

Date Filed: 21/04/01  
Time: 14:58

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION

2020-HC-DEM-CIV-SOC-13

BETWEEN:

*S. Clarke*  
*Shannel Clarke*  
*1st April, 2021*

ANNETTE FERGUSON

Respondent/ Claimant

And

BHARRAT JAGDEO

Applicant/ Defendant



NOTICE OF APPLICATION: URGENT

Dr. Bharrat Jagdeo (the “Applicant” or the “Defendant”), will make an application to the court on the \_\_\_\_\_ day of April 2021, at \_\_\_\_\_ o’clock or soon after that time as the motion can be heard, at the High Court of the Supreme Court of Judicature. *Before the Hon. Madam Justice KURTANUS*

PROPOSED METHOD OF HEARING: **On Notice. Urgent. The Application Is To Be Heard In Writing and Orally.**

1. THE APPLICATION IS FOR:

- a. An order setting aside the order for default judgment (the “Judgment”) against the Applicant dated March 11, 2021 and entered March 15, 2021 in its entirety;
- b. An order dismissing the Statement of Claim for delay;
- c. Alternatively, an order allowing the Applicant to file a Defence to this action within 7 days of the date of the granting of this application, and extending the relevant case management timelines to allow the Applicant to properly defend the claim;

- d. An Order pursuant to Section 17 of the Defamation Act and sections 19.02, 19.04 and 25.02(1)(b)(i) of the CPR consolidating this action with Action Number 2019-HC-DEM-CIV-SOC-275;
  - e. An interim order staying the enforcement of the Judgment pending the hearing and determination of this application;
  - f. Costs; and
  - g. Such further or other order as the Court may deem just.
2. THE GROUNDS FOR THE APPLICATION ARE set forth below and are contained in the accompanying submissions and affidavits in support which are incorporated herein as if fully set forth:
1. The Applicant is an individual with address 41 Robb Street, Lacytown, Georgetown, is the Vice President and former President of Guyana, and is and was a public political figure.
  2. He was and is the General Secretary of the People's Progressive Party (the "PPP") which forms the Government of Guyana, and prior to August 3, 2020, was the Leader of the Opposition, a constitutional office holder, as well as the leader of the List of Candidates for the PPP.
  3. On or around January 9, 2020, the Respondent filed the instant action against the Applicant, which was served on January 27, 2020. Pursuant to the provisions of the CPR, a Defence was due to be filed on or around February 25, 2020, less than one week prior to the scheduled March 2, 2020 national elections.
  4. On February 24, 2021, more than one year after the filing of the Statement of Claim (the Claim"), the Respondent applied for a Default Judgment, which was granted by order dated March 11, 2021, entered on March 15, 2021 (the "Order").
  5. The order for default judgment was served on the Applicant on March 30, 2021. To date the Order has not been served on the Applicant's then counsel or his former office.
  6. Between January 9, 2020 and February 24, 2021, no action was taken by the Respondent, and accordingly, the matter ought to have been dismissed for delay in accordance with the mandatory provisions of CPR Part 13, and accordingly, in the circumstances, the issuance of the Order was improper and irregular.
  7. For this reason alone, it is respectfully submitted that the Order ought to be set aside and the Statement of Claim dismissed.

8. Separate and apart from the foregoing, the Respondent has not fulfilled the requirements necessary for the grant of a default judgment.
9. The Respondent failed to alert the Court that she has filed identical parallel proceedings against the Guyana Times with matter number 2020-HC-DEM-CIV-SOC-14, which seeks damages against the Guyana Times arising out of the identical comments. Not only matter would have been relevant to the Court concerning the assessment of damages, but as a matter of law, the filing of two defamation matters arising out of the same facts and circumstances is improper and impermissible.
10. Moreover, in accordance with the provisions of CPR 12.01(3)(b), default judgment ought not to have been granted since the claim against the Applicant could not properly be dealt with separately from matter number 2020-HC-DEM-CIV-SOC-14.
11. The fly sheet in the matter reveals that on January 21, 2020, the file in this matter was assigned by the Honourable Chief Justice to “Justice Gino Persaud to meet related matter”, and this fact ought to have been disclosed by the Respondent in her application for default judgment.
12. Additionally, the Respondent failed to alert the Court that the interlocutory application in the foregoing matter was heard together with the interlocutory application in this matter, and under the circumstances a default judgment ought not to have been granted since there is now a risk of inconsistent decisions arising out of identical facts which affect the rights of the Defendants in number 2020-HC-DEM-CIV-SOC-14.
13. Since the Claim was for an unspecified sum of damages, the Court ought not have issued a default judgment for a sum certain, but rather, ought to have set the matter down for an assessment and inviting the Applicant to a hearing, warranting the setting aside of the Order.
14. The Applicant’s counsel was not informed of the application for a default judgment in breach of the provisions of CPR 1.01 and CPR 1.02, despite there being a record of counsel appearing for the Applicant in prior interlocutory proceedings. Had counsel been informed, the appropriate applications would have been sought to enable the filing of the defence, so that the matters in controversy would have been dealt with justly giving effect to the overriding objective, and in the circumstances, the Court ought not to have exercised its discretion to grant default judgment without notice, CPR 12.02(1) being discretionary in this regard.
15. Moreover, the Respondent’s attorney knew or ought to have known that the Applicant was represented by counsel, and ought to as a matter of professional courtesy acted in manner consistent with the highest standards of the profession and informed Anil Nandlall, S.C. that he intended to filed an application for a

default judgment prior to doing so as to afford an opportunity for a defence to be filed.

