

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Katz v. Kosikar*,
2026 BCSC 949

Date: 20260526
Docket: S253588
Registry: Vancouver

Between:

Karen Marie Katz

Plaintiff

And:

Terrance Joseph Kosikar and Camp My Way Society

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

The Plaintiff, appearing in person:

K. Katz

The Defendant, Terrance Joseph Kosikar,
appearing in person, and as Representative
for the Defendant, Camp My Way Society:

T. Kosikar

Place and Date of Hearing:

Vancouver, B.C.
May 1, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 26, 2026

Table of Contents

INTRODUCTION	3
RELEVANT BACKGROUND	3
PROCEDURAL BACKGROUND OF THIS PROCEEDING	4
ISSUE	13
LEGAL PRINCIPLES	13
Granting a Default Judgment.....	13
Setting Aside a Default Judgment	13
Setting Aside a Without Notice Application	14
ANALYSIS.....	15
Issue 1: Should the Plaintiff Set Aside Application be heard by Justice Branch? .	15
Issue 2: Are the defendants entitled to make submissions when they did not file an application response?	16
Issue 3: Should the Branch Order be set aside?	16
Any wilful or deliberate failure to file or serve the plaintiff	17
Was the Set Aside Application brought “as soon as practicable”?	18
Do the defendants have meritorious defences?.....	19
Interest of Justice.....	20
Affidavit evidence in support.....	20
Conclusion	20
Issue 4: Should the defendants be entitled to file an amended response?	21
Issue 5: What other procedural issues need to be addressed by the parties?	21
ORDERS MADE	23

Introduction

[1] The plaintiff applies to set aside a without notice order made by Justice Branch on January 23, 2026 (the “Branch Order”) and an order that the defendants are in violation of the Branch Order. The hearing of this application took place on May 1, 2026 (the “Hearing”).

[2] The defendants oppose the setting aside of the Branch Order.

[3] The parties provided no helpful submissions in respect to the issues to be addressed at the Hearing. To understand what had transpired I reviewed the various documents filed in this action along with the reasons for judgment issued by Justice Shergill and Justice Griffin, referenced below.

Relevant Background

[4] The plaintiff and the personal defendant, Mr. Kosikar, had some type of relationship, the nature of which is unclear to me. In October 2021, the plaintiff provided the sum of \$290,000 to the defendant, Camp My Way Society (the “Camp”). Mr. Kosikar says the money was gifted to the Camp to help him “buy out” his ex-partner’s share of the property where he lived and the Camp operates on. Ms. Katz claims that the payment was made for an interest in property at 353 Cresta Road, Seton, Portage, BC (the “Property”).

[5] On November 3, 2022, Ms. Katz filed a notice of civil claim against Mr. Kosikar in Vancouver Registry No. S228836 claiming that Mr. Kosikar holds the Property in trust for her and that she paid \$290,000 for the purchase of it (the “Kosikar Action”).

[6] On May 29, 2023, Ms. Katz filed a notice of civil claim against Mr. Kosikar and the Camp in Vancouver Reg No. S233949 seeking approximately \$110,000 representing paid expenses and personal property ostensibly belonging to Ms. Katz. (the “Camp Action”). An amended counterclaim was filed by Mr. Kosikar and the Camp on August 29, 2023, claiming that Ms. Katz had defamed them in a text message and on various social media platforms.

[7] On June 22, 2023, Ms. Katz filed a notice of civil claim against Catrina M. Chisholm and the law firm Kahn Zack Ehrlich Lithwick in Vancouver Reg. No. S234520 (the “Lawyer Action”). Ms. Chisholm was involved in the purchase of the Property and Ms. Katz alleges that Ms. Chisholm acted as her lawyer in this transaction whereby the Property was transferred from Mr. Kosikar’s ex-wife to Mr. Kosikar on November 29, 2021. The allegation that Ms. Chisholm acted on behalf of Ms. Katz is denied by the lawyer defendants.

[8] On November 19, 20, and 24, 2024, Shergill J. heard a series of applications in the Kosikar and Lawyer Actions and issued reasons on January 9, 2025, indexed at 2025 BCSC 34 (the “Reasons”). By consent, the Camp and Kosikar Actions were ordered to be tried at the same time: Reasons at para. 26. Justice Shergill declined to order the Lawyer Action be tried at the same time as the Kosikar/Camp Actions: Reasons at para. 65 and dismissed the application to have the lawyers added as defendants in the Kosikar Action: Reasons at para. 112. She further denied the application to have Mr. Kosikar added as a defendant in the Lawyer Action: Reasons at para. 114. A stay of the Lawyer Action was granted pending the resolution of the Kosikar Action: Reasons at para. 119.

[9] On May 12, 2025, Ms. Katz filed notices of discontinuance in the Kosikar and Camp Actions.

