IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021CV00266

BETWEEN	**SHERAN WELLINGTON**	**CLAIMANT/ RESPONDENT**
AND	**JAMAICA URBAN TRANSIT COMPANY**	**1ST DEFENDANT/ 1ST APPLICANT**
AND	**DENNIS STEWART**	**2ND DEFENDANT/ 2ND APPLICANT**

IN CHAMBERS

VIDEO CONFERENCE

Mr. Raun Barrett instructed by Malcolm Gordon appeared for the Claimant/Respondent.

Miss Latoya Kelly instructed by Jamaica Urban Transit Company appeared for the 1st and 2nd Defendants/1st and 2nd Applicants.

Heard: January 19th 2023 and February 15th 2023

Civil Procedure – Whether to set aside Default Judgment – Whether realistic prospect to successfully defending the Claim - Delay – Overriding Objective- Application of Civil Procedure Rules (CPR) 2002 (as amended): CPR 1.1, 10.9, 13.3 and 13.4.

MASTER CARNEGIE (Ag)

Introduction

[1] The Claimant (hereinafter referred to as the Respondent) filed a claim in which she claims general damages, special damages, costs and interests for personal injuries sustained in a motor vehicle accident on the 31st day of January 2016,

while traversing from the Half Way Tree Transportation Service Station. The Respondent claims against the 1st Defendant, the Jamaica Urban Transit Company Limited (hereinafter referred to as the 1st Applicant), and the 2nd Respondent, a driver and employee of the 1st Applicant (hereinafter referred to as the 2nd Applicant), for negligence resulting in personal injuries, loss and damage.

[2] It is the Notice of Application for Court Orders filed on April 20th 2022 that I am tasked with considering, and for which the parties made submissions both oral and written. The submissions on behalf of the parties are summarized therefore.

Submissions on behalf of the Applicants

[3] Miss Kelly, Counsel on behalf of the Applicants, submitted that the due date for filing the Acknowledgment of Service was February 12th 2021, and the due date for filing the Defence was March 9th 2021.

[4] Counsel submitted that the 1st Applicant made several checks with its accident department and there was no record nor preliminary report of any accident on the day in question. In addition, the 2nd Applicant had no knowledge of the accident on the day in question nor any other accident of a similar nature occurring on that day. The 1st Applicant subsequently filed its Defence March 16, 2021, one (1) week after the court's deadline for which the Defence should have been filed. Counsel submitted that though the Defence was filed out of time, the Acknowledgment of Service (which was filed within time) stated that the Applicants were going to defend the Claim on its merits.

[5] Counsel for the Applicants relied on several decisions in support of their application, grounding her submissions in the primary consideration of whether there was a real prospect of success as opposed to a fanciful one in defending the Claim. On this point Counsel relied **Sasha Saunders v Michael Green et al (unreported) Claim No. 2005HCV2868 delivered on the 27th of February 2007; Victor Gayle v Jamaica Citrus Growers & Anor (unreported) Claim No. 2008HCV05707 delivered on the 4th of April 2011; Three Rivers District Council v Governor**

and Company of the Bank of England [2001] UKHL16; and **Merrick Samuels v Gordon Stewart et al (unreported) Claim No. 2001/S-081 delivered on the 23rd of October 2004**. These cases dealt with the question of whether there was a real prospect of successfully defending the claim as a determination in setting aside a regularly obtained default judgment. Further, the cases considered the court's application of **CPR 13.3**, in setting aside a regularly obtained default judgment.

[6] In relying on the decision of Sykes J (as he then was) in **Sasha Saunders v Michael Green et al (supra),** Counsel submitted that the test for whether a judgment should be set aside is much higher than an arguable case. Sykes J indicated that the judge should evaluate the proposed defence to determine whether there is a real prospect of success. Further, he indicated that if there are substantial contradictions in the proposed defence, documentary evidence against the Defendant, or expert evidence in favour of the Claimant – it may be difficult for a defence to have a real prospect of success.

[7] Counsel further submitted that the learned judge noted that while a real prospect of success is essential, the court must also consider the other factors in **rule 13.3(2)** which, if not in favour of the Defendant, would negatively impact their Application to Set Aside a Default Judgment regularly entered. Counsel relied on **Victor Gayle v Jamaica Citrus Growers & Anor (supra), Three Rivers District Council (supra)** and **Merrick Samuels (supra)** where a similar discussion and approach was taken by the learned judges regarding setting aside a default judgment regularly entered.

