IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF CAMPBELLTON

File: CC-27-2022

2025 NBKB 006

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BETWEEN:

PRODUCTEURS ET PRODUCTRICES ACÉRICOLES DU QUEBEC,

Plaintiff

- and -

S.K. EXPORT INC., ÉTIENNE ST-PIERRE, MAPLE PRODUCTS KNB INC. ET JULIENNE BOSSÉ,

Defendants

DECISION

BEFORE:	Chief Justice Tracey K. DeWare
AT:	Campbellton, New Brunswick
DATE OF HEARING:	November 4 and December 19, 2024
DATE OF DECISION:	January 10, 2025
APPEARANCES:	Sacha Morisset, on behalf of the Plaintiff
	Leslie F. Matchim, on behalf of the Defendants

DEWARE, C.J.

INTRODUCTION

[1] This is a motion to set aside a noting in default and accord the defendants an opportunity to file a statement of defence pursuant to Rule 21.03(1) of the New Brunswick ***Rules of Court***. The plaintiff filed its action and responding materials on this motion in the French language. The defendants filed their motion and affidavits in English. The present decision is being issued in the English language only given the time constraints. The decision will be translated and made available to the parties in both languages as soon as possible.

FACTS

[2] The defendants filed the present motion requesting the setting aside of a default judgment on November 4, 2024. The plaintiff's motion seeking orders to allow enforcement under the judgment, following the noting in default, was scheduled to be heard on November 4, 2024 but was adjourned following the filing of the present motion. In order to grant the plaintiff an opportunity to respond, the defendants' motion was adjourned until December 19, 2024. In response to the defendants' motion, the plaintiff filed a detailed brief as well as an additional affidavit. The defendants filed additional affidavit evidence as well as a brief.

[3] The defendant, Étienne St-Pierre, was personally served with this action on November 22, 2022. The defendant, Julienne Bossé, was personally served with this action on November 30, 2022. The two personal defendants were served on different dates but at the same address. Neither of the personal defendants deny

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they were personally served with the action. None of the defendants filed a statement of defence. The defendants were noted in default on January 23, 2023.

[4] The Notice of Action with Statement of Claim Attached filed by the plaintiff on July 13, 2022 seeks enforcement of a judgment obtained by the plaintiff against the defendants, S.K. Export Inc. and Étienne St-Pierre on February 7, 2019 in the amount of $977,930.00. The plaintiff alleges the defendants effected transfers of parcels of land in an attempt to avoid payment to the plaintiff who was seeking to recover sums from the defendants, Étienne St-Pierre and S.K. Export Inc. The plaintiff brought the present action pursuant to the ***Debtor Transactions Act***, SNB 2015, c 23.

[5] The parties in this matter have a long history. The plaintiff, Producteurs et productrices Acéricoles du Quebec (PPAQ), is an association which manages and oversees the maple syrup industry in Quebec pursuant to authority granted to it under the ***Act respecting the marketing of agricultural, food and fish products***, R.S.Q., c M-35.1. Prior to obtaining the judgement in 2019, the parties had been involved in other court proceedings related to the defendants, S.K. Export Inc. and Étienne St-Pierre's alleged violations of the Quebec laws governing the purchase and sale of maple syrup products.

[6] In 2014, the plaintiff had unsuccessfully attempted to have an injunction issued in Quebec recognized by the courts in New Brunswick. The Court of Appeal rejected this request in ***Fédération de producteurs acéricoles du Québec c. S.K. Export Inc. et St-Pierre***, 2015 NBCA 30. In explaining the lengthy history between the

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parties in this earlier decision, Justice Deschênes, as he then was, stated at paragraph 2 the following facts:

> [2] The motion judge's decision included a summary of the main relevant events relating to the issues raised on appeal:
>
> > The Quebec Fédération has maple syrup marketing board status within the meaning of the province's *Act Respecting the Marketing of Agricultural, Food and Fish Products* [R.S.Q., c. M-35.1, Act Respecting Marketing] and administers a Joint Plan that allows it to regulate the conditions under which maple sap concentrate is produced and marketed in the province of Quebec.
> >
> > The Régie is a specialized administrative tribunal established by the *Act Respecting Marketing* and is responsible for administering the Act and, in particular, for overseeing the application of the joint plans established under the Act, including the Joint Plan administered by the Fédération in the province of Quebec.
> >
> > The Fédération controls maple product operations in the province of Quebec, pursuant to the *Act Respecting Marketing*, by controlling the production and bulk sale of maple sap, maple sap concentrate and maple syrup produced in Quebec.
> >
> > The *Act Respecting Marketing* provides a mechanism by which farmers, including maple producers, can get approval for a joint plan of Quebec maple producers and the regulations made to provide a framework for several facets of production. The Régie must approve the marketing of the maple product in order for such a regulation to come into force.
> >
> > The Régie approved the matter of the *Règlement sur l'agence de vente des producteurs acéricoles*. That regulation, which is relevant to this application, governs all transactions in barrelled maple syrup in Quebec. It requires all of Quebec's producers to deliver their syrup to Fédération-authorized buyers at the Fédération's warehouses in Quebec.
> >
> > It also stipulates that the product in question must be marketed by the Fédération, which is the producers' exclusive agent under the provisions of a marketing agreement (the "Agreement") homologated by the Régie.
> >
> > The Agreement sets out the terms and conditions for the bulk purchase of syrup, such as the price, warehousing, sale and delivery of the product, as well as the terms under which a business would be authorized to purchase the syrup. Accordingly, businesses wishing to purchase maple syrup in large containers, in barrels or in large volumes in the province of Quebec must do so from the Fédération, which exercises territorial control over the production and bulk sale of maple syrup.
> >
> > S.K. Export Inc. specializes in the purchase, import and export of maple sap and syrup in bulk, and offers maple products to retail clients. Its head office is in Kedgwick, New Brunswick.

