

Federal Court



Cour fédérale

Date: 20260612

Docket: T-735-26

Toronto, Ontario, June 12, 2026

PRESENT: The Honourable Madam Justice Turley

ADMIRALTY ACTION *IN REM*

BETWEEN:

MULTIFORM SHIPPING INC.

Plaintiff

and

**GOYAL IMPEX INC., AND THE OWNERS
AND ALL OTHERS INTERESTED IN THE
CARGO EX THE CONTAINERS NUMBERED
BMOU9013947, HLBU1863994, HAMU2519216,
MSDU6145090 AND FSCU8117820**

Defendants

REASONS AND ORDER

I. Overview

[1] The Defendant Goyal Impex Inc. [GII] brings this motion under Rule 399 of the *Federal Courts Rules*, SOR/98-106 [Rules], seeking to set aside the Court's judgment dated April 30, 2026, granting the Plaintiff Multiform Shipping Inc. [MSI]'s *ex parte* motion for

default judgment for GII's failure to file a Statement of Defence within the time prescribed in the *Rules*.

[2] For the following reasons, I find that GII has failed to establish a reasonable explanation for its delay in filing a defence. Because the legal test for setting aside a default judgment is conjunctive, this finding is sufficient to dismiss GII's motion.

II. Background

[3] MSI is a company, incorporated in Ontario, engaged in the business of freight forwarding. GII is a company, incorporated in Ontario, that imports packaged foods and other foodstuffs. MSI and GII have had a business relationship since sometime in 2023. GII would purchase goods from overseas suppliers, mainly in India, and arrange to have its cargoes shipped via ocean to Canada.

[4] MSI was the local Canadian freight forwarder appointed to facilitate the delivery of GII's cargoes on arrival in Canada. This included making arrangements with international ocean shipping lines, as well as rail lines and trucking companies, to move GII's international cargoes from point of origin to point of destination. MSI would pay the associated fees and expenses on GII's behalf and then, in turn, invoice GII for these amounts, as well as MSI's fees for its services.

[5] MSI filed a Statement of Claim on February 13, 2026, as against GII (the *in personam* Defendant). MSI sought, *inter alia*, damages in the amount of \$300,000, for unpaid invoices for

freight, demurrage, detention, storage, and other related costs and expenses associated with the shipment of GII's cargoes from India to Canada.

[6] MSI filed an affidavit of service sworn by Mervyn Archdall, process server, on February 23, 2026, confirming that the Statement of Claim was served on GII on February 19, 2026, by leaving a copy with Gurpreet Singh, a driver, at GII's offices. In addition, that same day, counsel for MSI sent a courtesy copy of the Statement of Claim to GII's President, Shubham Goyal, by email.

[7] The time for filing a Statement of Defence under the *Rules* expired on March 23, 2026. MSI filed an *ex parte* motion for default judgment as against GII on April 20, 2026.

[8] Justice Strickland granted MSI's motion on April 30, 2026, finding that MSI had met its onus of establishing that GII was in default and that there was evidence demonstrating MSI's claim on a balance of probabilities. With respect to the service of the claim, Justice Strickland was satisfied, based on the evidence, that service had been effected on GII in accordance with Rule 130(1)(a)(ii). She ordered, *inter alia*, that GII pay MSI the total amount of \$313,331.49, in respect of unpaid invoices and interest. Following the Court's issuance of the default judgment, MSI took enforcement and garnishment action as against GII.

[9] GII filed the within motion seeking to set aside the default judgment on May 29, 2026. It also seeks an interim injunction restraining and enjoining MSI from taking further enforcement and garnishment action.

III. Analysis

[10] To succeed on this motion to set aside the default judgment, GII must satisfy a three-part test and prove that it has: (i) a reasonable explanation for failing to file a defence; (ii) a *prima facie* defence on the merits of the Plaintiff's claim; and (iii) moved promptly or within a reasonable time to set aside the default judgment: *Atkinson v Canada (Commissioner of Competition)*, 2026 FCA 72 at para 37; *Babis (Domenic Pub) v Premium Sports Broadcasting Inc*, 2013 FCA 288 at para 5. As the test is conjunctive, the failure to establish any of these three elements is fatal: *2474234 Ontario Inc v Dunn's Famous International Holdings Inc*, 2024 FCA 161 at para 4.

[11] Furthermore, as the Federal Court of Appeal has made clear, "[s]etting aside a court order, even one made *ex parte*, is not done lightly": *Canada (Commissioner of Competition) v Amazon.com.ca, ULC*, 2026 FCA 64 at para 66.

[12] GII submits that it has a reasonable explanation for its failure to file a defence within the prescribed time, namely that it "did not receive effective notice of the proceeding": GII's Memorandum of Fact and Law at para 4. In support, GII relies on the affidavit evidence of Mr. Goyal: Affidavit of Shubham Goyal, sworn May 29, 2026 [Goyal Affidavit].

