CITATION: Virk v. Sihota et al., 2025 ONSC 6775
COURT FILE NO.: CV-24-33320
DATE: 20251204

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
KAMALPREET VIRK Plaintiff	)	Eric Florjancic, for the Plaintiff
– and –	)	
KARGUNE SINGH SIHOTA also known as HARGUNE SIHOTA AND PARAMPREET SIHOTA also known as PAM SIHOTA	)	Piera Segreto, for the Defendant
Defendant	)	
	)	**HEARD:** September 2, 2025

ENDORSEMENT ON MOTION

HORVAT J.:

[1] The plaintiff noted the defendants in default after being served with a statement of defence and knowing that the defendants were represented by a lawyer. On April 8, 2025, the plaintiff obtained default judgment. The defendants have brought a motion asking the court to set aside the noting in default and the default judgment.

[2] For these reasons, the defendants' motion is granted and both the noting in default and the default judgment are set aside.

BACKGROUND

[3] On April 5, 2024, the plaintiff commenced this action by issuing a statement of claim. The action seeks damages arising from an alleged breach of contract, fraudulent misrepresentation, and negligent misrepresentation.

[4] On August 8, 2024, the plaintiff served the statement of claim by substituted service.

[5] On October 11, 2024, the defendants' lawyer at the time, Mandeep (Jag) Brar of JB Legal, served a statement of defence.

[6] On October 21, 2024, the plaintiff served a reply to the statement of defence.

[7] On November 1, 2024, a lawyer for the plaintiff wrote to Mr. Brar: "It has come to our attention that you have not filed your client's Statement of Defence. Please rectify this issue or we will note your client in default."

[8] Later that same day, Mr. Brar responded by email writing: "I shall see what the issue is with the filling, but I shall note two things: 1. service of the statement has happened 2. You cannot obtain as default judgment when you have been served as per the rules of professional conduct as that is considered sharp practice."

[9] On both November 5 and 8, 2024, the plaintiff's lawyer contacted the court which advised them that the defendants did not file their statement of defence. On November 8, 2024, the plaintiff's lawyer filed a request to note the defendants in default.

[10] On November 15, 2024, a lawyer for the plaintiff wrote to Mr. Brar: "Please be aware your clients have been noted in default for failing to file their defence, and we will proceed with default judgment." Based on the materials before the court, it appears that Mr. Brar did not respond to this email or take any further steps on behalf of the defendants.

[11] On November 29, 2024, the plaintiff brought a motion for default judgment under r. 19.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The original return date of December 17, 2024, was adjourned to permit the plaintiff time to file additional evidence regarding punitive damages. The motion record included a copy of the served statement of defence and the plaintiff's reply.

[12] On April 8, 2025, default judgment was granted in the amount of $90,000, which included $70,000 for the loan amount and $20,000 in punitive damages. The court also granted full indemnity costs to the plaintiff in the amount of $28,234.26 and both pre and post judgment interest. The total amount owing under the default judgment is $118,234.26 plus interest.

[13] On April 10, 2025, the lawyer for the plaintiff wrote to the defendants directly by email serving the default judgment and stating:

> Please be advised that on April 8, 2025, Justice T Heeney ordered that you, the defendants, are liable to pay the plaintiff the loan amount of $70,000 CAD, punitive damages in the amount of $20,000, full indemnity costs of $28,234.26 and pre and post judgement interest.
>
> The plaintiff will seek further relief and enforcement measures as entitled in the Order should you fail to pay the Ordered amounts by April 23, 2025. Please pay the Ordered amounts to the plaintiff directly. Attached at TAB 1 is a copy of the issued Order dated April 8, 2025. Attached at TAB 2 is a copy of the Requisition of Default Judgment setting out pre and post judgment interest.

[14] On April 22, 2025, the defendant Kargune Singh Sihota (also known as Hargune Sihota) emailed the lawyer for the plaintiff and enclosed draft motion materials to set aside the default judgment.

[15] On April 24, 2025, the lawyer for the plaintiff responded to Mr. Sihota's email advising that the plaintiff would oppose the motion, seek costs, and proceed with enforcement of the default judgment. On that same day, Ms. Segreto, the now lawyer for Mr. Sihota, wrote to the lawyer for the plaintiff to advise that Mr. Sihota was consulting her to bring a motion to set aside the default judgment. Ms. Segreto also asked the lawyer for the plaintiff for a copy of the pleadings and non-privileged documents in this action so that she could bring herself up to speed.

