

**CITATION:** Starlish Home Corp. v. Nguyen, 2026 ONSC 1904  
**COURT FILE NO.:** CV-24-00733894-0000  
**DATE:** 20260330

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** STARLISH HOME CORP, Plaintiff

**AND:**

THUY PHUONG TAM NGUYEN, Defendant

**BEFORE:** Justice Audrey P. Ramsay

**COUNSEL:** *Michael Citak and Dara Hirbod* for the Plaintiff

The Defendant, Self-represented

**HEARD:** In-writing

**ENDORSEMENT**

1. The plaintiff commenced this action on December 23, 2024, against the defendant, seeking a declaration that the defendant breached an Agreement of Purchase and Sale, and attendant damages for the breach of the agreement, including punitive damages, and forfeiture of the deposit.
2. The plaintiff moves for default judgment on the statement of claim.
3. I would dismiss the motion, without prejudice to the plaintiff for the following reasons.
4. The motion for default judgment is supported only by an affidavit from a law clerk, which is hearsay. The plaintiff must prove the claim for damages on a motion for default judgment. In *Elekta v Rodkin*, 2012 ONSC 2062, at para. 14, Brown J. sets out the following inquiry that must be undertaken by the court on a motion for default judgment:
  - i. What deemed admissions of fact flow from the facts pleaded in the statement of claim?
  - ii. Do those deemed admissions of fact entitled the plaintiffs, as a matter of law, to judgment on the claim?
  - iii. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitles it to judgment on the pleaded claim?

5. The motion for default judgment is based solely on hearsay and double hearsay evidence on material facts. Under subrules 4.06(1)(d) and (2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, an “affidavit shall be confined to a statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except that an affidavit may contain statements of the deponent’s information and belief with respect to facts that are not contentious, provided that the source(s) of the information and the fact of belief are specified in the affidavit, or except where these rules provide otherwise.”
6. Statements in an affidavit based on information and belief ought to be restricted to matters which are not contentious: *R. v. Chan*, 2007 CanLII 52429 (ON SC); *CPC International Inc. v. Seaforth Creamery Inc.*, [1996] 49 C.P.C. (3d) 363 (Ont. S.C), at para. 28. A party cannot prove the truth of the contents of an exhibit by merely referring to the document in the affidavit and affixing the document as an exhibit: *Katz v. Katz*, 2014 ONCA 606, 377 D.L.R. (4th) 264. Ms. Craven, who swore the affidavit, is a law clerk with the plaintiff’s lawyer’s firm. Much of the statements in her affidavit are presumably based on information and belief, though her affidavit does not contain statements setting out the fact of her belief, in contravention of rule 39(4) of the *Rules of Civil Procedure*, which is fatal: see *Katz*, at para. 61.
7. Even if the law clerk’s affidavit complied with the requirements of the *Rules*, such an affidavit tendered to prove the underlying evidence to entitle the plaintiff to judgment for damages is inadmissible. The case law in Ontario establishes that statements in an affidavit based on information and belief ought to be restricted to matters which are not contentious: *Chan*; *CPC International Inc.*, at para. 28.
8. The law clerk relies upon hearsay evidence about the amount of deposits, makes conclusions of fact and law and repeatedly refers to Exhibits, the content of which would be hearsay. For example, at para. 6 of the affidavit: “In accordance with the APS, the Deposit was a true deposit, and therefore non-refundable in the event of any breach by the Purchaser.”
9. Annexed to Ms. Craven’s affidavit are the Agreement of Purchase and Sale, Extension Agreements, Mitigation of Sale document, among other things. Exhibits annexed to affidavits to prove the content of a document, without more, is not sworn evidence. Exhibits annexed to an affidavit is not sworn evidence: see *Katz*; *Sears v. Coristine*, 2020 ONSC 7968. In *Katz*, the Court of Appeal stated at paragraph 63: “Before making an order the efficacy of which will depend on the truth of the contents of a letter, a court should, at a minimum, require an affidavit from the author of the letter attesting to its contents.” In *Sears*, at para. 32, the court stated:

Letters, text messages, and emails attached to affidavits are not sworn evidence. Before making an order, the efficacy of which will depend on the truth of the contents of a letter, a court should, at a minimum, require an affidavit from the author of the letter attesting to its contents.

10. The admonishment against lawyers and law clerks swearing affidavits on motions where the evidence is contentious is dealt with by Myers J. in *Ferreira v. Cardenas*, 2014 ONSC 7119. After referring to the guideline articulated by Master MacLeod, as he then was, in *Mapletoft v. Service*, 2008 CanLII 6935 (ON SC) regarding the use of affidavits sworn by counsel and their staff, he stated:

It is rarer for law firm clerical staff to be helpful witnesses. In some cases, a clerk or assistant may conveniently adduce evidence simply exhibiting correspondence between lawyers that is non-contentious. By contrast, evidence from a lawyer adduced by way of information and belief through a staff member simply limits the weight of the evidence and should be discouraged: *Heck v. Royal Bank*, 1993 CanLII 8756 (ON SCDC), [1993] O.J. No. 2581 (Ont. Div. Ct.).

11. Although liability is admitted by virtue of the deemed admissions, the plaintiff must still prove the claim for damages set out in the statement of claim. Pursuant to subrule. 19.02(1), a defendant, noted in default, is deemed to admit the allegations of fact in the statement of claim. Under subrule. 19.05(1), a plaintiff may move before a judge for judgment against a defendant noted in default for which default judgment has not been signed. Under rule 19.05(2), the motion must be supported by evidence given by affidavit.
12. A default motion for judgment is just that, a motion for judgment. I also note the claim for declaratory relief. The jurisprudence establishes that judicial declarations ought to be made on the basis of examined evidence and not solely on the basis of admissions or even consent: *B2B Bank v. Batson*, 2014 ONSC 6105, at para. 10; *Bank of Montreal v. Mathivannan*, 2021 ONSC 2538, 69 C.P.C. (8th) 205.

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Justice Audrey P. Ramsay

**Date:** March 31, 2026