[13] GII asserts that MSI's service of the claim, by leaving it with Mr. Singh at GII's offices, did not constitute effective service. In that regard, Mr. Goyal states that Mr. Singh "was not an officer, director, manager, administrator, receptionist, or any person exercising control or

management over the affairs or operations” of GII. While Mr. Singh had been a GII employee, Mr. Goyal says that he ceased working for GII in October 2024: Goyal Affidavit at para 5. Mr. Goyal further states that neither he “nor any directing mind” of GII was ever provided with the Statement of Claim by Mr. Singh: Goyal Affidavit at para 7.

[14] Mr. Goyal also says that the email address (shubham.goyal@aapkipasandfoods.com), to which MSI’s counsel sent a copy of the claim, was not GII’s “principal corporate or litigation email address, was not monitored for legal correspondence, and was not reviewed in the ordinary course of business.” He states that the email “was diverted to a spam or junk folder”: Goyal Affidavit at para 7.

[15] Finally, Mr. Goyal states that he only became aware of the claim against GII on or about May 15, 2026, after enforcement and garnishment proceedings were commenced: Goyal Affidavit at para 8.

[16] Rule 130(1)(a)(ii) provides that personal service of a document on a corporation can be effected by leaving the document “with the person apparently in charge, at the time of the service, of the head office or of the branch or agency in Canada where the service is effected” [emphasis added]. This constitutes alternative personal service on a corporation to leaving the document “with an officer or director of the corporation or a person employed by the corporation as legal counsel,” as set out in Rule 130(1)(a)(i).

[17] As MSI points out, there is very little judicial consideration of the meaning of the expression “person apparently in charge”. The jurisprudence has focussed on whether the location of service is the defendant’s head office, branch or agency: MSI’s Written Representations at para 15.

[18] I agree with MSI that, in its ordinary usage, the word “apparently” means “appears to be” or “seems to be”: MSI’s Written Representations at para 16. Indeed, the *Oxford English Dictionary* (online) defines “apparently” as “to external appearance” or “seemingly”. By using the language “apparently in charge”, the *Rules* recognize that the person does not have to “actually” be in charge but that they only must “appear” to be in charge to the process server at the time of service. It is a matter that must be viewed from the perspective of the process server.

[19] In *Mona Lisa Inc v Carola Reith (Ship)*, 1979 CanLII 4180 (FC), [1979] 2 FC 633 [*Mona Lisa Inc*], the Court considered whether service on a receptionist constituted personal service under former Rule 309(2)(b)(ii), which mirrored the language of Rule 130(1)(a)(ii). The Court noted that the affidavit of service in that case did not describe the receptionist as being a person “apparently in charge”, although she may have appeared “in charge” to the process server at the time of service: *Mona Lisa Inc* at 636. The Court ultimately found that service was valid.

[20] In two other decisions under this former Rule, the Court also noted the absence of statements in the affidavit of service that the individual served was “apparently in charge”: *Kraft General Foods Canada Inc v Astro Dairy Products Ltd*, 1994 CarswellNat 1930, 49 ACWS (3d)

236, 56 CPR (3d) 350 at para 3; *MCA Canada Ltd v Robert Simpson Productions*, 1971 CanLII 1993 (FC), [1971] 1 FC 445 at 448.

[21] Here, Mr. Archdall's affidavit of service states that he served GII with the Statement of Claim by leaving a copy with Mr. Singh at 235 Advance Boulevard, Brampton, Ontario. He further says that he asked for his name and that Mr. Singh identified himself as a driver. Mr. Archdall's affidavit of service specifically describes Mr. Singh as "a person who appeared to be in control or management of the place of business": Affidavit of Service of Mervyn Archdall, sworn February 23, 2026 at para 2.

[22] MSI filed a further affidavit of Mr. Archdall in response to this motion: Affidavit of Mervyn Archdall, sworn June 6, 2026 [Archdall Affidavit]. In that affidavit, Mr. Archdall provides additional evidence about the service of the claim. He describes the premises as "a warehouse type building" and explains that both Mr. Singh and another man, who was present at GII's offices that day, confirmed that Mr. Singh worked for GII. When asked for his position, Mr. Singh said that he was a driver. Mr. Singh agreed to accept service of the documents and was told they were "legal documents". According to Mr. Archdall, these two individuals were the only individuals he saw in the building that day. Based on the foregoing, Mr. Archdall states that it "appeared" to him that Mr. Singh was "the person who was apparently in charge, at the time of [his] attendance, of the premises of GII": Archdall Affidavit at paras 3–7.

[23] GII's evidence and arguments about invalid service are not persuasive. Mr. Goyal states that Mr. Singh "had no actual or apparent authority to accept service" and that he had ceased

working at GII as of October 2024: Goyal Affidavit at paras 5, 7. The relevant consideration is, however, whether Mr. Singh “appeared” to be in charge to the process server when he attended GII’s premises. GII fails to address the critical evidence that Mr. Singh held himself out to be an employee and agreed to accept service of the legal documents. Significantly, GII did not adduce evidence of Mr. Singh disputing what Mr. Archdall puts forth about their interaction.

