

SUPREME COURT OF NOVA SCOTIA

Citation: *V&E International Trading Ltd. v. Olde Town Hills Community Limited*,
2025 NSSC 330

Date: 20251031

Docket: Hfx No. 526873

Registry: Halifax

Between:

V & E International Trading Ltd.

Plaintiff

v.

Olde Town Hills Community Limited and Hossam Elodka

Defendants

Decision

Judge: The Honourable Justice Glen G. McDougall

Heard: May 13, 2025, in Halifax, Nova Scotia

Final Written Submissions: October 31, 2025, May 13, 2025

Counsel: Colin D. Bryson, K.C, for the Plaintiff
Anna Marie Manley, for the Respondents

By the Court:

Introduction:

[1] V & E International Trading Ltd. (the “Plaintiff” or “V & E International”) commenced an action against Olde Town Hills Community Limited and Hossam Elodka (collectively the Defendants” or “Olde Town Hills” and “Dr. Elokda” individually) by filing a Notice of Action and Statement of Claim on September 18, 2023.

[2] An Amended Notice of Action and an Amended Statement of Claim were subsequently filed on March 15, 2024. The amended claim included an additional \$24,000.00 in special damages for unremitted HST arising from the sale of two of the eight building lots which V & E International agreed to purchase from Olde Town Hills.

[3] In total, V & E International is seeking special damages of \$461,000.00 (the agreed upon value of the eight building lots totalling \$587,000.00 less the proceeds from the sale of two of the lots amounting to \$160,000.00 plus unremitted HST on those two lots which according to the Amended Statement of Claim amounts to \$24,000.00) plus HST on the remaining six lots that are still vested in the name Olde Town Hills.

[4] The Plaintiff also seeks prejudgment interest, punitive damages, and costs on a solicitor and client basis.

Background Information:

[5] The Amended Statement of Claim pleads the existence of an Agreement of Purchase and Sale that was entered into by the Plaintiff and the Defendant on October 21, 2020. Under the agreement, V & E International agreed to purchase eight building lots from Olde Town Hills that were to be subdivided from a larger piece of land in two phases. The first four lots were expected to be approved for subdivision and conveyed to V & E International by November 30, 2020. The remaining four lots were expected to take more time to get subdivision approval but it was understood that Olde Town Hills would proceed expeditiously to obtain subdivision approval for all the lots. According to the Amended Statement of Claim, V & E International had pre-paid the full purchase price of \$ 587,000.00 plus HST prior to signing the agreement.

[6] Upon obtaining subdivision approval for the first four lots on April 28, 2021, the parties agreed that closing could be postponed to a time when market conditions had improved and V & E International could more readily sell the lots to other buyers. In the meantime, the title to the lots would remain vested in the name of Olde Town Hills.

[7] Again, according to the Amended Statement of Claim, Olde Town Hills contacted the Plaintiff in April 2021 to advise that it had received expressions of interest for the purchase of two of the four lots for a combined price of \$160,000.00 plus HST. This was \$10,000.00 more than the value attributed to these lots in the Agreement of Purchase and Sale. After the closing, Olde Town Hills remitted the net sale proceeds to V&E International but not the \$24,000.00 collected from the purchasers as HST.

[8] Olde Town Hills sold one of the other two approved lots that were earmarked for V&E International on December 2, 2021. V & E International first learned of this alleged breach of the agreement sometime in March 2023. Instead of remitting the net proceeds of sale to the Plaintiff, Dr. Elokda persuaded the company's principal owner to accept another somewhat larger lot in the same subdivision as a substitute.

[9] Olde Town Hills has yet to convey title to the remaining two lots that were approved for subdivision in Phase 1A of the project. According to the affidavit of Islam Ellaithy who is a Director and Officer of V & E International, in an effort to move matters along he met with Dr. Elodka in Cairo on June 9, 2023. As a result of that meeting, Dr. Elokda provided instructions to his property lawyer in Canada to prepare the necessary paperwork so title to the two remaining lots could be transferred to the Plaintiff. The paperwork that Dr. Elodka's Lawyer prepared required Mr. Ellaithy's signature on several documents relating to a letter of direction, deed transfer tax, HST, and a Joint Representation Agreement. Mr. Ellaithy signed what he was asked to sign but the deeds of conveyance that had been prepared for execution by Dr. Elodka and Olde Town Hills were not.