16. Alternatively, CPR Part 12.03((2) provides that an application to set aside a default judgment may be made within 28 days of the Applicant having been served with the order for Default Judgment.
17. The Applicant failed to file a defence within the time stipulated by the CPR for the reasons set forth herein, through no fault of his own.
18. The Applicant retained Mr. Anil Nandlall, S.C., the current Attorney General of Guyana, to defend his interests in this matter, who was instructed to promptly file the Defence in this matter.
19. Mr. Nandlall duly drafted the defence in this matter prior to January 27, 2020, but due to the reasons set forth herein inadvertently failed to do so, he having sole conduct of the matter.
20. At the time that the Defence was due, Mr. Anil Nandlall was legal adviser to the Leader of the Opposition and the Peoples Progressive Party (the "PPP") and was and is a senior member of the PPP, and was responsible for large portions of the PPP's elections campaign. His duties included but were not limited participating on the campaign trail, ensuring of the accreditation of PPP polling agents in Region 4, liaising with GECOM to ensure the propriety of polling places, meeting with election officials, diplomats and observers to ensure the smooth machinery of the electoral process.
21. As a result of his responsibilities, Mr. Nandlall was required to work on elections related matters for more than 20 hours a day during the month of February, 2020 through to the March 2, 2020 elections.
22. After the conclusion of the elections, Mr. Nandlall continued to be extensively and exclusively engaged in matters relating to elections, including acting as lead counsel in elections related litigations, as well as matters involving a recount of votes which continuously ensued through to August 3, 2020 and thereafter.
23. These tasks resulted in Mr. Nandlall inadvertently failing to file the Defence though drafted. This inadvertence was not due to neglect, but rather a combination of unusual and exceptional circumstances, which caused counsel to simply be unable to comply with the time limits established by the rules.
24. Additionally, the Covid-19 Pandemic resulted in the shuttering of Mr. Nandlall's office for several months in 2020 and the subsequent relocation of files. Accordingly, Mr. Nandlall did not discover that the defence though drafted was not filed.

25. The Court itself did not sit for most of 2020, matters being adjourned or held in abeyance, this still being the case today, and it has been usual and customary for matters which were filed around the time of the Covid-19 pandemic to be case managed so as to cure any default under the rules without penalty.
26. In that regard, a parallel matter arising out of the same facts and circumstances, filed by the Respondent against the Guyana Times with matter number 2020-HC-DEM-CIV-SOC-14 has not come up for case management since its commencement on January 9, 2020, nor has the registry complied with CPR Part 13.
27. The Applicant at all times diligently and promptly enquired of his counsel of the status of the matter, and was advised by Counsel that the defence had been filed, that matter had not yet been fixed for case management.
28. The Applicant made several inquiries about the filing of a defence, and at all times was under the mistaken impression that the matter had been attended to.
29. Had the Applicant been aware of the delay in filing of the Defence, he would have made arrangements for the appropriate application to be made to the Court.
30. Moreover, the Applicant was also involved in the 2020 elections campaign, this campaign taking the entirety of his time and devotion. Accordingly, it would have been impossible for the Applicant to take any other step other than the foregoing to secure his interests, the factual circumstances in this matter resulting in the non-filing of the defence being exceptional.
31. The first time the Applicant became aware of the default was when the Order was served.
32. The Applicant ought not to be penalised for law office inadvertence, he having a reasonable excuse for the failure to file the Defence.
33. The Applicant has a real prospect of successfully defending the claim against him by relying on fact that the statements were not defamatory and the defences of justification, fair comment, qualified privilege and the provisions of the Defamation Act Cap 6:03 apply.
34. Specifically, in relation to the allegations contained at paragraph 12 of the Statement of Claim, the Applicant will prove at trial that the Respondent, a sitting Minister in Government responsible for Housing, was granted a house lot under irregular circumstances, i.e. applying for a house lot and commencing construction within a year of her application, almost immediately after taking office, when it is an open and notorious fact that housing applications take in excess of 5 years of being granted, that the lot issued was triple the size of a usual house lot granted to citizens, that the price paid for the house lot was less than 20% of the price of house

lots of that size, was granted a preferential corner house lot skipping the queue of entitled applicants.

35. Additionally, in relation to the allegations contained at paragraph 22 of Statement of Claim the Applicant will content that not only did her statements not defame the Respondent in the manner alleged, but will also prove at trial that those comments were justifiable and true by proving that, *inter alia*, (i) the Respondent previously worked at the Guyana Post Office as its Properties Manager, (ii) during her tenure and oversight financial irregularities occurred, which included but were not limited to failing to reconcile and account for advances and expenses, contracting related persons without explanation and failing to justify the award of works and corresponding expenditures, paying for transportation costs which were inflated and unverified, approving payment for labour costs for salaried persons of the Guyana Post Office in a manner which escaped Management's scrutiny, (iii) the Respondent refused to substantively participate in investigations concerning misappropriation of advances and expenses and instead resigned, (iv) that on the conclusion of an investigation the Respondent was suspended for one week after it was concluded that her responses to audit questions were unsatisfactory, and (v) that the Respondent was written to on October 17, 2008 by the Human Resource Manager and removed as Properties Manager.
36. Moreover the facts alleged in the Statement of Claim do not entitle the Respondent to damages for libel. The alleged statements made by the Applicant, taken in context, were not defamatory or false or malicious as alleged and are not capable of the meanings attributed to them by the Respondent in the Statement of Claim. The allegation that the statements were made therefore do not entitle the Respondent to the relief sought in the statement of claim.
37. The Statement of Claim contains no facts which set out how the Respondent's reputation has been lowered or affected in any material way by the articles; there are only unsubstantiated conclusions put forward.
38. In any event, it is clear from the facts alleged in the Statement of Claim that the comments concerned the distribution of state land and the conduct of public officials, which are matters of public interest and matters concerning the discharge of public functions, the Applicant, a constitutional office holder, being entitled to bring these matters to the public's attention.
39. Assuming but not conceding that the statements were defamatory, the fact that the articles were about matters of public importance makes the content privileged.
40. Specifically, (i) the alleged statements did not rise to the level of seriousness necessary to withstand a defamation claim, (ii) the matters were of public concern, (iii) the comments supported by evidential documents and was credible; (iv) the Applicant believed the allegations to be supported by fact, and are in support by fact; and (v) the substance of the comments warranted publication reasonable.

41. At all times the Applicant acted reasonably and responsibly.
  42. As set out above, the Applicant has complete defences against the claim. If allowed to lead evidence, the Applicant will be able to establish that the statements made were not defamatory and were in any event true. The statements were also a fair comment on matters of public interest and privilege applies to the Applicants even if the statements were found to be defamatory.
  43. A draft of the defence is attached to the Affidavit in Support of this Application.
  44. The Applicant has generally complied with all other rules and orders thus far in this matter.
  45. It is respectfully submitted that this request will not cause any prejudice to the Respondent, on the contrary it would allow all parties to ventilate their positions claimed, and it would allow the issues to be determined on the merits and the weight of evidence extracted during the trial.
  46. There is no trial date to be affected.
  47. Given the length and complexity of the issues in controversy, the large sum of damages claimed by the Respondent, the Applicant's defence, the overriding objective of the CPR and the interests of justice, assuming the Statement of Claim is not dismissed, it would be prejudicial to the Applicant to deny him an opportunity to be heard by serving and filing his defence in this matter, having already been sanctioned in this matter.
  48. The failure to comply with the CPR's timeline can be remedied within 1 day which is a reasonable time in the circumstances and any defect hereunder can be remedied by an award of costs.
  49. This application is urgent since the Judgment has been entered and the Respondent may seek to enforce that judgment at any time warranting an immediate stay, rendering the instant application moot.
3. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application which contents are included herein as if fully set forth:
1. Affidavit of Bharrat Jagdeo dated April 1, 2021;
  2. A DRAFT OF THE ORDER that the Applicant seeks is attached.