[16] On April 25, 2025, the plaintiff's lawyer responded to Ms. Segreto and advised they would oppose that Mr. Sihota's motion, and that the plaintiff was proceeding with collections. The plaintiff's lawyer did not provide the pleadings or other documents to Ms. Segreto.

[17] On May 5, 2025, the plaintiff issued writs of seizure and sale for property in both Windsor and Brampton and filed the writ with the Windsor Sheriff's Office. On May 16, 2025, they filed the writ with the Brampton Sheriff's Office.

[18] On June 23, 2025, Mr. Sihota formally retained Ms. Segreto.

[19] On July 7, 2025, this motion to set aside the default judgment was brought.

ANALYSIS

[20] Under r. 19.03(1) and r. 19.08(1), the court may set aside a noting in default and a default judgment on such terms as are just. The decision under both rules is a discretionary one.

[21] When exercising its discretion to set aside a noting of default, the court must assess "the context and factual situation" of the case, including the behaviour of the parties, the length and explanation for the defendant's delay, and the complexity and value of the claim: *Intact Insurance Company v. Kisel*, 2015 ONCA 205, 125 O.R. (3d) 365, at para. 13; *Nobosoft Corp. v. No Borders Inc.*, 2007 ONCA 444, at para. 3.

[22] There is no dispute that the defendants served a statement of defence, and that Mr. Brar represented them at the time of the noting in default. They were clearly defending this action, and, in my view, it was improper for the plaintiff to note them in default in these circumstances. Parties are not to use default proceedings under r. 19 for tactical purposes or advantages: *Nobosoft*, at para. 7; *McNeill Electronics Ltd. v. American Sensors Electronics Inc*., [1996] O.J. No. 3446 (Ont. Gen. Div.), rev'd on other grounds 1998 CanLII 17693 (Ont. C.A.); *Strathmillan Financial Limited v. Teti*, 2021 ONSC 7603, at paras. 1-5, 28, 31-32.

[23] The words of Myers J. in *Strathmillan* are applicable in the present case: "this was an outrageous misuse of the default process under r. 19. When it took default proceedings against the defendants, the plaintiff knew that the defendants were in fact defending the

action on its merits": at paras. 1-5, 28, and 31-32. Counsel should also be reminded of their obligations under Rule 7.2-2 of the Rules of Professional Conduct: **"**A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other legal practitioners not going to the merits or involving the sacrifice of a client's rights."

[24] In my view, the defendants should never have been noted in default in these circumstances and the noting in default of the defendants shall be set aside.

[25] The default judgment should also be set aside under r. 19.08(1). When exercising its discretion to set aside a default judgment, the court must be guided by balancing the following factors from *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194, 119 O.R. (3d) 561, at paras. 48-50; *Intact*, at para. 14, and ultimately deciding whether "it is just to relieve a defendant from the consequences of default":

(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.

[26] The defendants rely only on an affidavit sworn by a paralegal employed by Ms. Segreto's law firm. The affidavit contains hearsay and no firsthand evidence that addresses what occurred from November 1, 2024, and April 2025 between Mr. Brar and the defendants. Included as an exhibit to the paralegal's affidavit is a copy of an email exchange between Mr. Sihota and Mr. Brar dated November 1, 2024, that includes what appears to be Mr. Brar charging Mr. Sihota the filing fee for the statement of defence as a disbursement. No other evidence is before the court with respect to: Mr. Brar's involvement (or lack of involvement); why the statement of defence was never filed with the court; or the precise reason for the defendants' failure to file the statement of defence.

[27] This is not generally a sufficient evidentiary basis to set aside a default judgment. The expectation of the court is that an affidavit sworn by a defendant that speaks to each of the five factors outlined in *Mountain View* would be filed. The present case, however, is not a typical one given that the defendants were defending the action and were noted in default anyway.

[28] The defendants argue that they were not aware of the default proceedings until April 2025, and then acted promptly once they became aware of the default. Unfortunately, there is no evidence before the court from Mr. Brar or the defendants that supports this position. It is unclear what occurred between November 2024 and April 2025 with respect to Mr. Brar and the defendants. As a result, I have difficulty making any findings with respect to the

first two *Mountain View* factors. The defendants, however, did not deliberately cause delay by refusing to respond to legal proceedings. They served a statement of defence and were served with a reply. As I have already found, the defendants never should have been noted in default in these circumstances.

