

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Buffett v. Dobson*, 2023 NSSC 183

**Date:** 20230511  
**Docket:** *Halifax*, No. 496482  
**Registry:** Halifax

**Between:**

Heather Marie Buffett

*Plaintiff*

v.

Jack Dobson

*Defendant*

**DECISION**

**Judge:** The Honourable Justice C. Richard Coughlan

**Heard:** May 11, 2023, in Halifax, Nova Scotia

**Oral Decision:** May, 11, 2023

**Written Decision:** June 19, 2023

**Counsel:** Kallen J. Heenan and Jeff T. Mitchell, for the Plaintiff  
Anthony S.E. Buckland, for the Defendant

**By the Court (Oral):**

**Background**

[1] Jack Dobson moves for an order to set aside a default judgment against him which Heather Marie Buffett obtained on August 28, 2020.

[2] *Civil Procedure Rule* 8.09 provides a judge may set aside a default issued by the Prothonotary or made on an *ex parte* motion by a judge.

[3] The test to be applied in a motion to set aside a default judgment is well established. It was set out in *Ives v. Dewar*, (1948-49), 23 M.P.R. 218, where Parker J., is giving the judgment of the Supreme Court sitting in banco stated at page 221:

Before the interlocutory judgment should have been set aside ... it was necessary for the appellant to show by affidavit, facts which would indicate clearly that he had a good defence to the action on the merits; not necessarily a defence that would succeed at the trial because the action was not being tried on that application; but facts which would at least show beyond question that there was a substantial issue between the parties to be tried. He must also show by affidavit why his defence was not filed and delivered within the time limited by the Rules.

[4] The approach has been consistently followed in Nova Scotia including in *Temple v. Riley*, 2001 NSCA 36, in which Saunders J.A. in giving the Court's judgment described the test by quoting from Roscoe J.A. in *Widmeyer v. Atlantic Pipeline Resources Inc.*, [2000] N.S.J. No 45 (C.A.), at para 27:

There are two requirements to be met in order to have a default judgment set aside:

1. A fairly arguable defence, or a serious issue to be tried; and
2. A reasonable excuse for the delay in filing the defence.

[5] Ms. Buffett's claim is that Mr. Dobson was negligent in the maintenance of property in Amherst, Nova Scotia of which he was the owner, occupier or landlord, as a result of which negligence she slipped and fell and suffered damages. The fall occurred on February 7, 2018.

[6] On April 12, 2019, Ms. Buffett commenced action concerning the fall against Beaubassin Investments Incorporated, being Hfx No. 487179, as owner of the property in question and Jackie Dobson, daughter of Jack Dobson, as occupier or caretaker or landlady of the premises for negligence.

[7] Ms. Dobson filed a defence dated January 31, 2020 as well as a defence to crossclaim made by Beaubassin Investment Incorporated dated the same date in which she states it was her recollection that the property in question was purchased by her father.

[8] On July 30, 2020, a notice of new counsel was filed by Jeff T. Mitchell in the action against Beaubassin Investments Incorporated and Jackie Dobson by Ms. Buffett, Hfx No. 487179.

[9] On February 10, 2020, Ms. Buffett commenced this action, Hfx No. 496482, against Jack Dobson for negligence and damages for the same fall she had sued Beaubassin and Jackie Dobson.

[10] I accept Camille LeBlanc's evidence that he served the notice of claim and statement of claim in Hfx No. 496482 on Jack Dobson on February 21, 2020. At the time, Jack Dobson was approximately 82 years of age.

[11] On August 28, 2020, Ms. Buffett entered default judgment against Jack Dobson.

[12] It appears that there was no further communication with either Jack Dobson or Jackie Dobson until Jack Dobson was served with the motion for assessment of damages and supporting documentation on November 14, 2022. I note Mr. Mitchell was solicitor for Ms. Buffett in the action against Jackie Dobson concerning the same incident in which he had entered default judgment against Jack Dobson.

[13] On November 2, 2022, Jack Dobson signed a power of attorney appointing his daughter, Jacqueline Linda Dobson, his attorney. Section 4.5 of the Power of Attorney authorizes Ms. Dobson to, among other things, defend any legal action.

[14] As attorney of Mr. Dobson, Ms. Dobson retained counsel and on November 29, 2022 a motion was filed for an order setting aside the default judgment dated August 28, 2020. On March 8, 2023, a notice of defence and statement of defence was filed.

**A fairly arguable defence or a serious issue to be tried**

[15] Ms. Buffett concedes that there is an arguable defence or a serious issue to be tried.

**A reasonable excuse for the delay in filing the defence**

[16] The notice of claim and statement of claim were served on the 82 year old Jack Dobson February 21, 2020. The evidence is that he has been in poor health the last few years. Less than a month after he was served, the COVID 19 pandemic hit. There was no more communication about the action with Mr. Dobson until he was served with the notice of motion for assessment of damages and associated documents on November 14, 2022. His attorney, Ms. Dobson, retained counsel who filed a motion to set aside the default judgment on November 29, 2022. Ms. Dobson had previously filed a defence when she was sued concerning the same incident.

[17] Considering the age of and health of the defendant, the fact of the COVID 19 pandemic commencing less than a month after service of the notice of claim and statement of claim, the lack of further communication with Mr. Dobson, the speed with which action was taken after his attorney became aware of the default judgment, I find there was a reasonable excuse for delay in filing the defence.

[18] Both requirements for setting aside a default judgment having been satisfied, I grant the motion and set aside the default judgment entered by Heather Marie Buffett against Jack Dobson on August 28, 2020.

Coughlan, J.