

CITATION: Sava Motor Works Inc. v. National Bank of Canada, 2025 ONSC 5859
DIVISIONAL COURT FILE NO.: DC-25-000000065-0000
DATE: 20251017

**SUPERIOR COURT OF JUSTICE - ONTARIO
DIVISIONAL COURT**

RE: SAVA MOTOR WORKS INC.

Applicant

AND

NATIONAL BANK OF CANADA

Respondent

BEFORE: J.A. Ramsay, S.T. Bale and M.D. Faieta JJ.

COUNSEL: *Daniel Litsos and Dallas Hayes-Nairne*, for the Applicant Sava Motor Works Inc.
Alexander Etkin and Michael Myers, for the Respondent National Bank of Canada

HEARD: October 16, 2025 (At Brampton by Videoconference)

Faieta J.

ENDORSEMENT

[1] The Applicant Sava Motor Works Inc. (“Sava”) is company that provides automotive repair services under the name and style “Select Fix Auto”. Ferhat Yilmaz (the “Owner”) borrowed funds from the Respondent National Bank of Canada (“NBC”) to assist with his purchase of an automobile. The Owner defaulted on the loan in March 2024. On May 24, 2024, Sava requested a lien release from a collection company representing NBC that had been hired to repossess the automobile. On June 12, 2024, Sava sold the automobile to Humberview Chevrolet Buick GMC for \$27,000 plus HST.

[2] NBC commenced a proceeding in the Brampton Small Claims Court for, amongst other things, an order requiring Sava to repay NBC the value of the automobile that it sold.

[3] On February 24, 2025, the Brampton Small Claims Court scheduled a motion by NBC to be heard on May 8, 2025. Sava was served with National Bank’s motion on May 1, 2025 at 4:22 pm, and thus 22 minutes after the deadline for the service of motion materials specified by Rule 15.01(3) of the *Rules of the Small Claims Court*, O. Reg. 258/98, as amended, which requires that a notice of motion and supporting affidavit be served on other parties at least seven days before the hearing date.

[4] The notice of motion is an Application. It states:

The applicant makes application for: An order under section 23(d) of the *Repair and Storage Liens Act* (the "RSLA") the Respondent is not entitled to a possessory or non-possessory lien encumbering one 2022 Mitsubishi Outlander VIN# JA4J4UA89NZ605622 (the "Vehicle"). An order that possession of the Vehicle is to be given to the Applicant without payment. An order that the Minister shall discharge any RSLA liens filed on the Vehicle by the Respondent.

The grounds for the application are: The Applicant holds a perfected Purchase Money Security Interest in the Vehicle and is entitled to possession of the Vehicle. The Respondent is claiming a possessory lien on the Vehicle for repairs and storage. The Respondent is not entitled to charge storage under the TSSEA. The Respondent has refused to provide any documentation whatsoever to support their claim to a lien for repairs.

[5] At the outset of the hearing on May 8, 2025, Sava sought an adjournment on the grounds that his counsel did not have time to prepare responding materials. The Deputy Judge granted the adjournment on terms. The Endorsement states:

Defendant seeks adjournment on questionable grounds. Motion is adjourned to date to be fixed by this court.

Order to go that the defendant produce the following within 30 days: Authorization for storage and towing, estimate of repairs, invoice for repairs, receipts for parts installed, tow operators certificate, storage certificate for Jan 6 to Mar 6 2024.

Further order to go that defendant pay into court to the credit of this action the sale proceeds of \$30,510.00 within 30 days. [Emphasis added.]

[6] On June 9, 2025, this application for judicial review was commenced. The Applicant seeks an order quashing the May 8, 2025 Order and a stay of that Order. The Applicant submits that this relief should be granted because the Deputy Judge breached the principles of natural justice and procedural fairness by failing to recognize that the motion materials were served contrary to the Rules and by proceeding to impose a punitive order that required Sava to pay into court the full amount of NBC's claim as a condition of the adjournment. The Applicant also states that the Deputy Judge lacked the jurisdiction to require the payment of money into Court as a condition of an adjournment.