[10] After making repeated inquiries of the lawyer who had prepared the deeds and other closing documents and realizing that nothing had been done to complete the transfer of title, Mr. Ellaithy once again arranged to meet with Dr. Elodka in Cairo on July 16, 2023. During this meeting Dr. Elodka stated that his business partner, Dr. Amr Nasrat, wanted a percentage of the transfer price of the lots and he could not afford to pay so he proposed another scenario whereby only one of the

Bridgewater lots would be conveyed to V & E International along with a lot of land in Dundee, Cape Breton. Mr. Ellaithy sought additional information regarding the Dundee Property before he would agree to the proposal. Despite calling and texting Dr. Elodka over the course of the next month, no additional information was provided to Mr. Ellaithy. And, out of frustration, he finally texted Dr. Elodka on August 17, 2023, to tell him “The deadline is over.” By this he said he meant that “all the friendly efforts had failed, and matters will then naturally be escalated to a different venue (i.e. legal).”

[11] As for the remaining four lots that were to be conveyed to V & E International upon receiving subdivision approval as part of Phase 1 B of the development, none of those lots has been transferred to the Plaintiff.

Additional Background Information:

[12] While these events were playing out, V & E international’s lawyer was also acting for Atlantic Haskap Ltd. (Atlantic Haskap”) in an action commenced on August 23, 2023 against North 45 Orchards Limited (“North 45”), another company owned by Dr. Elodka. Dr. Elodka was listed as a Director and the President of North 45 based on the Nova Scotia Companies Office on-line service.

[13] V & E International’s counsel was in regular contact with North 45’s legal counsel from September 2023 until the matter was resolved in December 2023. A copy of the Notice of Action and Statement of Claim filed on behalf on V & E International against Olde Town Hills and Dr. Elodka was sent to North 45’s legal counsel asking him to seek instructions to accept service on behalf of Olde Town Hills and Dr. Elodka. North 45’s legal counsel sent an email to V & E International’s legal counsel on September 26, 2023, indicating that he would seek instructions. This was followed by a further email dated November 1, 2023, from V & E International’s lawyer in which he asked North 45’s counsel for an update on “The acceptance of service on the Olde Town Hills and Eloisa [sic] matter?” North 45’s lawyer quickly responded on the same day indicating that “We will seek instructions on acceptance of service today.”

[14] Again, on November 22, 2023, counsel for V & E International sent a follow-up email to North 45’s lawyer asking him to “get instructions on this” referring to the outstanding claims being advanced by his client against the Defendants. It only took a couple of minutes for North 45’s lawyer to reply stating: “Please be assured that we having [sic] been trying really hard to do just that.”

[15] Despite the efforts to get North 45's legal counsel to seek instructions to accept service on behalf of the Defendant (all to no avail), a decision was made by the Plaintiff to serve Olde Towne Hills only. Accordingly, Olde Towne Hills registered agent, Marc Le Clair, a lawyer at BOYNECLARKE Lawyers/LLP, was served with the Notice of Action and Statement of Claim on January 4, 2024. In his capacity as Recognized agent for Olde Towne Hills, Mr. Le Clair confirmed acceptance of service by email that same day.

[16] In his email, Mr. Le Clair indicated that he would "forward a copy of the claim to (his) client" and requested Olde Town Hills counsel to "refrain from seeking judgement [sic] while (his) client decides on the appropriate course of action."

[17] Counsel for V & E International responded by email stating that he thought it "best (to) set a deadline" given his failed efforts to have North 45's counsel get instructions from Dr. Elodka to accept service. A deadline of January 28th was set for Olde Town Hills to file a defence. Mr. Le Clair was also asked to seek instructions from his client to accept service on behalf of Dr. Elodka personally.