[8] Counsel submitted that the Applicants remain unequal in their stance of having no knowledge of any accident nor any record of same. On this point, Counsel submitted that the 1st Applicant trains its drivers to report accidents within twenty-four (24) hours, and at no point was there any record from the 2nd Applicant or any record from the Respondent reporting the accident in respect of the Claim. Counsel submitted that in the circumstances, the 1st Applicant without any material

evidence of the accident would have framed the Defence in that manner, and therefore their Defence could not be regarded as a bare denial.

[9] Counsel further submitted that the Applicants are therefore seeking an extension of time to file their Defence and that the Defence filed on March 16th 2021 be allowed to stand. Counsel argued further that **CPR 10** allows for an extension of time to file a Defence. Counsel relied on the principles established in the cases **Attorney General of Jamaica and Western Regional Health Authority v Rashaka Brooks Junior (A Minor) by Rashaka Brooks Senior (His father and next of friend) [2013] JMCA Civ 16** and **Fiesta Estates Limited v Water Commission [2010] JMCA Civ 4.** In those cases, the considerations included the description of the delay, merits of appeal/defence, the importance of complying with time limits and the resources of the parties.

[10] In **AG and Western Regional Health Authority v Rashaka Brooks (supra)** the Court of Appeal considered a decision of the learned Master to refuse the Appellants' application for extension of time within which to file their Defence. The learned Master exercised her discretion to refuse the Appellants' Application on the basis that there was not sufficient material before her to prove that there is credible reason for the delay and that there is merit to the Defence. The Court of Appeal overturned the learned Master's decision on the basis that the refusal was an error on the Master's part as they were satisfied, based on various authorities, that there was a credible reason for the delay and that there are a myriad of acceptable reasons which exists as to why there is a delay in filing the Defence including securing instructions. Further, in **Fiesta Estates Limited v Water Commission (supra),** the Court of Appeal indicated that each case is to be decided on its own facts to prevent the inflexibility in hearing such applications.

[11] Counsel submitted that the delay in filing the Defence – one (1) week outside of requirements of **CPR 10.3 (1)**, was due to the 1st Applicant being served with allegations of negligence it had to investigate. Counsel submitted further that with

the 1st Applicant having no record of the accident, it took more time to furnish a response in how to Defend the Claim.

[12] In concluding her submissions on behalf of the Applicants, Counsel argued that given the types of facts the delay is not inordinate, and the Application to Set Aside the Default Judgment was promptly made and as such, would be less prejudicial in a trial process.

[13] Counsel submitted that she is uncertain as to why Counsel for the Respondent states the stance taken by the Applicants is vague. Dispatch provides a rundown of where buses are each day, but the Applicants are unable to put a time on the accident. The bus in question, Counsel submitted, was not in the vicinity on the day the Respondent stated the accident took place. The Chief Dispatch does not reflect that the 2nd Applicant was on duty that day and having received the Claim Form and Particulars of Claim, the 2nd Applicant said he did not know about the accident until he was told by Miss Kelly, the Legal Officer for the 1st Applicant. Thereafter, the 1st Applicant continually made checks to see if any information would have been unearthed. Further, the 1st Applicant had to exercise caution in accepting a Police Report, because such report can be subjective.

[14] Counsel for the Applicants concluded by submitting that as such there is no prejudice to the Respondent, because of the Defence being filed one (1) week later than the stipulated time and on the merits, as it is not only quantum being disputed but liability. These factors Counsel submitted would necessitate that issues be properly be ventilated at trial.

<u>Submissions on behalf of the Respondent</u>

[15] It was Counsel's submission that service of the Claim Form and Particulars of Claim were effected on the Applicants on January 29th 2021, and an Acknowledgment of Service was filed on February 4th 2021. Counsel submitted that the Defence was filed four (4) days out of time on March 16th 2021. The Respondent applied for Default Judgment and upon the entry of Default Judgment,

served notice of the Default Judgment on the 1st Applicant on April 8th 2022. Counsel submitted that nearly two (2) weeks later, the 1st Applicant filed an Application to Set Aside a Default Judgment.

