

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Humphries v. MacDonald*,
2024 BCSC 1414

Date: 20240806
Docket: S251255
Registry: New Westminster

Between:

Todd Humphries

Plaintiff

And

Robert Bruce MacDonald

Defendant

Before: Associate Judge Hughes

Reasons for Judgment

Counsel for the Plaintiff:

B. Potomak, Articled Student

No other appearances

Place and Date of Hearing:

New Westminster, B.C.
July 24, 2024

Place and Date of Judgment:

New Westminster, B.C.
August 6, 2024

[1] This matter came on before me for an assessment of damages following the granting of a default judgment. This action arises from a series of three loans from the plaintiff to the defendant, each of which has matured and has not been repaid.

[2] This action was commenced on October 6, 2023, and the defendant was personally served with the notice of civil claim on January 10, 2024. The defendant has not filed a response to civil claim.

[3] On March 19, 2024, the plaintiff obtained default judgment against the defendant with damages and costs to be assessed.

[4] By notice of application filed July 18, 2024, brought without notice to the defendant, the plaintiff seeks to have damages assessed pursuant to Rule 3-8(13). The total principal amount of the three loans is \$120,000. That is the amount pleaded in the notice of civil claim, and the three loan agreements were in evidence. The evidence in the plaintiff's first affidavit sworn on July 17, 2024 at para. 6 is "As of the date of swearing this Affidavit, I have received no repayment of funds whatsoever from Mr. MacDonald on account of the First Loan Agreement, the Second Loan Agreement, or the Third Loan Agreement."

[5] I questioned counsel as to whether the defendant was entitled to notice of the application for assessment of damages, having in mind the decision of this court in *Bassi v. Bassi*, 2013 BCSC 284. Counsel drew my attention to the more recent decision of *Wang v. Corsa Auto Gallery Ltd.*, 2023 BCSC 382 at para. 16, where this court determined that the plaintiff was not required to serve the defendant with the notice of application that resulted in either the default judgment or damages order.

[6] As it was a busy chambers day and I did not have time to review the *Wang* decision, I reserved judgment.

[7] I have now read *Wang* and also *National Home Warranty Group Inc. v. Red Rose Appliances & Plumbing Ltd.*, 2018 BCSC 234, cited with approval by the Court of Appeal in *Main Acquisitions Consultants Inc. v. Prior Properties Inc.*, 2022 BCCA 102 at para. 27.

[8] In *National Home Warranty Group Inc.*, the court held at para. 37 “I must conclude that Rule 8-1(7) no longer requires that a party in default receive notice of an application under Rule 3-8(13) for assessment of damages.”

[9] Following these authorities, the defendant is not entitled to notice of the plaintiff’s application under Rule 3-8(13) for assessment of damages.

[10] Accordingly, I hereby assess the plaintiff’s damages in the amount of \$120,000, exclusive of interest or costs.

“Associate Judge Hughes”