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> Étienne St-Pierre is the president of S.K. Export Inc. and lives in Kedgwick. Neither S.K. Export nor Mr. St-Pierre has a place of business in the province of Quebec. They are also not members of, or signatories or subscribers to the Joint Plan.
>
> Pursuant to the *Maple Products Regulations* made under the Canada Agricultural Products Act, S.K. Export has a certificate of registration as a maple syrup shipper establishment and packing establishment. It also has federal and provincial import authorization duly registered with the competent authorities.
>
> **On October 18, 2007, the Fédération filed an application with the Régie calling on it to conduct an inquiry, to issue various orders and to arbitrate a grievance pursuant to the Agreement and the Act Respecting Marketing. The Fédération claimed that based on information it had received, S.K. Export and Mr. St-Pierre were buying barrels of maple syrup from Quebec maple producers although they were not Fédération-authorized buyers and did not go through the Fédération, contrary to the *Act Respecting Marketing*, the Fédération's Joint Plan and the applicable marketing agreements.**
>
> [Emphasis mine]

[7] A quick review of cases involving the plaintiff and the defendants, S.K. Export Inc. and Étienne St-Pierre on Westlaw reveals the existence of the following matters that have come before the provincial and superior courts in both Québec and New Brunswick:

- ***Fédération des Producteurs Acéricoles du Québec c. Caisse Populaire de Restigouche Ltée***, 2014 CarswellNB 13; 2014 CarswellNB 14; 2013 NBCA 61;
- ***R. c. Vallières***, 2022 CarswellQue 3518; 2022 CarswellQue 3519; 2022 SCC 10; 2022 CSC 10; [2022] 1 S.C.R. 144; [2022] 1 R.C.S. 144;
- ***Fédération des Producteurs Acéricoles du Québec c. S.K. Export Inc.***, 2015 CarswellNB 217; 2015 CarswellNB 218; 2015 NBCA 30;
- ***Vallières c. R.***, 2020 CarswellQue 1307; 2020 QCCA 372;
- ***Fédération des Producteurs Acéricoles du Québec c. Caisse Populaire de Restigouche Ltée***, 2013 CarswellNB 564; 2013 CarswellNB 759; 2013 NBCA 61;
- ***R. c. Vallières***, 2022 CarswellQue 3518; 2022 CarswellQue 3519; 2022 SCC 10; 2022 CSC 10; [2022] 1 S.C.R. 144; [2022] 1 R.C.S. 144;

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- ***Fédération des Producteurs Acéricoles du Québec c. Caisse Populaire de Restigouche Ltée***, 2013 CarswellNB 564; 2013 CarswellNB 759; 2013 NBCA 61;
- ***St-Pierre c. Sûreté du Québec (SQ)***, 2014 CarswellQue 13871; 2014 QCCS 6536;
- ***Fédération des Producteurs Acéricoles du Québec c. Caisse Populaire de Restigouche Ltée***, 2013 CarswellNB 83; 2013 CarswellNB 84; 2013 NBBR 42; 2013 NBQB 42;
- ***Fédération des producteurs acéricoles du Québec c. SK Export Inc.***, 2014 CarswellQue 1418; 2014 QCCA 362;
- ***R. c. St-Pierre***, 2017 CarswellQue 3209; 2017 QCCS 1688;
- ***S.K. Export Inc. c. Fédération des producteurs acéricoles du Québec***, 2011 CarswellNB 461; 2011 NBBR 234; 2011 NBQB 234; [2011] N.B.J. No. 301;

[8] Once the plaintiff obtained judgement against the defendants, S.K. Export Inc. and Étienne St-Pierre, it began attempts to enforce this judgment in New Brunswick. As a result of these efforts, the plaintiff determined that the defendant, S.K. Export, had transferred three properties bearing PID numbers 50029727, 50254929 and 50367945 , (“the properties”), to a company owned and operated by the defendant, Maple Product KNB Inc. The defendant, Maple Product KNB Inc. is a company involved in the production and sale of maple syrup as is S.K. Export Inc. The sole director and shareholder of Maple Product KNB Inc. is the defendant, Julienne Bossé. In the act of transfer dated July 20, 2017, the postal address of S.K. Export Inc. and the postal address of Maple Product KNB Inc. is the same – 7375 Route 17, Kedgwick, New Brunswick. This is the same address at which the defendants, Étienne St-Pierre and Julienne Bossé, were both personally served with this action.

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[9] In the July 2022 Statement of Claim, the plaintiff alleges that the defendants, Étienne St-Pierre and Julienne Bossé, are common law spouses and their companies, the defendants, S.K. Export and Maple Product maintain their offices at the same address. The plaintiff submits that the defendants, S.K. Export and Étienne St-Pierre, transferred the properties to the defendants, Maple Product and Julienne Bossé to shelter these assets from attempts by the plaintiff to collect on outstanding amounts owed to the plaintiff as a result of the litigation in Quebec.

