



- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the plaintiff is entitled?

## **Analysis**

### **Issue 1: Do the materials provide a basis for a finding of liability?**

#### **Consequences of noting in default**

- [7] Pursuant to rule 19.02 of the *Rules of Civil Procedure*, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.
- [8] However, pursuant to rule 19.06, a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.
- [9] In particular, rule 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

#### **The test on a motion for default judgment**

- [10] The test on a motion for default judgment was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows:
- A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim?
  - B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgment on the claim?
  - C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgment on the pleaded claim?
- [11] I am satisfied that the plaintiff has established liability based upon the following deemed admissions in the Statement of Claim, and the affidavit of David Marcovitch sworn January 5, 2026:
- Moduflex Ltd. is a United Kingdom manufacturer of office furniture, storage solutions, library shelving and fitness equipment.
  - Isologex Corp. is the parent company of the Isophit brand. Isophit is a leader in "the global adoption and execution of isometric strength training.
  - In 2021, the defendant retained the plaintiff to manufacture equipment for the defendant.

- The plaintiff manufactured the equipment as per the requests and specifications provided by the defendant.
- Once completed, the equipment was shipped by the plaintiff directly to the defendant's clients as directed by the defendant.
- The agreement between the parties was that the defendant was invoiced for and was required to pay for each order prior to its dispatch. Until the matters at issue in this litigation developed, there was no issue regarding payment by the defendant.
- Given the growing business relationship between the parties, the plaintiff shipped certain of the defendant's orders without obtaining payment. In all, 10 orders were shipped to the defendant or to the defendant's clients without the plaintiff obtaining payment from the defendant beforehand.
- In addition to the above, the defendant sought to cancel three other orders it placed. The equipment represented by these invoices had already been manufactured by the plaintiff. They could not be cancelled.
- The defendant failed or neglected to pay for the orders mentioned above. The outstanding invoices total £65,218.67, which I have reviewed.
- In July 2024, the defendant acknowledged the amount owing to the plaintiff.
- Despite the promise to pay and the demand made for payment, no funds have been paid to the plaintiff for the amount owing.
- The plaintiff attempted to mitigate its damages by attempting to sell the equipment, but it was unable to do so. The equipment was manufactured according to the defendant's specifications. This impacted its usefulness and desirability to other prospective purchasers.

**Issue 2: What are the damages to which the plaintiff is entitled?**

[12] The plaintiff is entitled to be compensated for the loss of bargain which means he is entitled to be placed in the same position he would have been in if the breaches had not occurred, or in other words as though the contract had been performed without any breaches. In the present case, the plaintiff is entitled to be paid what it is owed on the invoices, that is, £65,218.67.

**Costs**

[13] The plaintiff requests costs on a partial indemnity basis in the amount of \$2527.00, inclusive of disbursements. I have reviewed the rates and time charged which I find fair and reasonable. I also find that such costs were within the reasonable contemplation of the defendant.

**Interest**

- [14] The plaintiff claims pre-judgment interest at the contractual rate of 4% plus the prime rate of the Bank of England. In the alternative, the plaintiff suggests the interest rate pursuant to the *Courts of Justice Act*. I opt for the latter. The role of interest is to recognize that the defendant has had the use of the money it owed for a few years. The defendant operates in Ontario and I find it appropriate to use the Ontario rate. Interest is fixed at 5.3% starting on October 5, 2023, the date of the last invoice.
- [15] The post-judgment interest rate is 4%.



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Des Rosiers J.

**Released:** March 24, 2026

**CITATION:** Moduflex Ltd. v. Isologe X Corp. O/A Isophit, 2026 ONSC 1234  
**COURT FILE NO.:** CV-25-00735526-0000  
**DATE:** 20260324

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Moduflex Ltd.

Plaintiff

– and –

Isologe X Corp. O/A Isophit

Defendant

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**REASONS FOR JUDGMENT**

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Des Rosiers J.

**Released:** March 24, 2026