

**CITATION:** *Service de Pneus Lavoie Outaouais Inc. v. 2184224 Ontario Inc. o/a Tiremag*,  
2024 ONSC 803

**COURT FILE NO.:** CV-21-86965

**DATE:** 2024/02/06

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Service de Pneus Lavoie Outaouais Inc. (Plaintiff)

**AND**

2189224 Ontario Inc. o/a Tiremag (Defendant)

**BEFORE:** Justice Sylvia Corthorn

**COUNSEL:** Pierre Champagne, for the plaintiff corporation

No one appearing for the defendant corporation (noted in default)

**HEARD:** January 3, 2024 (By videoconference)

**ENDORSEMENT**

***Introduction***

[1] The plaintiff corporation (“Service de Pneus”) obtained a default judgment in April 2022. Pursuant to that judgment, the defendant corporation is a judgment debtor in the approximate amount of \$72,600, with post-judgment interest accruing at the rate of 26.8 per cent per year.

[2] In the course of attempting to enforce the default judgment, Service de Pneus learned that the numbered corporation named as the defendant in this action is not the numbered corporation (a) which carries on business under the name of “Tiremag”, and (b) with which Service de Pneus had, in fact, been dealing for approximately six years when the default judgment was obtained.

[3] Service de Pneus brought this motion, seeking two forms of relief. The first form of relief is the correction of the name of the defendant corporation. That portion of the motion was heard in November 2023. Service de Pneus was granted leave to amend the title of proceeding, to correct an error in the corporate number: *Service de Pneus Lavoie Outaouais Inc. v. 2189224 Ontario Inc. o/a Tiremag*, 2023 ONSC 6453 (“the 2023 *Endorsement*”). In the title of proceeding, the corporation number is now corrected from “2189224” to “2184224”.

[4] The second form of relief sought is an order varying the terms of the April 2022 order of Parfett J. (“the 2022 Order”), such that it is clear the default judgment granted is against 2184224 Ontario Inc. o/a Tiremag (“Tiremag”). The second portion of the motion was adjourned from November 2023 to January 2024. The terms of the adjournment required Service de Pneus to serve Tiremag with a copy of the 2023 *Endorsement*, the motion record, and the factum.

[5] The affidavits of service filed support a finding that Tiremag was served with the requisite documents. Tiremag did not deliver any materials in response to the motion. No one appeared on behalf of Tiremag on the January 2024 return date.

[6] The sole issue to be determined at this stage of the motion is whether Service de Pneus is entitled to an order varying the terms of the 2022 Order. For the reasons that follow, the relief requested is granted.

***Discussion and Analysis***

[7] The history of the commercial relationship between the parties and of this litigation is set out in paras. 6-9 of the *2023 Endorsement*. I do not intend to repeat that history in this endorsement. I repeat, however, the finding made at para. 10 of the *2023 Endorsement*. That finding supported the exercise of the court’s discretion to grant Service de Pneus leave to amend the title of proceeding:

I am satisfied that (a) Service de Pneus clearly intended to bring their action against 2184224 Ontario Inc.; (b) it is clear from the statement of claim that Service de Pneus was pointing the litigation finger at the numbered corporation which operates under the business name of Tiremag; and (c) Tiremag will not be prejudiced in any way by the correction to the name of the numbered corporation named as the defendant in this action.

[8] As noted in the previous section of this endorsement, Tiremag was served with a copy of the *2023 Endorsement*, the motion record, and the factum. It was also served with a copy of the statement of law upon which Service de Pneus relies for the purpose of this second portion of the motion.

[9] Counsel for Service de Pneus informed the court that in mid-December 2023 – after Tiremag was served with the requisite documents – he received an email from a lawyer who identified himself as having been consulted in this matter by a principal of Tiremag. The lawyer requested an opportunity to speak with counsel for Service de Pneus. Counsel for Service de Pneus responded to that request by leaving a voicemail message with the lawyer. The voicemail message was not returned; counsel for Service de Pneus did not hear further from the lawyer or from anyone else on behalf of Tiremag.

[10] Tiremag was provided a fair and reasonable opportunity to respond to the motion. Tiremag chose not to respond to the motion in any meaningful way. I am satisfied that it is reasonable and fair to Tiremag to determine the second portion of the motion at this time.

