

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**CLAIM No. 766 of 2021**

**BETWEEN**

**NARDA GARCIA**

**CLAIMANT/RESPONDENT**

**AND**

**ALEX SANKER**

**DEFENDANT/APPLICANT**

**DECISION OF** The Honourable Madam Justice Patricia Farnese

**HEARING DATE:** July 22<sup>nd</sup>, 2022

**APPEARANCES**

Mr. Kevin Arthurs for the Claimant  
Mr. Darrell Bradley for the Defendant

**DECISION ON APPLICATION TO SET ASIDE DEFAULT JUDGMENT**

**Introduction**

[1] Ms. Garcia obtained a default judgment for libel against Mr. Sanker when he failed to file a defence or an appearance in her claim for damages and injunction arising from several posts on his Facebook page that Ms. Garcia says were libelous. Mr. Sanker was served with the claim form at 3:26pm on Friday, December 3, 2021. The default judgment was entered on January 10, 2022. Mr. Sanker filed this application to set aside the default judgment on January 13, 2022.

[2] Mr. Sanker is entitled to have the default judgment set aside because he meets the requirements outlined in Rule 13.3 of the *Supreme Court (Civil Procedure) Rules, 2005* (CPR). He made this application 3 days after learning of the default judgment, had a good explanation to

excuse his failure to file a defence, and has demonstrated that he has a real prospect of defending against the claim.

## Analysis

[3] The factors I must consider when deciding whether the default judgment will be set aside are outlined in CPR 13.3:

13.3(1) Where Rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant –

- (a) applies to the court as soon as reasonably practicable after finding out the judgment has been entered;
- (b) gives a good explanation for the failure to file an acknowledgment of service or a defence, as the case may be; and
- (c) has a real prospect of successfully defending the claim.

As described by the Caribbean Court Justice in *Belize Telecommunication Ltd. v. Belize Telecom Ltd. et al.*<sup>1</sup> all three of these conditions in Rule 13.3 must be met.

*Did Mr Sanker apply as soon as reasonably practicable?*

[4] I find that Mr. Sanker applied as soon as reasonably practicable after finding out that Ms. Garcia obtained a default judgment in this claim. Mr. Sanker endeavoured to file this Application within 3 days of learning of the default judgment. Mr. Sanker met with his attorney on January 11, 2022 and learned that Ms. Garcia was granted the default judgment the day before. Three days later, on January 14, 2022, an attempt was made to file the Application to Set Aside the Default Judgment, and multiple attempts were made again on January 17, 2022. Nonetheless, the document was stamped by the Supreme Court Registry as having been filed on Sunday, January 16, 2022. The Application was finally accepted in the case management system on January 26, 2022. I find that Mr. Sanker was diligent in filing his application as soon as practicable after discovering the default judgment. The e-filing and case management systems used by the Supreme Court is temperamental. I note that Ms. Garcia's Request for Default Judgment was also initially rejected by the system.

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<sup>1</sup> Belize Civil App. No. 13 of 2007.

*Does Mr. Sanker have a good explanation?*

[5] I find Mr. Sanker provided a good explanation for his failure to acknowledge service and file a defence. What is clear from the case law provided is that the courts have been better at articulating when an explanation does not meet the standard of being good than when it does. In *Garbutt v. Maheia's United Concrete and Supplies Ltd*, the court held that:<sup>2</sup>

...a general rule exists that administrative oversight, negligence, deliberate disregard of the court process, inattention, to name a few, all fail to meet the standard of good explanation.

The evidence supports the finding that Mr. Sanker was anything but indifferent, negligent, or inattentive to this matter. He received the claim on a Friday and on the Monday reached out to the lawyer who he had already assisted him during interactions with Ms. Garcia. The lawyer was out of the country and unavailable until January.

[6] Mr. Sanker then reached out to two other lawyers who would not take him on as a client without a retainer, which Mr. Sanker swore he could not afford to pay. While I take Ms. Garcia's point that the cost of entering in an appearance is likely less than a first consultation, I do not have evidence that Mr. Sanker had a first consultation. The record indicates that Mr. Sanker's current attorney related to this matter had done previous legal work from Mr. Sanker on a *pro bono* basis. It may be that Mr. Sanker inquired for *pro bono* representation and was turned away at the door.

