

**THE SUPREME COURT OF BELIZE, A.D. 2019**

**CLAIM NO. 2 of 2019**

**BETWEEN**

**(JUDITH PASOS**

**CLAIMANT**

**(**

**(AND**

**(**

**(MARIA PASOS GILLET**

**DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Decision:

6<sup>th</sup> May, 2021

Appearances:

Mr. William Lindo, Counsel for the Claimant.

Mrs. Julie- Ann Ellis Bradley, Counsel for the First Defendant.

**KEYWORDS: Civil Procedure - Setting Aside Default Judgment - Poor Reason-  
No Effective Service - Good Defence - Property - Cancellation of Deed - Fraud -  
Undue Influence.**

**DECISION**

1. The Defendant has applied to set aside the Default Judgment entered herein on the 21<sup>st</sup> March, 2019. The Court has considered the evidence presented by the Defendant and the test outlined in *Rule 13.3(1)*. Both parties agree

that the requirements are conjunctive and must all be satisfied before the Court can exercise its discretion to set aside the default judgment. We will deal with each limb separately below.

**Promptitude:**

2. It is conceded by the Claimant that the Defendant has applied as soon as reasonably practicable after finding out that judgment had been entered.

**Good Explanation:**

3. The Defendant says that she did not live at the address of which the Claimant had informed the Court. In fact that was the Claimant's own address and the Claimant was well aware that the Defendant had not lived there since migrating to the USA in the late 1980's. She adds that the Claimant knew quite well how to contact her in the USA not only by phone but also her physical home and work address but obviously chose not to do so. She says because the document was served by publication in a Belizean newspaper it had not been brought to her attention at all.
4. She explains further that it was not until October of 2020 that her sister Ezela informed her that her mother had gotten an attorney to take back the property which prompted her to action. Her investigations and the assistance of an attorney revealed the Claim, the Default Judgment and the cancellation of the deed of gift
5. The Claimant relies on information she received from her daughter Ezela Taylor that she, Ezela, had told the Claimant about the Claim and the Defendant met that information with an unsavory retort. This evidence is not the most reliable for a number of reasons. There is no indication of

when, how or where Ezela allegedly informed the Claimant. Further, the Court is left to wonder why, on an issue as important as this, Ezela Taylor herself did not give an affidavit so that she could have been cross examined if necessary. Moreover, Ezela's absence remains unexplained.

6. The Claimant also says she told her own process server that the Defendant did not live at her residence when he came to serve the Claim Form and that she actually lived in the USA. This is an admission that she was well aware that the Defendant was resident outside the jurisdiction. And that her address was not, as she said, had been stated on the deed of gift.
7. In **Donald Lavalee et or v Carina Taylor Claim No 411 of 2019** this Court has already ruled that the purpose of this service is to bring the document served to the attention of the Defendant. The service must therefore be effective. Where the service is proven to be ineffective and was knowingly so by the Claimant that certainly constitutes a good reason.
8. This Court is not convinced that the Defendant was aware of this Claim. Her reaction on getting notice of the Judgment is quite telling. She did all she could to have the Judgment set aside notwithstanding that she was not resident in Belize and there were issues arising from the pandemic.
9. The Defendant has established a good reason and the Court now need only consider whether she has a real prospect of successfully defending the Claim. It's is here that the Claimant places the most emphasis.

**Real prospect of successfully defending claim:**

10. The Court is not required to conduct a mini trial. Rather it is to ensure that the Defence has a realistic prospect of success - **Belize Telecommunications v Belize Telecom Ltd, Innovative Communications et al Civil Appeal No.13 of 2007.**
11. In her draft Defence and Counterclaim the Defendant denied any fraud or undue influence. She said the Claimant had with full knowledge and authority conveyed the property to her. The Claimant had even asked the Defendant to transfer the property back so that she could secure a loan but the Defendant had refused causing a rift between them.
12. Further, even before conveyance, the Claimant had encouraged her while she, the Defendant, had acted to her own detriment in expending over BZ\$150,000.00 for the maintenance, renovation, repair, taxes and insurance for the property. The Claimant had led her to believe the property would be hers and often referred to it as the Defendant's. She had acted on those representations and the Claimant ought to be estopped from denying her interest in the property.
13. She sought a declaration of validity of the deed of gift, that the property is held on trust by the Claimant for the Defendant and alternatively that the Claimant is estopped from denying her interest in the property and it either be transferred to her or she be compensated for it. She also claimed interest and costs.
14. The Claimant submitted that the Defence was a bare denial of the Claim. This was obviously without merit since the Defendant explained why the

Claimant knew and had consented to the transfer. She also drew the Court's attention to the fact that the property was now registered land and the title was now indefeasible. This forms no part of the Claim as it stands before the Court and the Defendant could not logically be called to defend an issue which is not before the Court. In any event, if this issue becomes live it will be dealt with in the usual way on trial.

15. This Court finds that the Defendant has presented a Defence which has a real prospect of success.

**Determination:**

16. Having surmounted the three (3) hurdles, the Court will exercise its discretion in favour of the Applicant by setting aside the Default Judgment entered herein on the 21<sup>st</sup> March, 2019. Costs shall be in the cause. The Claimant is to properly serve the Defendant through her Counsel with the Claim Form and Statement of Claim and the matter will progress thereafter in accordance with the rules.

**SONYA YOUNG**  
**SUPREME COURT JUDGE**