April 1, 2021

Devindra Kissoon  
Attorney-at-Law for the Applicant  
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87 A Issano Place West, Bel Air Park, Georgetown  
Tel: 231 1875  
E-mail: [dkissoon@londonhousechambers.com](mailto:dkissoon@londonhousechambers.com)

Date:

1/4/21

  
Signature for Registry

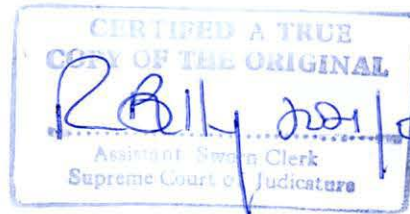
Issued by:

T. Wadd

Address of Registry:

T. Wadd

**TO: MR. LYNDON AMSTERDAM**  
Attorney for Ms. Annette Ferguson  
77 Hadfield Street  
Werk-en-Rust  
Georgetown, Guyana





**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION**

**2020-HC-DEM-CIV-SOC-13**

**BETWEEN:**

**ANNETTE FERGUSON**

Respondent/Claimant

**And**

**BHARRAT JAGDEO**

Applicants/ Defendant

**NOTICE OF APPLICATION**

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IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION

2020-HC-DEM-CIV-SOC-13

BETWEEN:

ANNETTE FERGUSON

Respondent/  
Respondent

And

Received By: S. Clarke

Print Name: Shannel Clarke

Date: 1<sup>st</sup> April, 2021



BHARRAT JAGDEO

Applicant/ Defendant

**AFFIDAVIT OF DR. BHARRAT JAGDEO**

I, **BHARRAT JAGDEO** of 41 Robb Street, Lacytown, Georgetown, Guyana, being duly sworn, MAKE OATH AND SAY:

1. I am the Applicant herein and respectfully submit this affidavit in support of the Notice of Application filed herewith to set aside the Default Judgment and strike out the Respondent's claim against me, the Vice President and former President of Guyana, and is and was a public political figure.

2. Unless stated to be upon information and belief, the facts contained herein are within my personal knowledge, based upon my review of the files in this matter, and are based upon my conversations with counsel.

3. I was and am the General Secretary of the People's Progressive Party (the "PPP") which forms the Government of Guyana, and prior to August 3, 2020, was the Leader of the Opposition, a constitutional office holder, as well as the leader of the List of Candidates for the PPP, and am a former President of Guyana.

4. On or around January 9, 2020, the Respondent Annette Ferguson (the “Respondent”) filed the instant action against me, which was served on me on January 27, 2020. I have been informed by my counsel and verily believe that pursuant to the provisions of the CPR, a Defence was due to be filed on or around February 25, 2020, less than one week prior to the scheduled March 2, 2020 national elections.

5. Apparently, unbeknownst to me or my former counsel Anil Nandlall, S.C., on February 24, 2021, more than one year after the filing of the Statement of Claim (the Claim”), the Respondent applied for a Default Judgment, which was granted by order dated March 11, 2021, entered on March 15, 2021 (the “Order”). A copy of the Court’s fly sheet in this matter is attached hereto and marked as Exhibit “A”.

6. The order for default judgment was served on me on March 30, 2021. I have been informed by my former counsel that to date the Order has not been served on him or his former office.

7. I have been informed by counsel and verily believe that CPR Part 12.03((2) provides that an application to set aside a default judgment may be made within 28 days of the Applicant having been served with the order for Default Judgment, so long as a reasonable excuse is proffered.

8. I failed to file a defence within the time stipulated by the CPR for the reasons set forth herein, through no fault of my own.

9. When I was served with this matter I exclusively retained Mr. Anil Nandlall, S.C., the current Attorney General of Guyana, to defend my interests in this matter, who I instructed to promptly file the Defence in this matter. At no time did I retain any other counsel, nor did I have cause to do so since Mr. Nandlall has always ably represented my interests.

10. In gave Mr. Nandlall detailed instructions concerning my defence who duly recorded the same.

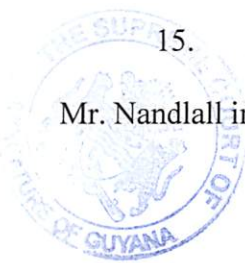
11. I have been informed by Mr. Nandlall that he duly drafted the defence in this matter prior to January 27, 2020 which was placed in his file, but due to the reasons set forth herein inadvertently failed to do so, he having sole conduct of the matter.

12. At the time that the Defence was due, Mr. Anil Nandlall was legal adviser to myself in my capacity as the Leader of the Opposition and the Peoples Progressive Party (the "PPP"), the largest political party in Guyana. He was and is a senior member of the PPP, and was responsible for large portions of the PPP's elections campaign. His duties included but were not limited participating on the campaign trail, ensuring the accreditation of PPP polling agents in Region 4, liaising with GECOM to ensure the propriety of polling places, meeting with election officials, diplomats and observers to ensure the smooth machinery of the electoral process.

13. As a result of his responsibilities, I am aware that Mr. Nandlall was required to work on elections related matters for more than 20 hours a day during the month of February, 2020 through to the March 2, 2020 elections, as was I.

14. After the conclusion of the elections, Mr. Nandlall continued to be extensively and exclusively engaged in matters relating to elections, including acting as lead counsel in elections related litigations, as well as matters involving a recount of votes which continuously ensued through to August 3, 2020 and thereafter. The event following the March 2, 2020 elections are open and notorious and need not be expounded, save to say that Mr. Nandlall and myself were working around the clock for five months to attend to the matters that arose therefrom.

15. I have been informed by Mr. Nandlall and verily believe that these tasks resulted in Mr. Nandlall inadvertently failing to file the Defence though drafted. I have been informed by Mr.



