the Registrar acted. That provision reads:

> *"(d) the defendant*
>
> *(i) has not filed a defence within time to the claim or any part of it or any defence filed has been struck out;"*

[45] Mr. Straughn asserted that the defendant was required to file and serve her defence by 27 December 2017 and that since there was no service of the defence on 27 December 2019 the claimant was in breach of the relevant provisions of the CPR and default judgment should have been entered against her.

[46] Mr. Straughn interprets **Part 10.4** of the CPR to mean that filing a defence is insufficient if service of the defence does not also take place within the same 28-day period that is required for filing the defence under **Part 10.3** of the CPR.

[47] Mr. Straughn, therefore, requested the Registrar to enter a judgment in default of defence against the defendant.

[48] Pursuant to an order made at case management, Mr. Straughn filed further submissions in which he repeated the arguments referred to above, but added that the defendant having opted to serve the claimant by e-mail, was required

to comply with the provisions of **Part 5.13** of the CPR. Those provisions state:

> *"5.13 (1) Instead of personal service a claimant may choose an alternative method of service.*
>
> *(2) Where a party*
>
> *(a) chooses an alternative method of service; and*
>
> *(b) the court is asked to take any step on the basis that the claim form has been served,*
>
> *the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.*
>
> *(3) An affidavit under sub-rule (2) must*
>
> *(a) exhibit a copy of the documents served;*
>
> *(b) give details of the method of service used;*
>
> *(c) show that*
>
> *(i) the person intended to be served was able to ascertain the contents of the documents; or*
>
> *(ii) it is likely that the person would have been able to do so; and*
>
> *(d) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.*
>
> *(4) The Registrar must immediately refer any affidavit filed under sub-rule (2) to a judge or master who must*
>
> *(a) consider the evidence; and*
>
> *(b) endorse on the affidavit whether it satisfactorily proves service.*

> *(5) If the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the Registrar must fix a date, time and place to consider making an order under rule 5.14 and give at least 7 days' notice to the claimant.*
>
> *(6) An endorsement made pursuant to sub-rule (4) may be set aside on good cause being shown."*

[49] Mr. Straughn submitted that since the defendant did not comply with **Part 5.13** of the CPR his attempt at service of the defence was defective.

[50] Mr. Straughn also submitted that if the process server was frustrated in her attempt to serve the defence when she presented herself at the claimant's address for service she should have left the defence on the floor, since this is a common practice when serving documents.

THE DEFENDANT'S SUBMISSIONS

[51] Mr. Patterson Cheltenham QC filed written submissions pursuant to court orders made on 15 October 2018 and 16 January 2019 respectively.

[52] Mr. Cheltenham QC identified the issue for the court's determination as whether the application for default judgment should be granted in this instance.

[53] Counsel briefly recited the relevant law, first in relation to computation of time following notice to remedy default; which stated inter alia:

> *"... the Claimant hereby calls upon the Defendant to remedy her default by filing and serving her Defence within 14 days after service of this notice on the Defendant."*

[54] Counsel for the defendant submitted that **Part 3.2** of the CPR addresses how to calculate any period of time for doing any act fixed by the CPR., a practice direction, or order of the court. That section reads:

> *"All periods of time expressed as a number of days are to be computed as clear days."*

[55] Mr. Cheltenham QC also referred me to **Rule 3.2(3)** of the CPR which provides that in computing the number of days, the day on which the period begins and the day on which the period ends are not included in the computation.

[56] Counsel for the defendant also **cited section 39(7)** of the **Interpretation Act**; **Cap 1** which provides at section 39(7) as follows:

> *"where by an enactment a period of time is expressed as "clear days" or is qualified by the term "at least", both the first and last day shall be excluded from the computation of the period,"*

[57] On the above computation, Mr. Cheltenham QC submitted that fourteen clear days from the service of the take notice by the claimant would have been 29 December 2019, and the defence having been filed on 27 December 2019, it was filed within the requisite period of time.

[58] Counsel for the defendant submitted that **Rule 12.5** addresses the requirements that must be satisfied before the Registrar can enter judgment

in default of defence. Counsel set out those provisions in full but emphasized the two conditions which were not satisfied: namely,

(c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;

(d) the defendant has not filed a defence within time to claim or any part of it or any defence filed has been struck out.