[10] In a joint affidavit dated November 4, 2024, the defendants, Étienne St-Pierre and Julienne Bossé, describe their explanation for the noting in default at paragraphs 4 to 10 and 13 as follows:

> 4. **There has been a long history of litigation (over 15 years) between the plaintiff and Etienne St-Pierre and SK Export.** The parties have appeared in court in New Brunswick on several occasions. In the year 2015, the plaintiff attempted to have homologated in New Brunswick an interim injunction originating out of Quebec and purporting to restrict the Maple Syrup Business of S.K. Export and Etienne St-Pierre. The New Brunswick Court of Appeal ultimately concluded that, inter alia, the plaintiff was attempting to enforce Quebec law in New Brunswick. The Court of Appeal declined to homologate the interim injunction. Annexed here to and marked as exhibit "A" is a copy of the decision. The Supreme Court of Canada declined to hear the plaintiff's appeal. Annexed hereto and marked as exhibit "B" is a copy of the SCC decision.
>
> 5. The above referenced court decisions came as a significant relief. To that point in time the constant pursuit by the plaintiff against S.K. Export and St-Pierre bordered on what we considered to be harassment. This harassment was severely affecting the health of St-Pierre who had a severe heart attack in 2008 (and 6 more heart attacks in 2021). We had understood, and had been informed by our lawyers, and did verily believe, that the above court decisions brought an end to the harassment. **We understood that any further communications from the plaintiff could simply be tossed in the garbage, as it had been declared they had no jurisdiction to pursue the defendants in New Brunswick.**
>
> 6. **In order to preserve our health and sanity we continuously tossed in the garbage any communications sent or delivered to us by the plaintiff.**
>
> 7. Neither of us had any knowledge of a Quebec judgment having been homologated in New Brunswick in 2019.
>
> 8. Neither of us had any knowledge of a New Brunswick legal action filed in 2022.

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> 9. Neither of us had any knowledge of a notice of motion scheduled to be heard for today.
>
> 10. All of the events described in paragraphs 7 through 9 were first learned by us on October 25, 2024, when a French radio reporter came to our place of business in an attempt to interview us. He had with him a copy of the 2022 New Brunswick legal action as well as the notice of motion scheduled for hearing today. Annexed hereto and marked as exhibit "C" is a copy of the 2022 legal action. Annexed hereto and marked as exhibit "D" is a copy of the notice of motion. We immediately contacted our lawyer, Leslie Matchim, and requested his first available appointment.
>
> 13. In 2017, the deteriorating health of St-Pierre required him to cut back his level of involvement in business. As well, efforts by the plaintiff to tarnish the reputation of S.K. Export in international markets was taking a toll. **It made sense that Bosse would increase her level,of business involvement. It was decided to leave exportation of maple syrup by the barrel to S.K. Export. It was further decided that Maple Product would assume responsibility for all manufacture and sale of all value-added maple syrup products.** To give effect to this plan Maple Product and Julienne Bosse purchased the real property and most of the equipment from S.K. Export. Essentially S.K. Export was only left with a forklift, two weigh scales and about 100 barrels. To affect these transactions Maple Product borrowed $190,000.00 from the bank, which sums were guaranteed by Bosse who agreed to have collateral mortgages placed against her home and cottage. Additionally, Maple Product assumed significant debt owed by S.K. Export (Maple Product still has, as additional debt, a line of credit at or near $50,000.00 for this purpose). At no time in 2017, did either defendant have any knowledge or expectation that the plaintiff would later become a creditor of S.K. Export and/or St-Pierre. Rather, all defendants believed that, as a result of the NBCA and SCC decisions of 2015, litigation with the plaintiff had been brought to an end.
>
> [Emphasis mine]

[11] In a supplemental affidavit filed on December 16, 2024, the defendant, Julienne Bossé, explained she borrowed $190,000 from CBDC in order to purchase the properties from S.K. Export. In support of this loan, the defendant, Julienne Bossé, obtained collateral mortgages against her home and cottage. The term sheet issued by the CBDC to Julienne Bossé and Maple Product Ltd. dated March 28, 2017, makes no mention of S.K. Export Inc. nor of the properties transferred from S.K. Export to Maple Product KBN Inc. The promissory note dated April 18, 2017 and the collateral mortgages dated May 2, 2017 do not involve S.K. Export nor do they pertain to the properties in question.

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[12] The defendant, Julienne Bossé, provided a copy of a trust statement from her lawyer dated August 29, 2017 which indicates $84,475.06 received by Maple Product KNB Inc. was used to pay three mortgages previously encumbering the properties in the amount of $80,108.13. The defendant, Julienne Bossé, further attached to her affidavit a copy of portions of a ledger for her company showing transactions during the period of January 1, 2017 and December 31, 2017 involving S.K. Export Inc. This one page document appears to be excerpts from the bookkeeping records of Maple Product KNB Inc.

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POSITION OF THE PARTIES

[13] The defendants and moving parties assert that they have a viable defence to this claim. The defendants suggest they have furnished to the Court documents which demonstrate the defendant, Maple Product KNB Inc., acquired the properties of S.K. Export for fair market value and in consideration of the transfer secured, a loan of $190,000.00 and a line of credit of $50,000.00 from Scotiabank which was used to pay off mortgages and other debts of S.K. Export Inc. While the defendants acknowledge they were careless in ignoring the Notice of Action with Statement of Claim Attached, they suggest this inaction is not lethal to their request for a setting aside of the noting in default as they have demonstrated the existence of a viable defence. Finally, the defendants point out the transfer of the properties occurred in 2017, two years prior to the issuance of the 2019 judgment.