Nandlall that this inadvertence was not due to neglect, but rather a combination of unusual and exceptional time sensitive circumstances, which caused counsel to fail to comply with the time limits established by the rules.

16. Additionally, I have been informed by Mr. Nandlall that the Covid-19 Pandemic resulted in the shuttering of his office for several months in 2020 and the subsequent relocation of files. Accordingly, due to the removal of files, Mr. Nandlall did not discover that the defence though drafted was not filed.

17. I have been informed by Mr. Nandlall that the Court itself did not regularly sit for a large portion of 2020, matters being adjourned or held in abeyance, this still being the case today, and that it has been usual and customary for matters which were filed around the time of the Covid-19 pandemic to be case managed so as to cure any default under the rules without penalty.

18. In that regard, I have been informed by my counsel that a parallel matter arising out of the same facts and circumstances, filed by the Respondent against the Guyana Times with matter number 2020-HC-DEM-CIV-SOC-14 has not come up for case management since its commencement on January 9, 2020, nor has the registry complied with CPR Part 13.

19. At all times during February 2020 and beyond, I diligently and promptly enquired of Mr. Nandlall of the status of the matter, and was advised by him that the defence was filed, that the matter had not yet been fixed for case management.

20. I made several inquiries about the filing of a defence, and at all times was under the mistaken impression that the matter had been attended to. I had no reason to believe otherwise, and had I known that the defence was not filed, I would have immediately taken steps to ensure that the proper application was made to the Court.



21. Moreover, since I was also involved in the 2020 elections campaign, this campaign taking the entirety of my time and devotion, it would have been impossible for me to take any other step other than the foregoing to secure my interests, the factual circumstances in this matter resulting in the non-filing of the defence being exceptional.

22. The first time I became aware of the default was when the Order was served.

23. I am advised by counsel and verily believe that my former counsel's and my personal circumstances as aforesaid, constitutes a reasonable explanation for the failure to timely file a defence. We did not in any way mean to disregard the Court's process.

24. I respectfully submit that I ought not to be penalised for law office inadvertence especially in light of the fact that I have a real prospect of successfully defending the claim as is outlined below.

25. Additionally, I have been informed by counsel and verily believe that between January 9, 2020 and February 24, 2021, no action was taken by the Respondent, and accordingly, the matter ought to have been dismissed for delay in accordance with the mandatory provisions of CPR Part 13, and accordingly, in the circumstances, the issuance of the Order was improper and irregular.

26. I have been informed by counsel and verily believe that for this reason alone, it is respectfully submitted that the Order ought to be set aside and the Statement of Claim dismissed.

27. Separate and apart from the foregoing, I have been informed by counsel and verily believe that the Respondent has not fulfilled the requirements necessary for the grant of a default judgment.



28. I have been informed by counsel and verily believe that the Respondent failed to alert the Court that she has filed identical parallel proceedings against the Guyana Times with matter number 2020-HC-DEM-CIV-SOC-14, which seeks damages against the Guyana Times arising out of the identical comments.

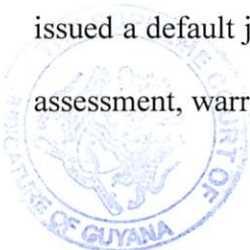
29. Not only would this matter have been relevant to the Court concerning the assessment of damages, but I have been informed by counsel that as a matter of law, the filing of two defamation matters arising out of the same facts and circumstances is improper and impermissible.

30. I have also been informed by counsel that in accordance with the provisions of CPR 12.01(3)(b), default judgment ought not to have been granted since the claim against me could not properly be dealt with separately from matter number 2020-HC-DEM-CIV-SOC-14.

31. The fly sheet in the matter reveals that on January 21, 2020, the file in this matter was assigned by the Honourable Chief Justice to “Justice Gino Persaud to meet related matter”, and this fact ought to have been disclosed by the Respondent in her application for default judgment.

32. Additionally, the Respondent failed to alert the Court that the interlocutory applications in the foregoing matter was heard together with the interlocutory application in this matter, and under the circumstances a default judgment ought not to have been granted since there is now a risk of inconsistent decisions arising out of identical facts which affect the rights of the Defendants in number 2020-HC-DEM-CIV-SOC-14.

33. Since the Claim was for an unspecified sum of damages, the Court ought not have issued a default judgment for a sum certain, but rather, ought to have set the matter down for an assessment, warranting the setting aside of the Order.



34. I have also been informed by counsel and verily believe that since my former counsel was not informed of the application for a default judgment despite being on record, this is in breach of the provisions of CPR 1.01 and CPR 1.02. Had counsel been informed, the appropriate applications would have been sought to enable the filing of the defence, so that the matters in controversy would have been dealt with justly giving effect to the overriding objective, and in the circumstances, the Court ought not to have exercised its discretion to grant default judgment without notice, CPR 12.02(1) being discretionary in this regard.

35. Moreover, it clear from the fly sheet that the Respondent's attorney knew or ought to have known that I was represented by counsel at the time that the default application was made, and ought to as a matter of professional courtesy acted in manner consistent with the highest standards of the profession and informed Anil Nandlall, S.C. that he intended to filed an application for a default judgment prior to doing so as to afford an opportunity for a defence to be filed.

36. Without prejudice to the foregoing, I respectfully deny that the statements as alleged in the statement of claim are defamatory and that I have a real prospect of defending the claim. A copy of my draft defence is attached hereto and marked as Exhibit "B" and I incorporate the statements therein as if fully set forth herein.

37. The statements I made were not defamatory and the defences of justification, fair comment, qualified privilege and the provisions of the Defamation Act Cap 6:03 apply.

38. Specifically, in relation of the allegations contained at paragraph 12 of the Statement of Claim, I will prove at trial that the Respondent, a then sitting Minister in Government responsible for Housing, was granted a house lot under irregular, nepotistic and corrupt circumstances.





39. For example, she applied for a house lot and commenced construction within a year of her application (See ¶¶7 and 10 of the Statement of Claim), almost immediately after taking office in 2015, and was granted title almost within a year of taking office in 2016, when it is an open and notorious fact that housing applications take in excess of 5 years of being granted due to large back log of applications.

40. Additionally, the lot issued to the Claimant was triple the size of a usual house lot granted to citizens, of approximately 10,000 square feet (0.2525 acre), making up almost three house lots, a standard house lot being approximately 45 by 80 in size i.e. 3,600 square feet.