[16] Counsel premised his submissions on whether the Default Judgment should be set aside and whether time to file the Defence should be extended. In that context, Counsel for the Respondent submitted that there is no real prospect of defending the Claim, because the proposed Defence is a bare denial. Counsel's submission was that the Applicants failed to respond to the averments in the Particulars of Claim and stated that the matter was reported to the police station, but the Applicants failed to make checks in this regard.

[17] Counsel submitted that the 1st Applicant did not apply within a reasonable time as the Notice of Application to set aside the Default Judgment was made twelve (12) days, approximately two (2) weeks after the Default Judgment was entered.

[18] Counsel in relying on **Norma Hines-Brissett v Lennox Brissett [2015] JMSC Civ 41,** asked three questions: (a) whether there was enough material to justify the delay? (b) is there a real prospect of success? and (c) how does this reconcile with justice and the overriding objective? Counsel indicated that the court should also bear these questions in mind in considering the Application and further stated that the reason for the delay must not be too vague.

[19] On the point of vagueness, Counsel submitted that the court needs to look at information in the affidavit of the Applicants which indicates that the reasons provided for their failure to file the Defence within time are vague. Further, failure to file Defence in time, Counsel submitted, should be supported and the reason must be credible. Counsel submitted that the 1st Applicant's oral submissions indicate that they took some time to conduct checks, but such was not stated in the affidavit in support of the Application. Counsel further argued that the Police Report was attached to the Claim and that the reasons provided by Counsel for the Applicants are not good reasons for their failure to file the Defence within time.

[20] Counsel submitted that the affidavit filed on behalf of the Applicants just indicated that the process to complete its internal checks took long. Counsel stated that the affidavit did not reflect why it took long to file the Defence, and therefore the reason given is not credible and should be rejected. On this final point of submission, Counsel stated the reasons for the delay in filing the Defence should be explained for the court to accept it.

Law and Analysis

[21] In arriving at my decision, it is necessary to anchor my analysis in the procedural history of the matter to date. The procedural history is as follows:

i. Claim Form and Particulars of Claim were filed on January 26th 2021;

ii. Affidavit of Service filed on March 16th 2021 which indicates that the 1st Applicant was served on the 29th January 2021, with the Claim Form and Particulars of Claims and its accompanying documents;

iii. An Acknowledgement of Service filed on February 4th 2021;

iv. A Defence filed on March 16th 2021;

v. A Request for Default Judgement filed on March 23rd 2021;

vi. A judgment was entered for failure to file Defence within time under CPR 10.3(1);

vii. Notice of Application for Court Orders and affidavit in support was filed April 20th 2022, filed by the Applicants, seeking the following orders –

(a) That the Default Judgment entered herein on the 23rd day of March 2022, located in Binder No. 778 and Folio No. 35 of the Judgment Book be set aside;

(b) That the Defence filed on March 16th 2021, be allowed to stand as filed;

(c) Further and other such reliefs as deemed fit by this Honourable Court;

(d) Costs to be cost in the Claim

[22] **CPR 13.2**, provides that a Default Judgment must be set aside if it was entered wrongly. In this application before me, the procedural history suggests that the Default Judgment was not entered wrongly and therefore necessitates an application of **CPR 13.3,** in determining whether the default judgment entered on March 23, 2022, should be set aside. Therefore, in keeping with **CPR 13.3**, the issues to be resolved are whether:

(i) there is reasonable prospect of the Applicants successfully defending the Claim;

(ii) the Applicants applied to Court as soon as is reasonably practicable after finding out judgment had been entered against them; and

(iii) there is a good explanation for the delay in filing the defence.

[23] **CPR 13.3** therefore provides:

> *"13. 3 (1) The Court may set aside or vary a judgment entered under Part 12 if the defendant has a real prospect of successfully defending the claim.*
>
> *(2) In considering whether to set aside or vary a judgment under this rule, the court must consider whether the defendant has:*
>
> *(a) applied to the court as soon as is reasonably practicable after finding out that judgment has been entered.*
>
> *(b) given a good explanation for the failure to file an acknowledgment of service or a defence, as the case may be.*
>
> *(3) Where this rule gives the court power to set aside a judgment the court may instead vary it."*

[24] An examination of **CPR 13.3 (2)** suggests that after a determination of whether there is a realistic prospect of success, both subparagraphs (2) (a) and (b) have to

be satisfied in considering whether to set aside a Default Judgment. Unlike the mandatory requirements under **CPR 13.2**, the consideration in respect to this application is to determine whether there is a real prospect for successfully defending the Claim ***and then making a determination as to whether the Applicant applied as soon as is reasonably practicable after finding out judgment had been entered and if there was a good explanation for failure to file the defence (within the time prescribed under CPR 10)*** – my emphasis.