[14] The plaintiff and responding party argues the position advanced by the defendants is bereft of merit. The plaintiff points out that it has been involved in litigation with the defendants, Étienne St-Pierre and S.K. Export for years. The corporate

defendants, S.K. Export Inc. and Maple Product KNB Inc. are involved in exactly the same type of business and operate out of the same address. The plaintiff points out that the defendants, Étienne St-Pierre and Julienne Bossé, are a couple and have been for years. The plaintiff asserts that any suggestion that Julienne Bossé was not acutely aware of the plaintiffs' attempts to recover amounts owing from Étienne St-Pierre and S.K. Export Inc. is simply incredulous and contradicts their own affidavit evidence. The plaintiff points out the documents the defendants have submitted in support of their motion do not demonstrate the transfer of the properties in these circumstances was done in good faith and not in an attempt to shelter the assets from the plaintiff. The plaintiff suggests the defendants' argument that it secured funds of $240,000.00 to acquire the properties has not been established. The plaintiff maintains there is no evidence whatsoever from Scotiabank, there is no evidence from S.K. Export Inc., there are no financial statements from either company nor are there banking receipts. The plaintiff argues the defendants have not met their burden to convince this Court the noting in default should be set aside.

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ISSUES

[15] The sole issue before this Court is to determine whether or not the noting in default should be set aside and the defendants be granted an opportunity to file a statement of defence.

LAW AND ANALYSIS

[16] The defendants' motion is brought pursuant to Rule 21.03 and 21.08 of the New Brunswick ***Rules of Court****:*

> **21.03 Setting Aside the Noting of Default**
>
> (1) A noting of default may be set aside by the court at any time on such terms as may be just.
>
> (1.1) A noting of default shall be set aside by the clerk at any time at the request of the plaintiff in writing and signed by the plaintiff or the plaintiff's solicitor.
>
> (2) Where a defendant files and serves a Statement of Defence with the consent of the plaintiff under Rule 21.02(1)(b), the noting of default against the defendant shall be deemed to have been set aside.
>
> **21.08 Setting Aside Default Judgment**
>
> A judgment obtained under this rule may be set aside or varied by the court on such terms as may be just, including provision that
>
> (a) an execution issued or enforcement instruction delivered pursuant to the default judgment remain on file in the office of the sheriff pending the final disposition of the proceeding, on condition that enforcement of the execution or enforcement instruction be stayed in the meantime, or on such other condition as the court may order, and
>
> (b) the registration of the judgment in any registry office remain undischarged pending the final disposition of the proceeding.

[17] The leading decision in New Brunswick regarding the setting aside of a noting in default is ***Royal Bank of Canada v. Ruddock and Horvath***, 2009 NBCA 25. Chief Justice Drapeau, as he then was, set out the guiding principles to consider upon receipt of a request to set aside a noting of default at paragraphs 26 to 28:

> [26] In my opinion, the test for the exercise of judicial discretion under Rules 21.03 and 21.08 consists of four elements which, **except for the first, come into play without presumptive make-or-break status: (1) a valid prima facie defence to the action; (2) a continuing intention to defend; (3) a reasonable explanation for the failure to file and serve a Statement of Defence before the noting of default; and (4) an application for relief within a reasonable period of time.**
>
> [27] Of course, the strongest case for set-aside relief is one where each and every element of that test is present. On the other hand, the easiest cases for the plaintiff to meet are those where the proposed defence is invalid in law or where the evidential record does not provide the requisite factual support for a defence that is valid at law. Absent leave to file additional material, an application in the second case will rarely if ever fare better than the one in the first. **Needless to say, the more problematic cases feature a proposed defence on the merits that is satisfactorily established coupled with non-**

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> **compliance with one or more of the other elements.** The case at hand falls within that category.
>
> [28] **In my respectful judgment, the first element – a valid prima facie defence on the merits – dwarfs all others in importance. It is axiomatic that the defendant need not satisfy the court that he or she will be entitled to summary judgment in the event the requested set-aside orders issue. The relevant inquiry is this: does the evidential record give rise to a triable defence on the merits? In determining that question, the court should require the moving party to file a draft of the proposed Statement of Defence and determine whether the affidavit evidence provides a factual underpinning for any legally recognized defence articulated therein.** Where it appears there is a defence on the merits, but the evidence in support is lacking or deficient, the motion judge ought to consider adjourning the hearing to afford the defendant an opportunity to rectify the situation (see Central Trust Company v. Wheeler, Frizzell and Leger (1983), 1983 CanLII 4085 (NB CA), 44 N.B.R. (2d) 159 (C.A.), [1983] N.B.J. No. 77 (QL)). As a practical matter that solution is preferable, if only for cost-saving purposes, to dismissal with leave to renew with further material. If after being given a fair opportunity to do so, the moving party fails to establish by admissible evidence any such defence, his or her motion ought to be dismissed. If, however, a meritorious defence is pleaded and established, and the plaintiff does not show irreparable default- or delay-related injury, the other elements should only very exceptionally entail the dismissal of the motion. Unless compelled by law to do otherwise, judges ought not to sacrifice justice on the altar of procedural correctness. That foundational principle argues strongly against allowing inconsequential procedural failures or other such failings to close the courtroom doors to a defendant with a valid defence on the merits. After all, there will be very few instances where the defaulting defendant's non-compliance with the Rules of Court cannot be satisfactorily dealt with by a suitable order of costs.
>
> [Emphasis mine]