41. Moreover, the Claimant has admitted in ¶9 of the Statement of Claim that the price paid for the house lot was G\$900,000, and I will prove at trial that that price was less than 30% of the price paid by citizen for house lots of that size, which size was not readily available to the public. For example, from publicly available records, nearby parcel number 913 with size 0.2516 was sold in 2014 for G\$3,000,000 and parcel number 680 with size 0.2093 was sold in 2014 for G\$2,500,000. I was also prove that trial that the Claimant was granted a preferential corner house lot skipping the queue of entitled applicants.

42. I intend to prove at trial that the Claimant used her influence and weight of her position as Housing Minister to be afforded a favour by Government in breach of established Government policy, or alternatively accepted the house lot in breach of that policy.

43. I also will produce evidence at trial that several communities, persons received promises of allocation of house lots but no infrastructure, nor any preparation of lands were done, for house lots to be allocated. These communities, include, Mon Repos, East Coast Demerara and Turkeyen, Greater Georgetown.

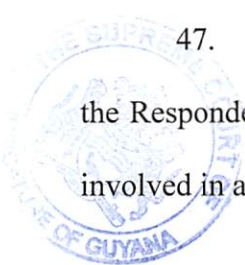


44. Additionally, in relation to the allegations contained at paragraph 22 of Statement of Claim I will prove at trial that not only did her statements not defame the Respondent in the manner alleged, but will also prove at trial that those comments were justifiable and true by proving that, *inter alia*, (i) the Respondent previously worked at the Guyana Post Office as its Properties Manager, (ii) during her tenure and oversight financial irregularities occurred, which included but were not limited to failing to reconcile and account for advances and expenses, contracting related persons without explanation and failing to justify the award of works and corresponding expenditures, paying for transportation costs which were inflated and unverified, approving payment for labour costs for salaried persons of the Guyana Post Office in a manner which escaped Management's scrutiny, (iii) the Respondent refused to substantively participate in investigations concerning misappropriation of advances and expenses and instead resigned, (iv) that on the conclusion of an investigation the Respondent was suspended for one week after it was concluded that her responses to audit questions were unsatisfactory, and (v) that the Respondent was written to on October 17, 2008 by the Human Resource Manager and removed as Properties Manager.

45. I intend to provide to the Court at trial the audit report dated July 2, 2008 written to the Postmaster general from the Manager of the Inspectorate Department outlining the foregoing findings, and intend to call persons who participated in the audit to verify these allegations.

46. Accordingly, I will prove at trial that the Respondent was accused of and/or suspected of misappropriation while employed by the Guyana Post Office, which is a complete defence to the allegations contained in the Statement of Claim.

47. In any event, I will prove at trial that in making those statements I did not accuse the Respondent of misappropriation but rather simply asked the question as to whether she was involved in any way. This is not defamatory and cannot be construed as such.



48. Moreover, I have been informed by counsel and verily believe that the facts alleged in the Statement of Claim do not entitle the Respondent to damages for libel. My alleged statements, taken in context, were not defamatory or false or malicious as alleged and are not capable of the meanings attributed to them by the Respondent in the Statement of Claim. The allegation that the statements were made therefore do not entitle the Respondent to the relief sought in the statement of claim.

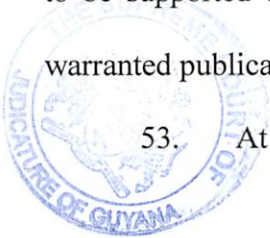
49. The Statement of Claim contains no facts which set out how the Respondent's reputation has been lowered or affected in any material way by the articles; there are only unsubstantiated conclusions put forward.

50. In any event, it is clear from the facts alleged in the Statement of Claim that the comments concerned the distribution of state land and the conduct of public officials, which are matters of public interest and matters concerning the discharge of public functions, and I as a constitutional office holder and Leader of the Opposition at the time was entitled to bring these matters to the public's attention.

51. Moreover, assuming but not conceding that the statements were defamatory, the fact that the articles were about matters of public importance makes the content privileged.

52. Specifically, (i) the alleged statements did not rise to the level of seriousness necessary to withstand a defamation claim, (ii) the matters were of public concern, (iii) the comments are supported by evidential documents and was credible; (iv) I believed the allegations to be supported by fact, and are in support by fact; and (v) the substance of the comments warranted publication reasonable.

53. At all times I acted reasonably and responsibly.



54. I have complete defences against the claim and a real prospect of success. If allowed to lead evidence, the I will be able to establish that the statements made were not defamatory and were in any event true. The statements were also a fair comment on matters of public interest given my constitutional office.

55. I have generally complied with all other rules and orders thus far in this matter.

56. It is respectfully submitted that my request to set aside the default judgment will not cause any prejudice to the Respondent, on the contrary it would allow all parties to ventilate their positions claimed and it would allow the issues to be determined on the merits and the weight of evidence extracted during the trial.

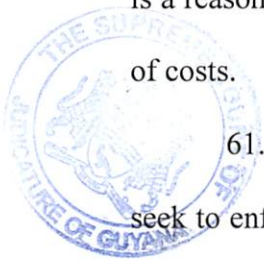
57. Conversely, if the Court denies the reliefs sought, it would cause me irreparable damage, which would, it is respectfully submitted, offend the interests of justice.

58. There is no trial date to be affected.

59. Given the length and complexity of the issues in controversy, the large sum of damages claimed by the Respondent, my real prospect of defending the claim, the overriding objective of the CPR and the interests of justice, assuming the Statement of Claim is not dismissed, it would be prejudicial to deny me an opportunity to be heard by serving and filing my defence in this matter, having already been sanctioned in this matter.

60. The failure to comply with the CPR's timeline can be remedied within 1 day which is a reasonable time in the circumstances and any defect hereunder can be remedied by an award of costs.

61. This application is urgent since the Order has been entered and the Respondent may seek to enforce that judgment at any time, rendering the instant application moot. Accordingly, I



also respectfully request that a stay of enforcement of the Order pending the hearing and determination of this application.

62. For the reasons set forth and for those to be articulated by my counsel on my behalf, I respectfully request that the reliefs sought herein be granted in their entirety.