Is there is a reasonable prospect of successfully defending the Claim?

[25] In the case of **Christopher Ogunsalu v Keith Gardener [2022] JMCA Civ. 12,** the appellant appealed the decision of T Hutchinson J (Ag) (as she then was), where she refused to set aside the default judgment against the Appellant in relation to a claim for defamation and also for extension of time to file his defence. The Appellants appealed the learned Judge's decision to refuse their Application to Set Aside a Default Judgment on the basis that she erred in finding that there was not a good reason for the delay and in the absence of good reason their application should fail.

[26] Reliance is placed on the dicta of D Fraser JA where he stated:

> *"[22] The application to set aside default judgment is to be supported by an affidavit of merit, which should exhibit a draft defence (see rule 13.4 (2) and (3) of the CPR. This court must consider whether the defendant has a real prospect of successfully defending the claim. In order to do so, the court relies on **Swain v Hillman and Another** [2001] 1 All ER 91, that the defence must demonstrate a real prospect of success of defending the claim and not a mere fanciful one. This means the defence must be more than just mere arguable (see paragraph 15 of **Flexnon Limited v Constantine Mitchell and others**). In making the determination the court must not engage in a mini trial…"*

[27] In the application before me, the Applicants filed their Defence which the Respondent stated was a bare denial of the Claim. On a review of the Defence, it reflects that the 1st Applicant has no report of the accident on the date stated in the Claim Form and Particulars of Claim and therefore denies the Claim against them.

Counsel for the Applicants in her oral submissions stated that checks revealed that the 2nd Applicant was not at work on the day nor did he have any knowledge of the incident. In this context, I do not find that the Defence filed was a bare denial but a denial that the Applicants were not involved in the accident as stated in the Claim and Particulars of Claim.

[28] It is not my role to engage in a mini trial (see: **Esther Yvonne Sailsman v Leonie Cummings [2023] JMCA Civ 3 at paragraph [19]**) and I have not done so. My role is restricted to determining whether the threshold for determining whether there is a realistic prospect of defending the Claim has been attained. The Claim filed is in respect of a claim for negligence for which duty of care, breach of that duty and causation would have to be established in respect of the 2nd Applicant who was purported to be acting in the course of his duties and thereby making the 1st Applicant vicariously liable. In the case at bar, I find that the Applicants in the circumstances has met the threshold of a real prospect of defending the case.

Whether there was Delay in Making the Application to Set Aside the Default Judgment

[29] Fraser D JA in **Christopher Ogunsalu v Keith Gardener (supra)** continued at paragraph [25] of the judgement to say:

> *"... Of course the need for consideration of the matters set out in rule 13. 2 (a) and (b) only arises if the court finds that the defendant has a real prospect of successfully defending the claim (see **Russell Holdings Limited v L & W Enterprise Inc and ADS Global Limited** [2016] JMCA Civ 39 at para [83]."*

[30] Having determined that there is a real prospect of defending the Claim, it falls to be determined whether the Application to Set Aside the Default Judgment was made as soon as practicable.

[31] Based on the facts, the Application to Set Aside the Default Judgment was made approximately two (2) weeks after the Notice that a Default Judgment was entered against the Applicants was filed. I have determined that the Application to Set

Aside the Default Judgment made within two (2) weeks of the judgment being entered would meet the standard of promptitude under subparagraph **CPR 13.3 (2) (a)**. In the case of **Webster McKenzie v Kevin Hayden [2020] JMSC Civ 86** the Court found that making an Application to Set Aside a Default Judgment one (1) month after it had been entered was considered as to be prompt. In this application before me the Application to Set Aside the Default Judgment was made twelve (12) days after service of the judgment was effected on the Applicants. In **McKenzie v Hayden (supra)**, the Court was satisfied that the Application made by the Applicant was prompt as it was made by the Applicant as soon as it came to his knowledge. I am satisfied that the same is true in this Application before me.