[10] On January 16, 2025, Shergill J. issued her costs reasons in the three actions indexed at 2026 BCSC 75.

Procedural Background of this Proceeding

[11] On May 12, 2025, the plaintiff filed a notice of civil claim (“NOCC”) consisting of 44 pages and approximately 55 paragraphs in Vancouver Reg. No. 253588 (the “Defamation Action”). The NOCC does not comply with the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] nor with case law on the scope of proper pleadings. The plaintiff claims a variety of torts including defamation, breach of confidence, and misappropriation of personality. She seeks general damages,

aggravated damages, exemplary or punitive damages, an interlocutory and permanent injunction, and special costs.

[12] In the NOCC Ms. Katz provides a post office box address for service (“PO Box”). The provision of only a post office box for service does not comply with R. 4-2 of the *Rules* since it is not an “accessible address”. This term is defined in R. 1-1 to be:

...an address that describes a unique and identifiable location in British Columbia that is accessible to the public during normal business hours for the delivery of documents;

[13] Ms. Katz says that she does not use email or texting as forms of communication nor does she have a computer, the internet or an email address available. Hence the only means of communicating with Ms. Katz is to the PO Box by mail. As she explains in her affidavit #12, made and filed on October 17, 2025:

12. There is no legal requirement for me to have any contact with the Defendant’s legal counsel to discuss any scheduling matters. This is simply a “courtesy” that is extended to lawyers by lawyers and is not a legal requirement nor is that any Supreme Court Rule mandating such discussions. Furthermore, I am not a lawyer. I am a self-represented litigant with a legal disability and medically I am to refrain from contact with adversarial legal counsel if I feel it will have a negative impact on my fragile mental health conditions.

[14] On May 24, 2025, David Lucas, process server, served the NOCC on the personal defendant by handing it to him. That affidavit of service of Mr. Lucas confirms that Mr. Kosikar admitted he was the proper person to be served.

[15] On June 13, 2025, the defendants filed a response to civil claim. Mr. Kosikar explained that he did not file a response sooner because his sister had unexpectedly died on May 14, 2025. The defendants did not serve the filed response to civil claim on the plaintiff as required by the *Rules*. Mr. Kosikar states in his affidavit #1 made on September 11 and filed on September 15, 2025 (the “Kosikar Affidavit”) that:

34. When I filed our Response before the deadline, I spoke to the registry staff. I thought they told me that they would send her a copy. Although I now realize that I may have misheard or misunderstood the Registry staff, I didn’t

know that I had to send Ms. Katz a copy of the Response. I did not know that I had to serve her with my Response until I retained counsel.

35. In the previous proceedings, my lawyers handled all the filing and sending documents to the other parties.

[16] On June 18, 2025, the plaintiff filed a notice of application seeking default judgment against the defendants on the basis that the defendants were in default (the “Default Application”). In the notice of application, the plaintiff submitted that the 21-day period for the defendants to serve a copy of the filed response to civil claim had expired on June 16, 2025. At paragraph 2 of Part 3, Legal Basis, the plaintiff claimed that the defendants had failed to file and serve a response to civil claim within the time allowed. The Default Application was scheduled for August 6, 2025.

[17] Ms. Katz claims that the Default Application was served on Mr. Kosikar on June 27, 2025. I have not located any affidavit of service filed by the plaintiff in support. Mr. Kosikar provides the following comments on the issue of “receiving the application for default judgment” in the Kosikar Affidavit:

36. I don’t remember when exactly I received the Notice of Application. I was not doing well spiritually, psychologically or physically.

37. I couldn’t understand the materials at all in my state of mind.

38. I couldn’t comprehend the idea of reading the materials, which were a huge stack of papers, almost three inches high, riddled with paper clips. I have never finished a book. I was completely overwhelmed.

39. I didn’t know I had to do anything to respond because I didn’t understand what was happening.

[18] Mr. Kosikar did not file an application response to the Default Application.

[19] On August 6, 2025, Ms. Katz appeared by telephone before Justice Sigurdson who granted the default judgment order. Mr. Kosikar was not in attendance. The order provided (the “Default Order”):

ON THE APPLICATION of the plaintiff, Karen Marie Katz coming on for hearing at Vancouver, BC, on August 6, 2025, and on hearing Karen Marie Katz appearing on her own behalf by telephone conference, and no one else is appearing:

1. The Plaintiff, Karen Marie Katz is granted default judgment; damages would be assessed to follow on a separate application.

2. The Plaintiff, Karen Marie Katz is entitled to regular costs in the action and in this application.
3. The signature of the plaintiff is dispensed with.

[20] It is not clear if the Default Order was served on Mr. Kosikar, but he claims he first became aware of it when a former counsel coincidentally found out about it and told him.

