

COURT OF APPEAL FOR ONTARIO

CITATION: Bank of Nova Scotia v. Reed, 2025 ONCA 445

DATE: 20250619

DOCKET: COA-25-CV-0098

Lauwers, Miller and George JJ.A.

BETWEEN

The Bank of Nova Scotia

Plaintiff (Respondent)

and

Kenneth Reed

Respondent (Appellant)

Jordan B.R. Palmer, for the appellant

K. Daniel Reason, for the respondent

Heard: June 11, 2025

On appeal from the judgment of Justice Michael B.J. Carnegie of the Superior Court of Justice, dated December 9, 2024, with reasons reported at 2024 ONSC 6859.

REASONS FOR DECISION

[1] The appellant is a farmer who regularly purchased supplies for his farming operation from FS Partners – Kitchener (“FS”). In 2014 the appellant had accumulated approximately \$32,000 in debt with FS which led him to enter into two credit agreements. The first, a Crop Input Line of Credit (“Crop Input LOC”), was provided by the respondent and commenced on February 19, 2015. This line

backstopped the credit that had already been extended by FS. This was an ongoing line of credit that the appellant could draw on for his crop inputs and other supplies necessary for his farming business.

[2] The second credit agreement was a \$20,000 line of credit that the appellant arranged directly with the respondent (“Business LOC”).

[3] The appellant defaulted on both loans. The respondent then commenced an action to recover the amounts owed under the two agreements. The appellant acknowledges his obligation to repay the Business LOC. He disputes, however, the amount owed under the Crop Input LOC. He argues further that the respondent failed to comply with the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A (“CPA”).

[4] The motion judge granted summary judgment in the amount of \$68,450.56 with respect to the Crop Input LOC and \$27,956.52 with respect to the Business LOC. The motion judge also granted relief pursuant to a general security agreement between the parties; he, among other things, allowed the respondent to take possession of some of the appellant’s assets and required the appellant to furnish the respondent with a list of his secured assets and their location.

[5] The appellant appeals. He argues that the motion judge erred 1) by granting summary judgment, 2) by finding that the CPA did not apply, and 3) in granting

relief other than summary judgment which he says should have been left for a later enforcement proceeding.

[6] On June 9, 2025 this court received correspondence from counsel for the appellant advising that he had just learned the appellant had applied for mediation under the *Farm Debt Mediation Act*, S.C. 1997, c. 21 (“FDMA”). On the same day, a notice of a stay of proceeding was issued pursuant to s. 7 of the FDMA. The panel invited the parties to make submissions on the impact of this stay on the appeal.

Summary Judgment

[7] The appellant submits that summary judgment was not an appropriate way to dispose of this case. He argues that he was unable to determine all persons with knowledge of the matter or all the documents held by the respondent without an affidavit of documents, and that he did not have the opportunity to question a representative of the respondent on discovery. This, he says, prevented him from putting his best foot forward on the motion.

[8] We reject this argument. The appellant’s ability to defend this matter at a summary judgment motion was not compromised by the fact he did not receive an affidavit of documents. We observe that the appellant, who was at the time represented by different counsel, examined a representative of the respondent and

that during the course of that examination he requested various undertakings, all of which were satisfied.

[9] The appellant was provided with all of the documents relevant to the dispute before the court, which was about the interpretation of the agreements and the parties' respective rights under them.

[10] The appellant submits further that the motion judge erred in finding that he had no defence under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B as he had acknowledged the ongoing terms and conditions set out in the credit agreements. There is no basis on which to disturb the motion judge's finding that the appellant had signed and dated the relevant documents and that he had made ongoing monthly payments. In other words, the evidence established that the appellant acknowledged these debts on an ongoing basis, which is important because, pursuant to s. 13 of the *Limitations Act*, if a debtor acknowledges or pays a debt the limitation period begins on the date of that acknowledgment.

Consumer Protection Act

[11] The appellant submits that the motion judge erred in finding that the CPA did not apply in the circumstances of this case. We reject this argument. The definition of a consumer in the CPA – an individual acting for personal, family, or household purposes – is fatal to this argument. The appellant was not a consumer

as defined in the CPA; he obtained the lines of credit in order to purchase crop inputs and supplies for his farming operation.

Farm Debt Mediation Act

[12] Under s. 5 of the FDMA a farmer may apply for a stay of proceedings against all of their creditors and for “mediation between the farmer and all the farmer’s creditors for the purpose of assisting them to reach a mutually acceptable arrangement”. As noted above, the appellant made this application and a stay was granted.

[13] The question is whether this stay applies to this appeal. In our view, it does not. That is because s. 12 of the FDMA makes it clear that a stay granted under s. 5 applies only to proceedings commenced, or continued, by the creditor. While the underlying application was indeed commenced by the respondent, this is the appellant’s appeal. Therefore, the appeal is not stayed.

[14] However, because the judgment under appeal arises from the respondent’s application, the respondent cannot take any steps to enforce it. For that reason, the enforcement provisions in the judgment – paragraphs 3 through 6 – are stayed pending the outcome of the mediation process or a termination of the stay by the administrator under the FDMA, whichever occurs first.

Conclusion

[15] For these reasons the appeal is dismissed, subject to a stay of the enforcement provisions in the judgment as described.

[16] Costs are payable by the appellant to the respondent in the all-inclusive amount of \$7,500.

“P. Lauwers J.A.”
“B.W. Miller J.A.”
“J. George J.A.”