CITATION: Consortium Mechanical Inc. v. Monte's Premium Meats Inc., 2026 ONSC542
COURT FILE NO.: CV-24-722070
DATE: January 27, 2026

2026 ONSC 542 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Consortium Mechanical Inc. v. Monte's Premium Meats Inc. and Ernesto Monte;

BEFORE: **ASSOCIATE JUSTICE C. WIEBE**

COUNSEL: Fatma Uyuklu *for Monte's Premium Meats Inc. and Ernesto Monte;*
Morgan Connor *for Consortium Mechanical Inc.;*

HEARD: January 26, 2026.

REASONS FOR DECISION

[1] The defendants bring this motion for an order setting aside a default judgment signed by the Registrar on August 22, 2024, setting aside the noting of the defendants in default, granting the defendants leave to deliver a statement of defence, staying enforcement proceedings and directing the return of all garnished funds. The plaintiff resists the motion.

Monte's Premium Meats Inc.

[2] Having read the motion material, the factums and heard oral argument, I dismissed the motion at the time of the argument on January 26, 2026 as the motion pertained to Monte's Premium Meats Inc. ("MPM"). I gave oral reasons. I will restate these reasons here.

[3] The test for setting aside a default judgment was articulated by the Court of Appeal in *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194 (CanLII) at paragraphs 48 and 49. The defendant must prove the following: (a) that the motion was brought promptly after the default judgment was discovered; (b) that there is a "plausible" excuse for the default; (c) whether the facts establish an "arguable defence" on the merits; (d) that the balance of prejudice favours setting the default judgment aside; and (e) the effect of the order on the integrity of the administration of justice. These factors are disjunctive.

[4] I found that the motion was brought promptly. However, I found that the defendants failed to meet the other tests.

[5] Concerning the default, I found that there was no "plausible" excuse for the default. The plaintiff produced an affidavit of service of process server Ian McIntrye sworn June 27, 2024 wherein he states that at 12:15 p.m. on June 21, 2024 he left a copy of the statement of claim with a person at 409 Royal York Road, Etobicoke (MPM's admitted place of business) who acknowledged

he was Ernesto Monte. This is an affidavit of someone who had no stake in this case sworn at a time when this motion did not exist. Mr. McIntrye was not cross-examined.

[6] Now, in the context of this motion a year and a half later when it suits him, Mr. Monte, the principal of MPM, states in his affidavit that "I was never properly served with the Statement of Claim in this action." This denial lacks all credibility. Firstly, Mr. Monte's statement does not deny the service, just the propriety of the service. He does not state what was improper about the service. Secondly, when Mr. Monte became aware of the default judgment through the garnishment process in January, 2025, his first reaction included no mention of the now alleged lack of proper service. There was a letter from Mr. Monte's accountant, Sean Franklin, on January 16, 2025 and a letter from Ms. Uyuklu dated February 18, 2025, neither of which deny proper service.

[7] Concerning the merits, I also found there was no arguable defence for MPM. The plaintiff had an oral contract with MPM for the transfer and installation of its meat storing and selling facility. The defendants' prime defence is that is that the oral contract was fixed price with the fixed price being $90,000, which is what MPM paid. They argue that there is nothing owing.

[8] I found there is no arguable defence for MPM. The plaintiff rendered four invoices to MPM between March, 2023 and mid-July, 2023 totaling $244,984.04. These were all time-and-material invoices with no mention of a fixed price. Also, the $90,000 alleged fixed price is itself suspicious as it is only 36% of MPM's total billings. No reasonable contractor would agree to a fixed price that guarantees such a catastrophic loss. MPM indeed paid only $90,367.70; but in my view that means nothing as there was no evidence the plaintiff agreed to this limit. The unpaid balance on the invoices is $154,616.34, which is the amount of the plaintiff's claim.

[9] Furthermore, and most importantly, the evidence indicates that, rather than denying anything was owing (as he now does), Mr. Monte at the time of the invoices admitted there was money owing and that he was working on "a proposal" to get it paid. The last invoice rendered on July 25, 2023 for $147,550.34 was not paid at all and is the most contentious. Kevin Beer of the plaintiff sent an email to Mr. Monte on July 26, 2023, the next day, enclosing all the invoices and asking for payment. Mr. Monte did not deny that money was owing. He emailed back stating he was passing this material on to his accountant and hoped this did not interrupt the finishing work. He asked for patience. Hardly a denial of the amount owing.

[10] After three months and no payment, on October 24, 2023, Mr. Beer sent a follow-up email stating the exact amount owing ($154,616.34) and demanding payment. Mr. Monte responded by email dated October 26, 2023 stating that he understood Mr. Beer's concerns "for the funds owing." Again, he promised "a written proposal on the outstanding balance." He again apologized and hoped the work could be finished the following week. This was essentially an admission by Mr. Monte of the debt. The "proposal" he kept referring to obviously was a payment plan, as that was mentioned by Mr. Beer in his October 24, 2023 email. As a result, I found there is no arguable defence on this point.

[11] Mr. Monte's affidavit also alleges there was an agreed-upon, one-month schedule for the work and that the plaintiff delayed, causing the defendants damage. The work clearly took months to get done. The invoices themselves were rendered between March and July, 2023, namely over five

2026 ONSC 542 (CanLII)

months. The correspondence indicates there was work going on as late as October, 2023. It seems highly unlikely that the plaintiff would have agreed to do all the work in one month. There was no evidence, other than Mr. Monte's bald, self-serving statements, that the plaintiff did so. Furthermore, and most importantly, Mr. Monte provided no evidence that he ever complained about the time it was taking to get the work done. The delay is another one of Mr. Monte's bald, self-serving, uncorroborated assertions. I found there is no arguable defence on this point.

