Neutral Citation No: [2026] NIMaster 10 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* 2026NIMaster10 *ICOS:* *25/22015/02 & 03* *Delivered:* 25/06/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

KNIGHTON LEISURE (NI) LTD

and

Plaintiff

MATAGORDA 2 LTD

and

CINEWORLD CINEMAS LTD

Defendants

Mr Robert McCausland (instructed by MKB Law) on behalf of the plaintiff.
Ms Anna Rowan (instructed by Arthur Cox Solicitors) for the first defendant.
Mr Keith Gibson (instructed by Cleaver Fulton Rankin Solicitors) for the second defendant.

MASTER HARVEY

Introduction

[1] This commercial action relates to alleged loss and damage of just over £400,000 said to arise from repeated escapes of waste and foul water from premises occupied or controlled by the defendants into the plaintiff's business premises in the period between 18 January and 20 November 2024. The first defendant is the plaintiff's landlord. The second defendant operates a cinema business within the same complex,

occupying neighbouring premises at Odyssey Pavilion. The claim against the first defendant is for alleged breach of contract, breach of covenant, negligence, misrepresentation, and breach of statutory duty. The claim against the second defendant is grounded in negligence and nuisance.

[2] The plaintiff obtained default judgment against the defendants on 14 January 2026 as they both failed to serve a defence within the time permitted under the Rules. The defendants now apply to set aside the judgments pursuant to Order 19 rule 10 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules"). At hearing, the second defendant refined its application to abandon any relief under Order 14 rule 12.

[3] I wish to thank the parties for the helpful electronic hearing bundle together with the written and oral submissions from counsel which were of assistance to the court.

Chronology

[4] In applications such as this, the litigation conduct of the parties is a relevant factor in the exercise of the court's discretion, therefore, it is necessary to set out the chronology in some detail.

[5] On 29 April 2024, the first defendants were put on notice of a claim by pre-action correspondence from the plaintiff seeking £9,780 in damages. A response denying liability was provided on 10 May 2024, with a reply from the plaintiff on 6 June 2024. No further correspondence in the subsequent pre-proceedings period is before the court. A letter of claim was served on the second defendant on 2 October 2024 claiming a sum of £2,480. I do not have sight of any response.

[6] On 10 March 2025, proceedings were commenced by writ of summons, with leave granted to serve outside the jurisdiction against the first defendant on 13 March 2025 and service effected on 20 April 2025 against this party. The writ was served on the second defendant on 29 April 2025. Appearances were entered by the defendants on 16 and 19 May 2025 respectively. On 2 July 2025 a statement of claim was served on both defendants. The parties agree that time for service of a defence was on or before 17 October 2025 (as time did not run during the long vacation), but no defence was forthcoming from either defendant.

[7] On 21 October 2025, the plaintiff's solicitors warned in correspondence that, absent service of a defence by 28 October 2025, judgment in default would be sought. The first defendant replied on 11 November 2025 stating they had instructed counsel, their defence was in preparation and would serve a defence "in due course". They further stated, "we trust that no steps to apply for judgment in default will be taken in the meantime". In the responding email from the plaintiff's solicitor on 12

November 2025, the solicitor asked when the first defendant's defence might be finalised. No response was received.

[8] On 23 October 2025, the second defendant requested a four-week extension for service of its defence. The plaintiff agreed, taking the due date to 20 November 2025. There was no further communication from the second defendant to the plaintiff in the interim. On 20 November 2025, instead of serving its defence, the second defendant served a notice for further and better particulars containing 36 questions, seeking a response to same within 21 days. No explanation appears to have been provided to the plaintiff as to why the defence was not being served.

[9] The next procedural step following these exchanges was when the plaintiff applied ex parte for judgment in default on 25 November 2025, with the judgment eventually issuing on 14 January 2026.

[10] The second defendant, not aware the plaintiff had taken this step, wrote to the plaintiff on 26 November 2025 seeking inspection facilities for their instructed expert to attend the plaintiff's premises in order to carry out a survey and prepare a condition report. They sent follow up emails regarding this issue to the plaintiff on 9 and 10 December 2025 and a chasing letter on 21 January 2026, noting the lack of a response. By this stage judgment was entered which led to them bringing their extant application on 29 January 2026.