[18] Justice LeBlond recently had an opportunity to further consider the issue of the burden which rests upon a party seeking to set aside a noting in default in ***Martin et al. v. Business Development Bank of Canada***, 2020 NBCA 3 at paragraph 22 as follows:

> [22] This is the extract cited by the motion judge at para. 49 of her decision. **The thrust of the test is to determine whether the evidential record gives rise to a triable defence on the merits. That is the burden of proof that must be discharged by the party noted in default.** Here, the judge clearly acknowledged the nature of the burden falling on the appellants when she wrote, at para. 95 of her decision:
>
> > [TRANSLATION]
> >
> > I am also aware that the burden which falls on the defendants in this case is not to satisfy the court that they would undoubtedly be entitled to summary judgment in the event that the requested set-aside orders issue (see

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> Ruddock, supra, at paragraph 28). That being said, to establish a valid prima facie defence on the merits, it is not enough to simply state a fact. Affidavit evidence must also provide a factual underpinning for the legally recognized defence articulated.
>
> [Emphasis mine]

[19] The defendants do not argue they have been compliant with all four requirements of the test as set out in ***Ruddock***. However, their position is they have set out a triable defence on its merits and as this first criteria trumps all others, they have satisfied the burden which rests upon them to obtain an order setting aside the default judgment. It is perhaps helpful to start the analysis with a consideration of the last three criterion of the ***Ruddock test***.

[20] The defendants have not demonstrated a continuing intention to defend. To the contrary, the defendants' affidavit evidence makes it clear that they threw into the garbage anything received from the plaintiff. The defendants, Étienne St-Pierre and Julienne Bossé, do not deny that they were both personally served with this action. The defendants' statement in their affidavit that they had no knowledge the Quebec judgment was homologated in New Brunswick nor of the legal action filed in 2022 is disingenuous. Their lack of knowledge stems from their decision to throw legal documents into the garbage rather than because the information was not made available to them.

[21] The defendants have no reasonable explanation for their failure to file a statement of defence. The defendants essentially determined they no longer wished to engage with the plaintiff. Regrettably, our legal system requires consequences when individuals make the conscious decision to ignore court proceedings. The defendants filed their motion to set aside the default judgment the day the plaintiff's

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motion for orders facilitating the enforcement of their judgement was set to be heard.

[22] Returning to the Chief Justice Drapeau's analysis in ***Ruddock***, context is extremely important. In ***Ruddock***, the moving party had clearly demonstrated a continuing intention to defend. Chief Justice Drapeau sets out the efforts taken by the moving party at paragraph [9] in ***Ruddock*** as follows:

> [9] Ms. Ruddock's July 19, 2008 affidavit, which is uncontradicted, features the following statements, all designed to provide, directly or inferentially, proof of her unabated intention to defend and an explanation for her failure to take prompt remedial action: (1) she has "always" contended the debt for which default judgment was signed was not hers, but Mr. Horvath's; (2) she is as much a victim as RBC, her identity having been stolen by Mr. Horvath; (3) after being served with a copy of the Notice of Action with Statement of Claim Attached, she contacted RBC and its solicitors with a view to persuading them that Mr. Horvath bore sole liability for the debt targeted by the lawsuit; (4) during the same period, she also confronted Mr. Horvath, who assured her – as he would on several subsequent occasions – that he would take care of the bank's claim, that his lawyer was looking after the matter and that she need not worry as he had undertaken steps to remove her name; (5) she took comfort from those assurances; (6) her lawyer of choice could not represent her due to a conflict of interest; (7) a second lawyer consulted gave an estimate of legal fees that was beyond her modest means before recommending a referral of the "identity theft" to the R.C.M.P.; (8) the R.C.M.P. eventually declined to investigate the complaint, offering the view that the issue was civil, not criminal; and (9) she is not worldly and, in particular, she did not appreciate the legal predicament that inaction would place her in, nor did she realize that self-representation was an option worth exploring.

[23] Chief Justice Drapeau also in ***Ruddock*** discusses those rare cases where the lack of a continuity of an intention to defend would tip the scales in favour of denying an order to set aside the default judgement. Chief Justice Drapeau comments at paragraph 29 as follows:

> [29] The second element – a continuing intention to defend – warrants inclusion primarily because it is a staple of most decisions dealing with set-aside applications. Yet, there are very few cases where it has actually tipped the scales against relief. That is likely so because the defendant with a valid defence on the merits rarely folds. **Nonetheless, this element might bear consideration in those relatively rare cases where the defendant's intent prior to the noting of default was not to defend.** I note that, in admittedly unusual circumstances, the Court in *Nobosoft Corp. v. No Borders Inc. et al.* (2007), 225 O.A.C. 36, [2007] O.J. No. 2378 (QL), 2007 ONCA 444, set aside a noting of default despite the