[7] NBC's motion was adjourned to September 9, 2025. On that date, Deputy Judge Acri adjourned the hearing of NBC's motion to a future date later established as November 22, 2025 and made the following Endorsement:

This motion was up in May. Defendant alleges short service by 22 minutes. An order was made in May that is not in the sharepoint, but was referenced in the plaintiff's materials. Defendant has not filed any responding material, and I am advised has not complied with the May 2025 order. Defendant has instead brought an application for judicial review,

suggesting that the May 2025 order was without jurisdiction due to late service. Defendant asked to adjourn again today, and plaintiff was opposed.

It is alleged that the defendant improperly seized and sold the vehicle. Without getting into the merits of this, I cannot accept that 22 minutes presents the defendant with an opportunity to ignore the order. The defendant's steps seem directed at delay rather than confronting the issues in this court, which is contrary to the Rules.

I order as follows:

1. The motion is adjourned to a date after October 14, 2025, to be set by admin.
2. Defendant to advise this court of the outcome of the judicial review.
3. Defendant to comply with the May 2025 order in the meantime, namely to provide all disclosure ordered and to pay the money into court.
4. The Divisional Court can certainly make whatever order appears appropriate to them but in the meantime Defendant has had 4 months to comply and provide responding material and has declined to do so. Simply requesting judicial review, particularly over a trifle of 22 minutes, does not in my opinion give the defendant the opportunity to ignore that May 2025 order.

[8] The Divisional Court has the discretion to refuse to grant a remedy on a judicial review application even when a case for review is established. In *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, Rowe. J. stated:

51 While there is a right to seek judicial review, it is open to the judge before whom judicial review is sought to decide whether to exercise his or her discretion to grant relief. This Court stated in *Strickland*, at para. 37, quoting *Minister of Energy, Mines and Resources*, at p. 90:

Judicial review by way of the old prerogative writs has always been understood to be discretionary. This means that even if the applicant makes out a case for review on the merits, the reviewing court has an overriding discretion to refuse relief Declarations of right, whether sought in judicial review proceedings or in actions, are similarly a discretionary remedy: "... the broadest judicial discretion may be exercised in determining whether a case is one in which declaratory relief ought to be awarded" [Emphasis added in original.]

52 In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 135, Rothstein J. stated:

The traditional common law discretion to refuse relief on judicial review concerns the parties' conduct, any undue delay and the existence of alternative remedies: *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326, at p. 364. As *Harelkin [v. University of Regina]*, [1979] 2 S.C.R. 561] affirmed, at p. 575, courts may exercise their

discretion to refuse relief to applicants "if they have been guilty of unreasonable delay or misconduct or if an adequate alternative remedy exists, notwithstanding that they have proved a usurpation of jurisdiction by the inferior tribunal or an omission to perform a public duty". As in the case of interlocutory injunctions, courts exercising discretion to grant relief on judicial review will take into account the public interest, any disproportionate impact on the parties and the interests of third parties. [Emphasis added in original.]

[9] NBC's motion ought to have been heard on September 9, 2025. It would have resolved the issue of whether the proceeds of sale of the automobile should be paid to NBC. Instead, Sava unnecessarily chose to seek an adjournment of that motion in order to attend this judicial review hearing to challenge the interlocutory order that required it pay the proceeds of sale into Court. In other words, this application for judicial review would have been, and should have been, moot had Sava not sought to delay the hearing of NBC's motion on its merits. Accordingly, even if there was any merit to Sava's position on this application for judicial review, it is appropriate to decline to grant any relief given that Sava's conduct added an unnecessary step to this litigation and unnecessarily delayed the resolution of NBC's claim on its merits.

[10] Sava shall pay NBC's partial indemnity costs of \$6,473.55, inclusive of disbursements and HST, within 30 days.

M.D. Faieta J.

"I agree. J.A. Ramsay J."

"I agree. S.T. Bale J."

RELEASED: October 17, 2025