Sworn before me at the city of  
Georgetown, in the County of  
Demerara on this <sup>1<sup>st</sup></sup> day of  
**April** 2021. *b*

**ASHOKE KUMAR**  
SIG: *[Signature]* .....  
Commissioner of Oaths to Affidavits  
Commissioner of Oaths to  
Affidavits

*[Signature]* .....  
**Bharrat Jagdeo**



# Exhibit A

ACTION # 2020-40-DEM-CU-SOC-13

Mr. Lyndon Amsterdam  
Attorney-At-Law

Annette Ferguson  
Claimant/Applicant

Bharrat Jagdeo  
Defendant/Respondent

2020

January	9 <sup>th</sup>	Form 8A	Statement of Claim
"	"	Form 4C	Information for court use filed
"	"	Form 63A	Notice of Appointment of Attorney-at-Law filed
"	"	Form 11	Notice of Application filed and
"	"		fixed for the 5 <sup>th</sup> of February
"	"		2020 at 3:00pm before the Hon
"	"		Justice Priya Sewnarine-Beltray.
"	"	Form 80	Affidavit of Annette Ferguson
"	"	Form 5A	Draft order attached
"	"	Form	Exhibits attached
2020 Jan	21 <sup>st</sup>	File	requested by Honorable Chief Justice for
			re-assignment to Justice Gino Persaud to meet related
			matter.
re-assigned to Persaud J to meet related case			
on 21/1/2020.			

This is the Document Marked ( )  
 Referred to in the Affidavit By  
 Sworn Before Me  
 On The 01 Date of 04 2021  
 Commissioner of Oaths



January 21 <sup>st</sup>	Room 610 Pessard		
	Mr. L. Amsterdam		
	Matter not served.		
	Adjourned 29 <sup>th</sup> Jan, 2020 @		
	11:15		
January 29 <sup>th</sup>	Room 610 Pessard J		
	Mr. L. Amsterdam with Mr. L. Roberts for Applicant		
	Mr. A. Nandall for Respondent		

Proceedings served Mr. Nandall informs

	Court that he has received the		
	document today Request leave to		
	file affidavit in answer.		
	Leave to Mr. Nandall to file		
	affidavit in answer before 10 <sup>th</sup>		
	February 2020.		
	Adjourned 17 <sup>th</sup> February, 2020		
	@ 9:30 am		
February 17 <sup>th</sup>	Room 610 Pessard J		
	Mr. L. Amsterdam		
	Mr. A. Nandall		
	Mr. N. Cairly		

Action # \_\_\_\_\_

Attorney-at-Law

Claimant/Applicant

-AND-

Defendant/Respondent

Oral addresses by Mr. L. Amsterdam  
 Oral addresses by Mr. M. Nandall  
 Oral addresses by Mr. N. Cairn  
 Replied by Mr. L. Amsterdam  
 Adjourned 25<sup>th</sup> February 2000 @  
 10:30 am.

February 25

Param Puro Puro J

Ms. L. Roberts for Mr. L. Amsterdam  
 Mr. M. Nayan for Mr. M. Nandall  
 Mr. D. Fission with Mr. N. Cairn

Ruling

Having considered the two notices  
 of Application filed by the claimant  
 for interim injunctions and having  
 having considered the affidavits and  
 in answer and the written submission

filed by the Parties and having heard the oral arguments on behalf of the Parties it is HEREBY ORDERED that the said two N.O.A's filed by the claimant for interim injunctions be and are hereby dismissed with costs in the cause.

2020  
27 Jan

Service was effected on the respondent

Feb 10

Affidavit in Answer filed.

Feb 13<sup>th</sup>

Affidavit in Reply filed.

Feb 18<sup>th</sup>

Skeletal Arguments filed

2020  
Dec 28<sup>th</sup>

Order entered ✓

2021

February 24

Notice of application made without notice filed and fixed before the Hon. Justice S Kurtzious

March 2021 11<sup>th</sup>

Mr. L. Amsterdam Claimant - ~~and A. A. Nandall, Resp~~  
Coram J. Kurtzious (J) J  
These being no defence filed and upon an application for Jtment in default, the Court hereby grants Jtment for the claimant against the Defendant Bharat Bagdeo in the sum of \$ 20,000,000.00.  
Costs to the claimant in the sum of \$ 75,000.00 -

# Exhibit B



**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION**

**2020-HC-DEM-CIV-SOC-13**

**BETWEEN:**

**ANNETTE FERGUSON**

Claimant

**And**

**BHARRAT JAGDEO**

Defendant

**DEFENCE**

1. Save and except where expressly admitted, the Defendant Dr. Bharrat Jagdeo (the “Defendant”) denies each and every allegation made in the Statement of Claim, as if same were set out verbatim and traversed seriatum.

2. The Defendant admits the allegations contained in paragraphs 2, 3, 4, 8, 9, 10 and 16 in the Statement of Claim.

3. The Defendant does not have sufficient knowledge and information concerning the allegations made in paragraphs 6, 11, 12, 20 and 21 of the Statement of Claim and therefore denies them.

4. The Defendant denies the allegations contained in paragraph 5 of the Statement of Claim, except admits that the Claimant held supervisory positions during her career, including the post of Properties’ Manager at the Guyana Post Office.



5. The Defendant denies the allegations contained in paragraph 6 of the Statement of Claim except admits that the Claimant applied for a house lot on March 8, 2014.

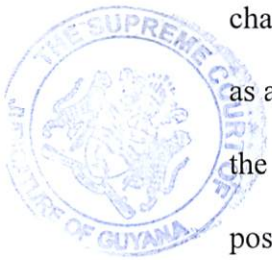
6. The Defendant denies the allegations contained in paragraphs 13 and 22 of the Statement of Claimant, except admits that he held press conferences on or around those dates, and respectfully will refer the Court at trial at the transcript of those press conferences for the words uttered.

7. The Defendant denies the allegations contained in paragraphs 14, 15, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the Statement of Claim.

8. The Defendant denies that the words complained of in the Statement of Claim bore or were understood to bear or are capable of bearing any of the meanings pleaded in paragraphs 15, 16, 24, 27, 32, 33, 34 and 35 in the Statement of Claim and elsewhere, or any defamatory meaning whatsoever by their ordinary meaning, innuendo or otherwise.

9. In any event, as it relates to innuendo, the Claimant has failed to provide the particulars of the innuendo and the relevant extraneous facts as is required by the CPR, requiring it to be dismissed.

