

CITATION: Konstantonis v. Topping, 2025 ONSC 4645
COURT FILE NO.: CV-17-7158
DATE: 2025/08/20

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sarah Konstantonis Plaintiffs

-and-

Keith Topping, Susette Topping and Allstate Insurance Canada, Defendants

BEFORE: Anne London-Weinstein J.

COUNSEL: Heena Kapoor for the Plaintiff

Defendant, Mr. Topping, Noted in Default

HEARD: July 22, 2025

ENDORSEMENT

[1] This is a motion for default judgment against the Defendant, Keith Topping. The Plaintiff, Sarah Konstantonis suffered serious personal injuries in a motor vehicle accident on October 20, 2015. For the reasons set out below, default judgment is granted against the Defendant, Keith Topping in the amount of \$250,000 plus costs, subject to the issue raised in relation to the costs of the action.

[2] The Plaintiff commenced an action and finally settled with the Defendant, Allstate Insurance Canada (“Allstate”). As part of the settlement agreement, Ms. Konstantonis assigned her right of recovery to Allstate.

[3] Ms. Konstantonis seeks unliquidated damages against Mr. Topping in the amount of \$250,000 plus costs of the action. The amount sought is the settlement amount agreed upon by Ms. Konstantonis and Allstate and Allstate’s costs of defending the action.

[4] The Defendants Susette Topping and Allstate defended against the action. The Defendant, Keith Topping, did not defend against the action. Allstate issued a Third Party Claim against

Certas Direct Insurance Company on January 17, 2019. The Third Party delivered a Statement of Defence dated May 24, 2019.

[5] On July 5, 2017, Ms. Konstantonis filed a requisition to note the Defendant, Keith Topping in default. The claims against the Defendant, Allstate Insurance Canada, and the Third Party, Certas Home and Auto Insurance have been dismissed. The Plaintiff, formerly represented by Tara Sweeney, delivered a Notice of Change of Lawyer on September 19, 2024. Heena Kapoor is now counsel of record.

[6] On November 9, 2021, Allstate settled this action with the Plaintiff on a full and final basis for \$250,000. As a condition of the settlement agreement, the Plaintiff agreed to assign Allstate the right to pursue default judgment against the Defendants.

[7] The claim arises from an accident that occurred on October 20, 2015. The Plaintiff suffered numerous physical and psychological injuries as a direct result of the accident.

[8] Ms. Konstantonis is currently 46 years old. She is married and has four young children. She was a generally healthy and functional person before the accident other than having anxiety and palindromic rheumatism.

[9] She was driving northbound on County Road 20 near Brockville, Ontario, when she was rear-ended by a motor vehicle operated by Keith Topping.

[10] Shortly after the accident she attended Brockville General Hospital where she was assessed. Her primary complaint at the time related to neck stiffness and pain radiating to her shoulders, and a significant headache. She also experienced facial numbness. She was diagnosed with a concussion and a sprain of her cervical spine. Her condition did not improve and she was referred to a neurologist where she was diagnosed with a concussion and an element of vestibular dysfunction.

[11] She was also received a psychological assessment and was diagnosed with Major Neurocognitive Disorder due to traumatic Brain Injury, Adjustment Disorder with Mixed Anxiety and Depressed Mood: Specific Phobia (Motor Vehicle Anxiety); and Somatic Symptom Disorder (primarily pain).

[12] At the time of the accident, the Plaintiff was receiving approximately \$20.00 per hour as a part-time (20 hours per week) Victim Issues Committee Co-ordinator. In 2015, she declared a total income of \$7,975.00 which consisted of Universal Childcare Benefit amount and net professional income.

[13] After the accident she did not return to work, however, she was in receipt of Income Replacement Benefits from her accident benefits carrier. An economic loss report by Guy Martel at GML Actuaries estimates her past income loss at \$2,602.00 (part time work at 15 hours per week) or \$57,548.00 (full-time work at 37.5 hours per week); and future income loss in the range of \$405,804.00 to \$1,020,534.00. The report considered the impact of the benefits and pension that would have been available to the Plaintiff if she was able to continue working. It also considered her anticipated premature withdrawal from employment in general at ages 62 and 65.

[14] On November 9, 2021, the Plaintiff settled her tort claim on a full and final basis with the Defendant, Allstate for \$250,000.00. As a condition of the settlement, she agreed to assign her right to Allstate Insurance Canada to pursue default judgment against the Defendants Keith Topping and Susette Topping for payment of the settlement funds in the amount of \$250,000.00

Legal Analysis:

[15] Rule 19.02 of the *Rules of Civil Procedure*, 1990 Reg 194 states, in part that a Defendant who has been noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim and that a Defendant who has been noted in default is not entitled to notice of any step in the actions and need not be served with any document in the action, with limited exceptions. In this case, the Plaintiff has made repeated attempts to serve Mr. Topping. The plaintiff attempted to serve Mr. Topping with a copy of her statement of claim on February 16, 2017 by attending the address 182 County Road 5, Mallorytown, Ontario K0E 1R0. An affidavit of service provided by Dana Mellon advises that she spoke to Susette Topping, who appeared to be an adult member of the same household in which Keith Topping resides. A second copy of the statement of claim was sent by prepaid first class mail to Keith Topping at 182 County Road 5, Mallorytown, Ontario. Attempts to serve Keith Topping at his Brockville address of 10 Cartier Court, Unit 3, Brockville, Ontario, K6V 6S6 were unsuccessful.

[16] While Rule 19.02(3) does not require the Defendants noted in default be given notice of a motion for default judgment, it is best practice to give notice. *Bassuday v. Solomon*, 2018 ONSC 72 at para 6.

[17] Rule 19.05 states, in part:

(1) Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed.

(2) A motion for judgment under sub rule (1) shall be supported by evidence given by affidavit if the claim is for unliquidated damages.

(3) On a motion for judgment under sub rule (1) the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented. *Rules of Civil Procedure*, 1990 Reg. 194, Rule 19.05

[18] Rule 19.06 states that a plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts entitle the plaintiff to judgment.

[19] Rule 19.06 requires the judge to inquire into whether the deemed factual admissions resulting from the default support a judgement on liability as well as damages.

[20] I have concluded that the factual allegations in the statement of claim and the affidavit evidence support both the claim for liability as well as the damages sought as a result of the deemed admissions. Default judgment is granted in the amount of \$250,000 in this matter against Keith Topping payable to Allstate Insurance Canada.

Costs:

[21] In terms of costs, Allstate seeks its costs of the action and of the motion for default judgment. I am satisfied that Allstate Insurance Canada is entitled to its costs on the motion on a partial indemnity basis. With respect to costs of the action, I am not satisfied that there is a basis upon which Allstate could recover its own costs of the action. The motion for default judgment is based on the assignment which Allstate obtained from the plaintiff of her claim against the defaulting defendant. In *Bassuday v. Solomon*, 2018 ONSC, Justice Favreau, as she then was, addressed costs requested in a motion for default judgment by “Fine Cars” a Defendant who had a subrogated interest in the Plaintiff’s personal injury claim. Justice Favreau’s preliminary view

was that Fine Cars should not be granted costs as there was no basis on which the Plaintiff would be entitled to recover Fine Car's costs of defending the action. However, Justice Favreau allowed the Plaintiff to fully address the request. Unfortunately, Justice Favreau's final determination is not published and counsel for Ms. Konstantonis was unable to locate case law which directly addresses this issue.

[22] Costs are awarded on a partial indemnity basis for the motion in the amount of \$2,896.83.

Anne London-Weinstein J.

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Released: August 20, 2025