

JUDGMENTS AND ORDERS

BAHAMAS CIVIL PROCEDURE RULES – AN OVERVIEW



PART 10

THE DEFENCE



PART 10- DEFENCE OF DISPUTED CLAIMS

- Defendant who wishes to defend all or part of a claim must file a Defence.
- Rules provide a Form for filing a Defence. In Fixed Claim actions, Defence may be by Affidavit
- A Defendant admitting liability and disputing quantum only can file a Defence dealing only with quantum

PART 10- DEFENCE OF DISPUTED CLAIMS

- Rules stipulate that a Defence must set out all facts relevant as succinctly as possible, however a Defendant cannot subsequently rely on any allegation or fact not in his Defence but that could have been pleaded unless the Court gives leave or the parties agree
- Rules regarding specificity of pleading largely the same, save that the Defendant must set out his own version of events and must identify or annex any documents necessary to his Defence
- Facts must be verified by Certificate of Truth signed by Defendant or his counsel

PART 10 – TIME FOR FILING DEFENCE

- General Rule - Period for filing a Defence is within 28 days of service of the Claim Form.
- Where leave given for a Claim Form to be served without a Statement of Claim, the period for filing a Defence is within 28 days of service of the Statement of Claim.
- Parties may agree to extend period for filing the Defence up to a maximum of 56 days. Agreements to extend must be filed at Court

PART 10 – DEFENCE OF PERSONAL INJURY CLAIMS

- Where Claimant has attached a medical report to his Claim, the Defendant must state in his Defence what parts of the Claimant's medical report are agreed, what parts are disputed and the nature of the dispute
- Where a Defendant intends to rely on his own medical report and he has the medical report in his possession, the medical report should be annexed to the Defence

PART II

JUDGMENTS AND ORDERS GENERALLY

PART 11 - JUDGMENTS AND ORDERS GENERALLY

- Deals generally with applications for Court Orders made before, during or after proceedings
- As far as possible all application relating to pending proceedings should be listed for hearing at a Case Management Hearing or Pre-Trial Review. Where a party makes an application outside those hearings that could have been made at that time, the applicant will be penalized in costs save in exceptional circumstances
- Where the Rules provide that an application must be made within a specified period, the application will be deemed to have complied with time requirements once the application is received by the Court Office within that period.

PART II – JUDGMENT AND ORDERS GENERALLY

- Expressly provides that the Court can deal with an application without the parties appearing before the judicial officer on a hearing in certain circumstances. Of note are express provisions which permit:
 - a telephone hearing,
 - parties to agree an order, or
 - parties to agree to permit the Court to hear the matter “on the papers”.
- Where an order is made ex-parte, a Respondent seeking to have it varied or set aside must apply within 14 days of service on him.
- Court retains its power to hear an application in the absence of any party once it has evidence of service of notice of the application on that party. An absent party wishing to have any order made in his absence set aside must apply within 14 days and must file affidavit giving good cause for absence and stating that if he was present, another order would likely have been made.

PART 11 - JUDGMENTS AND ORDERS GENERALLY

- Applications are generally to be in writing unless statute or practice direction dictate otherwise.
- An application must include the grounds on which the application is made and detail the order sought. A draft order should be filed along with every application but in any event, a draft order must be served on all respondent no less than 3 days before the hearing.
- Applications must be served on the other parties as soon as practicable but in any event at least 7 days before the application unless otherwise stipulated

PART 12

DEFAULT JUDGMENTS

PART 12 – DEFAULT JUDGMENTS

- Covers judgment in default of appearance and judgment in default of defence
- Provides that default judgment not available in probate matters, fixed date claims or admiralty *in rem* matters
- Leave of Court required to seek default judgment where claim against a minor, a patient or the State
- The Court Office rather than a party can enter a default judgment where certain conditions satisfied.
- Application for default judgment made by completing & submitting a Request for Judgment Form provided

DEFAULT JUDGMENT COURT CAN ENTER JUDGMENT WHERE:

DEFAULT OF ACKNOWLEDGMENT OF SERVICE

- Proof of proper service of claim form & statement of claim
- Defendant has not filed an Acknowledgment of Service in time or Defence
- Defendant has not satisfied claim in full.
- Only claim is for specified sum of money
- No leave of Court required

DEFAULT OF DEFENCE

- Proof of proper service of claim form & statement of claim
- Defendant has not filed Defence to claim or any part of it in time
- Where money claim, Defendant has not filed admission of liability to pay & request for time to pay
- Defendant has not satisfied claim in full
- No leave of Court required

PART 12 - ADMISSION OF CLAIM – REQUEST FOR TIME TO PAY

- Rules introduce new regime wherein a individual Defendant admitting a whole or part of a money claim may make a proposal for repayment of the debt which may be accepted or rejected by a claimant
- Where a Defendant admits only part of a claim, fails to file a Defence and the Claimant does not accept his proposal, the Claimant can apply for default judgment in relation to the entirety of his claim

PART 12 - NATURE OF DEFAULT JUDGMENTS

- On a claim for a specified sum of money – Must be judgment for payment of that amount or, if a part has been paid, the amount certified by the claimant as outstanding-
 - (i) if the defendant has applied for time to pay under Part 14 – at the time and rate ordered by the court; or
 - (ii) in all other cases – at the time and rate specified in the Request for Judgment,
- On a claim for an unspecified sum of money – Must be judgment for the payment of an amount to be decided by the court;

PART 12 - NATURE OF DEFAULT JUDGMENTS

- On a claim for goods – Must be -
 - (i) judgment requiring the Defendant either to deliver the goods or pay their value as assessed by the Court;
 - (ii) judgment requiring the Defendant to pay the value of the goods as assessed by the Court; or
 - (iii) if the court gives permission, a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

PART 12 - DEFAULT JUDGMENTS

- Interest – details regarding any claim for interest must be included in the application for default judgment. Where those particulars are not included, the Court will determine the rate of interest
- Costs – A default judgment must include fixed costs unless the Court assesses costs. Applications to have the Court assess costs must be on notice to the Defendant
- Unless a Defendant secures an order setting aside a Default judgment, the only matters he may be heard on once the judgment is entered are:
 - costs,
 - applications to enforce the judgment and
 - application in relation to time for payment of the judgment.

PART 13

SETTING ASIDE OR VARYING DEFAULT JUDGMENTS

PART 13 – SETTING ASIDE OR VARYING DEFAULT JUDGMENTS

- Court must set aside default judgment entered under Part 12 if judgment was wrongly entered because, in the case of -
 - (i) a failure to file an acknowledgment of service, any of the conditions in rule 12.4 was not satisfied; or
 - (ii) judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied.
- The Court may set aside judgment under this rule on application or of its own volition.
- Save in exceptional circumstances, the Court will only vary or set aside default judgment where the Defendant:
 - (i) applies promptly,
 - (ii) has a good explanation for failure to file Acknowledgement of Service or Defence, and
 - (iii) has real prospect of successful defence of the claim

PART 13 – SETTING ASIDE OR VARYING DEFAULT JUDGMENTS

- On an application to set aside a default judgment, the Court is at liberty to vary the default judgment instead.
- On an application for leave to set aside a judgment in default of defence, the Court must impose condition that the Defendant file and serve a Defence by a specific date
- Where a Court decides to set aside a default judgment on an application, the Court must also treat the application as a Case Management Conference unless it is not just to do so. In that case, Court must fix a date for Case Management.

