

**Authorised Version**

**Supreme Court (Chapter I Summary Judgment  
Amendment) Rules 2015**

**S.R. No. 29/2015**

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## **Authorised Version**

STATUTORY RULES 2015

S.R. No. 29/2015

*Supreme Court Act 1986*

*Civil Procedure Act 2010*

### **Supreme Court (Chapter I Summary Judgment Amendment) Rules 2015**

The Judges of the Supreme Court make the following Rules:

#### **1 Object**

The object of these Rules is to amend Chapter I of the Rules of the Supreme Court to update Orders 22 and 23 of that Chapter providing for summary judgment, stay of proceedings and striking out of pleadings.

#### **2 Authorising provisions**

These Rules are made under section 25 of the **Supreme Court Act 1986**, section 70 of the **Civil Procedure Act 2010** and all other enabling powers.

#### **3 Commencement**

These Rules come into operation on 4 May 2015.

#### **4 Order 22 substituted**

For Order 22 of the Supreme Court (General Civil Procedure) Rules 2005<sup>1</sup> **substitute—**

**"ORDER 22**

**SUMMARY JUDGMENT**

**PART 1—GENERAL**

### **22.01 Scope of Order**

This Order applies to all civil proceedings in the Court to which, in accordance with section 4 of the **Civil Procedure Act 2010**, that Act applies.

### **22.02 Interpretation**

- (1) In this Order, a reference—
  - (a) to a plaintiff includes a reference to a plaintiff by counterclaim; and
  - (b) to a defendant includes a reference to a defendant by counterclaim.
- (2) Without limiting paragraph (1), expressions used in this Order, unless the contrary intention appears, have the same meaning as in Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**.

## **PART 2—APPLICATION BY PLAINTIFF FOR SUMMARY JUDGMENT**

### **22.03 Application by plaintiff for judgment**

An application under section 61 of the **Civil Procedure Act 2010** by a plaintiff in a civil proceeding for summary judgment in the proceeding shall be made in accordance with this Part of this Order.

### **22.04 Summons and affidavit in support**

- (1) An application shall be made by summons supported by an affidavit—
  - (a) verifying the facts on which the claim or the part of the claim to which the application relates is based; and
  - (b) stating that in the belief of the deponent the defence to the claim or the defence to the relevant part of the claim—

- (i) has no real prospect of success; or
  - (ii) has no real prospect of success except as to the amount of the claim or as to the amount of the relevant part of the claim.
- (2) Where a statement in a document tends to establish a fact within paragraph (1) and at the trial of the proceeding the document would be admissible by or under the **Evidence (Miscellaneous Provisions) Act 1958**, the **Evidence Act 2008** or any other Act to verify the fact, the affidavit under paragraph (1) may set forth the statement.
- (3) An affidavit under paragraph (1) may contain a statement of fact based on information and belief if the grounds are set out and, having regard to all the circumstances, the Court considers that the statement ought to be permitted.
- (4) The plaintiff shall serve the summons and a copy of the affidavit or affidavits and of any exhibit referred to in the affidavit or affidavits on the defendant not less than 14 days before the day for hearing named in the summons.

#### **22.05 Defendant to show cause**

- (1) The defendant may show cause against the application by affidavit or otherwise to the satisfaction of the Court.
- (2) An affidavit under paragraph (1) may contain a statement of fact based on information and belief if the grounds are set out.

- (3) Unless the Court otherwise orders, the defendant shall serve a copy of any affidavit and of any exhibit referred to in the affidavit or affidavits on the plaintiff not less than three days before the day for hearing named in the summons.

**22.06 Affidavit in reply**

- (1) Where the defendant serves an affidavit under Rule 22.05, the Court may by order allow the plaintiff to rely upon an affidavit in reply.
- (2) Paragraphs (2) and (3) of Rule 22.04 apply, with any necessary modifications, to an affidavit in reply made under this Rule.

**22.07 Cross-examination on affidavit**

- (1) The Court may order any party or the maker of any affidavit—
- (a) to attend and be examined and cross-examined; or
  - (b) to produce any documents, or copies of or extracts from those documents.
- (2) Where a party is a corporation, the Court may make an order under paragraph (1) in respect of any director, manager, secretary or other similar officer of the corporation or any person purporting to act in any such capacity.