Was there a Good Explanation for Failure to File the Defence?

[32] Judgment was entered against the Applicants on the basis that the Applicants failed to file their Defence within the time as prescribed under **CPR 10.3**. This delay in filing the Applicants defence was four (4) days.

[33] Part of my determination as to whether the Default Judgment entered against the Applicants should be set aside, is whether there was a good explanation for failure to file the Defence within the time prescribed. The question of delay is also a consideration in determining whether there is a good explanation for failure to file a defence (see: **Frances Walton-James v Advantage General Insurance Limited 2021 JMSC Civ 13**). As stated in **Christopher Ogunsalu v Keith Gardener (supra),** this requirement becomes relevant by virtue of the Court making a determination that the Applicants have a realistic prospect of successfully defending the Claim.

[34] I have considered the submissions by Counsel for the Respondent which included:

(i) that there was a police report attached to the Particulars of Claim;

(ii) the affidavit in support of the Applicants' Application to Set Aside the Default Judgment did not speak to the reasons for the failure.

[35] I do agree with Counsel for the Respondent that the Application must be supported by evidence on affidavit - authority for same reflected in **CPR 13.4(2)**. Additionally, **CPR 13.4(3)** also requires that the affidavit must exhibit a draft of the proposed defence, which was filed on behalf of the Applicants in the Application before me (see: **Bar John Industrial Supplies v Honey Bee Fruit Juice Limited [2011] JMCA Civ. 7, paragraph 19**).

[36] The Affidavit in support of the Notice of Application before me states that it was on receiving the Judgment in Default of Defence that it was realised there was no application to regularise the Defence filed. The Applicant's averred it took time to do checks to be able to pass instructions to its Attorneys, to be able to respond to the Claim. The oral submissions made by Counsel was that, notwithstanding a Police Report, there was a process of internal checks which had to be undertaken and which unearthed that the 2nd Applicant was not on duty that day.

[37] I place reliance on the case of **Ameco Caribbean Inc v Seymour Ferguson [2021] JMCA Civ 53,** where the Appellants asked the Court of Appeal to consider the issue of good explanation, as they believed that the learned trial judge did not consider their explanation as to why the Acknowledgement of Service was filed out of time. In that case the application to set aside the default judgment was made after two years and another was filed three (3) year later - five (5) years after the judgment was entered. More time had passed when the matter was heard on appeal. The Court of Appeal in that case highlighted that the good explanation is not limited to the delay for filing the Acknowledgement of Service and extends to the delay in filing the Application to Set Aside a Default Judgment. The Court stated that –

> *"[81] … the only way the court could be placed in a position to assess whether an applicant had applied "as soon as reasonably practicable" in the circumstances of the case, is if the applicant provides an explanation as to the circumstances it faced at the material time that may or may not have prevented it from applying sooner."*

[38] Similarly, in the case **Francis Avadawn v Malcom Audley and Anor [2019] JMSC Civ. 13,** it fell to be considered by Rattray J, a Notice of Application made on 20th July 2016, to Set aside a Default Judgment against the 1st Defendant the judgment being entered March 31st 2005. Rattray J held that –

> *"In the final analysis although I am of the view that the 1st Defendant may have had a real chance of success he had failed to apply to the Court as soon as was reasonable practicable and has not provided any explanation for his failure to file his Defence in time. I believe the prejudice to the Claimant in this present case would be far too great were this Application to set aside the Default Judgment to be granted."*

[39] The case of **Francis Avadawn v Malcom Audley and Anor (supra)** is distinguishable on the facts of the Application before me. Notwithstanding the 1st Defendant in that case having a realistic chance of success, he failed to apply to the court to set aside the default judgment as soon as was reasonably practicable. The delay in that case was ten (10) years and by the time it was heard on appeal 14 years had elapsed since the default judgment was entered. The defence was filed four (4) months after the time prescribed in **CPR 10.3.** In the decision of **Ameco Caribbean Inc v Seymour Ferguson (supra)** it was stated that on great authority, both pre and post **CPR**, delay is a significant factor to be weighed in the balance of a particular case.

[40] It is clear from the case law therefore that in making a determination to set aside a default judgment regularly entered, delay is a factor which must be considered in addition to a good explanation for failure to file a defence. In the Application before me same was made to the court as soon as was reasonably practicable (see: **Francis Avadawn v Malcom Audley and Anor (supra)**).