[11] I turn next to r. 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. That rule governs motions for an order varying the terms of an order or a judgment. Pursuant to r. 59.06(1), “An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding.” Rule 59.06(2)(a) provides that a party who seeks to “have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made ... may make a motion in the proceeding for the relief claimed.”

[12] Service de Pneus relies on r. 59.06(2)(a), submitting that the request to vary the 2022 Order arises because of facts (i.e., the error in the corporation number) discovered after that order was made.

[13] In *Tsaoussis (Litigation Guardian of) v. Baetz* (1998), 41 O.R. (3d) 257, [1998] O.J. 3516 (C.A.), at paras. 41 and 44, Doherty J.A. set out the test to be met on a motion under r. 59.06(2)(a). That test was recently considered by the Court of Appeal for Ontario in *Mehedi v. 2057161 Ontario Inc.*, 2015 ONCA 670. At para. 13, Lauwers J.A. summarized the test again:

[T]he onus is on the moving party to show that all the circumstances “justify making an exception to the fundamental rule that final judgments are exactly that, final.” In particular, the moving party must show that the new evidence could not have been put forward by the exercise of reasonable diligence at the original proceedings. The court will go on to evaluate “other factors such as the cogency of the new evidence, any delay in moving to set aside the previous judgment, any difficulty in re-litigating the issue and any prejudice to other parties or persons who may have acted in reliance on the judgment.”

[14] It was reasonable for Service de Pneus to rely on (a) the credit application (in which the “4” appears to be a “9”); (b) its multi-year commercial relationship with Tiremag (during which invoices were repeatedly delivered to Tiremag using the incorrect corporation number); and (c) the lack of any effort on the part of Tiremag to bring the error in the corporation number to the attention of Service de Pneus. I find that Service de Pneus exercised reasonable diligence in pursuing its claim, arising from default in payment, relying on the only corporation number it had been using from the inception of its commercial relationship with Tiremag.

[15] For the first several years of the parties’ commercial relationship, Tiremag regularly paid the invoices it received from Service de Pneus. The latter corporation was given no reason to question the accuracy of the corporation number it relied on when invoicing Tiremag.

[16] Service de Pneus discovered its error in June 2022 – approximately three months after it obtained default judgment in this action against the incorrectly named numbered corporation. Counsel for Tiremag began its work on the materials for this motion in the latter half of 2022. There is no explanation before the court as to why the return date for the motion was not until November 2023. An earlier return date may well have been available.

[17] I find that Tiremag is not prejudiced by the passage of time from one or more of the date of the 2022 Order; the date on which the error in the corporation number was discovered; or the date on which counsel for Service de Pneus began work on the motion. Tiremag did not respond to the original statement of claim and has not responded to this motion. Tiremag was given the opportunity to participate in this motion – including to demonstrate prejudice it might suffer if the relief requested is granted. For a second time, Tiremag chose not to participate in the litigation (with the first time being its decision not to defend the proceeding).

***Disposition***

[18] Service de Pneus is entitled to an order varying the 2022 Order.

[19] In addition, Service de Pneus is entitled to its costs of the motion on the partial indemnity scale. There were numerous opportunities for Tiremag to alert Service de Pneus to the use of an incorrect corporation number. Those opportunities commenced with the delivery of the first invoice in 2016 and concluded with service of the statement of claim. Had Tiremag alerted Service de Pneus to the error, the correct corporation number would have been used in the title of proceeding and this motion would not have been required.

[20] I reviewed the costs outline filed. Service de Pneus is entitled to its costs of this portion of the motion, on the partial indemnity scale, in the all-inclusive amount of \$3,000.

[21] I make the following order:

1. Paragraphs 1, 2, and the concluding paragraph of the order of Justice J. Parfett dated April 21, 2022 shall be varied to read as follows:
  1. THIS COURT ORDERS that the defendant corporation shall pay to the plaintiff corporation damages for breach of contract and pre-judgment interest at the contractual rate of interest, in the total sum of \$70,083.52.
  2. THIS COURT ORDERS that costs of this action be fixed, payable by the defendant corporation to the plaintiff corporation, in the amount of \$2,507.42, all-inclusive.
2. The defendant corporation shall pay to the plaintiff corporation its costs of this motion, on the partial indemnity scale, fixed in the all-inclusive amount of \$3,000.00.

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Justice S. Corthorn

**Date:** February 6, 2024

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**ENDORSEMENT**

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CORTHORN J.

**Released:** February 6, 2024

