



Neutral Citation Number: [2026] CIGC (Civ) 28

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

Cause no: G 2025-0242

BETWEEN

GEORGE SANTOS CARVALHO

Plaintiff/Respondent

AND

TRACEY TERESA HYDES

Defendant/Applicant

IN CHAMBERS

Coram: Hon. Mrs. Justice Marlene Carter

**Appearances: Mr. Christopher Perry of PEB Attorneys for the Plaintiff instructed by H.
Philip Ebanks.**

Ms. Yvonne Mullen of Hampson and Company for the Defendant

Heard: 23 July 2026

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Ruling Delivered: 24 August 2026

*Civil Law - Application to set aside Default Judgment - Practice Direction 11 of 2020 - Deemed Service
via the Curia Platform - Overriding Objective - Purpose of Pleadings - Notice to Defendant of
Application for Default Judgment.*

JUDGMENT

The Background

1. The Plaintiff filed a generally endorsed Writ of Summons on 11 September 2025. The validity of the Writ was extended on 5 February 2026, and it was served on the Defendant on 11 February 2026.
2. On 23 February 2026, the Defendant filed an acknowledgement of service indicating an intention to defend. The Plaintiff's statement of claim was filed on 11 March 2026.
3. On 20 May 2026, the Plaintiff filed an application seeking judgment in default of defence. Default interlocutory judgment for damages to be assessed was entered on 22 May 2026 ("the Default Judgment") by the Clerk of Court.

The Application

4. The present application to set aside the Default Judgment and to strike the Plaintiff's claim was made on 1 June 2026.¹ The Defendant seeks the following relief:

"(1) An Order pursuant to Order 19/9 of the Grand Court Rules 2023:

(i) setting aside the Default Interlocutory Judgment entered against the Defendant on 22 May 2026 in default of Defence;

(ii) granting leave to the Defendant to file a Defence herein in the form appended to this Summons.

(2)

(3) The costs of this application and such further and other relief as to this Honourable Court may seem just.

5. The grounds upon which the application is made are summarized in the affidavit of Paul Keeble dated 10 June 2026 ("the Keeble affidavit") filed in support of the application to set aside and strike at Paragraph 3:

(i) "the Statement of Claim was filed out of time and no leave of the Court for such filing was obtained;

(ii) the Statement of Claim was not served;

(iii) there was no assertion by or evidence from the Plaintiff that the Statement of Claim was served on any particular date or that it was served at all; and

¹ The relief sought at Paragraph 2 to strike the claim was not pursued.

(iv) *by their failure to answer the Defendant's attorney's question as to when the Statement of Claim would be served, the Plaintiff's attorney represented that no Statement of Claim had been served and is estopped from asserting the contrary. Yet further in the circumstances the entry of judgment by the Plaintiff's attorney is an abuse of the process of the court and a breach of etiquette."*

The Plaintiff's response to the Application

6. The Plaintiff submits that the Defendant's application should be dismissed. The Plaintiff relies on Practice Direction 11 of 2020 and asserts that:
 - a. *Paragraph 12.2* expressly provides that documents may be served by way of the E-filing and E- service systems of the Curia platform.
 - b. *Paragraph 12.3(b)* provides that a party who electronically files a document or acknowledges service electronically is deemed to have consented to electronic service. The Defendant electronically filed an Acknowledgement of Service on the 23 February 2026 and thereby engaged with the electronic service regime established by Practice Direction 11 of 2020.
 - c. Where, as in this case, the Statement of Claim is successfully uploaded to Curia, accepted by the Registry, then made available through the platform which generates notifications regarding such filings, service may properly be treated as having been affected through the E-filing and E-service systems contemplated by *Paragraph 12.1*.
7. The Plaintiff contends that *"the Defendant's construction risks depriving Paragraph 12.1 of practical effect if documents made available through Curia can never amount to service notwithstanding Paragraph 12.3, it becomes difficult to identify any purpose to Paragraph 12."*
8. The Plaintiff accepts that the statement of claim ought to have been filed by 9 March 2026 and was therefore filed out of time. However, the Plaintiff argues that because no application was made by the Defendant to set aside the statement of claim, the irregularity does not render the document or proceedings a nullity as it remained a valid and effective pleading. The Plaintiff submits:

"The court undoubtedly retains a discretion to grant relief from or cure procedural irregularities. However, that is a fundamentally different proposition from the

Defendant's contention that the statement of claim was void ab initio and incapable of triggering the subsequent procedural steps required of her."