[59] Mr. Cheltenham QC observed that a failure to effect service of a defence is not one of the conditions precedent to entry of a default judgment and that since the conditions have not been met there is no basis for granting a default judgment.

[60] In respect of service of the defence, Mr. Cheltenham QC contended that the defendant was correct in attempting to effect service on the claimant at the office of Nelson & Wilkinson at Tudor Street, Bridgetown since this was the address for service given by the claimant on the claim form.

[61] Counsel also submitted that the claimant ought to have put proper measures in place to facilitate the service of the defence.

[62] In any event, Mr. Cheltenham QC averred that Part 5 and 6 of the CPR contemplated service by e-mail and that method of service was appropriate. Counsel mentions as well that the claimant's e-mail address was provided in both the claim form and statement of claim.

[63] Counsel submitted that since the defendant exhibited "a successful mail delivery report" this was evidence that the e-mail was received.

[64] Mr. Cheltenham QC also invited the court to use its case management powers to further the overriding objective set out in Part I of the CPR to deal with cases *"justly and expeditiously".*

[65] Mr. Cheltenham QC referred to **Steve Straughn v The Registrar of the Supreme Court No: 1950 of 2017**, a decision of Justice Alrick Scott, QC (Ag) **(Scott J.)** in which he extended retroactively the time for filing the defence to permit a defence filed out of time to stand.

[66] Counsel cited extensively from the decision of **Scott J.** and emphasized the need for the counsel to co-operate as part of the achievement of the overriding objective.

[67] Counsel also submitted that the claimant would have been aware that a defence was filed prior to the case management conference since the Registrar would have so informed him.

[68] If indeed Mr. Straughn did not receive the defence as alleged, counsel contended that he ought to have contacted the Registry to obtain a copy from the court file or he could have contacted him.

[69] In the absence of a query, counsel for the defendant would have had no reason to believe that he had not received a copy of the defence.

[70] Counsel for the defendant, therefore, submitted that the default judgment should be refused.

[71] Finally, in response to the allegation that the defendant failed to comply with the provisions of **Rule 5.13** in utilising an alternative method of service, Mr. Cheltenham QC referred to **Rule 26(4)** of the CPR and submitted that the failure to comply with a Rule does not invalidate any step taken in the proceedings, unless the court so orders. Therefore, if the Court finds that **Rule 5.13** was not complied with it does not follow that the court ought to enter judgment in default.

THE ISSUES

[72] There are two issues that I must consider. These are:

(i) Was the decision of the Registrar to refuse to enter judgment by default justified in accordance with **Part 12.5** of the CPR, which deals specifically with judgment for failure to defend?

(ii) In the circumstances of the case as argued by the claimant, can this court enter judgment in default of defence?

LAW AND ANALYSIS

[73] It is convenient at this time to consider what is the nature of a default judgment as defined in **Part 12** of the **CPR**.

[74] Part **12.1** describes the scope of the default judgment as described in Part 12. It reads:

> *"In these Rules, default judgment means judgment without trial where a defendant*
>
> *(a) has failed to file an acknowledgment of service giving notice of intention to defend in accordance with Part 9; or*
>
> *(b) has failed to file a defence in accordance with Part 10."*

[75] The Barbados Civil Procedure Rules in terms of wording closely resembles the English Civil Procedure Rules in respect of the provisions relating to default judgments material to this case. It is, therefore, helpful to consider how the English Rules have been interpreted.

[76] **Section 12.5** of the **CPR** provides:

> *"The Registrar **may**, at the request of the claimant enter judgment for failure to defend where*
>
> *(a) the claimant proves service of the claim form and statement of claim;*
>
> *(b) an acknowledgment of service has been filed by the defendant against whom judgment is sought;*
>
> *(c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;*
>
> *(d) the defendant*

(i) has not filed within time to the claim or any part of it or any defence filed has been struck out;

(ii) where the only claim, apart from costs and interest, is for a specified sum of money, has not filed or served on the claimant an admission of liability to pay all the money claimed, together with a request for time to pay it; and

(iii) has not satisfied the claim on which the claimant seeks judgment;

(e) the claimant has the permission of the court to enter judgment; and

(f) there is no pending application for an extension of time to file the defence."

