

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap. 4A)

Order 19 – DEFAULT OF PLEADINGS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Default in service of statement of claim (O. 19, r. 1)

Where the plaintiff is required by these rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

2. Default of defence: claim for liquidated demand (O. 19, r. 2)

(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any. (See App. A, Form 39)

(2) Order 13, rule 1(2) shall apply for the purpose of this rule as it applies for the purposes of that rule.

3. Default of defence: claim for unliquidated damages (O. 19, r. 3)

Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any. (See App. A, Form 40)

4. Default of defence: claim in detinue (O. 19, r. 4)

(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the

plaintiff may, after the expiration of the period fixed by or under these rules for the service of the defence and subject to Order 42, rule 1A, –

- (a) at his option enter either –
 - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs; or
 - (ii) interlocutory judgment for the value of the goods to be assessed and costs; or
- (b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any. (See App. A, Form 41)

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

5. Default of defence: claim for possession of land (O. 19, r. 5)

(1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any. (See App. A, Form 42)

(5) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

6. Default of defence: mixed claims (O. 19, r. 6)

Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

7. Default of defence: other claims (O. 19, r. 7)

(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the

defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may –

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
- (b) set down the action ~~on motion~~ for judgment against the defendant at the time when the action is set down for trial, or is set down ~~on motion~~ for judgment, against the other defendants.

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(3) An application under paragraph (1) must be by summons ~~or motion~~.

8. Default of defence to counterclaim (O. 19, r. 8)

A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counter-claim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

(HK)8A. Notice of intention to enter judgment (O. 19, r. 8A)

(1) No party shall enter judgment under the provisions of this Order against a party who has filed an acknowledgment of service giving notice of intention to defend, or on a counterclaim, unless –

- (a) after such acknowledgment of service or counterclaim has been filed, and not less than 2 clear days before entering judgment, the party intending to enter judgment has served notice in writing of his intention to do so on the party against whom judgment is sought or, if that party is legally represented, on his solicitor;
- (b) evidence of such service by way of affidavit has been filed in the Court.

(2) This rule shall not apply where –

- (a) the Court has made an order prescribing or extending the time for service of defence or defence to counterclaim; or

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- (b) the party against whom it is sought to enter judgment does not have a solicitor of record in the proceedings and has failed to state an address within the jurisdiction in the proceedings at which he can be served.

(L.N. 223 of 1995)

9. Setting aside judgment (O. 19, r. 9)

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

(Enacted 1988)