10. The Defendant specifically denies any harm or damage was done to the character or standing of the Claimant or that the Claimant is likely to suffer harm or damage as alleged in the Statement of Claim or at all; indeed there has been no material change in the Claimant's life since the said alleged publication and she continued to hold the same post at the Ministry of Housing until the change of Government in 2020.



11. The Defendant relies on his fundamental right of freedom of expression as guaranteed by Article 146 of the Constitution of the Cooperative Republic of Guyana and well as the provisions on the applicable provisions of the Defamation Act Cap. 6:03 in defending his claim.

12. Without prejudice to the above, the Defendant relies on the defences of justification, fair comment, honest opinion, the plea of privilege, publication in the public interest, as well as the applicable provisions of the Defamation Act, including but not limited to as follows:

13. At all material times, the Defendant was and is a public figure who was the Leader of the Opposition of the main opposition political party in Guyana, the Peoples Progressive Party (the "PPP"), Leader of the Opposition in the National Assembly of Guyana and its General Secretary. He is a former President of Guyana and currently is the Vice-President of Guyana.

14. In the aforesaid capacities, the Defendant was politically, legal, morally and constitutionally enjoined and duty bound to speak out and condemn acts of corruption, nepotism and cronyism, and subject the Government of Guyana and all Public Officers to public scrutiny and to reveal and disclose to the public Executive excesses, abuse of power, mismanagement, incompetence in public office, misuse of State resources, squander mania, violations of the law and the Constitution by the Government and Public Officers and indeed, all forms of public wrongs. it is part of the Defendant's duties and responsibilities to scrutinize the Government and to speak about wrong doing and excesses when the Defendant sees them and to disseminate that information to the public.



15. Whenever the Defendant speaks at a Press Conference, in the National Assembly of Guyana, at political meetings and , all public fora, it is his pursuant to his national, constitutional and political responsibility to discharge the aforementioned functions and duties.

16. The alleged publications as alleged in the Statement of Claim were, or formed part of, statements on a matter of public interest which concern public officials and public functions, i.e., the distribution of state lands to a Minister of Government and the past conduct of public officials, and were based on fact, reasonable inferences of fact and a reasonable value judgment. The Defendant reasonably believed that publishing the words complained of was in the public interest.

17. The Defendant has a social and moral duty to report on these matters to the public, who had a corresponding interest and/or were entitled to receive the same and acted in the public interest.

18. Since at least 2016, the Defendant has held weekly press conferences to the public, discussing matters of public interest concerning the governance of Guyana, and routinely discussing allegations of Government transgressions in which the people of Guyana are affected.

19. As is routine, the Defendant, held Press Conferences at the Office of the Leader of the Opposition, on the 5<sup>th</sup> day of December, 2019 and on or around the 11<sup>th</sup> day of December, 2019 to speak on matters of national importance (the “Press Conferences”), including but not limited to matters relating the affairs and conduct of the Claimant.

20. At the said Press Conferences, the Defendant denies that the remarks made were false as alleged, and in any event he was speaking on a privileged occasion. The





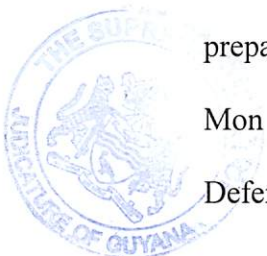
Defendant also denies that the comments alleged on paragraph 12 and 22 of the Statement of Claim were made in the manner alleged.

21. Without prejudice to the foregoing, the Defendant was speaking about general corruption in various sectors of the Government as he is obliged to do, as part of his public, constitutional and political role and function.

22. Specifically, in relation to the allegations contained at paragraph 12 of the Statement of Claim and the corresponding defamatory meanings as alleged in the Statement of Claim, the Defendant will prove at trial that the Claimant, a sitting Minister in Government responsible for Housing, was granted a house lot under irregular circumstances, i.e. applying for a house lot and commencing construction within a year of her application, almost immediately after taking office, when it is an open and notorious fact that housing applications take in excess of 5 years of being granted, that the lot issued was triple the size of a usual house lot granted to citizens (it being a fair inference that it constituted three house lots as opposed to one), that the price paid for the house lot was less than 20% of the price of house lots of that size, was granted a preferential corner house lot skipping the queue of entitled applicants.

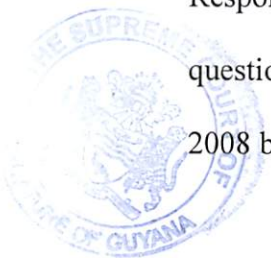
23. All times the remarks made were supported by documents which will be produced, including plans registered with the Guyana Lands and Surveys Commission.

24. The Defendant will also produce evidence that in several communities, persons received promises of allocation of house lots but no infrastructure, nor any preparation of lands were done, for house lots to be allocated. These communities, include, Mon Repos, East Coast Demerara and Turkeyen, Greater Georgetown and therefore, the Defendant will justify his said comments.



25. Additionally, in relation to the allegations contained at paragraph 22 of Statement of Claim and the corresponding defamatory meanings as alleged in the Statement of Claim, the Defendant will content that not only did his statements not defame the Defendant in the manner alleged, but simply that the Defendant is aware that when the Claimant was employed at the Guyana Post Office Corporation, there was in fact a fraud and the Defendant was merely wondering aloud whether the Claimant was implicated, thereof. The Defendant again was speaking about general corruption in various sectors of the Government as he is obliged to do, as part of his public, constitutional and political role and function.

26. The Defendant will also prove at trial that those comments were justifiable and true and constituted honest opinion and fair comment by proving that, *inter alia*, (i) the Defendant previously worked at the Guyana Post Office as its Properties Manager, (ii) during her tenure and oversight financial irregularities occurred, which included but were not limited to failing to reconcile and account for advances and expenses, contracting related persons without explanation and failing to justify the award of works and corresponding expenditures, paying for transportation costs which were inflated and unverified, approving payment for labour costs for salaried persons of the Guyana Post Office in a manner which escaped Management's scrutiny, (iii) the Respondent refused to substantively participate in investigations concerning misappropriation of advances and expenses and instead resigned, (iv) that on the conclusion of an investigation the Respondent was suspended for one week after it was concluded that her responses to audit questions were unsatisfactory, and (v) that the Respondent was written to on October 17, 2008 by the Human Resource Manager and removed as Properties Manager.



