Court of King's Bench of Alberta

Citation: Ghaoui Group LLC v Global Health Imports Corporation, 2026 ABKB 63

Date: 20260130
Docket: 2303 08333
Registry: Edmonton

2026 ABKB 63 (CanLII)

Between:

The Ghaoui Group LLC

Plaintiff

- and -

Global Health Imports Corporation, GHS-Global Health Care Solutions Corporation and Stephen Anderson

Defendants

Memorandum of Decision
of the
Honourable Applications Judge L.A. Smart

Introduction

[1] This is an application to set aside a Default Judgment granted by me on July 6, 2023 against the Defendants Global Health Imports Corporation (GHI) and GHS – Global Health Care Solutions Corporation (GHS) and a Partial Default Judgment granted by Applications Judge WS Schlosser on August 21, 2023 as against the Defendant Stephen Anderson (Anderson). Both Judgments were granted in without notice applications after the Defendants had been noted in default.

Preliminary Issue

[2] Six days after the application was heard in Special Chambers, the Plaintiff submitted further affidavit evidence containing numerous screen shots of text messages from November and December, 2023. Not surprisingly, Counsel for the Defendants took exception to this late submission. Regardless, I reviewed the evidence and have concluded it offers nothing material to the issues that were before me, particularly, what knowledge the Defendant Anderson had with respect to the issuance and service of the Statement of Claim in this action. On that basis, I have disregarded the affidavit completely.

Service on GHI and GHS

[3] The Statement of Claim was sent to the Attorney for Service and there is no dispute that that was legally proper and good service on GHI and GHS. Anderson says that he did not receive the Statement of Claim from his Attorney at the relevant time but now acknowledges that after retaining counsel for this application, on a review of his Junk Mail, he discovered that he had been sent, among other things, the Statement of Claim on May 29, 2023.

Service on Anderson

[4] The Statement of Claim was served on Anderson by email to an email address contained in the Agreements between the Plaintiff and GHI. Again, he indicated that he did not receive it but now also acknowledges that after retaining counsel, on a review of his Junk Mail, he discovered it had been sent to him on June 2, 2023. Service upon Anderson was validated by my Order of July 26, 2023.

Service and Correspondence Otherwise

[5] The Plaintiff and Anderson communicated regularly by email and text messaging throughout. So too did current legal Counsel for the Plaintiff. Despite this, Anderson says that in addition to the Statement of Claim, communications with respect to noting in default, judgments and garnishees in this matter were received in his Junk Mail. Furthermore, because he receives hundreds of (junk) emails, he rarely, if ever, reviews his Junk Mail folder as it is typically full of scam emails and marketing junk.

Discussion on Service

[6] Understandably, the Plaintiff views the service issues with a high degree of skepticism. Nonetheless, Anderson's evidence has not been impeached on cross-examination or otherwise. I note that despite innumerable exchanges between the Plaintiff and its Counsel with Anderson there is a peculiar lack of any specific reference whatsoever to the issuance and service of a Statement of Claim or to the Judgments that had been granted. I am satisfied that service upon the Defendants was proper, however, I am mindful that based on the evidence it may be that it did not come to the attention of Anderson.

2026 ABKB 63 (CanLII)

2026 ABKB 63 (CanLII)

The Default Judgments

[7] These Default Judgments were granted on *ex parte* applications to the Court following a Noting in Default. Rule 3.37(1) states that the plaintiff may, **without notice to any other party**, . . . apply to the Court for judgment in respect of a claim for which default judgment has not been entered if (a) one or more defendants are noted in default, . . . (Emphasis added). Rule 3.37(3) provides a shopping list of what the Court may do on such an application and, in subparagraph (f) includes directing that a claim proceed to trial and that notice be served on every other defendant. Indeed, there appears to be a general proposition that a party noted in default continues to be entitled to contest damages in the case of an unliquidated claim. This proposition seems to be in conflict with the concept that notice is not required unless the Court orders a trial and requires notice. Ostensibly, the Court has discretion nonetheless to require notice of any such application where an unliquidated claim is made or there are other material issues which would potentially be disputed.