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> defendant's original intent not to defend. I suppose this element might also come into the mix where the defaulting defendant's interest in achieving a merits-based outcome has been equivocal or spotty. The court could be tempted to project that apparent lack of resoluteness into the future and wonder whether a set-aside order might simply operate to delay the inevitable judgment in the plaintiff's favour. However, the court ought to refrain from yielding to that temptation except in the clearest of cases. Generally speaking, where a valid defence on the merits is established and irreparable injury to the plaintiff has not been shown, **the failure to establish an unrelenting intention to defend should not deny access to adjudication to a defendant whose will to litigate might have occasionally weakened in intensity or momentarily fallen prey to obstacles beyond his or her perceived capacity to overcome. I would offer the following non-exhaustive list of such obstacles: perceived lack of adequate resources; misconceptions about the judicial system; ignorance of the applicable procedure; and a less than full understanding of pertinent legal rights.**
>
> [Emphasis mine]

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[24] Despite this Court's grave concerns with the defendants' actions in this matter, Chief Justice Drapeau made it clear in ***Ruddock*** that the reviewing judge's primary concern must be the existence of a triable defence on the merits. At the initial appearance in this matter on November 4, 2024, the defendants' explanation of their defence on the merits was a potential limitation of actions defence. At the hearing of the motion on December 19 and in their written submissions, the defendants argue they have demonstrated the transfer of the properties in 2019 was not in contemplation of avoiding a potential judgment.

[25] In their brief in explaining the argument that there is a defence on the merits, the defendants state at paragraphs 11 and 12 as follows:

> 11. The defendants deposed that in 2017 they had no reason to believe that the plaintiff was, or would become, a creditor of the first two named defendants. There are no facts on the record to suggest otherwise. The plaintiff only became a creditor in 2019. On this basis alone this Honorable Court can readily determine that there is a "triable issue" as to whether the defendants orchestrated a property transfer to evade a phantom creditor.
>
> 12. Furthermore, there are no indications on the record that any property transfers were done for anything other than fair value.

[26] In their Notice of Action with Statement of Claim Attached, the plaintiff set out the crux of their allegations against the defendants at paragraphs 6, 7, 8, 9, 10, 11 and 13 as follows:

> **Le Jugement**
>
> 6. La présente action découle de multiples procédures à compter de 2009 impliquant PPAQ et S.K. Export et St-Pierre en lien avec l'achat de sirop d'érable en contravention avec les divers textes règlementaire pris dans le cadre du Plan conjoint des producteurs acéricoles du Québec, RLRQ, C. M-35.1, r. 19. devant la Règle des marchés agricoles et alimentaires du Québec (ci-après la « Règle ») visant, entre autres, à empêcher S.K. Export et St-Pierre de recevoir, d'acheter ou de transiger du sirop d'érable contrairement avec la règlementation applicable.
>
> 7. La Règle a rendu une décision en faveur de PPAQ le 7 février 2019 ordonnant à S.K. Export et St-Pierre de payer à PPAQ, solidairement, la somme de 977,930.00$.
>
> 8. PPAQ a fait homologuer la décision de la Règle par la Cour supérieure du Québec le 6 mars 2019. Le 31 octobre 2019, les PPAQ ont obtenu un jugement en vertu de la Loi sur les jugements canadiens, LRN-B 2011, c 123, à l'encontre de S.K. Export et St-Pierre (ci-après, le « Jugement »).
>
> **La Transaction Frauduleuse**
>
> 9. Suite à l'obtention du Jugement, PPAQ a pris les mesures nécessaires afin de l'enregistrer dans le Registre foncier de la province du Nouveau-Brunswick ainsi que dans le Registre des biens personnels du Nouveau-Brunswick afin de procéder à l'exécution du Jugement.
>
> 10. PPAQ a alors découvert que ni S.K. Export, ni St-Pierre n'étaient propriétaires de biens-fonds du Nouveau-Brunswick selon le Registre foncier. Le Registre foncier indiquait que S.K. Export avait autrefois été propriétaire de bien-fonds ayant les numéros d'identification de parcelle 50029727, 50254929 et 50367945 (ci-après « les Propriétés ») mais que celles-ci avaient été transférées à Maple Product le 20 juillet 2017. PPAQ a raison de croire que S.K. Export, en plus d'avoir transféré les Propriétés à Maple Product, lui a aussi transféré tous ses bien personnel utilisé dans le cadre de ses opérations commerciales (ci-après, PPAQ se réfère au transfert des Propriétés et des autres biens de S.K. Export comme la « Transaction »).
>
> 11. Les informations au Registre foncier indiquaient que les Propriétés avaient toutes été transférées le même jour, soit le 20 juillet 2017, et pour la même contrepartie, soit la somme de 78, 371.00$. Cela dit, la valeur combinée des Propriétés pour fin d'évaluation foncière se chiffrait à 146,900.00$.
>
> (...)
>
> 13. PPAQ affirme que S.K. Export et St-Pierre ont conservé la possession et l'usage des Propriétés et d'autres biens de S.K. Export depuis la Transaction et qu'ils y basent et continuent les opérations de S.K. Export à ce jour. Dans

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> l'alternative, S.K. Export et St-Pierre, de concert avec Bossé, utilisent Maple Product comme paravent pour continuer les opérations de S.K. Export à ce jour.