9. The Plaintiff argues that the Defendant was obliged to either file a defence or apply promptly to set aside service of the statement of claim. Having not done so the entry of the default interlocutory judgment was valid.

Discussion

10. The purpose of Practice Direction 11 is found at *Paragraph 3. 3.1* as follows:

"In furtherance of the objectives of GCR Order 63 Rule 3 and Order 5 Rules 1(5) and (6) this Practice Direction provides for the filing and service of documents ("e-filing and e-service") by electronic means. The introduction of an electronic means of filing and service of documents will improve access to justice by increasing efficiencies, timeliness and reducing costs."

11. Grand Court Rules (GCR) Order 18 r. 1 states as follows:

"PLEADINGS

Service of statement of claim (O.18, r.1)

1. *Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend."*

12. Applying these rules and procedures to the facts of this case, the statement of claim having been filed on 11 March 2026, was irregular and remained so where leave of the Court was not sought to rectify this irregularity. There is no issue that if this Court accepts that the irregularly filed statement of claim was not served on the Defendant as required by the GCR O.18, r.1, the default judgment entered by Order of the Clerk of Court on 22 May 2026 was also irregular. The Defendant contends that the judgment, so obtained, is in fact a nullity.

13. Regarding the issue of service and the Curia platform, Paragraph 12.1 of Practice Direction 11 of 2020 provides the means by which a document may be served via the platform.

"12. Electronic Service of documents

- 12.1. *Subject to the requirements of the GCR for personal service of documents in the first instance, it is directed that in addition to the*

means set out in GCR Order 65 Rule 5(1) for substituted service, any documents requested by the filing party to be served may be served electronically by way of the e-filing and e-service systems of the Platform.

12.2. *Electronic service of e-filed documents may be effected through the electronic service address of a party which includes:*

a. An electronic mail (email) address.

b. Other given electronic media address (SMS or text message).

14. Paragraph 12.3 (b) is of particular relevance.

"12.3. A party specifically consents to accept electronic service by:-

(a). serving and filing a notice or written consent on any other party, that the party accepts electronic service. The electronic service address at which the party agrees to accept service must be stated in the notice or written consent;

(b). electronically filing any document or acknowledging service of any document electronically. The party is deemed to agree to accept service at the electronic service address from which the electronic filing or acknowledgment is made, provided that self-represented parties must affirmatively consent to electronic service as provided under subparagraph (a);

(c). including an electronic service address in the address for service in the prescribed form of originating process filed pursuant to GCR Order 5;

(d). registering an account on the Platform. The email address provided during registration shall be the electronic service address for the registered party.

12.4. *An electronic service address is presumed valid for a party if the party files electronic documents with the Court from that address and has not filed and served notice that the address is no longer valid.*

12.5. *A party who has consented to electronic service under 12.3 must promptly notify the Court and other parties electronically of any change in their electronic service address.*

12.6. *A party who receives a document that is served electronically and is unable to view or download the document must promptly notify the*

serving party and the serving party shall take all reasonable steps to ensure that the document can be viewed and downloaded.

12.7. *A document served to an electronic service address is considered served on the date and time that it is sent.* [My emphasis added]

15. As stated above, the Plaintiff argues that the Defendant was caught by *paragraph 12.3 (b)* and was validly served once the statement of claim was uploaded on the Curia platform. The Plaintiff also relies on the provisions of GCR Order 2, r.1, for its position that the late filing of the statement of claim was a procedural irregularity that rendered neither this said statement of claim nor the entire proceedings a nullity.