Ex Parte Applications

[8] While it is said that the test for setting aside a default judgement is prescriptive, it does not obviate the obligations of Counsel on an ex parte application. "It is trite law that a party applying to the court *ex parte* has a duty of disclosure; it is sometimes said to be a duty of the utmost good faith. He or she must disclose to the court all facts material to the motion in question. It is also settled law in Alberta (and elsewhere) that the court is not always compelled to set aside an order for breach of that duty, but that the court will sometimes set it aside on that ground alone. We will not attempt to define the precise circumstances in which the order will or will not be set aside for nondisclosure. But obviously a very relevant factor is how important was the evidence not disclosed to the court on the *ex parte* application." (***Duke Energy Corporation v Duke/Louis Dreyfus Canada Corp***, 1998 ABCA 196 at para 4).

Setting Aside Default Judgments

[9] This is a situation where the Defendants were noted in default before the Plaintiff proceeded to obtain default judgments. As noted the test for setting aside a default judgment has been said to be prescriptive recognizing the presumptive finality of a judgment (***Liberty Mortgage Services Ltd v River Valley Development Corp***, 2025 ABCA 346). The "prescribed" tri-partite test consists of the following elements: (a) does the applicant have an arguable defence; (b) did they not deliberately let the judgment go by default, and have some excuse for the default; and (c) after learning of the default, did they move promptly to open it up (***Kraushar v Kraushar***, 2019 ABCA 186). Notwithstanding, the decision to set aside is discretionary, not based on a rigid set of rules but to achieve fairness and not blind adherence to mere formalism (***Don Reid Upholstery Ltd v Patrie***, 1995 CanLII 9147 (ABQB). Ultimately, the only rule on such motions as this is that the Court must apply its discretion judicially.

Arguable Defences

[10] The Judgment I granted on July 6, 2023 recites quite properly that having been noted in default GHI and GHS were deemed to have admitted the facts alleged in the Statement of Claim. Paragraph 1 of the Judgment says that GHI and GHS have breached their Agreements with the Plaintiff. A similar recital was in Judge Schlosser's Judgment of August 21, 2023 as well as its

first paragraph stating that GHI, GHS and Anderson breached their Agreements with the Plaintiff. The difficulty with this is that the Statement of Claim only alleges the Agreements were with GHI. GHS and Anderson cannot be deemed to have admitted facts that have not been alleged.

[11] The Statement of Claim alleges that Anderson was at all material times a Director and Shareholder of GHI and the sole Director and Shareholder of GHS. Based on representations of Anderson, it was the Plaintiff's understanding that the two corporations and Anderson worked along side one another for the same business purposes. The Defendants do not dispute those allegations. They are the only allegations in relation to GHS. Although there is some evidence presented that Anderson said both corporations worked together that does not make GHS a party to the Agreements. Indeed, the Statement of Claim specifically states that GHI failed to provide the product (surgical gloves) as set out in the Agreements. Corporations are incapable of thought or action and can only act through human agency. It is correct that Anderson was GHI's representative and its directing mind in relation to the Agreements, but that in and of itself does not make him a party to the Agreements nor personally liable under those Agreements.

[12] Ultimately, GHI failed to supply any product. It had received a refundable deposit under the Agreements of $361,000 USD. GHI acknowledged its obligation to return the deposit but only refunded $10,000. Thereafter, evidence of further wire transfer payments were sent to the Plaintiff but each of those transactions were cancelled and consequently no further funds were received.

[13] The Plaintiff has alleged that GHI and Anderson committed fraud and wire fraud by misrepresenting themselves as the owner of the product to be supplied and providing inaccurate wire receipts and misappropriation of the deposit. No further particulars are set out nor were the Judgments made or sought on the basis of anything other than the breach of the Agreements.

[14] The Defendants point to the provisions in the Agreements that any dispute is to be mediated and failing agreement that the dispute is to be resolved through a binding arbitration in Los Angeles, California. The Agreements also provide that they are to be construed in accordance with California law and they agree to attorn to the jurisdiction of California courts. No mediation took place and no California law was proven at the Applications for Judgment. The Plaintiff did provide evidence that an attempt to mediate was made but says it was frustrated by the Defendants lack of response. There is a separate Deposit Agreement. It does not have a mediation prerequisite nor an arbitration clause. It does have similar provisions with respect to California law and attornment.