[21] On August 14, 2025, Ms. Katz filed a notice of application seeking to have damages to be assessed in accordance with the Default Order (the “Assessment Application”). On the same day, Ms. Katz filed a notice of address for service providing a different PO Box (“New PO Box”). The Assessment Application was set for hearing on August 28, 2025. The plaintiff claims that the defendants were served with the Assessment Application on August 18, 2025.

[22] Mr. Kosikar states that he retained counsel on August 22, 2025. On the same day, Carly Peddle, with the firm of MacKay Boyar, sent a registered letter to Ms. Katz at the PO Box, advising of the firm’s retainer to act for the defendants, serving the defendants’ response to civil claim, and advising that an amended response would be filed. In part, the letter stated:

Second, I write to advise that we have instructions to apply under Rule 3-8(11) to set aside default judgment on the basis that the defendants did file a Response to Civil Claim on June 13, 2025, which was within the 21-day period prescribed by the Rules.

The prerequisites for default judgment were not met. Under Rule 3-8(1), default judgment may only be granted if the defendant “has not filed and served a response to civil claim” (emphasis added). Moreover, Rule 3-8(2) required you to file “a requisition endorsed by the registrar with a notation that no response to civil claim has been filed by that defendant” (Rule 3-8(2)(c)).

(Emphasis in original.)

[23] Ms. Katz asserts that the August 22, 2025 letter was sent to the wrong PO Box since she had filed a notice of address changing the PO Box listed in the NOCC to the New PO Box. It appears that defendants’ counsel was not aware of the New PO Box. Ms. Katz received a copy of the August 22, 2025 letter when it was resent

to her by letter from defendants' counsel on September 5, received by Ms. Katz on September 10, 2025.

[24] At the hearing on August 28, 2025, before Justice Loo, the defendants were represented by counsel, T.C. Boyar. Mr. Boyar advised Loo J. that the defendants would be bringing an application to set aside the Default Order. Justice Loo ruled that considering that pending application, it made no sense to have the damages assessment heard before the set aside application. As such, the Assessment Application was adjourned to allow for the set aside application to proceed (the "Loo Order"). Justice Loo directed that Mr. Boyar's firm make their best efforts to have the set aside motion filed and brought by September 15.

[25] On September 5, 2025, Ms. Katz filed a notice of appeal of Loo J.'s decision.

[26] On September 15, 2025, the defendants filed an application seeking to set aside the Default Order with a hearing date of October 3, 2026 (the "Set Aside Application").

[27] On September 17, 2025, Ms. Katz filed an application response to the Set Aside Application opposing it primarily on the basis that it was premature as Ms. Katz had sought leave to appeal the Loo Order and since the defendants had no meritorious defences.

[28] On September 19, 2025, Ms. Katz filed a second application response to the Set Aside Application. It is unclear on what basis Ms. Katz filed a second response.

[29] On September 29, 2025, Ms. Katz filed an application seeking an interlocutory and permanent injunction to restrain the defendants from unlawful defamation, slander and/or libel ("Injunction Application"). This application was set for hearing on October 16, 2025.

[30] On October 3, 2025, Ms. Katz and counsel for the defendants were before Justice Wilkinson who ordered that the Set Aside Application be adjourned to December 1, 2025. Ms. Katz filed a notice of appeal of this decision.

[31] On October 9, 2025, the defendants filed an application response to the Injunction Application.

[32] On October 16, 2025, the defendants filed a without notice application seeking to adjourn the Injunction Application to a mutually agreeable time and for the plaintiff to provide an address for service under R. 4-1(1.1). This application was set for hearing on October 16, 2025. This application and the Injunction Application were adjourned by Justice Ramsay to October 20, 2025.

[33] On October 20, 2025, the parties appeared before Justice Basran on the Injunction Application. The order made was that the Injunction Application be dismissed and that costs be in the cause with the trial judge to determine the costs in respect to this matter and this application. The defendants' application filed October 16, 2025 was adjourned. It does not appear that Basran J.'s order was filed.

[34] On October 31, 2025, Ms. Katz filed a notice of trial setting the trial date in this matter for five days.

[35] On November 25, 2025, Griffin J.A. heard the applications seeking leave to appeal Loo J. and Wilkinson J.'s orders. The leave to appeal applications were not granted and Griffin J.A. provided oral reasons on November 25, 2025, indexed at 2025 BCCA 450 ("CA Reasons"). Justice Griffin notes:

[5] The respondents say that Ms. Katz's default judgement was erroneously granted. This is because she failed to comply with the requirement of R. 3-8(2)(c) of the *Supreme Court Civil Rules* that she first file a requisition endorsed by the registrar with a notation that no response to civil claim had been filed. The reason for this requirement is that one cannot obtain default judgment if a response to civil claim has been filed.

...

[43] Respectfully, both applications for leave to appeal border on frivolous and are entirely without merit.

