

## **RULE 17 – DEFAULT OF APPEARANCE OR PLEADING**

### **Default in filing of appearance**

- (1) A plaintiff may proceed against a defendant under this rule if
  - (a) that defendant has not filed an appearance to a statement of claim, and
  - (b) the time for appearance has expired.

### **Filings required**

- (2) A plaintiff proceeding against a defendant under subrule (1) must file
  - (a) proof of service of the statement of claim on that defendant,
  - (b) a requisition requesting the clerk to enter final judgment in Form 90.

### **Default in filing and delivering a statement of defence**

- (3) A plaintiff may proceed against a defendant under this rule if
  - (a) that defendant has not filed and delivered a statement of defence, and
  - (b) the time for filing and delivering the statement of defence has expired.

### **Filings required**

- (4) A plaintiff proceeding against a defendant under subrule (3) must file
  - (a) proof of service or delivery of the statement of claim on that defendant,
  - (b) proof that that defendant has failed to deliver a statement of defence, and
  - (c) a requisition requesting the clerk to enter final judgment.

### **Claim for debt or liquidated demand**

- (5) Where the plaintiff's claim against a defendant is solely for recovery of a debt or liquidated demand, the plaintiff may enter final judgment against that defendant for a sum not exceeding that claimed, interest if entitled and costs, and may proceed with the action against any other defendant.
- (6) For the purpose of subrule (5), a claim may be treated as a claim for a liquidated demand notwithstanding that part of the claim is for interest accruing after the date of the statement of claim, and the interest shall be computed from the date of the statement of claim to the date of entering judgment.

### **Claim for unliquidated damages**

- (7) Where the plaintiff's claim against a defendant is solely for unliquidated damages, the plaintiff may enter judgment against that defendant for damages to be assessed and costs, and may proceed with the action against any other defendant.

### **Claim for detention of goods**

- (8) Where the plaintiff's claim against a defendant relates solely to the detention of goods, the plaintiff, at the plaintiff's option, may enter either
- (a) judgment against that defendant for the delivery of the goods, or their value to be assessed and costs, or
  - (b) judgment for the value of the goods to be assessed and costs,
- and may proceed with the action against any other defendant.

### **Multiple claims**

- (9) Where the plaintiff's claim against a defendant is for one or more of the claims referred to in subrule (5), (7) or (8), and for another claim, the plaintiff may enter judgment against that defendant, in respect of any claim, as the plaintiff would be entitled to enter under those subrules if that were the plaintiff's only claim, and may proceed with the action against that defendant and any other defendant.

### **Application to judge**

- (10) Where the clerk is not certain that a plaintiff's claim against a defendant relates to a claim within subrule (5), (7), (8) or (9), the clerk may refuse to enter judgment and the plaintiff may apply to a judge in chambers for default judgment.

### **No defence to part of claim**

- (11) Where a statement of defence answers only part of the claim in the statement of claim, the plaintiff may apply to the court for such judgment in respect of the unanswered claim as the plaintiff would be entitled to enter under subrules (5) to (8) if no statement of defence were filed.

### **No execution on default judgment where there is a counterclaim**

- (12) Unless the court otherwise orders, where there is a counterclaim the plaintiff shall not issue execution on a judgment obtained under this rule until the entire action has been disposed of.

### **Judgment in other claims**

- (13) If the plaintiff's claim against a defendant is not one referred to in subrules (5) to (8), the plaintiff may apply for judgment against the defendant under Rule 18.

### **Default by one of several defendants**

- (14) Where, in any action mentioned in subrule (13), there are several defendants and a defendant defaults in filing and delivering a statement of defence, the plaintiff may apply for judgment against that defendant under Rule 18.

### **Method of assessment**

- (15) Where a plaintiff has obtained judgment for damages or value to be assessed, the plaintiff may set the assessment down for trial but, unless the court otherwise orders, it shall be tried at the same time as the trial of the action or issues against any other defendant.

### **Court may set aside or vary default judgment**

- (16) The court may set aside or vary any judgment entered under this rule.

### **Alternative methods of assessment**

- (17) Where a plaintiff has obtained judgment under subrule (7), (8) or (9), instead of proceeding to trial to assess the damages or the value of the goods, the plaintiff may apply to the court and the court may
- (a) assess the damages or value of the goods summarily upon affidavit or other evidence,
  - (b) order an assessment, an inquiry or an accounting,
  - (c) give directions as to the trial or hearing of the assessment or determination of value, or
  - (d) make any other order it thinks just.