

**IN THE DISTRICT COURT
AT GISBORNE**

**I TE KŌTI-Ā-ROHE
KI TŪRANGANUI-A-KIWA**

**CIV-2019-016-000276
[2020] NZDC 1477**

BETWEEN

INTERCOLL LIMITED
Plaintiff

AND

MEDANARE PHILLIPS
Defendant

Hearing: 28 January 2020

Appearances: T Maribito for the Plaintiff (via telephone)
No appearance by or for the Defendant

Judgment: 28 January 2020

ORAL JUDGMENT OF JUDGE W P CATHCART

[1] Ms Maribito represents Intercoll Limited. She is not a lawyer but is familiar with the company's debt agency work. The defendant Medanare Phillips has not appeared before me.

[2] This is an unusual application because the plaintiff is seeking to set aside the judgment by default on the basis it is no longer able to recover the debt. The application is framed on the basis the plaintiff considers it is "in the defendant's best interests to have the judgment by default set aside."

[3] I have pointed out to Ms Maribito that power to set aside a judgment obtained by default is limited by the District Court Rules 2014. Rule 15.10 states that a judgment obtained by default may be set aside or varied by the Court on such terms as it thinks just "if it appears to the Court that there has been or may have been a

miscarriage of justice.”¹ The normal application under r 15.10 is where a debtor or a defendant seeks to set aside the default judgment on the basis it was irregularly obtained or obtained by fraud. This is not such a case. This is one where Ms Maribito accepts the plaintiff obtained judgment by default in a proper way.

[4] I also raised with Ms Maribito that if I was minded to set aside the judgment by default, what the plaintiff intends to do in these proceedings because technically they would remain on foot. She advises me the best course is to acknowledge in this ruling the proceedings would be withdrawn and discontinued by the plaintiff once judgment is set aside.

[5] There is some case law, *National Westminster Finance New Zealand Limited v Berry* where a plaintiff was unsuccessful in its application to have its own default judgment set aside where there appeared to be no miscarriage of justice.² That is the situation here. But I note that in *National Westminster Finance* the Court was ultimately satisfied there was jurisdiction for the application. I imagine that the High Court was relying on its inherent jurisdiction to do so.

[6] Here, I consider that this case falls within the inherent power of the District Court to set aside a judgment in the circumstances because the plaintiff effectively is also inviting the Court to discontinue the proceedings because they are no longer able to recover the debt.

[7] In those circumstances I exercise my residual discretion, albeit somewhat concerned about its jurisdictional existence, in favour of the plaintiff.

[8] Judgment by default is set aside in the circumstance. And, in view of Ms Maribito’s representations to me, the proceedings are dismissed.

W P Cathcart
District Court Judge

¹ District Court Rules 2014.

² *National Westminster Finance New Zealand Limited v Berry* HC Masterton CP 4-87, 18 July 1990.