[36] On November 26, 2025, Ms. Katz filed a 33-paragraph reply. On the same day, Ms. Katz requested from defendants' counsel that the Set Aside Application scheduled for December 1, 2025 be adjourned on the basis that she was not able to

attend for medical reasons. On November 28, 2025, the defendants' counsel filed a requisition adjourning generally the hearing of the Set Aside Application.

[37] On December 12, 2025, counsel for the defendants wrote to Ms. Katz at the New PO Box requesting her availability to set the Set Aside Application down for hearing. This letter was not picked up.

[38] On December 24, 2025, counsel for the defendants wrote to Ms. Katz at the New PO Box which was returned by Canada Post on the basis it was not picked up.

[39] On January 6, 2026, counsel for the defendants wrote to Ms. Katz at the New PO Box which states, in part (the "January 6 Letter"):

I therefore ask that you provide me with your availability as soon as possible for January and February 2026 by Monday, January 12, 2026, at noon. If I do not receive your availability at this time, I will unilaterally set down the defendants' application without any further consultation regarding your availability. As you are aware, there is an order preventing you from bringing any further applications until the defendants' application is decided. For this proceeding to move forward, the defendants' application must be heard.

[Emphasis in original.]

[40] On January 8, 2026, a notice card was left for Ms. Katz for the January 6 Letter. It appears that Ms. Katz received the January 6 Letter as she references it in her notice of application filed February 9, 2026:

13. On January 17, 2026, the Plaintiff received a long verbose letter dated January 06, 2026 from the Defendants legal counsel. In this letter, the Defendants legal counsel is demanding that the Plaintiff provide her dates of availability to her for the Defendant's application hearing as soon as possible for January and February 2026 by Monday, January 12, 2026 noon. The Defendants legal counsel then gives the Plaintiff an ultimatum in the letter and advises her that if she does not receive the Plaintiff's availability at this time, she will unilaterally set down the Defendant's application without any further consultation regarding the Plaintiff's availability. This letter states NOTHING about having an application without notice to the Plaintiff.

14. As the Plaintiff had already advised the Defendants legal counsel in court, in front of her protector, the Honourable Justice Sandra Wilkinson, she would "never" be available when she was available, so the Plaintiff could not understand why she was receiving this letter. The Plaintiff also did not receive this letter until after the ultimatum date had passed. The Plaintiff could also not understand why the Defendant's legal counsel was sending her this letter

as the Plaintiff had previously advised the Defendant's legal counsel in a letter dated November 05, 2025 that she would not correspond with her outside of the courtroom. There is also no Supreme Court Rule which mandates the Plaintiff to correspond with adverse opposing counsel in any way, shape or form. Additionally, it costs the Plaintiff unrecoverable money to correspond with the opposing counsel which she simply cannot afford to pay. As far as the Plaintiff is concerned, the Defendant's legal counsel can set down any date that she wants for a hearing and the Plaintiff would do her best to attend any hearing via teleconference IF SHE WAS NOTIFIED!!!!

[41] On January 14, 2026, the defendants' counsel filed a requisition seeking to reset the Set Aside Application for January 23, 2026.

[42] There is no evidence that this requisition was served on Ms. Katz nor that she was advised of the resetting of the Set Aside Application for January 23, 2026. It appears that Ms. Katz made no effort to contact the defendants' counsel after she had received the January 6 Letter.

[43] On January 16, 2026, Shergill J. issued costs reasons in the Kosikar and Lawyer Actions indexed at 2026 BCSC 75. Mr. Kosikar was entitled to costs of the hearing payable forthwith, in any event of the cause.

[44] On January 23, 2026, the defendants appeared in chambers and obtained the Branch Order. The preamble of the order notes that it is without notice. The Branch Order provides:

1. The default judgment entered August 6, 2025 against Terrance Joseph Kosikar and Camp My Way Society (together the "Applicants") be set aside.
2. The costs award against the Applicants made on August 6, 2025 be set aside.
3. The Applicants be required to file and serve their Amended Response to Civil Claim within 14 days of the order setting aside the default judgment.

[45] On February 6, 2026, Ms. Katz claimed that she became aware of the Branch Order after being informed of it by a "confidential source".

[46] On February 9, 2026, Ms. Katz filed an application seeking to set aside the Branch Order ("Plaintiff Set Aside Application"). In the alternative, seeking that if the Branch Order is set aside, then the defendants pay the plaintiff costs forthwith in any

event of the cause for her notice of application hearing. She further sought an order that the defendants not be allowed to file an amended response to civil claim since the defendants are in violation of the Branch Order and various steps in the litigation have already taken place. Finally, she seeks an order that the defendant(s) pay special costs forthwith in any event of the cause for obtaining the Branch Order. The Plaintiff Set Aside Application was scheduled for February 23, 2026.