2026 ONSC 542 (CanLII)

[12] Concerning prejudice, I found that the balance of prejudice favoured the plaintiff. Mr. Hurlbert, the deponent on the plaintiff's affidavit, made it clear in his affidavit that the plaintiff is a small business and that it is "not a point-of-sale business." It relies heavily on customers paying their debts in a timely way. He stated that this unpaid account has caused, and continues to cause, significant disruption to the company's cash flow and overall business. He stated that this was the reason the plaintiff obtained the default judgment and pursued its enforcement vigorously at significant additional expense. On the other hand, the only prejudice Mr. Monte could point to in his affidavit should the motion not be granted is the loss of the opportunity to defend this claim. Having found no arguable defence on the merits, I did not put much weight on Mr. Monte's position.

[13] Concerning the administration of justice, I found that it would bring the administration of justice into disrepute if the court became a party to the efforts of a debtor trying to avoid paying its legitimate debts. That is the situation here.

Ernesto Monte

[14] I reserved my ruling as to the personal liability of Mr. Monte. In the statement of claim, the plaintiff alleges that Mr. Monte provided "guarantees of payment to Consortium." The plaintiff also alleges that Mr. Monte was the "directing mind" of MPM; but it does not rest its case against Mr. Monte on this point. The core allegation against Mr. Monte is that he guaranteed payment of the outstanding account. In paragraph 7 of the statement of claim, the plaintiff alleges that Mr. Monte gave a verbal guarantee of payment to the plaintiff on or about July 26, 2023, and that the plaintiff asked for a "binding letter" confirming that promise.

[15] The evidence shows an email from Mr. Beer to Mr. Monte dated July 26, 2023. Attached were the outstanding invoices. In the email Mr. Beer states "I would like a binding letter as to when we will be issued payment form [sic] the bank." It is undisputed that this "binding letter" never came. In his subsequent email to Mr. Monte of October 24, 2023, Mr. Beer again asks for payment pointing out that the account was now over 90 days old; but he makes no reference to a verbal guarantee of payment from Mr. Monte. None of this shows me that Mr. Monte clearly gave the plaintiff a verbal personal guarantee of payment. Mr. Monte himself in his affidavit states that he did not personally guarantee payment of the MPM account and never signed any such personal guarantee.

[16] There is also the issue of the *Statute of Frauds,* R.S.O. c.S.19 ("*SOF*") section 4. Neither counsel addressed this issue in their written material or argument. I did. *SOF* section 4 specifies that no action shall be brought on a guarantee of another's debt "unless the agreement upon which the action is brought, or some memorandum or note thereof is in writing and signed by the party to be

charged therewith or some person thereunto lawfully authorized by the party." There is no evidence that the guarantee Mr. Monte may have given, if any, was in writing. There was also no argument as to whether the facts of this case represent an exception to the *SOF* section 4 requirement.

[17] I have, therefore, decided that there is an arguable defence for Mr. Monte as to his personal liability for MPM's debt to the plaintiff. I have also decided that, despite Mr. Monte's failure to adequately explain his default, it would reflect badly on the administration of justice if Mr. Monte was held personally liable for MPM's debt if the plaintiff was not careful enough to get an enforceable personal guarantee from him. This would be like a windful result for the plaintiff. Therefore, I have decided to set aside the default judgment, but only to the extent of allowing Mr. Monte to contest his personal liability to the plaintiff for the MPM debt.

Conclusion and costs

[18] For these reasons, I set aside the default judgment but only to the extent of allowing Mr. Monte to contest his personal liability to the plaintiff for the MPM debt. I grant Mr. Monte leave to serve a statement of defence and stay enforcement proceedings as they pertain only to Mr. Monte and direct the return of any garnished funds that belong only to Mr. Monte.

[19] Concerning costs, the plaintiff filed a bill of costs that includes the costs of default proceedings (ie. noting in default, default judgment, writs of seizure and sale and garnishments) totaling $4,680, plus that partial indemnity costs of this motion in the amount of $7,594.25, for a total of $12,277.40. The defendants filed a costs outline that shows the following costs of this motion only: $8,773.21 in partial indemnity costs, $11,536.28 in substantial indemnity costs, and $14,299.35 in actual costs.

[20] I have decided to make an award of costs at this point based on the result and other factors, with the right being given to the parties to challenge this award in light of the offers to settle that counsel advised were made.

[21] This motion resulted solely from Mr. Monte's failure to deliver a statement of defence for himself and MPM. Therefore, both Mr. Monte and MPM should jointly and severally pay the plaintiff the $4,680 it incurred to date for enforcement proceedings and half of the plaintiff's costs of this motion, namely $3,797. MPM should solely pay the plaintiff for the other half of the plaintiff's partial indemnity costs of the motion, $3,797, as the plaintiff succeeded entirely as against MPM. It did not succeed as against Mr. Monte. That means the following costs award: MPM and Mr. Monte must jointly and severally pay the plaintiff $8,477 and MPM must solely pay the plaintiff $3,797. The defendants are denied costs.

[22] This result accords with what I view as the reasonable expectation of the defendants given the result. The quantum is reasonable as the motion was not overly complex.

[23] Either side may challenge this costs award by serving and filing written submissions on costs of no more than one page on or before 12 noon on Friday, January 30, 2026, failing which this award stands. Should such a challenge take place, this award is deemed set aside. In that event, the other side has until February 3, 2026 to serve and file responding written submissions on costs of no more than one page. I will then render a new costs award. The parties are warned that, in the event I

2026 ONSC 542 (CanLII)

make a new costs award, I may go in any direction and the award will include the added costs of these submissions.

DATE: January 27, 2026

____

ASSOCIATE JUSTICE C. WIEBE

2026 ONSC 542 (CanLII)