

CITATION: YF Capital Inc. v. Harrison Frank Roy, 2024 ONSC 2029
COURT FILE NO.: CV-23-703837
DATE: 20240405

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
YF CAPITAL INC)	Lu Yun Law, for the Plaintiff
)	
)	Plaintiff
)	
– and –)	
)	
HARRISON FRANK ROY)	
And TRUNG TRAN)	
)	Defendant
)	
)	
)	
)	READ: April 5, 2024

PAPAGEORGIOU J.

Overview

[1] This endorsement is written to remind the Bar of the requirements they must meet when they bring a motion for default judgment.

[2] As in many default judgment motions that are brought, there are significant deficiencies in the materials before me. Unfortunately, this is regularly the case with written motions for default judgment. These simple motions end up wasting scarce judicial resources as judges must time and time again write to parties essentially walking them through the test for default judgment.

[3] And so, with this endorsement, I remind the Bar that the test is set out in r. 19 and the decision *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC). Counsel should review the Rules, the *Elekta* decision, as well as any endorsement permitting such motions to ensure that they follow the Rules, the caselaw and the standard form endorsement that sets out that motions for default judgment must be served on defendants as per the case *Casa Manila Inc. v. Iannuccilli*, 2018 ONSC 7083.

[4] I also remind the Bar that bald affidavits of service that simply state that something was delivered or served at a particular address are insufficient where they do not also set out how the plaintiff knew that the defendant resided there.

[5] Additionally, although this is a straightforward case apart from the deficiencies below, I remind the Bar that if there are any significant legal issues, they must provide a factum that addresses such issues. It is not enough to simply assume that whatever is pleaded legally entitles a party to judgment. As set out in *Elekta* and the *Rules*, a plaintiff is not entitled to judgment on a motion for default judgment simply because there are deemed admissions, unless those deemed admissions entitle the plaintiff to judgment. It is not the job of the judge to conduct legal research to assist a party moving for default judgment. Parties must provide relevant caselaw and legal argument to the judge where required.

Discussion

[6] The plaintiff is a lender suing on a mortgage loan over 519-7 Grenville St. Toronto, ON (the “Property”), such loan given to the defendant Harrison Roy. It also sues on a guarantee given by Trung Tran.

[7] The materials note that the defendants failed to defend the proceeding and were noted in default.

[8] The plaintiff brought a motion in writing for default judgment pursuant to my endorsement in Civil Practice Court dated October 18, 2023, seeking damages, an order for possession of the Property, and an Order directing the Registrar to issue Writs of Seizure and Sale.

Deficiencies in the materials.

[9] These are the deficiencies in the materials before me:

- Pursuant to r. 19.05 a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit. Here, there are no details as to how the damages were calculated. There is simply a conclusion as to how much remains outstanding based upon what is pleaded in the Statement of Claim also as a conclusion, with no supporting documentation otherwise. The plaintiff must provide details as to why the outstanding balance as of August 2, 2023, is \$734,511.38 comprised of \$680,000 in principal and \$54,511.38 in interest. This is customarily done with an affidavit from the party that sets out a schedule showing all the payments that have been made together with the remaining balance after each payment on an ongoing basis, also taking into account missed payments.
- 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.

In the Annotated Rules and Legislation, 2023, by Todd Archibald, Stephen Firestone, and Tamara Sugunasiri, at page 2100 the authors provide a list of information which should be included in an affidavit in support of a motion pursuant to r. 60.10. The following are some items of information which the authors have concluded should be provided:

- i) The manner of determining who is in possession of the property and proof that no one other than the parties who were served with the claim are in possession.
- ii) Alternatively specific evidence of who else is in possession and whether that person is a tenant or in possession in some other capacity.
- iii) Whether the plaintiff has ever heard from any other person who claims an interest in the land or appears to be a person in possession and whether anyone in possession appears to be a person under a disability.

There is no evidence of who is in possession of the property in question at all.

- I have concerns about the affidavit of service of the Statement of Claim on the defendant Mr. Roy who obtained the loan. The defendant Mr. Trung was served personally and purported to accept service on behalf of the defendant Mr. Roy. There is no reason for this court to conclude or have comfort that Mr. Trung had authority to do so or that he actually did deliver the Statement of Claim to Mr. Roy. There are many ways that parties can search for the address of parties and the plaintiff must do the work to find Mr. Roy and to serve him, unless there is some legitimate reason for it to move for substituted service, of which there is none before me.
- Additionally, when I made my endorsement in Civil Practice Court on October 18, 2023, that this could proceed by way of a written motion, I directed that the motion materials must be served on the defendants as per *Casa Manila*. There is no evidence in the file that this was done. The plaintiff must provide an affidavit of service that shows the defendants were served and that also shows how the process server, or the plaintiff knew where the defendants lived.
- It is unclear to me why the matter then proceeded before another Civil Practice Court judge who wrote that the timetable was preserved notwithstanding any issues as to service and that the judge hearing the motion would have to satisfy herself as to service. In any event, I am concerned about the absence of an affidavit of service or any information about attempts to serve the defendants with the motion for default judgment.

[10] Thus, the motion is dismissed without prejudice to the plaintiff bringing it again after correcting all of these deficiencies. I am seized of such written motion. There is no point to timetabling the new written motion since the deficiency with respect to the service issue on Mr. Roy must be corrected and this will begin the entire process again.

Released: April 5, 2024