[47] The defendants did not file an amended response to civil claim within 14 days of the Branch Order.

[48] On February 23, 2026, Ms. Katz filed a requisition seeking to have the Plaintiff Set Aside Application heard on March 12, 2026 on the basis that her application record was not accepted due to an error in calculating when it had to be filed.

[49] On February 23, 2026, Ms. Katz attached a letter sent to Ms. Peddle dated February 21, 2026 to a requisition and filed it in court. I note that this is not a proper procedure to follow. The *Rules* do not permit parties to attach correspondence, such as Ms. Katz's February 21, 2026 letter, and file them. If correspondence is to be placed before the Court, the correspondence should be attached to an affidavit.

[50] On March 12, 2026, counsel for the defendants sought an adjournment of the Plaintiff Set Aside Application. It was adjourned for two weeks.

[51] On March 13, 2026, Ms. Katz filed a requisition resetting the Plaintiff Set Aside Application for March 27, 2026.

[52] On March 24, 2026, the defendants filed a notice of intention to act in person.

[53] On March 27, 2026 the matter was adjourned generally and on March 30, 2026, Ms. Katz filed a requisition resetting the Plaintiff Set Aside Application for May 1, 2026.

Issue

[54] The issue on this application is whether the Branch Order should be set aside on the basis that Ms. Katz did not receive notice of the January 23, 2026 hearing date and was not present.

Legal Principles**Granting a Default Judgment**

[55] Rule 3-8(1) and (2) provide:

Default in filing and serving a response to civil claim

- (1) A plaintiff may proceed against a defendant under this rule if
 - (a) that defendant has not filed and served a response to civil claim, and
 - (b) the period for filing and serving the response to civil claim has expired.

Filings required

- (2) A plaintiff who wishes to proceed against a defendant under this rule must file
 - (a) proof of service of the notice of civil claim on that defendant,
 - (b) proof that the defendant has failed to serve a response to civil claim,
 - (c) a requisition endorsed by a registrar with a notation that no response to civil claim has been filed by that defendant, and
 - (d) a draft default judgment order in Form 8.

[56] The requirements of R. 3-8(2)(a) to (d) are mandatory and, as described in the *Rules*, are required filings.

Setting Aside a Default Judgment

[57] Rule 3-8(11) allows the Court the discretion to set aside or vary any judgment made under this Rule.

[58] To succeed in setting aside a default judgment, the following must be shown:
(a) that the failure to file a response or defence was not wilful or deliberate; (b) that the application to set aside the default judgment was made as soon as reasonably

possible upon learning of it or an explanation for the delay is given; (c) that there is a defence worthy of investigation; and (d) that all requirements are established through affidavit material filed on behalf of the defendant: *Miracle Feeds v. D & H Enterprises Ltd.* (1979), 10 B.C.L.R. 58 at p. 61 [*Miracle Feeds*].

[59] The Court of Appeal in *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, 2020 BCCA 341 at paras. 17-31, commented that the *Miracle Feeds* factors still apply, with the appreciation that the factors are to be applied flexibly. The meaning of deliberate conduct included blameworthy conduct. A defence worthy of investigation is not onerous to establish as it is an “arguable claim”, a “live issue”, “may well be meritorious”, “an arguable defence” or “triable issues”.

[60] Wilful or deliberate conduct is not unreasonable or negligent conduct: *Summit Leasing Corporation v. Westshore Towing Ltd.*, 2019 BCSC 1058 at para. 15.

[61] The ultimate question is whether it is in the interests of justice having regard to the factors set out in *Miracle Feeds*: *Andrews v. Clay*, 2018 BCCA 50 at para. 29.

[62] This Court noted in *MacLean Bros. Drywall Ltd. v. 1114136 B.C. Ltd.*, 2023 BCSC 2356, in the context of an application to set aside a default judgment that:

[48] Courts routinely give latitude to self-represented litigants who are not familiar with court procedures or other aspects of litigation, including rules of evidence and legal principles. That is to ensure that all litigants have access to justice. However, it cannot result in an unfair or unjust advantage for one party over the other.

Setting Aside a Without Notice Application

[63] Rule 8-5 provides that a Court may change or set aside an order made without notice to the person affected by the order.

[64] In *Kliman v. Kinrade*, 2022 BCSC 1193, Justice Blake commented at para. 19:

Rule 8-5(8) of the *Supreme Court Civil Rules* authorizes a person affected by a court order made *ex parte* to apply to court to set aside or vary the order. Such an application should be brought before the judge who granted the original order unless they are not available to hear the application: *Waruk v.*

Waruk, 1996 CanLII 2573 (B.C.C.A.) at para. 22; *Gulf Islands Navigation Ltd. v. Seafarers' International Union of North America* (1959), 28 W.W.R. 517 at 518, 1959 CanLII 272 (B.C.C.A.). I understand that for practical reasons it is not always possible to do so. Neither counsel sought to have the application set before Justice Gaul, nor did either counsel object to my hearing the application. In such circumstances, the hearing before me is *de novo* as to both the law and facts involved: *Waruk* at para. 22; *Gulf Islands* at 518.