[7] Mr. Sanker then indicates that he left Belize City to be with a close relative who was in her final days. He appended a copy of her Medical Certificate of Causes of Death, which stated that she died of diabetes mellitus on December 26, 2021. The cause of death indicates that the death was likely not sudden and corroborates Mr. Sanker's testimony that he left Belize City and put this matter aside to be with his relative. He then returned to Belize City in the New Year and shortly after he met his current attorney and arranged a meeting the next day on January 11, 2022. The court also notes that both Christmas and the New Year holidays occurred during the time Mr. Sanker had to file his defence. The circumstances in this case beg the question of, if not now, when would there ever be a good explanation to justify setting aside a default judgment.

[8] That Mr. Sanker did not think to consider legal aid as a possible option for representation given his financial circumstances or representing himself does not defeat the good explanation he provided for missing the deadline. This court is not interested in punishing a party who feels that their interests are best served through experienced legal counsel of their choosing provided that the request for specific representation is genuine and not a strategy aimed at frustrating the proceedings.

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<sup>2</sup> Claim No. 621 of 2017 at para 23 [*Garbutt*].

*Does Mr. Sanker's defence have a real prospect of success?*

[9] Finally, I find that Mr. Sanker's defence has a real prospect of success. It is well established that a defence meets the standard of a real prospect of success if it is not fanciful. In order to reach a conclusion of whether the defence is fanciful, I am not expected to engage in a mini-trial.<sup>3</sup> Where multiple defences are pleaded, Mr. Sanker is not required to demonstrate that every pleading has a real prospect of success to set aside the default judgment.

[10] Mr. Sanker is facing allegations of defamation and libel for references he has made in visual art and videos posted on social media allegedly suggesting that Ms. Garcia embezzled or stole money while she was the General Manager and Chief Executive Officer (CEO) of the Social Security Board (SSB). It is undisputed that Ms. Garcia was dismissed from the SSB after the Senate Select Committee investigating allegations of misuse and abuse of public funds at the SSB issued their report. Relying on this investigation and the report, Mr. Sanker defends against the claim based on truth, fair comment on the matter of public interest, qualified privilege, and opinion.

[11] Ms. Garcia asserts that Mr. Sanker cannot defend against the claim because she did not engage in any wrongdoing while the head of the SSB. She also successfully sued the members of the Senate Select Committee that conducted the investigation.<sup>4</sup> The Court explicitly threw out any of the Senate Select Committee's findings that were related to her. Since she has never been found to have engaged in any wrongdoing, Mr. Sanker has no real prospect of success. His comments are libelous and defamatory because they are untrue, unfair, and malicious.

[12] I agree with Mr. Sanker that the Court's decision in Ms. Garcia's suit does not address the issue he says is at the heart of his comments – Ms. Garcia's responsibility, either directly or indirectly, for the misuse of public funds at the SSB while she was the General Manager and CEO. Her lawsuit focused on the procedure the Senate Select Committee followed during their investigation. Their decision, therefore, does not exonerate her of the allegations Mr. Sanker makes in the artwork and videos Ms. Garcia says are libelous and defamatory. Rather, the Court held that she was not treated fairly:<sup>5</sup>

The Committee, having formed a preliminary view that it would make recommendations adverse to Mrs. Garcia, failed to provide her with the items of evidence that implicated her and to offer her opportunity to explain or contradict the items of evidence; the Committee acted unfairly to that extent.

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<sup>3</sup> *Garbutt*, *supra* note 2 at para 21.

<sup>4</sup> *Garcia v. Hulse et al.*, Action No. 496 of 2006.

<sup>5</sup> *Ibid.* at para 69.2.

Consequently, the defence of truth is not foreclosed by the early decision. The defence of truth is also not fanciful as the entirety of the Senate Select Committee's report was not quashed.

[13] I also do not find that the use of the word "embezzlement" in relation to the conduct Mr. Sanker alleges Ms. Garcia should be held accountable for, precludes a finding that the statement was truthful or a fair comment. To make such a finding, I would need the benefit of complete submissions by the parties to appreciate what allegedly occurred at the SSB during the relevant period to decide if "embezzlement" is a fair or truthful description.

[15] Having found that the defence of truth is available and is not fanciful, I decline to comment on the viability of the remaining defences raised by Mr. Sanker so as not to appear to prejudge their merits.

### **Disposition**

[16] Having found that Mr. Sanker did not delay in filing this application, that he provided a good explanation for failing to file his defence in time, and he has presented a defence that has a real prospect of success, I order

1. The Default Judgment is set aside.
2. Costs are awarded to the Applicant in the cause.

October 21, 2022

Patricia Farnese  
Justice of the Supreme Court of Belize