[77] In describing similar provisions in the English Rules the authors of the **White Book (2005)** at **paragraph 12.0.2** describe a default judgment in the following terms:

> *"A default judgment is a judgment without trial and is obtained by procuring an administrative act rather than by judicial decision. A defendant who fails to file an acknowledgment of service or a defence or, having filed an acknowledgment of service then fails to file a defence, is liable to have a default judgment entered against him save in those specific cases where it is prohibited."*

[78] It is very useful to consider, for the purposes of comparison Rule 12.1 of the English Rules which provides:

> *"In these Rules, "default judgment" means judgment without trial where a defendant -*
>
> *(a) has failed to file an acknowledgment of service; or*
>
> *(b) has failed to file a defence."*

At **paragraph 12.1** of the **White Book (2005)** the learned authors describe the scope of the above provisions (which are in materially identical terms to the Part 12.1 of the CPR, set out above) in this manner:

> *"Rule 12.1 lays down the only two situations where a default judgment can be obtained".*

It is difficult to find any other provisions of the CPR stated with greater simplicity and clarity. In the context of the case at bar the above words must mean, that provided a defence is filed in accordance with the Rules, a default judgment ought not to be entered. The issue of service of the defence invites other considerations, but they are inconsequential to the decision on entry of a default judgment.

[79] Of course, Rule 12.1 is subject to the period for filing the acknowledgment of service or defence and also subject to the other provisions of Part 12.

[80] In respect of the CPR the power to enter judgment by default is constrained by the provisions of Part 12.

[81] One such provision is **Part 12.7**, which states:

> *"(i) A claimant applies for a default judgment by filing a request in Form 6;*
>
> *(iv) No request for final judgment in default of defence shall be filed unless notice in writing has been served upon the defendant calling upon the defendant to remedy the default within 14 days after service of the notice."*

[82] The above provision was invoked by **Chandler J.** in **Straughn v Edwards, Atkins and the Attorney General (civil suit 1186 of 2013)**.

[83] Mr. Straughn was also the claimant in that suit and no doubt would have learned from that decision.

[84] In this case Mr. Straughn quite correctly served notice on the defendant on December 14, 2017 calling on her to remedy her default in filing her defence within 14 days.

[85] It is common ground that the defence was filed by the defendant on 27 December 2017.

[86] The defence would clearly have been filed within 14 days.

[87] The defence having been filed in accordance with Part 12 the Registrar was bound to note that the conditions set out in Part 12. 5(c) and (d) (1) were not satisfied, and as a consequence, she refused to enter judgment in default.

[88] In the circumstances, I have concluded that the Registrar was justified in refusing to enter a default judgment.

[89] Having carefully perused the CPR in general, and having regard to the plain words of Part 12 of the CPR in particular, I have also concluded that there is no other basis for the court to enter a default judgment.

[90] Although my finding with respect to the defence is sufficient to dispose of this matter, I wish to make some observations with respect to the following matters: the computation of time, the service of the defence and the overriding objective.

Computation of Time for Service of Defence

[91] With respect to the computation of time, Mr. Straughn seems to have assumed that the last date for filing a defence was 27 December 2017. On the other hand Mr. Cheltenham QC observed correctly that days refer to *"clear days"* which means that the first and last day of the period of 14 days must not be counted. On this view, service ought to have been effected by 27 December 2017.

[92] However, it seems to me, that in the circumstances of this case, Part 3.5(1) of the CPR would have been relevant in the computation of time.

[93] **Part 3.5(1)** states:

> *"During vacations, time prescribed by these Rules for filing and serving any statement of case other than the claimant's claim form does not run."*

[94] It is therefore, my view that the period during the Christmas recess would not have been counted for the purposes of calculation of the period of 14

days. On this view, the time for filing the defence would have been sometime in January 2018.

Service of the Defence By E-mail

[95] Service by e-mail is one of the alternative means of service provided for in the CPR.

In this case the defendant opted to serve the defence by e-mail because personal service was unlikely to be achieved once there was no provision for service of documents at the address for service.

[96] Service by e-mail takes effect one business day after the e-mail was sent (**Part 6.6 of the CPR**).

[97] Proof of service by e-mail required is provided for in **Part 5.13**; those provisions appear to be mandatory.

[98] However, that is not the end of the matter. A careful reading of the CPR would show that **Part 5.13** applies to the service of a claim form. Indeed Part 5 is headed: *"Service of Claim Form Within Jurisdiction"*, and clearly is intended to apply to service of a claim form.