[27] In their proposed Statement of Defence, the defendants set out in part their response to the action at paragraphs 5, 6, 7 and 8 the following:

> 5. With respect to paragraph 10 of the Statement of Claim the defendants state that the defendant, S.K. Export Inc. (hereinafter referred to as S.K. Export), did not sell the entirety of its commercial equipment, but did sell the majority of it, to the defendant Maple Product KNB Inc, (hereinafter referred to as Maple Product). The defendants admit the remaining allegations contained therein.
>
> 6. With respect to paragraph 11 of the Statement of Claim the defendants state that there was additional consideration paid by Maple Product to S.K. Export. In total there was $190,000.00 paid directly and indirect payment in the form of the assumption of debt in excess of $50,000.00. The defendants deny that the consideration paid was inadequate. The defendants admit the remaining allegations contained therein.
>
> 7. With respect to paragraph 13 of the Statement of Claim the defendants state that the operations of S.K. Export have essentially been non-existent for the past four years, having only restarted in the past few months. Even at that, the operations of S.K. Export are now limited to the sale and export of maple syrup by the barrel. S.K. Export uses a portion of the buildings owned by Maple Product. The business of manufacturing and selling value added maple products is handled exclusively by Maple Product as run exclusively by the defendant Julienne Bosse.
>
> 8. With respect to the whole of the Statement of Claim the defendants state that the transactions done between the defendants were done for legitimate business reasons and without any knowledge or expectation that the plaintiff would ultimately become a creditor of S.K. Export and/or the defendant St-Pierre.

[28] In reviewing the evidence submitted by the defendants in support of their motion, they have not demonstrated that S.K. Export Inc. received $240,000.00 in consideration for the transfer of the properties. The defendants have not demonstrated how the transfers were done for legitimate business reasons. At best, the defendants have submitted documentary evidence suggestive of a payment of mortgages on the properties in the amount of $80,108.13. The plaintiff has acknowledged in the Statement of Claim that there may have been some

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consideration paid by the defendants but that this was inadequate. The evidence furnished by the defendants confirm there may have been some consideration paid but leaves unanswered the questions of the value of the properties and the details of any additional payments.

[29] The plaintiff maintains the evidence produced by the defendants is inadequate to meet the test of establishing a triable defence on the merits. The plaintiff highlights the fact the burden remains on the defendants to satisfy the Court that the evidence presented is sufficient to support the existence of a defence on the merits. The plaintiff points out that the defendants were in a position to provide all available evidence to explain the transactions between the defendants in order to establish the transfers were done in good faith, and they failed to do so. While the burden upon the defendants is not akin to what would be expected on a summary judgment motion, there must nonetheless be sufficient evidence to satisfy the Court that within the record there exists tangible evidence supportive of the potential defence.

[30] In my view, the defendants' response to the last three criterion as set out in ***Ruddock***, are woefully inadequate. It goes without saying that in a democratic society which functions according to the rule of law, individuals cannot simply choose to ignore their legal obligations and interact with the Court only to avoid the consequences of their previous inaction. In the event the approach taken by the defendants in this matter was sanctioned by the Court, our ***Rules of Court*** would quickly become meaningless and the administration of justice would become chaotic and unpredictable.

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[31] The defendants' assertion that they were unaware of the outstanding judgement is incredulous. The defendant, Julienne Bossé, and her company, Maple Products KNB Inc., are involved in the exact same business as S.K. Export Inc. and Étienne St-Pierre. The defendants concede this point in their affidavits. Therefore, with this undeniable relationship established, what is the evidence the defendants have furnished to suggest the transfer of the properties in 2017 was not done with the intention to thwart recovery attempts Étienne St-Pierre and S.K. Export's creditors, primarily the plaintiff. The defendants have provided the following documentary evidence:

(1) a term sheet from CBDC Inc. confirming terms and conditions of a loan for Maple Product KNB Inc. in the amount of $190,000.00 dated April 18, 2017;

(2) a promissory note dated April 18, 2017 executed by Julienne Bossé and Maple Product KNB Inc. in favour of the CBDC;

(3) a collateral mortgage between Julienne Bossé and CBDC dated May 2, 2017 encumbering two of Julienne Bossé's properties;

(4) a statement from a lawyer's trust account dated August 29, 2017 indicating funds of $80,108.13 were used to pay existing mortgages on the properties; and

(5) excerpts from the bookkeeping ledger of Maple Products KNB Inc. during the year 2017.

[32] Significantly, there is no evidence furnished by the defendants as to the value of the properties transferred in 2017, the receipt of any funds from S.K. Export, nor

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details of an additional line of credit of $50,000.00 that Maple Product is said to have obtained from Scotiabank as part of the purchase of the properties and assets of S.K. Export Inc. The defendants could have easily provided evidence such as financial statements, complete bookkeeping records or bank records to demonstrate with documents how, when and why these transfers were affected. The defendants chose to provide a spotty assortment of information in support of their narrative which leaves many unanswered questions.

[33] In my view, this case falls into one of those rare situations where the defendants' lack of intention to defend carries considerable weight. This is not a situation where the matter was not defended due to a perceived lack of adequate resources, misconceptions about the judicial system, ignorance of the applicable procedure or a less than full understanding of pertinent legal rights. These defendants made a conscious decision not to defend in a situation where they were acutely aware the plaintiff had been pursuing them for years. These defendants simply decided they would not engage in the legal process.