[65] When someone affected by an *ex parte* order applies to set aside or vary the order, whether or not there was a material misrepresentation, the hearing is *de novo* as to the law and facts of the original application: *Money in a Minute Auto Loans Ltd. v. Price*, 2001 BCSC 864 at para. 14 [*Money in a Minute*]; *Evans v. Umbrella Capital LLC*, 2004 BCCA 149 at para. 33. A hearing *de novo* is one that is heard anew or starting from the beginning.

Analysis

[66] I will comment on the following issues:

1. Should the Plaintiff Set Aside Application be heard by Justice Branch?
2. Are the defendants entitled to make submissions when they did not file an application response?
3. Should the Branch Order be set aside?
4. Should the defendants be entitled to file an amended response in light of their breach of the Branch Order?
5. What other procedural issues need to be addressed by the parties?

Issue 1: Should the Plaintiff Set Aside Application be heard by Justice Branch?

[67] A set-aside application should be brought before the judge who granted the original order: *Kliman* at para. 19. It is not clear to me whether Ms. Katz made any effort to appear before Branch J. A party will usually seek to attend before a specific judge by emailing a request to appear to the Registry making that request and the reason why. Practice Direction 18 requires that the request form be electronically

submitted. Since Ms. Katz says she does not use email as a form of communication she would not be able to email a request to appear. In my view, considering those practical challenges Ms. Katz faces, I will not adjourn and direct that the Plaintiff Set Aside Application be heard by Branch J. I will proceed to hear the merits of it.

Issue 2: Are the defendants entitled to make submissions when they did not file an application response?

[68] The defendants concede that they were served with the Plaintiff Set Aside Application but did not file an application response. In chambers, I asked Mr. Kosikar if he had filed an application response and he said he had on the morning of May 1, being the date of the Hearing, and he held up some papers. I asked him to provide me with the papers so I could determine what they were. The papers Mr. Kosikar handed to me were not a filed application response, but rather a notice of application that had been filed on May 1, 2026 seeking unrelated orders against Ms. Katz. I returned the papers to Mr. Kosikar, advising that I would not be dealing with this further application at this Hearing. He confirmed that an application response had not been filed.

[69] Rule 8-1(9) requires that a person who is served with an application, and who wishes to respond, must file an application response.

[70] As noted in *British Columbia (Director of Civil Forfeiture) v. Crowley*, 2013 BCCA 89, at paras. 72, 76 and 77, a person who has not complied with subrule 8-1(9) has no right to participate in a proceeding, nonetheless the Court may, in the exercise of its discretion, allow the person to participate. I exercised my discretion to allow Mr. Kosikar to make submissions, although as I initially noted, those submissions were not helpful in respect to the nature of the application before me.

Issue 3: Should the Branch Order be set aside?

[71] At the hearing, I asked Ms. Katz what her submissions were in respect to whether the Default Order should have been granted. She stated she was not in a position to provide submissions and she was proceeding only on whether the Branch Order should be set aside. The case authorities support that since the application

was made before a different judge than the one that presided at the without notice application, it is a hearing *de novo*. That means, it is for me, to consider whether the Default Order should be set aside.

[72] Ms. Katz should have been ready to make the necessary arguments in support of the Plaintiff Set Aside Application. I further note that the issue of whether the Default Order should be set aside is a straightforward one. The primary reason to set it aside is that Ms. Katz failed to comply with the mandatory requirements of R. 3-8(2)(c), the filing of a requisition endorsed by a registrar with a notation that no response to civil claim has been filed by the defendant. I note that Ms. Katz could not have obtained such a requisition since as of the date she applied for the default judgment, being June 18, 2025, a response had been filed by the defendants on June 13, 2025, within the time period provided by the *Rules*.

[73] The Default Order should not have been granted when a response had already been filed. The lack of compliance with R. 3-8(2)(c) supports that the Default Order should be set aside. The decision of Branch J. to set aside the Default Order was correct and I would have made the same order.

[74] Since I anticipate that Ms. Katz will appeal this order, I will go on to consider the *Miracle Feeds* factors and whether it is in the interests of justice to set aside the Default Order.

Any wilful or deliberate failure to file or serve the plaintiff

[75] I accept that Mr. Kosikar is an unsophisticated litigant who struggles to understand the procedural requirements of the *Rules*. At the particular period of time when the NOCC was commenced and served on him, he was struggling with the sudden loss of his sister. He claims that he is still struggling from the loss of his sister.