[18] The deadline of January 28th went by without any further communication from Mr. Le Clair. So, on January 29, 2024, V & E International's counsel sent a follow-up email to Mr. Le Clair reminding him that the deadline for filing a defence had passed and he expected to receive instructions from his client to file for default judgment. In response, Mr. Le Clair responded by email stating that "I have not heard back from Hossam and accordingly have received no instructions." He further indicated in his email message that "I tried all phone numbers and email addresses that we have for him on file with no response."

[19] In an affidavit filed in support of a motion to set aside the Default Order for Judgment granted by the Prothonotary on February 6, 2024, and a second Default Order for Judgment granted on June 13, 2024, Dr. Elodka swore that he first became aware of the default judgment in a conversation with his younger brother, Ihab Elodka, on May 1, 2024. According to Dr. Elodka this prompted him to search his email inbox for a Gmail account he possessed. At para. 49 of his affidavit filed on January 14, 2025, he indicated that:

In my search, I found an unread email that Marc Le Clair, the recognized agent for Olde Town Hills, had sent me an email [sic] on January 4, 2024, enclosing the Notice of Action.

[20] A copy of Mr. Le Clair's email is attached to the Elodka affidavit.

[21] At para. 52 of the Elodka affidavit, Dr. Elodka attributed the oversight to the fact that:

My daughter got married on January 5, 2024, in Egypt. Her wedding was large, and we had many friends and family visiting before and after the wedding. I was busy with celebrations in early January and was not monitoring my email carefully on the days leading up to her wedding.

[22] He also indicated that “Mr. Le Clair’s email was one of 144 emails I received to my Gmail account on January 4, 2024.”

[23] V & E International filed an Amended Notice of Action and Amended Statement of Claim on March 15, 2024. They were served on Olde Town Hills’ Recognized Agent on April 10, 2024. Acknowledgement of service was confirmed by the Recognized Agent on May 6, 2024.

[24] A copy of the Amended Notice of Action and Statement of Claim was sent to Dr. Elodka by the Recognized Agent attached to an email dated May 6, 2024. In his affidavit, Dr. Elodka acknowledged having received the email along with the attachments “on or about the day it was received.”

[25] In the previous email sent to Dr. Elodka by Mr. Le Clair on January 4, 2024, he asks Dr. Elodka to “please let me know if I can accept service in your personal capacity...”. In this email Mr. Le Clair explains to Dr. Elodka that “I am recognized agent, so automatically can be served on behalf of the company, but in your personal capacity please let me know if I can accept service as well.”

[26] In his affidavit, Dr. Elodka, at para. 55, states:

On July 18, 2024, when I was preparing this affidavit, I discovered a second email from Mr. Le Clair, which was also sent on January 4, 2024, wherein he asked me if I accepted service personally...

[27] In the same paragraph, Dr. Elodka goes on to swear that:

Based on Gmail structuring, I believe that this email was condensed by Gmail into the same thread that I reviewed when I did my initial search in May, as it had the same parties and subject line, but I did not see it in my initial search in May.

[28] Dr. Elodka responds to what Mr. Le Clair had sent in an email to V & E International’s Legal counsel, dated January 29, 2024, that he “...never received any call from Mr. Le Clair, or any additional emails beyond those sent on January 4,

2024. “He goes on to state that he “searched my email and phone and could not find any other emails, texts, voicemails or missed calls.” He goes on to add:

My Canadian phone number is not functional while I am in Egypt.

[29] In a Supplementary Affidavit, filed on January 8, 2024, Dr. Elodka indicated that he did “...not recall Mr. Giles (who was North 45’s legal counsel) notifying me about a claim involving the Bridgewater Properties, against either myself or Olde Town Hills Community Limited, by either V & E International Trading Ltd. or Mr. Ellaithy.” He also stated that “..., I searched my Gmail for correspondence from Mr. Giles about this proceeding and did not find anything.”

