

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Ahmad v. British Columbia*
(*Superintendent of Motor Vehicles*),
2024 BCCA 411

Date: 20241205
Docket: CA50028

Between:

Syed Ahmad also known as Joe Ahmad

Appellant
(Plaintiff)

And

**Superintendent of Motor Vehicles, Administrator P Harris,
C Morgan and Jennifer Quarry**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Harris
The Honourable Madam Justice Horsman
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated
July 2, 2024 (*Ahmad v. British Columbia (Superintendent of Motor Vehicles)*,
Vancouver Docket S-241634).

Oral Reasons for Judgment

The Appellant, appearing in person:

S. Ahmad

Counsel for the Respondents:

S. King
J.L.M. Gleed

Place and Date of Hearing:

Vancouver, British Columbia
December 5, 2024

Place and Date of Judgment:

Vancouver, British Columbia
December 5, 2024

Summary:

Appeal from an order dismissing the appellant's application for default judgment. The appellant filed a requisition with the registrar requesting default judgement. The registrar refused to grant default judgment because the respondents filed their response to civil claim before the registrar considered the requisition. The chambers judge refused to grant default judgment for the same reason.

Held: Appeal dismissed. The response to civil claim was filed before the registrar or the chambers judge considered whether to grant default judgment. Further, the appellant did not file proof that the respondents failed to serve a response to civil claim, as required by Rule 3-8(2)(b) of the Supreme Court Civil Rules.

[1] **EDELMANN J.A.:** The appellant, Mr. Syed Ahmad, appeals the order of the chambers judge dismissing his application for default judgment. For the following reasons, I would dismiss the appeal.

[2] The appellant served the respondents his notice of civil claim on April 5, 2024. On May 6, 2024, the appellant filed a requisition with the registry to verify if the respondents had filed a response to civil claim (“RTCC”), and, if not, requesting default judgment. The respondents filed their RTCC on June 6, 2024, and served the appellant on June 7, 2024. On June 13, 2024, the registry rejected the appellant’s request for default judgment because the respondents had by then filed their RTCC.

[3] On June 18, 2024, the appellant applied to a judge for default judgment. On July 2, 2024, the chambers judge rejected his application as the RTCC had been filed.

On Appeal

[4] The issue on appeal is whether the chambers judge erred in dismissing the application for default judgment.

[5] Rule 3-8(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 sets out when a plaintiff may receive default judgment:

Default in filing and serving a response to civil claim

- (1) A plaintiff may proceed against a defendant under this rule if
 - (a) that defendant has not filed and served a response to civil claim, and
 - (b) the period for filing and serving the response to civil claim has expired.

[6] Rule 3-8(2) lists the documents a plaintiff must file when seeking default judgment:

Filings required

- (2) A plaintiff who wishes to proceed against a defendant under this rule must file
 - (a) proof of service of the notice of civil claim on that defendant,

- (b) proof that the defendant has failed to serve a response to civil claim,
- (c) a requisition endorsed by a registrar with a notation that no response to civil claim has been filed by that defendant, and
- (d) a draft default judgment order in Form 8.

[7] The appellant suggests that the relevant time to assess the criteria for default judgment is at the time his requisition was filed. I note that he did not frame the application before the chambers judge as a review or a continuation of the request made before the registrar but as an application under Rule 3-8(8), which reads as follows:

Application to judge or associate judge

- (8) If a registrar is not certain that a plaintiff's claim against a defendant relates to a claim within subrule (3), (5) or (6), the registrar may refuse to grant judgment and the plaintiff may apply to a judge or associate judge for default judgment.

[8] Respectfully, Rule 3-8(8) is not applicable. It applies when the registrar refuses to grant judgment because they are not certain that default judgment relates to a claim under subrule (3) (5) or (6). That does not appear to be the basis upon which the registrar refused to grant judgment.

[9] I also note that the appellant did not comply with Rule 3-8(2)(b) when his application before the chambers judge was filed on June 18, 2024. To the contrary, on the face of the appellant's own affidavit sworn the same day, he was aware that the RTCC had been filed on June 6, 2024, presumably because it had been served on him. In my view, the chambers judge did not err in dismissing the application for default judgment. Neither the requirements of Rule 3-8(1)(a) nor Rule 3-8(2)(b) were met on June 18, 2024.

[10] In any event, even if the application before the chambers judge were to be understood as a review or continuation of the request made to the registrar, I do not find the judge erred. In my view, the registrar did not err in refusing the appellant's

request on June 13, 2024 because the RTCC had been filed at the time the request was considered.

[11] I would dismiss the appeal.

[12] **HARRIS J.A.:** I agree.

[13] **HORSMAN J.A.:** I agree.

[14] **HARRIS J.A.:** The appeal is dismissed.

“The Honourable Justice Edelmann”