[29] On the third factor, the defendants only need to show that their defence has an "air of reality" or a "plausibility of a defence": *Mountain View*, at para. 51; *Dentons Canada LLP v. Khan*, 2021 ONSC 5261, at para. 31.

[30] The plaintiff argues that the defendants have not met their evidentiary burden to support an arguable defence by failing to adduce affidavit evidence that supports the facts underlying the proposed defence. The plaintiff relies on an affidavit sworn by her father, Jasbir Singh Sandhu. Mr. Sandhu is also the father of the defendant Ms. Sihota and the grandfather of Mr. Sihota. Mr. Sandhu's evidence speaks to the merits of the action. 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.

[31] The statement of defence that the defendants served denies the allegations in the statement of claim, challenges the nature of the alleged loan, and asserts that Mr. Sihota should not be a party. The plaintiff served a reply in response. There is a genuine dispute about whether the funds were advanced as a loan or to settle an outstanding family debt. Having reviewed the served statement of defence, and given the record before me, in my view, there is an "air of reality" to the defence that the defendants intend to put forward: *Mountain View*, at para. 51.

[32] On the fourth factor, the prejudice to both parties in setting aside, or not setting aside, the default judgment, must be balanced.

[33] The plaintiff argues that she would suffer prejudice if the default judgment were set aside because she "has undertaken efforts to push this matter forward despite the resistance of the defendants." With respect, there is no evidence of resistance by the defendants. They served a statement of defence, and the plaintiff replied to it. The plaintiff then took advantage of a technicality, being that the defendants' lawyer did not file the statement of defence with the court. This is not a case of "inattention and inaction" by the defendants: *HSBC Securities (Canada) Inc. v. Firestar Capital Management Corp.*, 2008 ONCA 894, at para. 17.

[34] The plaintiff also argues that she obtained default judgment "in good faith" and argues that the defendants will render themselves "judgment proof" if the default judgment is set aside. There is no evidence before me to support this speculation, and I have already found that the defendants never should have been noted in default.

[35] The defendants, on the other hand, are prejudiced by not setting aside the defaults as they become liable to pay $90,000 in damages and over $28,000 in costs to the plaintiff for an

outstanding loan that they dispute even exists. Further, the defendants would be denied the opportunity to advance their defence and have the action adjudicated on its merits.

[36] In this case, the plaintiff moved very quickly – within seven days of discovering the irregularity with the filing of the statement of defence. Although the plaintiff was entitled to do so, and Mr. Brar was given fair warning that they might do so, the shortness of the period between the discovery of the defendants' failure to file the statement of defence and the noting of default is a consideration on the question of prejudice: *Intact*, at para. 26.

[37] On the fifth and final factor, the effect on the integrity of the administration of justice if the default judgment is not set aside must be considered. In my view, the interests of justice do not support rewarding the plaintiff for noting a defendant in default who served a statement of defence and was represented by a lawyer. The integrity of the administration of justice is promoted, in my view, by the setting aside of the default judgment and having this action determined on its merits. The court should always strive to ensure that issues between litigants are resolved on their merits, when that can be done with fairness to the parties: *Nobosoft*, at para. 7; *McNeill Electronics*, at para. 2.

[38] Balancing all the factors, it is my view that the circumstances of this case favour granting the defendants' motion to set aside both the noting in default and the default judgment.

DISPOSITION

[39] The defendants' motion is granted. The default judgment and noting in default shall be set aside, and the defendants may deliver their statement of defence within 30 days.

COSTS

[40] On costs, I note the words of Centa J. in *Duninger Corporation v. Montour*, 2022 ONSC 4938, at para. 8, that, in my view, apply to the present case:

> As I stated in the endorsement on the merits, the *Rules of Civil Procedure* should not reward taking advantage of, or acting upon, slips, mistakes, or inadvertence by counsel. Similarly, I would not exercise my discretion to make a costs award that could incentivize such conduct. Parties who take unreasonable positions should expect to face costs consequences for their folly: *Strathmillan Financial Limited v. Teti*, 2021 ONSC 7603, at paras. 46-53; *Mollicone v. Town of Caledon*, 2011 ONSC 883.

[41] The defendants are entitled to their costs of this motion. If the parties are unable to resolve the quantum, the defendants may deliver written costs submissions of up to two pages (excluding any costs outline, bill of costs, or offers to settle) within 45 days, and the plaintiff may deliver its responding submissions on the same terms within 30 days following.

Jacqueline A. Horvat
Justice

Released: December 4, 2025

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