[30] Dr. Elodka was cross-examined by V & E International’s lawyer during the hearing of the motion to set aside the two default judgments. He confirmed that Mr. Giles acted for him and North 45 in the matter brought against them by Atlantic Haskap. He was asked if had ever discussed the claims advanced against Olde Town Hills and him personally with Mr. Giles. He answered by saying that he did not recall ever discussing the matter with Mr. Giles. He also denied having any discussion or receiving any communication from Mr. Giles in regard to V & E International’s Amended Notice of Action and Amended Statement of Claim that was served on Olde Town Hills’ recognized agent, a copy of which was sent to Mr. Giles attached to an email dated May 8, 2024 by V & E International’s legal representative. In this email, Mr. Bryson stated:

Following the judgment, the pleading was amended and served on the registered agent. The amended pleading is attached. The time for the defence recently expired, I have not taken out default for the additional amount claimed, and now that you have appeared, will require a defence by May 24,2024, if a defence is to be filed.

[31] Mr. Giles replied to the email just a few minutes after it was sent in which he stated:

Dear Colin:

Thank you. But please note that I have not yet appeared. But I sure do appreciate your concession. Thank you for that too.

[32] When asked about this during cross-examination, Dr. Elodka said that Mr. Giles had not contacted him – he had contacted his nephew. It should be noted that this particular email exchange was initiated by Mr. Giles who early on the morning

of May 8, 2023, indicated to Mr. Bryson that “we are endeavouring to sort some matters arising from the Bridgewater lands.”

[33] Also during cross-examination, Dr. Elodka admitted that the documents he instructed, Mr. Igor Yushchenko – his property lawyer – to prepare to transfer title to lot 109 and lot 113 (to replace lot 112 which Olde Town Hills sold without disclosing to Mr. Ellaithy in apparent breach of the Agreement of Purchase and Sale) were sent to him attached to an email from Mr. Yushchenko (dated June 29, 2023) but remained unsigned and unreturned.

[34] Dr. Elodka’s evidence is that he only first became aware of V & E International’s legal action against him and his company in a conversation with his brother – Ihab Elodka – sometime during the first week of May 2024. And according to Ihab Elodka, he only became aware of it from his son, Mohamed, at the end of April 2024. Subsequently, a copy of the Amended Notice of Action and Amended Statement of Claim was received by Dr. Elodka attached to Mr. Le Clair’s email dated May 6, 2024. He then reached out to his current lawyer on June 4, 2024 (see para. 59 of Dr. Hossam Elodka’s affidavit filed on January 14, 2025) and after a slight delay retained her and her firm’s services on July 2, 2024. He instructed her to accept service of the amended documents on his behalf personally.

[35] I will now turn to the issues that have been presented for this Court’s consideration followed by a discussion of the law and my ruling.

ISSUE:

[36] Should the Court exercise its discretion to set aside the Default Order for Judgment granted by the Deputy Prothonotary on February 16, 2024, and the second Default Order for Judgment granted by the Deputy Prothonotary on June 13, 2024?

The Law

[37] Civil Procedure Rule 8.09 reads:

8.09 Setting aside default judgment

A judge may set aside a default judgment issued by the prothonotary or made on an *ex parte* motion by a judge.

[38] The test to be applied to decide whether a default judgment should be set aside can be found in the case of *Widmeyer v. Atlantic Pipeline Resources Inc.*, [2000 NSCA 22](#) where at paras. 8 and 9, Justice Roscoe wrote:

[8] In *Marissink v. Kold-Pak Inc. et al.* (1993), 125 N.S.R. (2d) 203, Justice Chipman indicated at para. 15:

[15] The leading case in this province on the setting aside of a default judgment is *Ives v. Dewar*, [1949] 2 D.L.R. 204, where Parker, J., speaking for this court said at p. 206:

“Before the interlocutory judgment should have been set aside by the learned County Court judge as Master before whom the first application for that purpose was made, it was necessary for the appellant to show by affidavit, facts which would indicate clearly that he had a good defence to the action on the merits; not necessarily a defence that would succeed at the trial because the action was not being tried on that application; but facts which would at least show beyond question that there was a substantial issue between the parties to be tried. He must also show by affidavit why his defence was not filed and delivered within the time limited by the **Rules**. The reasons thus disclosed are material matters which the judge or court should consider in determining whether the application to set aside the judgment should [be] granted or refused.”