[99] Indeed, more stringent procedures are laid down in the CPR for service of the claim form, which usually must be served personally on a defendant.

[100] The provisions governing service of a defence are to be found in **Part 6.2**.

[101] **Part 6.2** provides:

> *"**Method of service***
>
> *6.2 Where these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods:*
>
> *(a) any means of service in accordance with Part 5;*
>
> *(b) leaving it at, or sending it by prepaid post to, any address for service in accordance with rule 6.3 (1);*
>
> *(c) (where rule 6.3 (2) applies) FAX; or*
>
> *(d) other means of electronic communication permitted by a relevant practice direction,*
>
> *unless a rule provides otherwise or the court orders otherwise."*

[102] In respect of proof of service, **Part 6.7** states:

> *"6.7 Where proof of service of any document is required it may be proved by any method of proving service set out in Part 5."*

[103] It is not in my view, axiomatic that with respect to a defence, proof of service must necessarily comply with **5.13**.

[104] Since I am not required to decide this matter to dispose of this case, I make no finding with respect to the requirement for strict compliance with 5.13 of the CPR but invite the parties to examine the provision within the context of the CPR and the less stringent requirements for service of documents other than a claim form.

The Overriding Objective

[105] **Part 1** of the CPR states:

> *"1.1 (1) The overriding objective of the Rules is to enable the court to deal with cases justly.*
>
> *(2) Dealing justly with a case includes, so far as is practicable,*
>
> *(a) ensuring that the parties are on equal footing;*
>
> *(b) saving expenses;*
>
> *(c) dealing with the case in ways which are proportionate to*
>
> *(i) the amount of money involved;*
>
> *(ii) the importance of the case;*
>
> *(iii) the complexity of the issues; and*
>
> *(iv) the financial position of each party;*
>
> *(d) Ensuring that it is dealt with expeditiously and fairly; and*
>
> *(e) Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."*

[106] Mr. Cheltenham QC in his written submissions filed on 28 December 2018, referred me to the case of **Steve Straughn v the Registrar of the Supreme Court No: 1950 of 2017, supra.** which I cite because Mr. Straughn was also the claimant in that matter and would be familiar with the contents of the judgment. Of course, there are numerous statements in the cases on the requirements of the overriding objective but I found the comments of **Scott**

J. at the following paragraphs of his judgment especially relevant to this case:

[107] *"[26] Taking a robust or tough approach to enforcing compliance with rules practice directions and orders does not exclude flexibility and discretion… There are two extremes which may be reached in interpreting and applying the overriding objective to compliance with timelines set out in rules, practice directions and orders. One is to be unduly strict and Draconian, which may lead to injustice, and the other is to be unduly relaxed and accommodating, which would permit the continuation, of not promotion, of the old culture of non-compliance and delay."*

[108] **Scott J** further stated at **paragraph 28**:

"[28] Expedition is not the only focus of dealing with a case justly. The court must also consider the other principles involved in dealing with a case justly, such as, inter alia, cooperation between the parties, saving expense, proportionally and justice…The application of the overriding objective requires the court to take into account all the circumstances of the case before it. And each case is to be decided on its own facts. A holistic approach is required when considering the principles embodied in dealing with a case justly…"

[109] At **paragraph 44 Scott J** addressed the issue of cooperation amongst counsel. He stated:

"[44] The claimant's approach in this action has already started to disfigure the litigation. It is being marked by a lack of cooperation on the part of the claimant. One would expect, on the facts mentioned before that the claimant would have cooperated with the defendant."

[110] The above extracts aptly describe the state of affairs with respect to this matter. My understanding is that the decision of Scott J. is under appeal. I can only urge Mr. Straughn to co-operate with Mr. Cheltenham QC in

advancing this matter to trial expeditiously. In this regard, I consider that the defence has been received by Mr. Straughn. If Mr. Straughn still contends that he needs a copy of the defence, he must request a copy from the Registry.

DISPOSAL

[111] Having concluded that there is no basis for entering a default judgment where a defence has been filed within the time stipulated by the CPR, I make the following orders:

(1) The application for default judgment is dismissed.

(2) The issue of costs is reserved.

(3) The matter is adjourned to 9 January 2020 for a Pre-Trial Review.

Cecil N. McCarthy
Judge of the High Court