[11] The default judgment was served on the first defendant on 27 January 2026. They wrote to the plaintiff the next day seeking consent for it to be set aside. This was refused on 30 January 2026, and they brought their set aside application on the 2 February 2026.

Legal principles and procedure

[12] The plaintiff's claim is for unliquidated damages meaning that once the statement of claim was served on 2 July 2025, if a defendant thereafter fails to serve a defence within six weeks (the time limit set in accordance with Order 18 rule 2) the plaintiff may enter interlocutory judgment against that defendant for damages to be assessed and costs, pursuant to Order 19 rule 3. As stated above, given the writ was served during recess and time did not run, the defendants had a longer period within which to file their defences. With the court term recommencing on 5 September 2025, six weeks did not expire until 17 October 2025.

[13] Once judgment was entered, either defendant may then apply under Order 19 rule 10 of the Rules which provides:

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

[14] The court therefore has a discretion to set aside a judgment regularly obtained in default. The discretion must be exercised according to established principles. A mere assertion of a defence is insufficient, it must be articulated with sufficient clarity and particularity to disclose a genuine issue to be tried. The merits threshold requires the defendant to establish an arguable defence. This has also been expressed as a prima facie defence, a serious defence, a real triable issue or a defence with merits to which the court should pay heed, see the comments of Weatherup J at para 16 in *Bank of Ireland (UK) plc v Eugene Jones and Eamon Jones* [2014] NIQB 93.

[15] The court must also consider all the circumstances, including inter alia the length of any delay, the reasons for the delay, the promptness of the set aside application, any prejudice to the plaintiff, the conduct of the parties, the public interest in finality of litigation and compliance with the Rules.

[16] In *Bank of Ireland v Mervyn Coulson* [2009] NIQB 96 Gillen J addressed some of the wider circumstances to be taken into account in such applications, stating:

> "[19] There is no rigid rule that the applicant must satisfy the court that there is a reasonable explanation why the judgment was allowed to go by default, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters which the court will have regard in exercising its discretion. (See Evans v Bartlam (1937) AC 473 at 480). The application should be made promptly and within a reasonable time. Delay if coupled with prejudice to the plaintiff or a bona fide assignee of the judgment debt will also be factors."

[17] Thus while there is no strict requirement to provide a reasonable explanation for the default, the absence of any proper explanation may be a factor weighing against the applicant in the exercise of the discretion.

[18] The authorities make clear that the procedure for marking judgment is not intended to punish the defendant denying them a right to a trial "but part of the disciplinary framework established by the rules of the court which are designed to ensure proper and timeous conduct of litigation" (para 34 of *Coulson).* The Rules are there to ensure the orderly and efficient conduct of litigation, and compliance with them is expected, particularly in commercial proceedings. More generally, modern case management reflects an approach that serious and unexplained default, especially by represented parties, will not readily attract indulgence. In this case it is argued by the plaintiff that the discretion of the court should not be used to relieve a party from the consequences of non-compliance where deadlines have been ignored.

[19] In *McCullough v BBC - NILR [1996] NI p584* Girvan J highlighted the danger of forming views at an interlocutory stage of the case, stating:

> "If, on the other hand, there is a real triable issue between the parties, justice will normally require that the matter should be allowed to go to trial. In determining whether if there is a real triable issue between the parties … I do not see in justice why a defendant should be deprived of the opportunity of presenting his defence merely because the court on the limited material available to it at that stage and on the inevitably somewhat superficial interpretation of that material concludes that the defendant will probably fail. Experience shows that provisional views of probable outcomes can readily be shown to be fallacious when a matter is tried out."

Submissions from the parties

[20] The plaintiff asserts the default judgments were regularly obtained after prolonged unexplained delay, despite warnings. Both defendants were fully aware of the claim and deadlines but failed to act. They contend there is no arguable defence and neither defendant meets the threshold for setting aside. The plaintiff submits the first defendant relies on bare denials, blame-shifting, and unparticularised contractual points while the second defendant admits any defence is minimal and dependent on future expert evidence. It argues the applications should be dismissed due to serious default, no adequate explanation, no real defence, and prejudice to the plaintiff, with the emphasis on enforcing procedural discipline and finality in litigation.