[9] *Ives v. Dewar* has been consistently followed in this Court and in the Supreme Court for 50 years. There are two requirements to be met in order to have a default judgment set aside:

1. a fairly arguable defence, or a serious issue to be tried; **and**
2. a reasonable excuse for the delay in filing the defence.

[39] This formulation of the test was adopted by Justice Saunders of The Nova Scotia Court of Appeal in *Temple v. Riley*, [2001 NSCA 36](#), at para. 27:

[27] The test, whether to set aside default judgment, is well established in Nova Scotia and has been reiterated by this court recently in *Widmeyer v. Atlantic Pipeline Resources Inc.* [2000], N.S.J. No. 45 (C.A.), Justice Roscoe stated:

Ives v. Dewar [1948 CanLII 275 (NS CA), [1949] 2 D.L.R. 204] has been consistently followed in this Court and in the Supreme Court for 50 years. There are two requirements to be met in order to have a default judgment set aside:

1. A fairly arguable defence, or a serious issue to be tried; and
2. A reasonable excuse for the delay in filing the defence.

[40] In a more recent case out of this Court, Justice Brothers borrowed from an even earlier decision of Justice Roscoe when she was a member of the Nova Scotia Supreme Court, Trial Division (prior to her elevation to the Nova Scotia Court of Appeal). At paras. 22 and 23 of Justice Brother’s decision in *J.W. Bird and Company Limited v. Allcrete Restoration Limited*, [2019 NSSC 311](#), she wrote:

[22] The test on such a motion is well established, and set forth by Justice Roscoe in *Lewis-Choi Company v. Western Glove Works Ltd.*, (1990), 98 N.S.R. (2d) 282, 1990 CarswellNS 318 (S.C.T.D.), at para. 12:

When the cases are all considered, I do not think there is any doubt as to what is the test to be applied in Nova Scotia. In order to succeed on an application to set aside a default judgment, the applicant must show two things:

- (1) a fairly arguable defense, or a serious issue to be tried; and,
- (2) a reasonable excuse for the delay in filing the defence.

[23] The test was further confirmed in *Ross Barrett & Scott v. Simanic*, (1994), 137 N.S.R. (2d) 45, 1994 CarswellNS 90 (C.A.). This case also confirms that the burden in such motions is upon the moving party, here Wheaton. In order to be successful, Wheaton must discharge the burden of proof on each element of the *Lewis-Choi* test.

[41] Justice Brothers also relied on the comments of Parker, J. in *Ives v. Dwar, supra*, (previously quoted in the decisions of Saunders and Roscoe referred to earlier). When considering the arguments of counsel for the party seeking to set aside the default judgment, each part of the test must be met in order to satisfy its requirements. In *Temple v. Riley*, Saunders, J. made it clear that both parts of the test have to be met. At para. 39 of the decision he wrote:

[39] ... We think it best that an applicant seeking to set aside a default judgment be required to show *both* a defence or serious argument on the merits *and* a reasonable excuse for delay, leaving it to the judge to consider the weight of evidence proffered for each requirement and whether one might to be given more emphasis than the other, depending upon the particular circumstances of that case.

