

CITATION: Loy v. Richard K. Watson Professional Corporation, 2023 ONSC 4208
COURT FILE NO.: CV-21-00672337
DATE: 20230717

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SARINA LOY, KELSEY NG AND ELI-PHARM INC.

Plaintiff

AND:

RICHARD K. WATSON PROFESSIONAL CORPORATION AND RICHARD K WATSON

Defendants

BEFORE: Justice Papageorgiou

COUNSEL: Kwong Ho, for the Plaintiff, kyh@kyhlaw.com

READ: July 14, 2023

ENDORSEMENT

Overview

[1] The plaintiffs are mortgagees who seek judgment in respect of a defaulted mortgage. The defendants are a professional legal corporation and its principal. The corporation was the mortgagor and the individual defendant the guarantor. The parties entered into minutes of settlement pursuant to which the mortgage was extended in exchange for the defendants executing a consent to judgment if the mortgage was not paid out.

[2] The defendants did not pay out the mortgage in accordance with the minutes of settlement. The plaintiffs commenced an action and then the parties agreed again that the mortgage would be extended. Once again, the defendant did not pay out the mortgage. The plaintiffs sought default judgment. Justice Sanderson ordered that the plaintiffs serve the defendants with the default judgment materials which they did. Once again the defendants did not respond.

The Issues

[3] The main issues are:

- 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?

- Issue 3: Do the materials entitle the plaintiff to a writ of possession?
- Issue 4: What costs are the plaintiffs entitled to?

Analysis

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

Consequences of noting in default

[4] Pursuant to r. 19.02, having not defended the proceeding, the defendants are deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[5] However, pursuant to r. 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.

The test on a motion for default judgment

[6] The test on a motion for default judgement 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 plaintiffs, as a matter of law to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[7] The deemed admissions in the Statement of Claim and affidavit evidence demonstrate the following:

- On August 31, 2020, the plaintiffs provided the defendants with \$300,000 in financing for a 12 month term at 7.5 % interest and the defendants gave the plaintiffs mortgage security in the amount of \$300,000.
- The defendants defaulted on September 1, 2021 when they failed to pay out the mortgage on maturity.
- On November 18, 2021 the plaintiffs and defendants agreed to extend the mortgage to March 1, 2022 at 8 % interest. As a term of this agreement, the defendants accepted service of a Statement of Claim and consented to judgment.
- The plaintiffs served the Statement of Claim and the defendants were then noted in default.
- The parties then negotiated a further extension to March 1, 2023 at 8.5 % interest.
- The mortgage was not paid out.

- The defendants did not make any further payments.

[8] Therefore, I am satisfied that the defendants have defaulted on their mortgage commitment and that the plaintiffs have established liability.

Issue 2: What are the damages to which the plaintiffs are entitled?

[9] As at May 1, 2023, the total amount due and owing to payout the mortgage was \$307,735 inclusive of interest and other charges.

[10] The Minutes of Settlement dated November, 2021 entitled the plaintiffs to payment of a consulting fee in the amount of \$6,000 which has not yet been paid.

[11] Therefore, the plaintiffs are entitled to judgment in the amount of \$307,735 plus the consulting fee in the amount of \$6,000 with interest at the contract rate of 8.5 % after May 1, 2023.

Issue 3: Is the Plaintiff entitled to a writ of possession?

[12] Pursuant to r. 60.10 “the court may grant leave to issue a writ of possession only when it is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief.” See also *Hyungjong Kim*, 2022 ONSC 2731 at para 19.

[13] The plaintiffs provided evidence that the defendants are no longer living in the property and have leased it to other tenants. The defendants have been in communication with these tenants who have agreed to pay rent to the plaintiffs and who have already paid rent for the months of March through July. These tenants are also willing to cooperate with showings of the property.

[14] I am satisfied that all persons who may be in possession of the property have received sufficient notice of this proceeding.

[15] Having complied with all requirements of r. 60.10, I am satisfied that the plaintiffs are entitled to a writ of possession.

Issue 4: What are the costs to which the plaintiff is entitled?

[16] The plaintiffs claim costs in the amount of \$1,500 for fees and \$904 for disbursements on a substantial indemnity basis which the mortgage permits. I find these fair and reasonable.

Conclusion

[17] Order to go granting the plaintiffs judgment in the amount of \$307,735, with an additional \$6000 payable as a consulting fee in accordance with the minutes of settlement, interest at the rate of 8.5 % in accordance with the mortgage after May 1, 2023, and costs in the amount of \$1,500 for fees and \$904 in disbursements.

Justice Papageorgiou

Date: July 17, 2023