**22.08 Hearing of application**

- (1) Subject to Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**, on the hearing of an application the Court may—
- (a) dismiss the application;

- (b) give such judgment for the plaintiff against the defendant on the claim or the part of the claim to which the application relates as is appropriate, having regard to the nature of the relief or remedy claimed;
  - (c) give the defendant leave to defend with respect to the claim or the part of the claim to which the application relates either unconditionally or on terms as to giving security, paying money into court, time, the mode of trial or otherwise; or
  - (d) with the consent of all parties, and notwithstanding Rule 77.03(1), dispose of the proceeding finally in a summary manner.
- (2) The Court may stay execution of any judgment given under paragraph (1)(b) until after the trial of any other claim or counterclaim which remains outstanding in the proceeding as between the relevant parties.

#### **22.09 Assessment of damages**

Where the Court gives summary judgment under section 63 of the **Civil Procedure Act 2010** for damages or the value of goods to be assessed, the assessment shall be made in accordance with Order 51.

#### **22.10 Judgment where debt amount unascertained**

Where on an application under section 61 of the **Civil Procedure Act 2010** for summary judgment on a claim for a debt the amount of the debt is not established to the satisfaction of the Court, and where if the amount were

established the Court would give summary judgment on the claim under section 63 of that Act, the Court may—

- (a) make a declaration as to liability for the debt and order that its amount be ascertained in such manner as the Court directs; and
- (b) give leave to enter judgment for the debt once the amount is ascertained.

#### **22.11 Directions**

- (1) Where on an application under section 61 of the **Civil Procedure Act 2010** for summary judgment leave is given to defend or summary judgment is given on a claim or part of a claim but execution of the judgment is stayed pending the trial of an outstanding claim or counterclaim or of the proceeding, as the case may be, the Court may give directions as to the further conduct of the proceeding.
- (2) The Court—
  - (a) may direct that an affidavit made under this Order shall serve as a defence or defence and counterclaim;
  - (b) may order the proceeding to be forthwith set down for trial; and
  - (c) may define the questions to be tried.

#### **22.12 Continuing for other claim or against other defendant**

Where the plaintiff obtains summary judgment under section 63 of the **Civil Procedure Act 2010** on a claim or part of a claim against any defendant, the plaintiff may continue with the proceeding for any

other claim or for the remainder of the claim or against any other defendant.

**22.13 Judgment for delivery up of chattel**

Where the Court gives summary judgment under section 63 of the **Civil Procedure Act 2010** for the delivery up of a specific chattel, it may order the party against whom judgment is given to deliver up the chattel without giving the party an option to retain it on paying the assessed value of the chattel.

**22.14 Relief against forfeiture**

A tenant may apply for relief after summary judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under section 63 of the **Civil Procedure Act 2010** as if the judgment were given after trial.

**22.15 Setting aside judgment**

The Court may set aside or vary any judgment given against a party who does not attend on the hearing of an application under section 61 of the **Civil Procedure Act 2010**.

**PART 3—APPLICATION BY DEFENDANT FOR SUMMARY JUDGMENT**

**22.16 Application by defendant for judgment**

An application under section 62 of the **Civil Procedure Act 2010** by a defendant in a civil proceeding for summary judgment in the proceeding shall be made in accordance with this Part of this Order.

**22.17 Summons**

The application shall be made by summons.



**22.18 Affidavit in support**

- (1) If the defendant intends to rely on an affidavit in support of the application, the affidavit shall be filed with the summons.
- (2) Where a statement in a document tends to establish a fact upon which the defendant relies and at the trial of the proceeding the document would be admissible by or under the **Evidence (Miscellaneous Provisions) Act 1958**, the **Evidence Act 2008** or any other Act to verify the fact, the affidavit may set forth the statement.
- (3) An affidavit relied upon by the defendant may contain a statement of fact based on information and belief if the grounds are set out and, having regard to all the circumstances, the Court considers that the statement ought to be permitted.
- (4) The defendant shall serve the summons and a copy of any affidavit in support and of any exhibit referred to in the affidavit on the plaintiff not less than 14 days before the day for hearing named in the summons.