Fairly Arguable Defence:

[42] The onus is on Olde Town Hills to show “by affidavit, facts which would indicate clearly that (it has) a good defence to the action on the merits: not necessarily a defence that would succeed at the trial ... : but facts which would at least show beyond question that there was a substantial issue between the parties to be tried.” (Again see *Ives v. Dewar, supra*, at para. 206)

[43] Counsel for Olde Town Hills referred to the decision of Rosinski, J. in *Pogosyam v. Wilson Furl Co. Limited*, [2021 NSSC 326](#), at para. 10, which suggests the first part of the test has a “low threshold”. She argues that her client is not required to “establish a defence that would succeed at the trial but rather must show facts which would at least show beyond question that there is a substantial issue between the parties to be tried.” (See again *Ives v. Dewar* at para. 206)

[44] V & E International’s claim against Olde Town Hills alleges that Olde Town Hills breached the Agreement of Purchase and Sale and, at the direction of Dr. Elodka, acted fraudulently and in bad faith in breaching the agreement. Olde Town Hills’ counsel suggests the evidence establishes that Olde Town Hills acted honestly, in good faith and in accordance with the Agreement of Purchase of Sale. She addresses the specific allegations advanced by V & E International in its Amended Statement of Claim regarding Olde Towne Hills failure to remit HST on the sale of Lots 115 and 116 by pointing to Dr. Elodka’s affidavit that states the purchasers of these two lots were self-assessed and, as such, no HST was collected by Olde Town Hills and, therefore, was not payable to V & E International. She also points to the evidence of Dr. Elodka as well as the provision of the Agreement of Purchase and Sale recognizing that subdivision approval of the four lots in Phase 1B would take some additional time before Olde Town Hills would be in a position to convey them to V & E International. She argues because the Phase 1B lots have yet to be approved for subdivision, the timeline for transferring them to V & E International has not been triggered.

[45] She also addressed Olde Twon Hills sale of lot 112 by saying that after discovering the error, Dr. Elodka spoke to Mr. Ellaithy explaining that lot 113 was larger and more valuable and, in so doing, convinced Mr. Ellaithy to agree to take it in replacement for lot 112.

[46] Not surprisingly, counsel for V & E International does not accept the position advanced by opposing counsel. He points to a number of instances where Dr. Elodka, as principal of Olde Town Hills, did or failed to do what was required of him and Olde Town Hills to live up to the terms of the agreement. While there is merit to these arguments, I am reminded that the threshold to meet the first part of the test – to raise a fairly arguable defence – is a low one. Based on what has been presented, I am satisfied that Olde Town Hills has satisfied this requirement.

Reasonable Excuse for Delay:

[47] The onus remains on Olde Town Hills to show that it has a reasonable excuse for its delay in filing a defence. There is no disputing the fact that Marc Le Clair, the Recognized Agent for Olde Town Hills, was served the Notice of Action and Statement of Claim on January 4, 2024. There is also no dispute that Mr. Le Clair acknowledged service of the court documents and sent an email to Dr. Elodka apprising him of the lawsuit on the same day. According to Dr. Elodka's evidence he did not open Mr. Le Clair's email until sometime in the first week of May 2024. Dr. Elodka stated that he was busy caring for his ailing mother and preparing for his daughter's wedding on January 5, 2024. What prompted him to go back and check his emails was a conversation he had with his brother who told him that his son (Dr. Elodka's nephew) had brought to his attention the existence of a default judgment. This, according to Dr. Elodka, was the first he had heard of V & E International's claim.

[48] Dr. Elodka was made aware of the Amended Notice of Action and Amended Statement of Claim (that was also served on Mr. Le Clair as Recognized Agent for Olde Town Hills) in an email sent to him by Mr. Le Clair on May 6, 2024. Dr. Elodka acknowledged that he "saw" this email "on or about the day it was received". As for the earlier email sent to him by Mr. Le Clair on January 4, 2024, advising him of the original Notice of Action and Statement of Claim, Dr. Elodka swore that he did not see it until July 18, 2024, when he was preparing the affidavit that was filed in support of this motion.

[49] It should be noted that after finding out in the first week of May 2024 that there was a default judgment registered against his company and then being notified on May 6, 2024, that an Amended Action had been filed against him and his company, it still took him almost a month to begin the search for a lawyer. And it took nearly another month beyond that to finally secure legal representation. After that, things moved rather quickly to try to set aside the two default judgments.

