

CITATION: The Bank of Nova Scotia v. Arnold, 2025 ONSC 2371
COURT FILE NO.: CV-13-58831
DATE: 2025/04/16

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Bank of Nova Scotia, Plaintiff

AND:

Ronald William Arnold, aka Ronald W. Arnold, Respondent

BEFORE: Anne London-Weinstein J.

COUNSEL: Sean Goodman, for the Plaintiff
Respondent, Self-Represented

HEARD: April 15, 2025

ENDORSEMENT

[1] The plaintiff, the Bank of Nova Scotia seeks leave for an order granting a notice of garnishment and allowing the bank to enforce the terms of a judgment granted March 14, 2014 in the amount of \$144,138.93 and costs of \$1410.00 with post-judgment interest at the rate of 4.56 percent per year in connection with mortgage account number 2499311.

Legal Analysis:

[2] If six years or more have passed since the date of the order, or if its enforcement is subject to a condition, a writ of seizure and sale may not be issued without leave of the court. *Rules of Civil Procedure*, O.Reg 575/07m s, 60.07(2)

[3] Similarly, if six years or more have passed since the date of the order, or if its enforcement is subject to a condition, a notice of garnishment shall not be issued without leave of the court. *Rules of Civil Procedure*, O. Reg. 575/07, s. 60.08(2). The wording of rule 60,07(2) is in essence, identical to rule 60.08(2), therefore the same test applies. *Royal Bank of Canada v. Correia*, 2006 CanLII 26976 (ON SC), para 5.

[4] Whenever a plaintiff seeks leave under rule 60.08(2) to issue a notice of garnishment more than six years after the date of judgment, the plaintiff must adduce evidence to demonstrate that the plaintiff has not waived its rights under the judgment or otherwise acquiesced in non-payment of the judgment. *Royal Bank of Canada v. Correia*, 2006 CanLII 26976 (ON SC), para 6.

[5] A defendant may argue that enforcing the claim would produce an inequitable result. For example, the defendant could demonstrate reliance to his detriment, or that he changed his financial position in reliance on reasonably perceived acquiescence resulting from the delay. *Royal Bank of Canada v. Correia*, 2006 CanLII 26976 (ON SC) para 6.

[6] The onus would rest with the defendant to adduce evidence of such reliance and detriment. *Royal Bank of Canada*, supra, at para 6. In this case, the defendant did not respond to this motion and filed no responding material.

[7] The evidentiary threshold of providing an explanation for the delay is a low one. *Achtem v. Boese*, 2021 ONCA 284 at para 14.

[8] Delay is but one factor to be considered in determining whether leave under rule 60.07(2) should be granted. It is relevant to the issue of whether waiver or acquiescence exist. There is no evidence in this case that there has been a detrimental reliance or a change of position by the defendant.

[9] Has the plaintiff acquiesced or waived its claim to the debt as evidenced by the elapse of time? In this case, the evidence is that while there was a considerable delay in acting to enforce collection of the debt in this matter, the plaintiff did take steps to advance its claim.

[10] For example, a writ of seizure and sale was filed with the Sherriff of the City of Greater Sudbury on March 17, 2014 and was renewed on March 2, 2020. It continues in force until September 14, 2026.

[11] There was also evidence adduced on this motion that regular, repeated attempts were made to contact the defendant regarding the debt. The plaintiff's counsel sent a letter to the defendant at their last known address on May 20, 2020. On June 3, 2020, the letter was sent back to the plaintiff's counsel as returned mail. On January 19, 2021, a property search was conducted in

relation to the defendant but he could not be located. On June 23, 2021, the defendant was contacted by telephone. He would not discuss the outstanding matter nor would he provide any updated contact information. He terminated the call.

[12] On June 24, 2021, a credit report relating to the defendant was obtained. On July 6, 2021, senior counsel Jack Goodman sent a letter to the last known address of the defendant as set out in the credit report. The letter was not returned to the plaintiff as returned mail. On January 7, 2022, a property search was conducted in relation to the defendant. On February 2, 2022, a property search was conducted again in relation to the defendant.

[13] A recovery officer of the plaintiff's law firm placed calls to the defendant at the last known phone number on the credit report on March 23, 2022, April 4, 2022, April 18, 2022, April 29, 2022, May 9, 2022, May 12, 2022, and May 25, 2022. No response was ever received from the defendant.

[14] A call was also placed to the defendant on June 30, 2022, and no response was received. A call was again placed on September 20, 2022, and no response was received. A call was placed to the defendant on April 19, 2023, and May 8, 2023 with no response received.

[15] Calls to the defendant were also placed on May 17, 2023, May 29, 2023, June 15, 2023, July 12, 2023, July 26, 2023, August 11, 2023, September 19, 2023, October 23, 2023, November 15, 2023, March 20, 2024, April 9, 2024, May 17, 2024, June 7, 2024, June 25, 2024, July 10, 2024, August 16, 2024, September 3, 2024, September 19, 2024, October 10, 2024, October 24, 2024, November 1, 2024, November 18, 2024 and December 11, 2024. No response was received from the defendant to any of these calls.

[16] Continuous efforts were made to contact the defendant regarding the debt, however the defendant did not always answer telephone calls and has refused to discuss repayment of the debt. The most recent call to the defendant regarding this matter was made on December 11, 2024.

[17] In the circumstances, while there has been considerable delay on the part of the plaintiff, the evidence, when considered as a whole, is insufficient to establish that the plaintiff has acquiesced to non-payment of the judgment or waived its rights under the judgment. Rather, the evidence is to the contrary. The plaintiff filed a writ of seizure and sale with the sheriff on March

17, 2014, and renewed it prior to its expiry on March 2, 2020. The writ remains in force. The plaintiff has also repeatedly made attempts over the years to contact the defendant to collect on the debt. The evidence before this court is that the defendant acknowledges the debt but refuses to pay.

[18] Counsel for the plaintiff also submits that there was another matter involving the defendant which took priority to this one. In all the circumstances, I find that the plaintiff has met the relatively low threshold to explain the delay, and that there has been no waiver or acquiescence on the part of the plaintiff with respect to the debt. Granting leave in this case would not result in an inequitable result. Rather, to fail to grant leave in this case would result in an inequitable result by granting the defendant a windfall through avoidance of the plaintiff's attempts to enforce the debt.

[19] Leave is therefore granted permitting the plaintiff to issue a notice of garnishment.

Anne London-Weinstein J.

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Released: April 16, 2025