[41] Further, in the Application before me, the explanation given for failure to file the Defence before four (4) days after the time prescribed in **CPR 10.3 (1)** was the procedures undertaken to make the necessary checks to be able to instruct its attorney in filing the Defence (see: **AG and Western Regional Health Authority v Rashaka Brooks (supra).** I would accept the explanation given by the Applicants for failure to file the Defence within the time prescribed in **CPR 10.3(1)**.

[42] I find that in the circumstances the filing of the Defence of four (4) days after the time prescribed in the CPR was done in the circumstances as soon as was reasonably practical. Further, having regard to what is considered delay, I do not find there was inordinate delay in filing the Defence by virtue of **McKenzie v Hayden (supra) Michelle Daley et al v Tonyo Melvin et al CL 2002/D-034; Christopher Ogunsalu v Keith Gardener (supra),** as the Applicants applied as early as 12 days after receiving the Notice of Judgment in Default of Defence.

Overriding Objective

[43] The foundation of any exercise of judicial discretion is furthering the overriding objective. The Court of Appeal decision of **Christopher Ogunsalu v Keith Gardener (supra)** Fraser D JA stated:

> *"[23] Additionally, the rule provides that if this court considers to set aside or vary its default judgment, it must examine: i) the length of the delay between the time the applicant became aware of the judgment and the filing of the application to set it aside, as well as ii) the reason for failing to comply with the rules, which in this case is the failure to file the defence within time. The matter should be considered through the lens of the overriding objective and, therefore, this court must also have regard to any prejudice a claimant may suffer if the default judgment is set aside… All these ingredients are essential, but, the two most important are whether the defence has a real prospect of success and ensuring that justice is done (see Stuart's Practical Approach to Civil Procedure, 15th Edition at page 159"*

[44] In applying the words of Fraser JA, for the purposes of the Application before me the Court must ensure that the overriding objective is achieved in coming to a determination on an Applicant's satisfaction of **CPR 13.3(1).** The aim of this is to ensure that the Respondent is not deprived of the benefit of her judgment without good reason (see: **Anwar Wright v The Attorney General of Jamaica (unreported) Claim No. 2009 HCV02875 delivered on the 26th of November 2010 at paragraph 13)**. In this regard, the effect of the prejudice has to be weighed in respect of both the Respondent and the Applicants by striking a balance. Though the requirements of **CPR 13.3(2)** is mandatory, regard must also be had to the circumstances of each case. In this instance the consideration is on one

hand setting aside a Judgment regularly obtained and the other the Applicants being put in the position to be made to pay damages for a Claim for which they may not be liable - the latter prejudicial (see: **Ameco Caribbean Inc v Seymour Ferguson (supra);** and **Russel Holdings Limited v L W Enterprise Inc and ADS Global Limited [2016] JMCA Civ 39 at para 128.)**. I have not been presented with any affidavit evidence on behalf of the Respondent regarding the prejudice suffered or likely to be suffered by her.

[45] Having determined that –

(i) the Defence filed has a realistic prospect of success;

(ii) there was no delay in filing the Application to Set Aside the Default Judgment;

(iii) the explanation for failure to file the Defence by virtue of having to conduct a search to be able to respond to the Claim filed and there being no delay in filing same,

I find that this Application to Set Aside the Default Judgment is one that should be granted in the circumstances. In the absence of affidavit evidence to the contrary, any prejudice likely suffered on the part of the Respondent can be adequately compensated by costs.

[46] Therefore, having found that the Applicant has satisfied the criteria under the **CPR 13.3**, I hereby set aside the Default Judgment and make the following orders:

(i) the Default Judgment entered herein on the 23rd day of March 2021, located in Binder No. 778 and Folio No. 35 of the Judgment Book is set aside;

(ii) the Defence filed on March 16th 2021, be allowed to stand as filed;

(iii) the parties are to enter in mediation on or before June 2nd 2023 and if unsuccessful CMC set for June 21st 2023 at 10:30 a.m. for ½ hour;

(iv) costs to the Respondent to be paid on or before [date]; and

(v) the Applicants'/Defendants' Attorney-at-Law to file and serve the orders herein.