[21] The first defendant argues the threshold to set aside the default judgment is low and that it has a substantive defence denying liability and attributing fault to the second defendant, alongside contractual exemptions. Their explanation for allowing default judgment to be entered was the delay due to the complexity of the case, the need for extensive instructions and investigation, and the timing of events around the long vacation as the statement of claim was served on 2 July 2025. They claim it was only briefly overdue when first chased and believed from correspondence that the plaintiff was awaiting their defence rather than pursuing judgment. They complain the judgment was obtained without proper warning and in circumstances where they had engaged and sought to explain the delay. They emphasise the court's broad discretion under Order 19 and submit this is a "classic case" where judgment should be set aside so the dispute can be determined on its merits.

[22] The second defendant **a**rgues the primary liability lies with the first defendant as landlord and disputes both liability and causation. Although default judgment has been entered, they submit it does not resolve the overarching dispute as damages must be assessed via a process akin to a full trial, with evidence, discovery, and cross

examination. Importantly they say the key issue of apportionment between defendants remains unresolved. The assessment of damages process will be complex involving expert evidence, causation and contribution issues, meaning it will effectively turn into a plenary trial in disguise. The proper course they say should have been via commercial court case management and maintains they have a full defence.

Consideration

Was the judgment regular?

[23] The only contrary submissions to this being a regular judgment are essentially criticisms of the plaintiff's solicitor by the defendants for jumping the gun and marking judgment. Despite assertions the plaintiff failed to give adequate or fair warning, if court rules are to mean anything, the fact remains the defendants were in default and there has been no procedural irregularity by the plaintiff in so far as the default judgment is concerned. These are both represented defendants who were given clear warnings and allowed a prolonged period of default to accrue.

[24] A further issue raised concerns the failure to enter the proceedings in the Commercial List. The defendants submit that the plaintiff was obliged, pursuant to Order 72 rule 3(1) of the Rules, to request entry following service of the writ and that, had this occurred, the present dispute would likely have been avoided. It was however acknowledged this is not always observed by the parties in commercial cases.

[25] I do not accept that submission assists the defendants in this application. While the Commercial Hub Practice Direction No1 of 2022 provides for early directions and case management in commercial actions (see para 24), there is no evidence before me of any procedural default which affects the regularity of the judgment.

[26] In any event, Order 72 rule 3(2) expressly permits any party at any stage to request entry into the Commercial List. It was therefore equally open to the defendants to invoke that procedure or to seek appropriate extensions of time from the court.

[27] The failure to engage the Commercial List procedures does not excuse non-compliance with the Rules governing service of a defence. Nor does it provide a basis upon which a regularly obtained judgment can be impugned. I therefore attach little weight to this issue in determining whether the judgments should be set aside.

[28] I would observe this case has regrettably been beset with breakdowns in communication and would have greatly benefitted from early directions and robust judicial case management. This would have occurred if the case had been appropriately referred to the court's attention thus perhaps avoiding a protracted interlocutory skirmish.

The explanation from the defendants

[29] As stated above, the conduct of the parties is a relevant factor in these applications. The plaintiff asserts the defendants have been in continuous default since October 2025, including for one of them, failure to comply with an agreed extension. No adequate explanation has been advanced, and no defences were served. The delay they say was significant and unexplained.

[30] The first defendant asserts it was "alarming" for the plaintiff to mark judgment as no prior warning was given. I consider this appears at odds with the express wording of the email of 21 October 2025 from the plaintiff. This indicated the deadline for the defence was 4pm on 28 October 2025 and "we are instructed (to) begin the process of an application for judgment if your defence is not served". I do not think the first defendant can credibly place reliance on the wording of its email of 11 November 2025. This stated that the defence was being prepared and would be served in the rather nebulous timescale of "in due course", trusting that no judgment would be marked in the interim. The solicitor for the first defendant was expressly asked the following day as to when it would be served but did not reply.

[31] The first defendant raises the issue of complexity as a reason to explain delay. This action started out as a potential county court case with letters of claim setting out modest levels of damages. The case has evolved into a much more significant commercial action with damages sought of over £400,000. While this may now be considered a complex commercial case, the Rules still apply and the defendants had a number of options open to them such as collaborating more constructively with the plaintiff's solicitor, providing them with clear timescales for a defence or referring the matter to the court and seeking an extension.