[34] The Court is mindful of Chief Justice Drapeau's suggestion that if the record is incomplete, the moving party ought to be given an opportunity to rectify the evidentiary frailties. I am not satisfied that the evidence as currently presented to the Court is sufficient to conclude there is a triable defence on the merits, particularly given the weight which must be necessarily given to the other factors in the context of this case. Further, I do not accept the submission by defendants' counsel that if the evidentiary record is deficient, the plaintiff's counsel should have availed himself of the opportunity to probe those frailties via cross-examination. As

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pointed out by Justice LeBlond in ***Martin***, the burden rests upon the party seeking to have the default judgement set aside.

[35] Rule 21.03(1) provides the Court the ability to set aside a noting in default or such terms as the Court views are necessary. The availability of this discretionary remedy is appropriate and necessary, particularly in circumstances of defendants who are noted in default as the result of an error or a misunderstanding. In this matter, the plaintiff commenced an action against these defendants alleging a fraudulent conveyance designed to thwart the plaintiff's ongoing attempts to obtain recovery of a significant judgment obtained against the defendants, Étienne St-Pierre and S.K. Export Inc. The defendants' response is they had become fed up with the plaintiff's attempts to obtain recovery and they decided to throw into the garbage any communication received from the plaintiff. This explanation is so far from an established intention to defend the matter that the weight of this criterion must be adjusted accordingly. Further, the evidence provided to establish the *bona fides* of the conveyance of the properties is incomplete. The complete failure to provide any evidence from S.K. Export Inc., the financial statements of the companies or evidence from lawyers or accountants involved in the transaction is problematic. This was the time for the defendants to demonstrate to the Court that the plaintiff has wrongly interpreted the nature of these conveyances. None of the evidence received by the Court is compelling to confirm these transfers were done for any reason other than to move these assets under a "safer" entity given the plaintiff's ongoing pursuit of the defendants, Étienne St-Pierre and S.K. Export.

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[36] While the defendants have raised a potential limitation period defence, they have not addressed this in their written submissions. In their proposed statement of defence, the defendants suggest that the plaintiff's action is barred by virtue of section 27 of the ***Debtor Transactions Act***, SNB 2015, c 23. This section states as follows:

> 27(1) Subject to subsections (2) and (3), no application for an order is to be commenced more than one year after the date of the transaction that is the subject of the application.
>
> 27(2) If the transferee conceals or assists in the concealment of the transaction or of material facts, the one-year period commences at the time that the applicant knew of the transaction or the material facts, but no application is to be commenced more than five years after the date of the transaction.
>
> 27(3) If the debtor becomes bankrupt before the end of the one-year period, the debtor's trustee in bankruptcy may bring an application if the transaction occurred during the period that begins on the day that is one year before the date of bankruptcy and that ends on the date of bankruptcy, but no application is to be commenced by the trustee more than one year after the date of bankruptcy.

[37] The present action was commenced in 2022 once the plaintiff became aware of the transfer. The transfer of the properties took place on July 20, 2017, and the plaintiff's Notice of Action with Statement of Claim Attached was filed on July 13, 2022, within the five year limitation period provided by virtue of section 27(2). The defendants suggest that the transfer of the properties was registered on the Land Titles system and therefore the plaintiff ought to have known of the transaction as the information would have been readily available from the records available on the Land Titles Registry. However, section 27(2) stipulates that the applicant had "*one year from the time the applicant knew of the transaction*". Unlike many limitation period clauses, section 27(2) of the ***Act*** does not include the additional qualifier "*or ought to have know*".

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[38] In the present matter, the plaintiff filed the action as soon as they discovered the transaction and did so within the maximum available period of five years as the action was filed on July 13, 2022, and the transaction occurred on July 20, 2017. In my view, the limitation period under section 27(1) or 27(2) of the ***Act*** does not provide a viable defence to the defendants.

CONCLUSION AND DISPOSITION

[39] Unlike the moving party in ***Ruddock***, these defendants have never had a continuing intention to defend this matter. The defendants do not have a reasonable explanation for their failure to defend. The defendants filed their motion to set aside the default judgement on the day the plaintiff was before the Court requesting orders pursuant to section 18 of the ***Debtor Transactions Act***. The defendants were alerted to the scheduled motion by a journalist who was interested in the appearance given the notoriety of the dispute between these parties. The defendants' response to the last three ***Ruddock*** criterion are as already reviewed problematic and must be accorded considerable weight in the circumstances.

[40] Despite the conclusion that the defendants have not satisfied the last three criterion under ***Ruddock***, the Court is mindful that the primary consideration remains the existence of a triable defence on the merits. The defendants' position falls on this criterion as well. The Court does not accept that a valid defence has been made out pursuant to the limitation period under the ***Act***. The defendants' remaining argument is that there was fair consideration paid by the defendants, Julienne Bossé and Maple Product KNB Inc., for the property and assets of the

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defendants, S.K. Export Inc. and Étienne St-Pierre. However, the evidentiary record submitted by the defendants only confirms what has already been acknowledge by the plaintiffs "*some consideration*" was paid. The value of the properties and the extent of the consideration received by S.K. Export Inc. remains unaddressed. The defendants did not provide any evidence to the Court as to the fair market value of the property nor any receipts or financial information from S.K. Export Inc.

[41] For all the aforementioned reasons, the Court is not prepared to exercise its discretion and set aside the noting in default. The defendants' motion requesting the setting aside of the noting in default is denied with costs payable by the defendants to the plaintiff in the amount of $2,000.00

DATED at Moncton, New Brunswick, this 10th day of January 2025.

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Tracey K. DeWare
Chief Justice of the Court of King's Bench
New Brunswick, Trial Division

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