“ORDER 2 EFFECT OF NON-COMPLIANCE

1. Non-compliance with rules (O.2, r.1)

- (1) *Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.*
- (2) *Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1) and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.*
- (3) *The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.*

16. Paragraph 41 of the Keeble affidavit notes a statement in The Supreme Court Practice 1999 Volume 1 at 18/12/2: *“The purpose of pleadings is not to play a game at the expense of the litigants but to enable the opposing party to know the case against him.”*

17. Having considered the submissions of the parties and the provisions referred to above, it appears to this Court that the purpose of the pleading was ignored in this case. The Plaintiff, having filed a generally endorsed Writ, did not file a statement of claim within the time stipulated by GCR O.18, r.1. After filing, the Plaintiff took no steps to seek leave of the Court to rectify what counsel for the Plaintiff accepted was an irregularity.
18. It is difficult to understand the Plaintiff's actions thereafter. Having filed the statement of claim out of time as above, when counsel for the Defendant inquired, quite rightly and conscientiously, about the status of the statement of claim on 12 March, noting: "*your Statement of Claim was due to be served on Monday 9 March, under GCR Order 18, r.1. "Have you sought leave of the court to serve it out of time?"*". Counsel for the Plaintiff made no response. The Keeble affidavit records that counsel for the Defendant emailed again on 17 March with the same inquiry and again there was no response. Efforts were made to reach counsel for the Plaintiff by telephone with no success on 01 April and 14 April 2026.
19. That the Plaintiff did not have sufficient regard to the intent of pleadings and the significance of the opposing side being made aware of the case against him may also be gleaned from what transpired regarding the application for default judgment. Having filed a statement of claim out of time and having made no attempt to rectify that default by seeking to validate the statement of claim through leave of the Court and having also failed to respond to counsel for the Defendant's inquiries concerning the filing and service of the statement of claim, the Plaintiff proceeded to file an application for judgment in default of defence on 20 May 2026.
20. The Keeble affidavit records that upon becoming aware that an application for judgment in default of defence had been filed, he took the following actions:

"Paragraph 1

"18. I considered it incumbent upon me as an attorney and consistent with the Overriding Objective that I bring to the attention of the Clerk of Court that this application for entry of default interlocutory judgment was entirely irregular and should be rejected by her in the exercise of her discretion under GCR Order 42, r.6(4). I accordingly, wrote to the Clerk of Court, Ms Allenger, by letter dated 22 May 2026 emailed at 2:49 p.m. [5] that day copied to Mr Ebanks and hand delivered to both, stating inter alia as follows:

- *The Writ of Summons filed by the Plaintiff on 11 September 2025 is a Generally Endorsed Writ. No Statement of Claim is endorsed on it.*
- *Our Acknowledgment of Service and intention to defend to the Generally Endorsed Writ was filed in a timely fashion on 23 February 2026.*
- *Under GCR Order 18, r. 1 The Plaintiff's Statement of Claim was due to be served no later than 9 March 2026. No Statement of Claim was served by that date or to date, and the Plaintiff now requires leave of the Grand Court under GCR 18, r. 1 to deliver a Statement of Claim out of time.*
- *No Statement of Claim having been served by 9 March 2026 or otherwise with leave of the Court, no Defence by the Defendant is due under the Rules."*

21. The response from the Plaintiff was immediate. Without addressing counsel for the Defendant's concerns surrounding the Defendant's lack of service of the statement of claim, the response, as noted in the Keeble affidavit was as follows:

- "20. On 25 May 2026 I received an email timed at 9:07 a.m. from a Simon Pine, Executive Administrative Assistant in Mr. Ebanks' office, suggesting that my letter to the Clerk of Court was not appropriate, i.e. presumably he considers that we should have allowed the Clerk of Court to fall into error, awaited entry of default judgment, and then applied by summons to set it aside.
21. More seriously and more concerning Mr. Pine claimed in his email that under paragraph 12.3 of Practice Direction 11 of 2020 by filing the Acknowledgment of Service electronically on behalf of the Defendant, the Defendant was deemed to have consented to electronic service at the email address from which that filing was made. Accordingly, he claimed that when the Plaintiff filed the Statement of Claim electronically by uploading it via the Curia e-filing portal on 11 March 2026 at 3:49 p.m.⁴, that Statement of Claim was effectively then served on the Defendant for the purposes of ordinary service under GCR Order 65, r.5 without any further form of notice or communication to the Defendant i.e. our firm as attorneys of record."