[76] There was no wilful or deliberate failure to file the response since one was filed in compliance with the *Rules*. The defendants did fail to serve the filed response on the plaintiff, which is a requirement of the *Rules*. Mr. Kosikar explains why he did

not serve the filed response. I find that his explanation arose out of ignorance or from a “mistaken but not irrational belief” and that delay was not wilful, nor blameworthy conduct: *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2023 BCSC 2245 at para. 15 (appealed on other grounds).

Was the Set Aside Application brought “as soon as practicable”?

[77] Upon learning of the Default Order, the defendants acted to retain counsel. That counsel wrote a letter on August 22, 2025, the same day she was retained, alerting Ms. Katz to her retainer and the plan to set aside the Default Order. I do note this letter was sent to the PO Box referenced in the NOCC and not to the New PO Box. However, Ms. Katz did receive the letter on September 10, 2025.

[78] On August 28, 2025, counsel for the defendants attended in court to oppose the Assessment Application. Justice Loo agreed the Assessment Application should be adjourned pending the filing of the Set Aside Application. The Set Aside Application was filed on September 14, 2025 with a hearing date of October 1, 2025. The delays in having it heard were all the result of Ms. Katz’s actions. She sought to adjourn the October 1, 2025 date and further date of December 1, 2025.

[79] Ms. Katz did receive a copy of the Set Aside Application but did not receive notice of the rescheduled date of the hearing for January 26, 2026. A very significant problem is that Ms. Katz has only provided PO Boxes for her service address and the defendants’ counsel had no means of telephoning or emailing Ms. Katz to discuss the date for the rescheduled hearing.

[80] Ms. Katz admits that she received the January 6 Letter on January 17, 2026. She complains that it was after the date of the ultimatum of counsel, being noon on January 12, 2026. What Ms. Katz failed to do was to reach out to counsel to ask if the Set Aside Application had been reset.

[81] It is essential that parties acting on their own behalf respond to communications from the opposing party or the opposing counsel. A party is not entitled to simply refuse to be available, which appears to be the position taken by

Ms. Katz. As noted by Griffin J.A. in the CA Reasons at para. 14: “Ms. Katz stated that she was not available and that she would never be available when counsel for the respondents was available”.

[82] A litigant who is acting on their own behalf is required to make themselves available to schedule appearances. Ms. Katz appears to be of the view that she can simply refuse to communicate with any counsel and Mr. Kosikar. This has created difficulties and Ms. Katz should give some thought on how she can receive communications other than by mail. I appreciate her position is that due to medical condition she does not want to speak with Mr. Kosikar or any counsel he retains. However, if she is going to handle this proceeding herself it is important that there is some mechanism in place to communicate. I would suggest consideration be given to a third party that Ms. Katz trusts who would be available to receive emails on her behalf.

Do the defendants have meritorious defences?

[83] This aspect of the factors is challenging since the response filed by the defendants is woefully inadequate. In the Set Aside Application counsel notes the following potential meritorious defences at para. 18:

- a. The plaintiff's claims for defamation that are contained at paragraphs 9-19, 21-24, 31, 34, 36 are being brought more than two years after the date on which the right to do so arose, in contravention of s. 3 of the *Limitation Act*, R.S.B.C. 1996, c. 266.
- b. The entirety of the Applicants' expression is protected by the *Protection of Public Participation Act*, S.B.C. c. 3, because her claim is abusive and retaliatory.
- c. The alleged defamatory statements are not defamatory (and are mere insult) or are not recognizable as comments about the plaintiff (for example, see paragraphs 17, 18, 23, 24, 27-31, 32, 34, 38, 42, 43, 48, 49, 51, 52).
- d. The alleged defamatory statements are protected by qualified and absolute privilege (for example, paragraphs 19, 20, 21, 22);
- e. The other alleged defamatory statements (including those not properly pleaded by the plaintiff) are protected by the defences of justification, fair comment, and/or responsible communication on a matter of public interest.

[84] At paragraph 19 of the Set Aside Application it states that the tort of misappropriation of personality does not exist in British Columbia: *Bao v. Welltrend United Consulting Inc.*, 2025 BCCA 3 at paras. 33-34.

[85] Former counsel for the defendants argues that the common law tort of breach of confidence does not apply since the sharing of the confidential information conveyed must have been confidential in the sense that it was communicated in confidence, and it was misused by the party to whom it was communicated: *Equustek Solutions Inc. v. Jack*, 2024 BCCA 104 at para. 32.

[86] Based on the potential of an amended response, and taking into account that the response filed was drafted without the assistance of counsel and when Mr. Kosikar describes being under mental distress due to the death of his sister, I conclude that the potential for meritorious defences exist.

Interest of Justice

[87] In my view, a further consideration is that Ms. Katz did not comply with the requirements of R. 3-8 in that a requisition from the registrar confirming no response had been filed was obtained, which was required.