PART 14

JUDGMENT ON ADMISSIONS

PART 14 – JUDGMENT ON ADMISSIONS

- Party may admit the whole or part of any other parties' case at any time before or during proceedings
- A Party may give notice in writing before issue of proceedings or may include the admission in their Acknowledgment of Service. Where a party files an admission after the time delimited for acknowledging service, the other party entitled to assessed costs.
- Where a Defendant admits a claim, pays sums claimed along with statutory interest and fixed costs as set out in Claim Form before the period delimited for filing an Acknowledgment of Claim, the claim will be automatically stayed and the Claimant must file a Notice of Discontinuance within 7 days.
- If the Claimant does not file the Notice of Discontinuance, with 7 days the Defendant can file a Form with the Court requesting the claim to be recorded as satisfied. Where the Claimant disputes the claim has been satisfied, the Court will fix a hearing to consider the matter.

PART 14 – JUDGMENT ON ADMISSIONS

- Where Court receives an admission of whole or part of a money claim, the Court must send the admission and any request for time to pay it to the Claimant
- Where the Admission is only for part of the money claim and the Defendant has filed a Defence to the part not admitted, the Claimant is at liberty to file a Default Judgment in relation to the entire claim.
- Where a Defendant admits a money claim in full, the Claimant can file a Request for Judgment Form for the amount claimed along with interest and fixed costs. The Request for Judgment can specify the date of payment, or in the case of instalments, the time and rate of any instalments. Upon receipt of the Claimant's Request for Judgment, the Court must enter judgment in accord with the Request.

PART 14 – JUDGMENT ON ADMISSIONS

- Claimant must file notice within 14 days either accepting the partial payment in satisfaction of the entire claim or alternatively, advising that he intends to continue the claim. A Claimant must file the notice within 14 days, failing which his claim will be stayed pending filing.
- Where Defendant files Admission in relation to part of money claim but has not requested time to pay, the Claimant can request judgment by filing a Form for the amount admitted, along with interest and fixed costs and specifying the rate of payment.
- A Judgment on Admissions cannot be entered where either the Claimant or Defendant is a Minor or a Patient. In those cases, must refer to rules on compromise of claims by or against a minor or patient.

PART 14 – JUDGMENT ON ADMISSIONS

- A Defendant making an Admission on a money judgment may make a proposal about the date and schedule of payment of the judgment. A Defendant opting to do so must file a statement of his financial affairs in form provided along with his Admission.
- Where the Claimant accepts the Defendant's proposal (reflected on his Request for Judgment form), the Court will enter judgment in the agreed terms.
- If the Claimant does not agree with the Defendant's proposal, the Claimant must set out his objections in the Request for Judgment form. The Court will consider both the Defendant's proposal and the Claimant's objections and enter judgment in terms it deems fit without a hearing (on the papers). If the Court deems a hearing necessary, it can summon the parties.

PART 14 – JUDGMENT ON ADMISSIONS

- Where time & rate of payment ordered by Court without a hearing, either party may apply for the decision to be redetermined at a hearing.

PART 15

SUMMARY JUDGMENT

PART 15 – SUMMARY JUDGMENT

- Available to Claimant where Defendant has no real prospect of successfully defending the claim or issue
- Summary Judgment now also available to Defendant where Claimant has no prospect of succeeding on his claim or issue
- Court is at liberty to exercise its powers to enter Summary Judgment of its own volition without notice at any Case Management Conference
- Where Court enters Summary Judgment on an application, if proceedings are not brought to an end, the Court must treat the hearing as a Case Management Conference

PART 15 - SUMMARY JUDGMENT

OLD RULES

Available in all claims begun by Writ except claims for:

- (i) libel
- (ii) slander
- (iii) malicious prosecution
- (iv) false imprisonment
- (v) seduction or breach of promise of marriage;
- (vi) claims based on an allegation of fraud.

NEW RULES

Not available in:

- (i) admiralty proceedings in rem;
- (ii) probate proceedings;
- (iii) fixed date claims;
- (iv) claims against the Crown;
- (v) claims for defamation;
- (vi) claims for false imprisonment;
- (vii) claims for malicious imprisonment;
- (viii) claims for redress under the Constitution

PART 29

JUDGMENTS & ORDERS

PART 29 – JUDGMENTS & ORDERS

- New Rules stipulate that a party is bound by the terms of the Judgment/Order when made once the party was present in person, represented by counsel or notified of the terms of the order by phone, fax, email or otherwise.
- Rules introduce forms for certain types of Orders and encourages their use.
- All Judgments/Orders must be signed by a judicial officer. Where an Order sets a time limit for doing an act, the deadline for compliance is to be expressed by calendar date in the Order and include the time of day by which act must be done.
- Procedure for securing approval of parties on other side prior to submitting Order to Judicial Officer for initialling included in new Rules.