22. The insistence noted in this response of Mr. Pine to counsel for the Defendant writing to the Clerk of Court about the issue surrounding the statement of claim ignored what had plainly been communicated to the Plaintiff's attorney since March 2026 and which should have been obvious at this point: the Defendant's attorney did not have the statement of claim.
23. It was incumbent on the Plaintiff to, at the very least, have alerted counsel for the Defendant of the Plaintiff's position that statement of claim had been filed and through the operation of Paragraph 12.3(b) of Practice Direction 11 of 2020, been properly served. There is no response by way of evidence from the Plaintiff to explain the lack of response between March and May to the Defendant's inquiries about the filing and service of the statement of claim.
24. Had the Plaintiff acted to alert the Defendant about the filing via Curia the following would have been the result:
- a) The Defence would have been filed - see *Paragraph 15* of the Keeble Affidavit:
"If, as the Plaintiff's Attorney asserts, by e-filing the Statement of Claim on 11 March 2026 that somehow amounted to service (a contention which I submit is false) he was duty-bound to respond immediately and state that the Statement of Claim had been served. Had he done so in accordance with his duty and in accordance with Rule 11 of the Code of Professional Conduct 2026 and the Guidance Notes to Rule 11, I would immediately have served the Defence which had been prepared at the time, and which is appended to the Defendant's Summons."
 - b) The need for filing the application to set aside the default judgment would have been obviated.
 - c) Both parties could have saved costs.
25. In support of the present application counsel for the Defendant has also submitted that there was no evidence placed before the Clerk of Court from the Plaintiff that the statement of claim was served on any particular date or that it was served at all; and that the failure to answer the Defendant's attorneys question as to when the statement of claim would be served, the Plaintiff's attorneys represented that no statement of claim had been served and is estopped from asserting the contrary.
26. The Keeble affidavit states the following regarding these submissions:

- “38. *The Default Judgment is additionally defective in that at no stage in his Application for Default Judgment did the Plaintiff assert or give evidence of the fact of or any date of service of the Statement of Claim upon the Defendant. The Plaintiff in applying for judgment merely asserted and tendered an affidavit showing that the Writ had been served upon the Defendant. However, this was a Generally Endorsed Writ which did not contain a Statement of Claim. Accordingly, the Plaintiff failed to assert or prove that the Statement of Claim had been served and in the premises was not entitled to judgment in default of defence.*
39. *Quite apart from the technical points made above, the fact is that the Plaintiff had absolutely no business applying for judgment in default of defence when the Plaintiff's attorney knew perfectly well from my emails of the 12th and 17th of March 2026 that I was of the view that no Statement of Claim had been served. All he had to do was to answer my email saying that a Statement of Claim had been served attaching a copy. Had he done so the defence which was ready would immediately have been filed and served upon him.”*

27. It is noted that there is no explanation offered by counsel for the Plaintiff as to what was communicated to the Clerk of Court or what evidence was put before her regarding service of the statement of claim in the face of counsel for the Defendant's continued assertion that the statement of claim had not been filed within time and that the Defendant had not been served with a copy thereof.

28. In her submissions to the Court at the hearing of the summons to set aside the default judgment, counsel for the Defendant referred the Court to the Judgment of McMillan J. in *Felder v Hill*². A party seeking an ex-parte order has very high disclosure obligations. The Learned Judge expressed his views thus:

“The Court also expressed its concern that in an ex parte application where a high standard is placed upon Counsel not only to be accurate and precise as to the formalities and procedures but also to enlighten the Court as to any matter of

² *Felder v Hill* Unreported 8 December 2021.

disclosure of any untoward issue that might have arisen, neither of those aspects were complied with on that occasion."

29. In the present case, there is no need for this court to make a determination as to the efficacy of the Curia system in respect to service of documents. As the Keeble affidavit notes there were issues that require further attention to improve the system's reliability.

30. At Paragraph 17 of the Keeble affidavit, he described his practical difficulties that led to his lack of knowledge of the filing of the statement of claim.

"On 20 May 2026 with still no response forthcoming from Mr Ebanks and the Statement of Claim due on 9 March 2026 not having been received, either by email of otherwise, nor any explanation of his position having been given, I was surprised to receive a Curia email advising that an application had been made that day ("successfully e-filed") for entry of default judgment in default of defence, no Statement of Claim having been served. For the avoidance of doubt clicking on the document in the Curia email which appears to be a live pdf or clicking on the "Click her to view Document details" does not open or download the document in question at all, but merely takes you to the Curia log-in page. Historically, clicking on the document or Document details, would trigger an "invalid" response or other verbiage advising that this was not a functioning feature. Over the past year or two this has been improved so that it now at least takes you to the e-filing portal log-in page, but this is of very little benefit to the practitioner, particularly when the document contains no time of filing reference to distinguish it from other filings of the same or similar name filed that date (as I reference at paragraph 35 below)."