**22.19 Plaintiff to show cause**

- (1) The plaintiff may show cause against the application by affidavit or otherwise to the satisfaction of the Court.
- (2) An affidavit under paragraph (1) may contain a statement of fact based on information and belief if the grounds are set out.

- (3) Unless the Court otherwise orders, the plaintiff shall serve a copy of any affidavit and of any exhibit referred to in the affidavit on the defendant not less than three days before the day for hearing named in the summons.

#### **22.20 Affidavit in reply**

- (1) Where the plaintiff serves an affidavit under Rule 22.19, the Court may by order allow the defendant to rely upon an affidavit in reply.
- (2) Paragraphs (2) and (3) of Rule 22.18 apply, with any necessary modifications, to an affidavit in reply made under this Rule.

#### **22.21 Cross-examination on affidavit**

- (1) The Court may order any party or the maker of any affidavit—
  - (a) to attend and be examined and cross-examined; or
  - (b) to produce any documents, or copies of or extracts from those documents.
- (2) Where a party is a corporation, the Court may make an order under paragraph (1) in respect of any director, manager, secretary or other similar officer of the corporation or any person purporting to act in any such capacity.

#### **22.22 Hearing of application**

Subject to Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**, on the hearing of an application the Court may—

- (a) dismiss the application;
- (b) give such judgment for the defendant against the plaintiff on the claim or the part of the claim to which the

application relates as is appropriate (including the grant of any appropriate stay of the proceeding), having regard to the nature of the relief or remedy claimed; or

- (c) with the consent of all parties, and notwithstanding Rule 77.03(1), dispose of the proceeding finally in a summary manner.

### **22.23 Setting aside judgment**

The Court may set aside or vary any judgment given against a party who does not attend on the hearing of an application under section 62 of the **Civil Procedure Act 2010**.

## **PART 4—APPLICATION BY OR AGAINST THIRD OR SUBSEQUENT PARTY**

### **22.24 Third or subsequent party**

- (1) A party who has joined a third or subsequent party to a civil proceeding may apply to the Court for summary judgment against the third or subsequent party on the ground that the defence or part of the defence of that party has no real prospect of success.
- (2) A party joined as a third or subsequent party to a civil proceeding may apply to the Court for summary judgment on the ground that the claim made against the party or part of that claim has no real prospect of success.
- (3) Part 2 of this Order applies, with any necessary modifications, to an application under paragraph (1).
- (4) Part 3 of this Order applies, with any necessary modifications, to an application under paragraph (2).

(5) The Court may order that a claim made by or against a third or subsequent party proceed to trial if the Court is satisfied that, despite there being no real prospect of success, the claim should not be disposed of summarily because—

(a) it is not in the interests of justice to do so; or

(b) the dispute is of such a nature that only a full hearing on the merits is appropriate.

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#### **5 Stay or judgment in proceeding**

(1) Rule 23.01(1)(a) of the Supreme Court (General Civil Procedure) Rules 2005 is **revoked**.

(2) For Rule 23.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 **substitute**—

"(2) Where the defence to any claim in a proceeding is scandalous, frivolous or vexatious, the Court may give judgment in the proceeding generally or in relation to any claim."

#### **6 Rule 23.03 revoked**

Rule 23.03 of the Supreme Court (General Civil Procedure) Rules 2005 is **revoked**.

#### **7 Affidavit evidence**

In Rule 23.04 of the Supreme Court (General Civil Procedure) Rules 2005—

(a) in paragraph (1), **omit** "or 23.03"; and

(b) in paragraph (3), after "22.07" **insert** "or Rule 22.21, as the case requires,".

## **8 Limitations on authority**

In Rule 77.02(1) of the Supreme Court (General Civil Procedure) Rules 2005, for "22.06(1)(d)" **substitute** "22.08(1)(d), 22.22(c)".

Dated: 30 April 2015

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CHRISTOPHER W. BEALE, J.  
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RITA ZAMMIT, J.

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## **Endnotes**

- <sup>1</sup> Rule 4: S.R. No. 148/2005. Reprint No. 6 as at 26 March 2015. Reprinted to S.R. No. 11/2015.