

evidence relied on by TGG, the video shows that the work by ZMAC was not completed prior to the fire.

- [5] On June 8, 2024, ZMAC sent an invoice to TGG by email for partially completed work. The defendant did not receive any further communication from ZMAC or its lawyers.
- [6] On July 17, 2024, ZMAC registered a construction lien on title to the Property.
- [7] On July 19, 2024, ZMAC issued the statement of claim.
- [8] On July 26 and August 2, 2024, ZMAC's process server attended at TGG's Walker Road address to personally serve the statement of claim. No one from TGG was present at the address on either date, therefore the process server could not complete service.
- [9] At some point prior to July 2024, TGG moved its business address from Walker Road to Assumption Road. TGG did not update its registered business address with the Corporations Canada.
- [10] On August 6, 2024, the process server attended at the Assumption Road address, which he located online as belonging to Thompson Asset Management ("TAM") and Thompson Electric ("TE"). The process server found signs for TAM and TE at the Assumption Road address.
- [11] On August 15, 2024, the process server called the telephone number for TAM and sent a text message inquiring about TGG. In response, the process server received a call from Mr. Thompson who advised the process server that he was out of the country. The process server and Mr. Thompson have different recollections and interpretations of what they said during this telephone call.
- [12] On August 16, 2024, the process server again attended at the Walker Road address, and no one was present.
- [13] On September 18, 2024, the process server sent by regular mail to TGG's Walker Road address the statement of claim in accordance with r. 16.03(6) of the *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194. The process server did not deliver the statement of claim to the Assumption Road address or send it by email to TGG's principal.
- [14] On November 26, 2024, Hebner J. noted the defendant in default and granted default judgment to the plaintiff.
- [15] On February 13, 2025, while working on a refinancing proposal, TGG discovered a construction lien and the default judgment that the court had registered against the Property.

ANALYSIS

- [16] The parties agree that under r. 19.08 the court may set aside a default judgment on such terms as are just. The parties also agree that the decision is a discretionary one and that the court must be guided by the factors outlined in *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194, 119 O.R. (3d) 561, at paras. 48-49:
- (a) Whether the motion was brought promptly after learning of the default judgment.
 - (b) Whether there is a plausible excuse or explanation for the defendant's default.
 - (c) Whether the facts establish that the defendant has an arguable defence on the merits.
 - (d) The potential prejudice to the parties.
 - (e) The effect of any order the court might make on the overall integrity of the administration of justice.
- [17] ZMAC concedes that TGG moved promptly once it learned of the default judgment.
- [18] The parties do not agree on whether there is a plausible excuse or explanation for TGG's default. In my view there is.
- [19] ZMAC properly served the statement of claim in accordance with r. 16.03 by sending a copy by mail to TGG's registered business address. The statement of claim did not come to the attention of TGG or its principal because of the failure of TGG to document its change in registered office address with Corporations Canada. TGG argues that ZMAC was aware that TGG's office moved and had an email address for the principal of TGG and should have also served the statement of claim at those addresses.
- [20] Regardless of whether there was an obligation on ZMAC to bring the statement of claim to the attention of the defendant, in my view, there is a plausible and legitimate explanation for why TGG was in default and did not defend the claim. The statement of claim, while properly served under r. 16.03, did not come to TGG's attention because its business address had changed. Once TGG became aware of the claim and the default judgment, it acted quickly.
- [21] On the merits of the defence, TGG did not file a draft statement of defence with its motion record. The affidavit of Mr. Thompson, sworn May 20, 2025, however, outlines the anticipated defence of TGG. This includes (i) the work that ZMAC had been contracted for was incomplete at the time of the fire, and (ii) ZMAC used inferior materials resulting in significant cost difference and breach of contract. ZMAC argues that given the fire destroyed the building where the work by ZMAC was being done, it will be impossible for TGG to prove its defence and setting aside the default will only prolong the inevitable.
- [22] TGG argues that there is a video that documents the status of the work on the date of the fire. TGG also argues that the defendant has a right to discovery which will permit it, or at least give it an opportunity, to prove its defence. As the judge hearing the motion to set aside the noting in default, it is not my role to make findings of fact or to assess the merits

of the defence: *Zeifman Partners Inc. v. Aiello*, 2020 ONCA 33, 442 D.L.R. (4th) 299, at para 34; *Mountain View* at paras. 61-63. Given the record before me, in my view, there is an “air of reality” to the defence that TGG intends to put forward: *Mountain View* at para. 51.

- [23] With respect to the prejudice to the parties, if the default is not set aside, TGG will be denied the opportunity to defend this action. ZMAC, on the other hand, has not pointed to any prejudice that it will incur if the default is set aside that cannot be compensated for monetarily.
- [24] Finally, in considering the effect on the administration of justice, in my view and in all the circumstances of this case, TGG should be given a fair opportunity to defend, or settle, the claim on its merits.
- [25] Balancing all the factors in *Mountain View*, it is my view that the circumstances of this case favour granting TGG’s motion to set aside the noting in default and the default judgment. TGG shall have twenty days from the date of this endorsement to deliver its statement of defence.

COSTS

- [26] TGG seeks its costs of this motion on a substantial indemnity scale. TGG argues that ZMAC made no efforts to resolve the matter and should have served TGG at its updated address or by email. ZMAC argues that each party should bear their own costs of this motion and seeks its costs thrown away on the motion for default judgment. ZMAC argues that TGG found itself in the position of default because it did not update its registered business address with Corporations Canada.
- [27] In my view, ZMAC properly served the statement of claim under r. 16.03. The statement of claim did not come to TGG’s attention because it did not update its registered business address. In these circumstances, I find that each party shall bear their own costs of this motion.
- [28] With respect to ZMAC’s costs thrown away, TGG would have been properly served with the statement of claim had it updated its registered business address, as it is required to do as a federally incorporated corporation. The motion for default judgment and this motion would have both been avoided. Given these circumstances, ZMAC is entitled to its costs thrown away. I note that Hebner J. awarded costs in the amount of \$2,000.00 on the motion

for default judgment. I have reviewed the bill of costs that ZMAC submitted with the motion for default judgment and considered the factors outlined in r. 87.01. It is my view that costs thrown away in the amount of \$3,500.00 all-inclusive is fair and reasonable considering the circumstances of this case.

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Jacqueline A. Horvat
Justice

Released: August 13, 2025

CITATION: ZMAC Plumbing Inc. v. Thompson Global Group Ltd., 2025 ONSC 4689
COURT FILE NO.: CV-24-33739

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ZMAC Plumbing Inc.

and

Thompson Global Group Ltd.

ENDORSEMENT ON MOTION

Horvat J.

Released: August 13, 2025