

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 509 OF 2014

**BETWEEN (PROCAP ASSETS (BDG GS ACTION) LTD. CLAIMANT
(AND
(BDG FINANCIAL SERVICES LTD. DEFENDANT**

BEFORE THE HONORABLE JUSTICE LISA M SHOMAN

HEARING : February 09 2021

Appearances: Ms. Stevanni Duncan for the Applicant
Mr Oscar Sabido SC for the Claimant/Respondent

Written Submissions :

4th February 2021 for the Claimant/Respondent

5th February 2021 for the Applicant

RULING

THE APPLICATION

1. The Applicant, Gary Robert Slingo, who is the sole director and sole shareholder of the Defendant Company has applied pursuant to Rules 13.2 and 19.3(6) of the Supreme Court (Civil Procedure) Rules 2005 for the following orders :
 - a. That the Judgement in Default dated 6th October 2014 made against the Defendant be set aside pursuant to Rule 13.2 of the Rules;
 - b. Further or Alternatively that the Default Judgement made against the Defendant be set aside as an abuse of process;

- c. That permission be granted for the Applicant to be substituted as a new Defendant in place of the existing Defendant;
- d. That the Court make any consequential directions as it deems necessary for the management of the proceedings pursuant to Rule 19.3(6) of the Supreme Court (Civil Procedure) Rules 2005;
- e. That costs of this application be awarded to the Applicant;
- f. Such further and other relief as the Court deems just.

2. The Application is supported by the First Affidavit of Gary Robert Slingo.

3. The Grounds of the Applicant's Application are that :

- (1) The Applicant is a person directly affected by entry of the Default Judgement;
- (2) Rule 13.2 CPR mandates that the Court must set aside a Default Judgement wrongly entered;
- (3) The Default Judgement was wrongly entered because all pre-conditions in Rule 12.4 were not satisfied, specifically;
 - a. The Claim Form and Statement of Claim were not served on the Defendant and/or were not brought to the attention of the principal of the Defendant;¹
 - b. The period for filing the Acknowledgement of Service had not yet expired at the time the request for entry of default had been filed²

¹ The First Affidavit of Gary Slingo at paragraphs 9 to 12

² Ibid at paragraphs 13 to 14

- (4) The Default Judgement was obtained on fraudulent premises and constitutes an abuse of the process of the Court
4. The Applicant also applied to be substituted as a Party in place of the Defendant, but this would not arise unless the Court agrees that the Default Judgement dated October 6, 2014 is set aside.

SETTING ASIDE DEFAULT JUDGEMENT

5. In response, the Claimant submits that the Applicant's application for setting aside the Default Judgement should be dismissed for the following reasons:
- a. That Rule 5.7 provides that one of the methods of service of a Claim Form and Statement of Claim on a company is by leaving the same at the registered office of the company, and this was done per the Affidavit of Bentley Jarrad Thwaite³;
 - b. That the period for filing Acknowledgment of Service had already passed when the Default Judgement was entered per the Affidavit of Bentley Jarrad Thwaite⁴;
 - c. The Defendant Company, an IBC registered in Belize, no longer exists and was struck off the register on January 15, 2015 and compulsorily dissolved on the 3rd January 2018 per the Affidavit of Bentley Jarrad Thwaite.⁵
 - d. The Claimant Company no longer exists and was dissolved on October 15, 2019 per the Affidavit of Bentley Jarrad Thwaite⁶
 - e. The Applicant has no locus standi in this claim

³ Paragraphs 12 to 14, 17 to 22 and 22 to 24 and 33.

⁴ Paragraphs 34 to 43

⁵ Paragraph 2

⁶ Paragraph 1

6. The Applicant furnishes the Court with no evidence from the registered agent that service to the Defendant company was in fact not effected. The Agent merely says in an email in response to the Applicant it “seems that they did not receive” but the Agent declined to provide an affidavit to proffer such evidence to the Court.⁷
7. On the other hand, the Court has the Affidavit of Service of Clara Chi Camal, and the Affidavit of Mr. Thwaite and therefore accepts that the Defendant Company was properly served.
8. Likewise, the Court is of the view that the period for filing the Acknowledgement of Service had passed when the request was made on October 6th, for entry of Default Judgement which is dated October 6, 2014.
9. The Default Judgement was properly entered and the Application to set aside the Default Judgement is refused. The Court therefore need not make any ruling in respect of any of the other orders applied for by the Applicant.

DATED THIS 9th DAY OF JUNE 2021


Lisa M Shoman
Justice of the Supreme Court

⁷ First Affidavit of Gary Slingo, at Tab 6