[15] In addition, the Defendants raise defences based on a force majeure event being a fire destroying the GHI warehouse in Edmonton, and a limited liability provision which would preclude a claim for loss of profits and other business losses. In light of the foregoing, I find it unnecessary to detail further particulars and say only that those defences may be arguable. Lastly, in relation to representations regarding availability of the product and foreseeability of the potential for lost profits as alleged, the Defendants argue that there is conflicting evidence on those issues quite apart from the limited liability provision. I agree.

Discussion

[16] The test for setting aside Default Judgments is set out above. Albeit, with some degree of skepticism, I accept Anderson's explanation regarding his email and that the Statement of Claim

2026 ABKB 63 (CanLII)

not coming to his attention. Furthermore, I am of the view he on his own behalf and on behalf of GHI and GHS moved promptly in bringing this application to set aside the Judgments once aware.

[17] With respect to GHS and Anderson, the Statement of Claim is fundamentally deficient. Regardless of the evidence or circumstances, the Judgments against them cannot stand. The matter is somewhat more complicated for the GHI Judgment. It was the party under the Agreements and legal recipient of the refundable deposit. There is no question that it was in default under the Agreement. There are two components to the claim. First is return of the deposit, and the second, damages for lost profits.

[18] The arguable impediment to these claims comes from the Agreements that require Mediation of disputes and Arbitration in the event mediation fails. The evidence before me does not put in dispute nor does it seem the requirement to return the deposit was ever disputed. The specific Agreement related to Deposits does not contain the mediation requirement but says it is to be construed under California law with venue and jurisdiction in Los Angeles, California. The question is whether it is appropriate for Alberta to take jurisdiction over this matter. For the deposit it is plain that the Defendants reside here and any collection would have to occur in Alberta. The issue has not been that the deposit must be repaid but the fact that it has not been. I do not interpret the jurisdiction clause as exclusive, there is a clear connection to Alberta. I am of the view that Alberta may assume jurisdiction for this aspect of the action which has distinct and separate characteristics from the balance of the claim.

[19] There are a number of issues with the claim for lost profits not the least of which is the evidentiary conflict in the underlying facts. Whether it is open for Alberta to take jurisdiction over that issue can be left for another day.

Conclusion

[20] The Default Judgments against GHS and Anderson are set aside. The Default Judgment as against GHI for the return of the Deposit shall stand inclusive of *Judgment Interest Act* interest both pre and post Judgment. The balance of the claim against GHI is also set aside. Costs previously awarded shall be set aside with those costs to be considered as part of the balance of the action.

Costs

[21] The noting in default of the Defendants arose because of the carelessness of Anderson. Ordinarily in such a circumstance a Plaintiff would be entitled to costs. However, there are some aggravating factors in this case. The pleadings were fundamentally defective and possible defences to the claim were not brought to the attention of the Court. It is not an answer that the Affidavits filed contained the Agreements and other evidence where the material relevant to the defences could be found. In addition, there is the concern with the filing of further evidence following the hearing of the application.

[22] Having regard to all of the foregoing, I have concluded that the proper disposition is for each of the parties to bear their own costs.

2026 ABKB 63 (CanLII)

Next Steps

[23] The Defendants shall have 30 days from the date an Order is entered to file and serve their Statements of Defence. I was informed that that there is stay of enforcement in place relative to the judgments. As I am not familiar with the specific terms of that Order, the parties may apply before any Applications Judge to set aside or vary its terms.

Dated at the City of Edmonton, Alberta this 30th day of January, 2026.

L.A. Smart
A.J.C.K.B.A.

Appearances:

Amrinder Mandair
Emery Jamieson LLP
for the Plaintiff/Respondent

Philip J Prowse
Prowse Barrette LLP
for the Defendants/Applicants

2026 ABKB 63 (CanLII)