

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1194432 B.C. Ltd. v. Gram Canada
Investment Ltd.,
2025 BCSC 2470*

Date: 20251128
Docket: S215249
Registry: Vancouver

Between:

1194432 B.C. Ltd.

Plaintiff

And

**Gram Canada Investment Ltd.,
Yu Du, Xiaoying Chen, Yirui Sun, and Na Zhang**

Defendants

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J.M.S. Woolley

Counsel for the Defendants:

T.A. Falcone

Place and Dates of Hearing:

Vancouver, B.C.
November 6–7, 2025

Place and Date of Judgment:

Vancouver, B.C.
November 28, 2025

[1] The defendants apply under Rule 3-8(11) of the *Supreme Court Civil Rules* to set aside a default judgment that was entered against them on September 11, 2025.

[2] The law for setting aside a default judgment was succinctly set out by Justice Sigurdson in *Williams v. British Columbia (Ministry of Public Safety and Solicitor General)*, 2025 BCSC 1272 as follows:

[26] Rule 3-8(11) simply provides: “The court may set aside or vary any judgment granted under this rule.” The rule accordingly provides for a discretionary decision. This discretion is guided by consideration of the following factors:

- a) Whether the applicant wilfully or deliberately failed to file a defence to the plaintiff’s claim;
- b) Whether the applicant made the application to set aside the default judgment as soon as reasonably possible after obtaining knowledge of the default judgment, or provided an explanation for any delay in the application being brought;
- c) Whether the applicant has a meritorious defence or at least one worthy of investigation; and
- d) Whether the applicant established these elements to the satisfaction of the court through affidavit material, filed by the applicant or another party.

Miracle Feeds v. D. & H. Enterprises Ltd. (1979), 10 B.C.L.R. 58 (Co. Ct.); *Andrews v. Clay*, 2018 BCCA 50 [*Andrews*], at paras. 28–32.

[27] These factors are not intended to be either mandatory or exhaustive of the relevant considerations. In most cases they will be the appropriate indicators of whether it is in the interests of justice to set aside the default judgment. They are not to be applied inflexibly, and they are not immutable: *Andrews*, paras. 29–31.

[28] With respect to the first factor, the defendant’s failure to file a defence must have been “blameworthy”: there must have been a wilful or deliberate decision not to defend on the part of the defendant. See *British Columbia v. Ismail*, 2006 BCSC 1552; *Forgotten Treasures International Inc. v. Lloyd’s Underwriters*, 2020 BCCA 341 at para. 17; *Summit Leasing Corporation v. Westshore Towing Ltd.*, 2019 BCSC 1058 at para. 19.

[29] An applicant is not obliged to satisfy all four factors, other than that any evidence relied on must be by affidavit. The court must apply its discretion to determine whether, in all the circumstances, the default judgment should be set aside. The discretion must always be exercised in light of the emphasis given in R. 1-3(2) to the just, speedy and inexpensive determination of every proceeding on its merits: *H.M.T.Q. In Right of the Province of British Columbia v. Ismail*, 2007 BCCA 55. The interests of justice are the principal consideration: *Gill v. Sandhar*, 2022 BCSC 255 at para. 11.

[Emphasis added.]

[3] The plaintiff concedes that factors b and d are satisfied; factors a and c are in issue.

[4] I will consider them in turn.

Issue 1: Whether the applicants wilfully or deliberately failed to file a defence to the plaintiff's claim

[5] Despite there being an affidavit of personal service stating the contrary, the plaintiff concedes that Ms. Chen was never served. She was out of town at the time the process server claims to have served her.

[6] The evidence of other two applicants Sun and Zhang were served by alternative service - via email. They claim that they did not receive the notice of civil claim or if they did, they did not look at it or understand it.

[7] As above, the failure to file a defence must be blameworthy. There must be a wilful or deliberate decision not to defend the action.

[8] The applicants are not sophisticated business people. They are immigrants to Canada. English is not their first language.

[9] The evidence shows that as soon as they became aware of the default action they moved quickly. They retained counsel within days and had this application filed promptly.

[10] On the facts of this case, I am unable to conclude that there was a deliberate decision not to defend the action.

Issue 2: Whether the applicants have a meritorious defence or at least one worthy of investigation

[11] As our Court of Appeal stated in *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, 2020 BCCA 341 at para. 31, to answer this question the chambers judge need not engage in a searching, extended, or detailed weighing of

the evidence. The threshold the applicant must meet is, as the words “worthy of investigation” suggest, not onerous. The overarching aim is to do justice as between the parties.

[12] I am satisfied that there are several defences worthy of investigation including that it was actually the plaintiff who breached the sub-franchise agreement by suddenly withdrawing from the business venture.

Analysis

[13] The plaintiff concedes that Ms. Chen was never served. Accordingly, the default judgment against her is set aside.

[14] Weighing all the circumstances, I conclude that the interests of justice require that the default judgments against applicants be set aside. In addition to all of the factors above, the action involves a significant amount of money. Judgments against them should cause the defendants to lose their homes. Justice will be served by permitting the applicants to have a determination of the claim on its merits.

Conclusion

[15] In conclusion, I make the following orders:

1. The default judgment against all of the defendants - Gram Canada Investment Ltd., Xiaoying Chen, Yirui Sun and Na Zhang be set aside.
2. The applicants are granted leave to file a response to the plaintiff’s amended notice of civil claim dated March 7, 2024 and counterclaim, within 14 days of this order;
3. The Registrar of Land Titles is directed to cancel registered charge CB2343326 on PID 028-777-093, Strata Lot 87, District Lot 440 Group 2, New Westminster District, Strata Plan 4210; and

4. The registrar of Land Titles is directed to cancel registered charge CB2343326 on PID 026-581-086, Strata Lot 68 Section 18 Block 3 North range 6 West, New Westminster District, Strata Plan BCS1023.

[16] Because they were less than diligent in responding to the notice of civil claim, I order that Yirui Sun and Na Zhang pay the costs of this application to the plaintiff despite being the successful parties.

“The Honourable Madam Justice Murray”