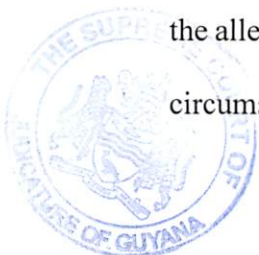
27. Those comments made at the Press Conferences were fair and constituted fair and honest comment and opinion based on facts on matters in which the public has a legitimate interest or with which it is legitimately concerned. The were comments which an honest person could hold based on inferences from the facts and constituted a reasonable value judgment of the Defendant.

28. Further or alternatively, the words complained of were privileged, uttered on a privileged occasion, bona fide, published in the public interest, and without malice to the Claimant. The Defendant will contend that he had a duty to publish, particularly matters of a national interest concerning the discharge of public functions and that the alleged comments made at the Press conferences were not actuated by, influenced by or even tainted with malice.

29. The words complained of comprised a fair, accurate and balanced report of facts.

30. The distribution of state land by and to public officials and the conduct of public officials are matters of public interest and a matter concerning the discharge of public functions, it contained commentary on statements made by the former President on the distribution of state land and the employment history of a sitting Minister.

31. Specifically, (i) the alleged statements did not rise to the level of seriousness necessary to withstand a defamation claim, (ii) the matters were of public concern, (iii) the source of the comments was supported by evidential documents and was credible; (iv) the Defendant believed the allegations to be supported by fact and are in support by fact; (v) the alleged comments was urgent and considered to be perishable; (vi) and the surrounding circumstances warranted the publications reasonable.



32. At all times the Defendant acted reasonably and responsibly.

33. In all circumstances the Defendant was under a moral or social duty to publish the comments to the public, who had a corresponding interest and/or were entitled to receive the same in the public interest.

34. The Defendant is aware that the Claimant has held several interviews with the press in which she denied the statements that the Defendant is alleged to have made and those interviews were widely carried across the media in Guyana, she having an opportunity to fairly put forward her version of events. mitigating any damage that the Claimant may have suffered, which is denied.

35. All State lands belong to the people of Guyana and the Defendant has a duty to inform the people of Guyana whom are allocated their properties, in what proportion, at what value and under what circumstances and that they do not do so, they will be failing in their duty to their readers to keep the public informed of current events surrounding state property.

36. That as a Public Officer, the Claimant also has a duty to disclose the Claimant's assets and employment history and circumstances.

37. The Defendant denies that the Claimant is entitled to any of the reliefs sought in her Statement of Claim.

Date: April 1, 2021



.....  
**DEVINDRA KISSOON**  
Attorney-at-Law for the Defendant





**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION**

**2020-HC-DEM-CIV-SOC-13**

**BETWEEN:**

**ANNETTE FERGUSON**

Respondent/ Claimant

**And**

**BHARRAT JAGDEO**

Applicants/ Defendant

**DEFENCE**

Devindra Kissoon  
Attorney-at-Law for the Defendant  
London House Chambers  
A87 Issano Place West, Bel Air Park, Georgetown  
Tel: 231 1875  
E-mail: [dkissoon@londonhousechambers.com](mailto:dkissoon@londonhousechambers.com)



**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION**

**2020-HC-DEM-CIV-SOC-13**

**BETWEEN:**

**ANNETTE FERGUSON**

Respondent/  
Respondent

**And**

**BHARRAT JAGDEO**

Applicant/ Defendant

**AFFIDAVIT OF DR. BHARRAT JAGDEO**

Devindra Kissoon  
Attorney-at-Law for the Applicant  
London House Chambers  
A87 Issano Place West, Bel Air Park, Georgetown  
Tel: 231 1875  
E-mail: dkissoon@londonhousechambers.com



Date Filed: 21/04/21  
Time: 14:58

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION

2020-HC-DEM-CIV-SOC-13

BETWEEN:

*S. Blake*  
*Shannel Clarke*  
*1st April, 2021*

ANNETTE FERGUSON

Respondent/ Claimant

And

BHARRAT JAGDEO

Applicants/ Defendant



NOTICE OF APPOINTMENT OF ATTORNEY-AT-LAW

The Defendant, Bharat Jagdeo, has appointed Mr. Devindra Kissoon as his additional Attorney-at-Law of record.

Date: March 31, 2021

*Bharrat Jagdeo*  
.....  
Bharrat Jagdeo

Devindra Kissoon  
Natasha Vieira  
London House Chambers  
Attorneys-at-Law  
A87 Issano Place West, Bel Air Park, Georgetown  
Tel: 231-1875  
Email:dkissoon@londonhousechambers.com

TO: **MR. LYNDON AMSTERDAM**  
77 Hadfield Street  
Werk-en-Rust  
Georgetown, Guyana

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION**

**2020-HC-DEM-CIV-SOC-13**

**BETWEEN:**

**ANNETTE FERGUSON**

Respondent/ Claimant

**And**

**BHARRAT JAGDEO**

Applicants/ Defendant

**NOTICE OF APPOINTMENT OF ATTORNEY-AT-LAW**

Devindra Kissoon  
London House Chambers  
Attorneys-at-Law  
A87 Issano Place West, Bel Air Park, Georgetown  
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IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA  
REGULAR JURISDICTION

2020-HC-DEM-CIV-SOC-13

BETWEEN:

*S. Clarke*  
*Shannel Clarke*  
*15<sup>th</sup> April, 2021*



ANNETTE FERGUSON

Respondent/  
Respondent

And

BHARRAT JAGDEO

Applicants/ Defendant

**BEFORE THE HONOURABLE**

**DATED THE        DAY OF        , 2021**

**ENTERED THE        DAY OF        APRIL, 2021**

Devindra Kissoon, , Attorney-at-Law for the Applicant.

**DRAFT ORDER**

THIS APPLICATION, was heard this day at the High Court, Georgetown.

ON READING the Notice of Application and the Affidavit in Support of Application and on hearing the submissions of the Attorneys-at-Law for the Applicant made with notice (collectively referred to as the "Application"),

1. THIS COURT ORDERS that the order for default judgment dated March 11, 2021 and entered March 15, 2021 be and is hereby set aside in its entirety;
2. THIS COURT ORDERS that this claim and High Court Actin No. 2020-HC-DEM-CIV-SOC-13, be and are hereby consolidated;
3. THIS COURT ORDERS that the Respondent's claim against the Applicants be struck out

in its entirety;

4. THIS COURT ORDERS that the Respondent pays the Applicants' costs in this application.

.....  
FOR REGISTRAR