31. However, the efficacy of the Curia system in respect to service is not at the heart of the issue on this application. This Court does not have to make a determination whether the Defendant should be deemed to have been served by dint of the provisions of Practice Direction 11, para 12.3(b). Even if the Defendant is so deemed served, when the Plaintiff ignored the queries raised by the Defendant surrounding this issue, there being no evidence or explanation to the contrary, the events that led to the present summons were set in motion.

32. The Defendant has acted exactly as the Plaintiff asserts that he should have upon becoming aware of the filing of the statement of claim. The Plaintiff's submissions that the Defendant was either

obliged to file a defence or apply promptly for relief to set aside service of the statement of claim is premised upon the Defendant at least having notice that the statement of claim had been filed. There is no doubt that this hearing and the application itself could and should have been avoided had counsel for the Plaintiff responded promptly on 12 March 2026.

33. In *Rankin-Hurlston v Dilbert*³ in which Asif J. stated as follows;

- “26. As far as costs are concerned, I have been shown correspondence indicating that the Plaintiff was aware that a loss adjuster was involved, that insurers were dealing with the claim on behalf of the Defendant, and that liability was disputed on behalf of the Defendant. The correspondence shows the Plaintiff’s attorneys did not make any inquiry with the Defendant’s representatives before applying for default judgment, and Mr Keeble criticises them for that. There is no rule of law that the Plaintiff’s representatives should have done so. But my experience is that it is common professional courtesy where a defendant is represented by attorneys, for the plaintiff to check whether a writ may have been overlooked before applying for a default judgment. It is consistent with the overriding objective for a plaintiff’s attorneys to do so because otherwise entering judgment in default inevitably generates the necessity for a contested application to set aside the default judgment if there has been some oversight on the part of a defendant or her professional representatives. And if setting aside the default judgment is not contested by the plaintiff because there is a defence with some merit, that amply demonstrates that moving for judgment in default was an unreasonable step to have taken. For these reasons, I consider there is some force in the Defendant’s criticisms of the Plaintiff for moving straight to an application for a default judgment without giving such a warning in this case.
27. There is, I think, more force, however, in the Defendant’s criticisms that the Plaintiff should have consented to setting aside the judgment in the particular circumstances of this accident and bearing in mind that an explanation for the default and an indication that an application to set aside the judgment would be made were very promptly communicated to the Plaintiff’s attorneys.

³ Asif J. Unreported 26 November 2024.

28. *As I have said, it is not wrong for the Plaintiff to apply for a default judgment. Nevertheless, I accept the Defendant's submission that the hearing today could easily have been avoided if the Plaintiff had consented to setting aside the judgment. For that reason, in my judgment, the appropriate outcome as regards costs is that the Plaintiff should pay the costs of the application to set aside the judgment on the standard basis in any event, save for the costs of issuing the summons, which should be paid by the Defendant as he was at fault in allowing judgment to be entered as a result of not filing an acknowledgment of service in good time."*

34. Asif J. was careful to say that it was not wrong for the Plaintiff to apply for a default judgment before he ordered that the Plaintiff should bear the costs of the application to set aside. The court endorsed an approach wherein counsel should alert the other side to an imminent application for judgment in default.
35. In the present case, this Court is of the view that the Plaintiff was wrong to apply for default judgment having ignored the Defendant's inquiries between 12 March and 25 May 2026 regarding the filing and service of the statement of claim. To this court's mind the facts here are more egregious than those in Rankin in the sense that counsel for the Plaintiff had an indication of an intention to defend and given the Defendant's entreaties surrounding the statement of claim it should have been obvious that there was a reason why the defence had not been filed. There was no prejudice to the Plaintiff in engaging in clarification via communication, with courtesy.
36. In the circumstances, this Court is satisfied that the Defendant's application to set aside the default judgment should be granted. There is good reason why the defence was not filed within the time limited by the rules. There is no application to strike the statement of claim. Leave is granted for the statement of claim, filed two days after the time limited for so filing, to be deemed to have been properly filed. The Defendant, having previously indicated that a draft defence was prepared, shall have seven days from the date of this Ruling within which to file the defence. The Defendant shall have the costs of the application to set aside the default judgment on the standard basis to be taxed if not agreed.



Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court