[32] With regard to the second defendant, the plaintiff asserts they were patient and did not mark judgment on the expiry of the agreed extended deadline of 20 November 2025 but waited another six weeks until 14 January 2026. By that stage, the plaintiff submits the defendants were approximately 89 days in default of the Rules. The judgments were entered more than six months after service of the statement of claim. I do note, however, that while judgment did not issue until January 2026, the actual default judgment application was within five days of the extended deadline referred to in November 2025.

[33] The second defendant has offered no explanation for its failure to serve a defence within the prescribed period or within the agreed extended period. Given the paucity of the draft pleading they have belatedly produced, one would question why this could not simply have been served in time.

[34] Having considered all the material before the court, I consider this started off as a modest case but evolved into a more complex action and there has been regrettable delay. There is evidence that steps were taken by the defendants including entering into correspondence, instructing counsel, seeking inspection facilities and serving a notice for particulars which demonstrated engagement with the proceedings. There is no evidence before me to suggest the default was deliberate.

[35] Leaving aside the issue of service of a defence, I do not consider the defendants were sitting on their hands. By way of example the correspondence between the second defendant and the plaintiff in the period from 9 December to 21 January 2026 demonstrated they were investigating the claim, retained counsel, served a searching notice for particulars, appeared to have an expert on board and were actively seeking inspection facilities. Those are not the actions of a party doing nothing. They could have filed a defence in keeping with the draft which accompanied this application and it is regrettable they did not do so, however, it arguably would not have advanced the case substantively in circumstances where an expert report was being sought. For their part, the first defendant has produced a more substantive draft defence which supports their assertion they were actively taking instructions, investigating liability and working on the document. I note that once they became aware of the default judgments, both defendants acted promptly and brought these applications within days.

Prejudice

[36] The plaintiff's affidavit sets out what it claims were significant business disruption, closure of trading areas, loss of revenue, and reputational damage from leaks and that delay in this case has exacerbated the prejudice it suffered. The business was in its initial operating phase when these incidents occurred and at a time when customer impressions are critical. There is a purported element of irrecoverable damage as it is claimed lost customers and reputational damage are not readily quantifiable or recoverable even if the proceedings continue.

[37] It is argued that the prejudice to the plaintiff is that it is a small business with the benefit of a default judgment and has incurred an allegedly significant loss of approximately £409,000 and that the delay has materially exacerbated that prejudice. The default judgment was regularly obtained, and it is submitted that setting it aside would deprive the plaintiff of finality and impose further cost and delay, in circumstances where no substantive defence has been articulated.

[38] This is to be balanced against the defendant's denial of a hearing on the merits if the judgments are allowed to stand. There is a risk of injustice in a multi-party dispute such as this where issues are raised in relation to liability and causation if

those issues cannot be fully ventilated in court. Across the authorities in many cases involving interlocutory applications such as summary judgment, strike out and set aside applications, there is a common thread that courts should be slow to drive a party from the seat of justice. After careful consideration, in my judgment there is no prejudice to the plaintiff that cannot be compensated in costs. The greater injustice in this case would be a summary disposal rather than a trial.

Are there serious issues to be tried

[39] The plaintiff asserts the draft defences are inadequate containing mere denials, blame between defendants and unparticularised contractual exemptions. It contends there is no pleaded factual or legal basis as a platform for an arguable defence and any dispute between defendants concerns contribution/ indemnity and does not answer the plaintiff's claim nor does it amount to triable issue vis-à-vis the plaintiff.

[40] I recognise the first defendant has denied liability from the outset since its initial reply to the letter of claim on 10 May 2024 relying on purported exemptions contained in the terms of the lease and that it was not the correct entity to be sued. For its part the plaintiff avers in an affidavit from one of its directors dated 10 March 2026 that the first defendant knew about the leaks in the plaintiff's premises since 22 May 2023 albeit I note the pleaded cause of action relates to leaks in the period from January 2024.