[50] To try to refute the evidence of Dr. Elodka and to refute the arguments advanced on behalf of Olde Town Hills by its counsel, counsel for V & E International filed an affidavit of Danielle J. Keating, a lawyer in the same law firm, who had represented Yonnis Ashraf Genidi in an action commenced on his behalf against North 45 Orchards Limited and Hossam Elodka as defendants. Similar to the case on behalf of Atlantic Haskap versus North 45 referred to earlier, counsel for North 45 and Dr. Elodka was Mr. Giles, K.C. The "Keating" affidavit was offered to show that Mr. Giles was communicating and receiving instructions from his client – Dr. Elodka – throughout the period of time that V & E International's counsel was

asking him to accept service on behalf of Olde Town Hills and Dr. Elodka, personally, in the V & E International action. Counsel for Olde Town Hills opposed the use of the Keating affidavit on the basis that it consists mainly of hearsay. She did not object to the admissibility of a Supplementary Affidavit of Colin D. Bryson, K.C., filed on January 9, 2025 which I will have more to say about later.

[51] In my ruling, I agreed that the “Keating” affidavit contained hearsay, but it was, nonetheless, admissible under Civil Procedure Rules 39.07(b) and 22.15(2)(c) because it was being offered on a motion to determine a procedural right. I also left it to be determined what, if any, weight should be given to this evidence pending the results of the cross-examination of Dr. Elodka by V & E International’s counsel and submissions of counsel.

[52] The Supplementary Affidavit of Mr. Bryson referred to earlier, provides evidence of the various communications between counsel representing Atlantic Haskap and North 45 throughout the relevant time period which makes it clear that Mr. Giles was in communication with Dr. Elodka and that he received instructions from his client that eventually led to a settlement. It was open for Dr. Elodka to waive solicitor/client privilege and have Mr. Giles file an affidavit to corroborate his evidence that he did not speak to or receive any communication from Mr. Giles about the V & E International lawsuit. He chose not to do so. A negative inference can be drawn from this.

[53] After weighing all the evidence offered in support and in opposition to the motion to set aside the two default orders, I am not persuaded that a reasonable excuse has been offered for the delay in filing a defence on behalf of Olde Town Hills. The evidence offered by Dr. Elodka that he failed to open Mr. Le Clair’s January 4, 2024 email attaching the Notice of Action and Statement of Claim because he was just too busy preparing for his daughter’s wedding might explain a slight delay of a few days or even a week. But, to overlook the receipt of the email for nearly four months is inexcusable. I do not find Dr. Elodka’s evidence to be credible.

[54] In respect to Dr. Elodka’s answers to questions put to him by V & E International’s counsel during cross-examination regarding any contract he might have had with Mr. Giles, I, likewise, find it wanting. To simply say “I don’t remember” or “I don’t recall” is both evasive and disingenuous.

[55] My assessment of Dr. Elodka’s lack of truthfulness is influenced by his efforts to delay and frustrate Mr. Ellaithy’s attempts to have the Agreement of Purchase and

Sale honoured. An example of this is when he instructed Mr. Yushchenko to prepare deeds to transfer title to the two remaining approved lots in phase 1A only to ignore them after they had been prepared and sent to him for execution.

[56] I also question Dr. Elodka's rather casual approach to finally retaining a lawyer to represent him and his company after he admitted becoming aware of the existence of the default judgment and the Amended Notice of Action and Amended Statement of Claim. It demonstrates a disregard to the processes of this court. He should not be allowed to benefit from the protection of the rules when to do so would come at the expense and prejudice of an opposing party.

Courts Ruling

[57] The motion to set aside the Default Orders for Judgment granted by the Deputy Prothonotary on February 16, 2024, and June 13, 2024, is dismissed.

[58] I call upon counsel for Olde Town Hills Community Limited and Hossam Elodka to prepare the Order reflecting my decision.

[59] I will leave it to counsel to try to reach an agreement on costs. If the parties cannot agree, I will give them 30 calendar days from the date of release of this decision to provide written submissions so that I can decide what is appropriate.

Glen G. McDougall, J.