PART 29 – JUDGMENTS & ORDERS

- Limits who may enter into consent orders and kinds of proceedings in which they can be agreed. In particular, consent orders not available where:
 - (i) there is a litigant in person,
 - (ii) a party to the proceedings is a patient or minor, or
 - (iii) statute dictates.

PART 30

ENFORCEMENT OF JUDGMENTS & ORDERS

PART 30 – ENFORCEMENT OF JUDGMENTS & ORDERS

- Methods of enforcement of judgments and orders largely unchanged. Introduce forms for use in enforcement procedure
- Vest in a party against whom judgment was entered the right to apply for a stay of relief on the basis of matters that occurred after the date of the judgment or order
- Writs of Execution only valid for a 12-month period after which the issuing party must apply for the Writ of Execution to be renewed (similar to current Writ of Summons)
- A party who issues a Writ of Execution can require the Provost Marshal to indorse on the Writ the manner in which he executed the Writ and return the duly indorsed Writ to the Issuing Party. Where the Provost Marshal fails to comply, the Issuing Party can apply to the Court for an order so directing the Provost Marshal.

PART 3 I

ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

PART 3 I – ORDERS TO OBTAIN INFORMATION FROM JUDGEMENT DEBTORS

- New Rules streamline the current Examination of the Judgment Debtor regime
- Judgement Creditor may serve notice on Judgment Debtor requiring him to complete and serve a financial report form that exhibits receipts, payments, income, expenditures etc. on the Judgment Debtor without the need for a Court hearing
- Order for Examination of the Judgment Debtor secured in largely the same manner as under current
- Where Judgment Debtor lives on an island other than New Providence or Grand Bahama is required to attend Court to be examined in New Providence or Grand Bahamas, that Judgment Debtor is entitled to request the Judgment Creditor pay up to \$300 for travel expenses to attend the hearing

PART 31 – ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

- On the hearing to examine the Judgment Debtor, the judicial officer has power to make orders for payment of the debt, orders staying any proceedings, etc.
- Where a Judgment Debtor fails to attend to be examined, the Judicial Officer can issue a warrant for his arrest. The Judicial Officer can fine the Judgment Debtor up to \$5,000 or imprison him for up to 1 month.
- Similarly where the Judgment Debtor attends, but fails to cooperate with the examination (refuses to swear or affirm, answer questions or produce documents) the Judicial Officer can exercise similar powers.

PART 32

THIRD PARTY DEBT ORDERS

PART 32 – THIRD PARTY DEBT ORDERS

- Renames the Garnishee Order a “Third Party Debt Order” although procedure largely unchanged
- Permits an individual Judgment Debtor experiencing difficulty meeting his ordinary living expenses to apply to the court for a “hardship payment order” that will permit a target financial institution to make payments out of the garnished account to the Judgment Debtor or some other specified party

PART 33

ENFORCEMENT AGAINST A FIRM OR PERSON CARRYING ON BUSINESS IN
ANOTHER NAME

PART 33 - ENFORCEMENT AGAINST A FIRM OR PERSON CARRYING ON BUSINESS IN ANOTHER NAME

- Provides that judgment against a Firm may be enforced against the property of the Firm or against a Partner of the Firm in certain circumstances
- Where one Partner of a Firm wishes to enforce a judgment or order in an action against another member of the Firm, he must secure leave of the Court
- New Rules provide for garnishment of debts due to a Firm
- Specifically provide that where a person carries on business in a name other than his own, that person may sue or be sued in that name and for those purposes should be treated in the same way that a partner in a partnership would be treated