[24] The evidence adduced by GII to support that Mr. Singh was no longer an employee is not relevant to the inquiry at hand. Additionally, as I stated at the hearing, I have concerns about the accuracy of GII’s description of the documents tendered to establish that Mr. Singh was no longer an employee after October 2024. Exhibit A to Mr. Goyal’s affidavit purports to be a copy of GII’s “employee list from 2020 to 2026”. However, a review of the document reveals that it is simply a screenshot of a paycheque list, for Mr. Singh, for three pay dates between September 6, 2024, and October 4, 2024. Similarly, Exhibit B is described as copies of GII’s T4 Summary for 2024 and 2026. The documents attached, however, are T4 slips for employees; they are not GII’s T4 Summary.

[25] Considering the circumstances of Mr. Archdall’s interaction with Mr. Singh on the day of service, I find that Mr. Archdall’s assessment of Mr. Singh as being “apparently in charge” on that day to be entirely reasonable. Consequently, I find that personal service on GII was effected pursuant to Rule 130(1)(a)(ii). This finding is sufficient to dispose of this motion.

[26] That said, I have considered Mr. Goyal’s evidence that he was only made aware of the claim once enforcement had begun. I agree with the Plaintiff that this evidence is not credible.

While Mr. Goyal states that Mr. Singh was present for an informal meeting that day, he says that Mr. Singh never gave him or “any directing mind” the claim: Goyal Affidavit at paras 5, 7. It defies common sense that Mr. Singh would have agreed to accept service, knowing that they were legal documents, but fail to pass them on to anyone in GII’s management. Mr. Goyal provides no evidence or insight into why Mr. Singh would fail to do so, nor was any evidence of Mr. Singh tendered.

[27] Furthermore, Mr. Goyal’s evidence that he did not receive the email from MSI’s counsel advising him that the claim had been served earlier that day and attaching a copy of the claim, is equally not credible. He states that the email address used was not GII’s principal corporate email, was not regularly monitored, that the message was diverted to a spam or junk folder, and that he only discovered the email after enforcement proceedings had commenced. However, Mr. Goyal provided no corroborative evidence, such as a screenshot of the spam or junk folder, to support this assertion. Nor did he provide any evidence about what email address he used to conduct GII business, if not this one.

[28] In response to this motion, MSI filed an affidavit of Abhishek Rana, MSI’s President: Affidavit of Abhishek Rana, affirmed June 6, 2026 [Rana Affidavit]. Mr. Rana states that the email address used by MSI counsel (shubham.goyal@aapkipasandfoods.com) was “used by Mr. Goyal on a regular and frequent basis and an email address from which he regularly conducts business, including the business of GII”: Rana Affidavit at para 6.

[29] Notably, Mr. Rana conducted a search of MSI records and found that “nearly 1200 emails” using that email address had been exchanged between MSI employees and Mr. Goyal, or in which he had been copied, since the parties first started doing business in 2023: Rana Affidavit at para 7. In support, Mr. Rana attaches, as an exhibit to his affidavit, evidence of various emails and additional screenshots showing that Mr. Goyal uses that email address to transact GII’s business affairs: Rana Affidavit, Exhibit B. This evidence also demonstrates that the email address is used in Mr. Goyal’s email signature line and on his GII business card. This contradicts GII’s evidence and submissions that the email address in question is not used by Mr. Goyal for GII’s business.

[30] A review of the exhibits to Mr. Goyal’s affidavit also shows that the email address was used in communications related to GII’s business with MSI.

[31] At the hearing, MSI counsel clarified that they were not asking the Court to retroactively validate service by email under Rule 147. Rather, their position is that the evidence concerning MSI counsel sending a courtesy copy of the claim to Mr. Goyal the same day that service was effected by the process server is relevant to “the overall factual matrix”. In their view, it further undermines GII’s evidence and submissions that it was not made aware of the claim until after enforcement proceedings had begun. I agree that, looking at the totality of the evidence, it is not credible that Mr. Goyal was not provided the claim by Mr. Singh on February 19, 2026, and that he also did not receive a courtesy copy by email that same day.

IV. Conclusion

[32] For these reasons, GII has failed to meet its burden of establishing a reasonable explanation for failing to file a Statement of Defence within the prescribed time.

[33] MSI seeks its costs of this motion in the amount of \$7,500, the same amount ordered payable as costs by Justice Strickland in the default judgment motion. MSI counsel fairly acknowledged that this motion required less work on their part than the default judgment motion. On that basis, I find that \$5,000 is an appropriate costs award in the circumstances.

ORDER in T-735-26

THIS COURT ORDERS that:

1. The Defendant Goyal Impex Inc.'s motion to set aside the default judgment dated April 30, 2026, is dismissed.
2. The Defendant Goyal Impex Inc. shall pay the Plaintiff Multiform Shipping Inc. costs in the amount of \$5,000.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-735-26

STYLE OF CAUSE: MULTIFORM SHIPPING INC. v GOYAL IMPEX INC.,
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PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 9, 2026

REASONS AND ORDER: TURLEY J.

DATED: JUNE 12, 2026

APPEARANCES:

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