Affidavit evidence in support

[88] Mr. Kosikar filed an affidavit in support of the Set Aside Application that provided the evidentiary foundation that there was no deliberate or wilful conduct, that he acted in a timely way and with amendments to the response there exists some meritorious defences although not currently properly plead.

Conclusion

[89] I find that it is in the interests of justice to set aside the Default Order. The result is that there is no basis to set aside the Branch Order as it was correctly made. The Plaintiff Set Aside Application is dismissed.

Issue 4: Should the defendants be entitled to file an amended response?

[90] Ms. Katz seeks an order that the defendants not be permitted to file an amended response to civil claim. The Branch Order gave leave to the defendants to file an amended response within 14 days. The defendants did not file the amended response during the permitted time period, and as of the day of the Hearing, they had not filed an amended response.

[91] Since a notice of trial has been filed, the defendants are not permitted to file an amended response unless they have the consent of the plaintiff or a court order: R. 6-1(1)(b).

[92] There was no explanation given by the defendants for their failure to comply with the Branch Order. If the defendants want to file an amended response, they will need to bring an application pursuant to R. 6-1(1)(b)(i) seeking leave of the court. If that application is filed, the proposed amended response should be attached to the notice of application.

[93] Mr. Kosikar should be aware that every day he delays in making the application to amend his response, heightens the potential that the Court will not grant his amendments. As the matter gets closer to the scheduled trial date, the less likely that any amendments will be granted.

Issue 5: What other procedural issues need to be addressed by the parties?

[94] The following comments are made because both parties are self-represented and both have struggled to follow the proper procedure under the *Rules*. This is understandable in that neither of them are lawyers. I do not mean to be critical of either but offer these comments to assist the parties moving forward in this proceeding.

[95] When the court makes an order, such as the order made by Basran J. on October 20, 2025, there is an obligation on the parties to reduce the orders made to

a formal order of the court in accordance with R. 13-1: *Halvorson v. British Columbia (Medical Services Commission)*, 2010 BCCA 267 at paras. 18-19.

[96] The parties should be aware that they must schedule a trial management conference as required by R. 12-2(1)(b)(ii). This is a mandatory procedure when one or more parties are representing themselves.

[97] I note that the object of the *Rules*, as noted by Griffin J.A., is to “secure the just, speedy, and inexpensive determination of every proceeding on its merits”: R. 1-3(1). As she noted, quoting from para. 41 of *Universe v. Fraser Health Authority*, 2022 BCCA 201:

[78] The objective of ‘proportionality’ is now expressly recognized as an important part of civil litigation. This objective reflects that no one litigant or group has the right to demand that unlimited time and resources be devoted to a particular case, no matter how important it is. The rights and interests of other litigants in other cases waiting to be heard must be balanced in a fair way against litigants who are before the court, and measures designed to increase efficiency must generally be followed, both in the form of court rules and in judges’ management of trials.

[98] To date these parties have collectively appeared before at least nine different Supreme Court judges and one Court of Appeal judge. Ms. Katz has filed 19 affidavits in this action. There have been seven applications filed in this one action to date.

[99] In respect to affidavits the requirement is that a party use sequential numbers on affidavits made by the same person in the same proceeding: R. 22-2(3)(b). It gets confusing when the same number is used twice. Ms. Katz filed affidavit #15 on November 18, 2025, but she has filed two further affidavits on February 9, 2026 and March 30, 2026, both referenced as “the 1st Affidavit”. To comply with the *Rules*, Ms. Katz should be using sequential numbers on her affidavits. It helps keep track of which affidavit is being referred to.

[100] Mr. Kosikar, in his application filed May 1, 2026, refers to a further affidavit “to be filed”. Rule 8-1(3)(b) requires the applicant to file the original of every affidavit that is to be referred to by the applicant at the hearing. It is not sufficient to refer to

an affidavit “to be filed”. This does not provide proper notice to the opposing party on the evidence in support of the application being made.

[101] I further note that Mr. Kosikar filed a requisition on May 11, 2026 which appears to list further evidence that Mr. Kosikar wishes to rely upon. This is not an appropriate way to place evidence before the Court. Evidence should be set out in a properly sworn affidavit, served on the opposing party, and not simply listed in a requisition that is filed in Court.

Orders Made

[102] The application of the plaintiff filed February 9, 2026 seeking to set aside the order of Branch J. made January 23, 2026 is dismissed.

[103] Costs of this application will be as provided for in R. 14-1(12), meaning that the plaintiff is not entitled to costs of this application even if she succeeds at trial. The defendants are entitled to costs of this application if they are awarded costs of the trial.

[104] As requested by Ms. Katz, I will return the application record provided by her to Scheduling so she can make arrangements to pick it up. The application record will be kept by Scheduling for one month. If it is not picked up during that period, it will be destroyed.

“Forth J.”