CITATION: Raymond Exterior Veneers Inc v. Exterior Walls Systems Limited et al, 2025 ONSC 7198
COURT FILE NO.: CV-24 00095188
DATE: 2025/12/23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Raymond Exterior Veneers Inc, Plaintiff

-and-

Exterior Walls Systems Limited O/A Ontario Panelization, Philip MacDonald, Robert B. MacDonald and Dan Boyd, Defendants

BEFORE: Justice A. Doyle

COUNSEL: Ryan Stubbs for the Plaintiff
Scott Martin and Jonathan Mahoney for the Defendants

HEARD: December 18, 2025

ENDORSEMENT

[1] On December 18, 2025, the court granted the Defendants' motion for an order permitting the extension of time for delivery of their response for particulars which was due under Associate Justice Perron's consent order on April 7, 2025 (Perron Order) but was not delivered until April 9, 2025.

[2] Due to this delay, the Statement of Defence and Counterclaim of the Defendants was automatically struck as a consequence of the Perron Order.

[3] The Plaintiff opposed this motion and argued that the Defendants had previously delayed providing these particulars which required a motion to be made and they were awarded costs.

[4] As a result of granting the Defendants' motion, the court dismissed the Plaintiff's motion for default judgment.

[5] These are my reasons for granting the Defendants' motion.

Facts

[6] This action involves a commercial dispute. A Statement of Claim was issued on March 26, 2024. The Statement of Defence and Counterclaim was delivered on May 21, 2024.

[7] On May 24, 2024, counsel of the Defendants received a Request to Inspect Documents and a Demand for Particulars (Response) regarding allegations in the Statement of Defence and Counterclaim.

[8] Counsel for the Defendants delayed in providing a response due to the birth of his child and the volume of his practice. On December 13, 2024, the Plaintiff served a motion for an order requiring delivery of the Response.

[9] Prior to the motion, counsel for the Defendants consented to the order which provided that the Response would be delivered by April 7, 2025 failing which their Statement of Defence and Counterclaim would be struck. In addition, the Defendant would pay the costs of $6883.22 (which was paid).

[10] The Response was not delivered until the evening of April 8, 2025 which would be effective April 9, 2025 due to personal circumstances of counsel for the Defendants. His wife and infant son had become ill with the flu, and they were moving their family residence to London ON in April 2025. After taking possession of their new home, they discovered rat feces and latent nests in the insulation which required the family to find alternative accommodation. Despite this, counsel was working on a detailed response on April 7, 2025 in order to meet the deadline but was called out of the office unexpectedly to assist with a pest controller investigating the pest issue.

[11] On the morning of April 8, 2025, counsel requested an indulgence from counsel for the Plaintiff and explained the circumstances.

[12] Counsel advised he would seek instructions. The response was delivered at 6:57 p.m. on April 8, 2025.

[13] On April 9, 2025, counsel for the Plaintiff advised that he had instructions to move for default judgment on the basis of non-compliance with the Perron Order.

[14] On April 11, 2025, the Plaintiff brought a motion for default judgement in writing but did not acknowledge in their material that the Defendants had filed their Response two days late.

Plaintiff's position

[15] The plaintiff relies on *Rana v. Unifund Assuarance Company* 2016 ONSC 50.

[16] It opposes the motion on the following basis:

- Other lawyers in the law firm could have completed this Response if counsel on record was not available;
- That time management and a form of tickler system would be of some assistance;
- There is no evidence of what other efforts were made by counsel before April 7, 2025;
- The Statement of Defence and Counterclaim was automatically struck for failure to comply;
- There was a consistent and ongoing pattern of unreasonable conduct by the defendants in the course of this action;
- Pursuant to Rule 60.12, when there has been non-compliance of on order, the court should be alive to the possibility that the process is being abused;
- The defendants should accept responsibility and comply with orders;
- That the defendants "cavalierly ignored its obligations; and
- Costs do not provide adequate compensation for prejudice in the delay of proceeding in this matter.

Analysis

[17] At the hearing, I permitted the extension of the delivery of the Response under the Perron order retroactively to April 10, 2025.

[18] Rule 3.02 of the *Rules of Civil Procedure* provides the Court with broad discretion to extend or abridge any time on terms as are just.

[19] Rule 1.04 provides that the *Rules* must be construed to secure the "just, most expeditious, and least expensive determination of every civil proceeding on its merits".

[20] In my view, this case should be decided on its merits rather that the failure of Defendants' counsel to deliver the Response within the time prescribed under the Perron Order.

[21] This is not meant as a condonation of counsel's tardiness and certainly there have been other time management issues prior to the Perron Order. He failed to respond to the original request made in May 2024 for particulars and a request to inspect documents.

[22] Yet, in the circumstances in this case when there was an intention that the Response was going to be delivered on time, and personal circumstances of counsel, it is in the interests of justice to permit the case to proceed on its merits.

[23] Instead the plaintiff brought an immediate motion in writing for default judgment without providing evidence that indeed the Response had been received albeit late.

[24] I am guided by the Ontario Court of Appeal in *Duffin v. NBY Enterprises Inc.* 2010 ONCA 765 where the court set aside an order dismissing an action after the defendant was two days late in paying a costs award. At para 18, the Court considered the justice of the case in granting the extension of time.

[25] The court is reluctant to dismiss a claim on grounds unrelated to its merits. To do so is contrary to the general principle – found in rule 1.04(1) that rules should be construed liberally.

[26] I must consider the issue of the prejudice to the parties that will result from its order. Here, the Plaintiffs will suffer no prejudice whatsoever if the Perron order is varied to relieve against the Defendants' non-compliance. On the other hand, the Defendants will suffer great prejudice if the order is not varied: their action will be dismissed without a hearing on the merits.

[27] Next, the court has considered the underlying purpose of the Perron order which was to ensure that particulars and inspection took place in a timely fashion. The full particulars were provided albeit 2 days late. Therefore, the litigation could have proceeded without further delay

[28] Finally, the court should consider the seriousness of the breach. Here, the breach was minor – a compliance made in practical terms one day late.

[29] Taking all of these considerations into account, the justice of the case warrants relieving the defendants' from their technical non-compliance of the Perron Order.

[30] Therefore, the Defendants' time to deliver their response is retroactively set at April 10, 2025 and the Statement of Defence and Counterclaim are reinstated.

[31] I am not inclined to award costs.

[32] First, the reason for this motion is that the Defendants failed to comply with a timeline and they had previously shown tardiness in responding to proper requests for the particulars resulting in the Perron Order.

[33] Second, the Plaintiff is not entitled to costs as I find this case should be decided on its merits and not because personal intervening circumstances of the opponents' counsel contributed to non-compliance.

[34] Accordingly, there will be no order as to costs.

Justice A. Doyle

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DOYLE J.

Released: December 23, 2025