[41] The arguable issues to be tried for the first defendant are as follows. It denies liability for the leaks and resulting loss, placing responsibility on the second defendant due to issues with design, specification and works carried out by the second defendant's contractors and improper use of toilets by the second defendant. It claims any defects in pipework is not attributable to the first defendant. Further it denies the nature and extent of the leaks and challenges the losses claimed on the basis there is no breakdown and the claim is unparticularised and purportedly inflated. It is claimed that any defects were fixed by October 2024 and early 2025. It relies on the terms of the lease and an exclusion clause regarding "no liability for disruption to services or matters beyond control". It claims the service disruption in this case was caused by a third party and the plaintiff should have mitigated its loss via its insurers. In short, it denies breach of the lease, denies negligence and asserts there is also a causation defence and contractual exclusion.

[42] The second defendant admits its defence is currently limited as they require expert evidence. I have considered the document. While it can hardly be described as a lengthy pleading setting out the necessary detail of the basis of their defence, in order to comply with the court Rules, I recognise it was drafted absent the expert report this party is purportedly seeking and for which they require inspection facilities which

appear to remain outstanding. It was of course open to the second defendant to bring the necessary application for such facilities long before now.

[43] The second defendant's draft defence can be summarised as follows. Cineworld is not a party to the underlease between the plaintiff and first defendant. It is therefore a "stranger" to the lease terms and declines responsibility for those arrangements. It contains a full denial of key factual allegations and losses. The plaintiff is put to strict proof, including calculations of loss. While it admits appointing Metro Rod for works, it denies that it caused the leak or that its use of the toilets was a contributing factor or that it was instructed to close toilets. The plaintiff is put to proof on those points. Cineworld also denies involvement in appointing the engineer or responsibility for their findings. The defence contains denials of factual allegations relating to later leaks and their consequences. It positively pleads that the pipework and drainage system was designed and installed by the first **d**efendant. It is asserted that any defect is therefore the sole responsibility of the first defendant, not Cineworld.

[44] I do have some reservations particularly regarding the underdeveloped nature of the second defendant's defence and there is force in the plaintiff's contention that some of the matters in dispute are inter defendant rather than triable issues as between the plaintiff and defendants. Moreover, there are issues raised regarding quantum which could easily be dealt with in the context of an Order 37 assessment of damages hearing which would be the next procedural stage if these judgments were not set aside.

[45] I have also carefully considered the obvious difficulty that the material available at this stage is rather limited. As a result, any views this court could form on the arguability or otherwise of the defences put forward would run the risk of being no more than a superficial interpretation of such scant information. There is also the potential for refinement of the pleadings as the case evolves. The authorities make clear that even if a court has initial reservations regarding the strength of a party's case, that:

> "courts must be wary to form provisional views of probable outcomes which experience has shown can readily be shown to be fallacious when the matter is tried out…the primary consideration is whether he has merits to which the court should pay heed; if merits are shown the court will not … desire to let judgment pass and which there has been no proper adjudication …" (para 35 *Coulson*).

[46] The primary consideration in applications such as this is whether on the material before the court the applicants have demonstrated an arguable defence. The

test is not whether the defendants will succeed at trial, nor should the court embark at this interlocutory stage on a prolonged assessment of the strengths or weaknesses of the respective defences.

[47] In my judgment, there are core commercial disputes in this case unsuitable for summary disposal and which require factual investigation and evidence. These are serious triable issues. The appropriate forum to deal with such issues is a trial, in advance of which discovery can be provided, the pleadings can be refined, notices for particulars or interrogatories may be exchanged, expert evidence can be obtained and exchanged and expert meetings arranged as appropriate.

[48] These applications should not lead to a mini-trial at this interlocutory stage. In my judgment, the defences have merit to which the court should pay heed as they raise genuine, substantive issues requiring a full trial on liability, causation, and quantum. The set aside threshold is therefore met.

Conclusion

[49] On balance, for the reasons set out in this judgment, I am persuaded there are sufficient grounds which justify setting aside the judgments and allowing the case to proceed to trial. I therefore do so pursuant to Order 19 rule 10.

Costs

[50] The court can set aside judgments on such terms as it thinks just. I consider that the justice of this case, balancing the prejudice between the parties, requires that costs should be awarded to the plaintiff in respect of securing default judgment together with the costs of dealing with this application, such costs to be borne equally by the defendants, taxed in default of agreement and I certify for counsel.