

CITATION: Ali v. Ontario Motor Sales Chevrolet Cadillac, 2026 ONSC 3797
DIVISIONAL COURT FILE NO.: DC-1632/25
(Oshawa)
DATE: 20260630

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: ALI ALI, Appellant

AND:

ONTARIO MOTOR SALES CHEVROLET CADILLAC, Respondent

BEFORE: D.L. Corbett, Cullin and Brownstone JJ.

COUNSEL: *Appellant self-represented*

Respondent not appearing and in default

Heard at Oshawa: June 24, 2026

ENDORSEMENT

The Court

[1] The appellant noted the respondent in default and moved for default judgment before Christie J., who dismissed the claim (2025 ONSC 1529).

[2] We would allow the appeal and direct an expedited damages hearing before an Associate Justice of the Superior Court. In our view, the motion judge erred in her approach to default proceedings. Pursuant to r. 19.02, where a party has been noted in default, the allegations in the statement of claim are deemed to be true. The allegations in the statement of claim in this case, when deemed true, establish a valid claim under the *Sale of Goods Act*, RSO 1990, c. S.1, and the only issue for the motion judge should have been an assessment of the appellant's damages. That assessment was not done by the motions judge, and the findings and record below are not sufficient for this court to fix an appropriate damages amount.

The Claim

[3] The following allegations in the statement of claim are deemed to be true:

(a) On May 9, 2022, the appellant went to the respondent to purchase a vehicle.

- (b) After a test drive, the appellant purchased a 2017 Cadillac XTS which, he was told, would be certified, would include a warranty, and would come with four free oil changes.
- (c) On May 16, 2022, the appellant took delivery of the vehicle and drove it home.
- (d) The next day, on May 17, 2022, the appellant experienced severe vibrations when braking the vehicle. He reported the problem to the respondent.
- (e) On May 20, 2022, the appellant noticed multiple malfunctions in the touchscreen in the vehicle, which he also reported to the respondent.
- (f) The appellant booked an appointment to bring the vehicle back to the respondent and scheduled the earliest available date, on June 9, 2022.
- (g) Sometime between May 25 and June 3, 2022, the appellant went back to the respondent and spoke with the sales manager, asking how the vehicle had been certified in light of the problems he had discovered, and demanding a refund or exchange of the vehicle. The sales manager said they should wait until the service department looked at the vehicle.
- (h) By the time the appellant took the vehicle into the dealership for the service appointment, which he made on the earliest available date, he had discovered another issue: the alignment was “off” and the vehicle pulled to the left.
- (i) On June 9th, repair work was done on the brakes at the dealership, following which the appellant found there was a loud “screeching noise” when he applied the brakes, which he reported to the dealership.
- (j) In respect to the “screeching”, on June 14th, the dealership recommended replacing the brake pads at a cost to the appellant of \$543.36. The appellant protested having to pay this cost to correct issues with the brakes within 29 days of purchase of the vehicle.
- (k) The appellant followed up with the respondent on this issue, and the respondent’s Service Manager told the appellant to continue driving the vehicle and to apply the brakes firmly to heat up the brake pads, so that the pads “would become flush with the rotors” and the screeching sound would stop.
- (l) The appellant followed the advice of the Service Manager, and the result was three warning lights illuminating on the dashboard
- (m) On July 5th, via an exchange of emails, the appellant asked to return the vehicle because of all the problems he had experienced. The respondent asked that the vehicle be brought in for further inspection and offered to exchange the vehicle for a vehicle of lower cost.

- (n) On July 12th the appellant brought the vehicle back to the respondent, which reported that “the left front reluctor ring was broken and needed a new hub\bearing” but the respondent did not fix these issues.
- (o) After a further exchange of emails, the respondent advised that the appellant would have to pay for the required repairs because he had put 5,000 km on the vehicle. The appellant took the position that he wanted a refund, since the vehicle was “filled with issues” in the less than two months he had had it.
- (p) The respondent replied by saying that the vehicle “followed government guidelines” when they certified the vehicle and that the issues were a “wear and tear” issue arising from being driven 5,000 km.
- (q) The appellant responded that the vehicle had not been certifiable at the time he took delivery because it had “severe pulsation” when the brakes were applied.
- (r) The respondent indicated that they would have to agree to disagree and encouraged the appellant to speak with OMVIC and/or the Ministry of Transportation.
- (s) The appellant requested a copy of the safety inspection report that was the basis of the respondent’s certification of the vehicle. The copy sent to him was so blurry as to be illegible, and no clearer copy was provided by the respondent.
- (t) On the advice of OMVIC, the appellant had a safety inspection performed at another dealership. The vehicle failed to pass this safety inspection.
- (u) On August 12th, the vehicle developed another problem: it would turn off while it was being driven.

[4] The appellant claimed that “the “Vehicle” was not safety certified when it was delivered to me by the Dealership and since August 12th, 2022, I have not been able to use the “Vehicle” due to the “vehicle” turning off when I drive it.”

[5] In paragraph 1 of the statement of claim, the appellant frames his claim as for “breach of contract” and “false advertising”. No other legal characterization is stated expressly in the statement of claim. However, the appellant is self-represented, the pleading is to be given a “large and liberal” reading, and this is an obvious claim under the *Sale of Goods Act*, as well as a claim that the respondent’s certification of the vehicle falsely declared that the vehicle was sound and certifiable.

[6] Rule 19.02(1) of the Rules of Civil Procedure provides:

- (1) A defendant who has been noted in default,
 - (a) is deemed to admit the truth of all allegations of fact made in the statement of claim; and

(b) shall not deliver a statement of defence or take any other step in the action, other than a motion to set aside the noting of default or any judgment obtained by reason of the default, except with leave of the court or the consent of the plaintiff.

[7] A plaintiff may move for default judgment before a judge in respect to claims against a defendant that has been noted in default. Rule 19.06 provides:

A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[8] The conclusion of the motion judge can be summarized by the findings at para. 41 of the Reasons:

The Plaintiff claims that the Defendant violated section 15 of the *Sale of Goods Act* by selling a vehicle that was not of merchantable quality or fit for use. Accepting that the plaintiff expressly advised the Defendant of his intended use of this vehicle, long-distance driving, there is no reason to believe that the vehicle was anything other than that on the date of purchase.

[9] This is not a criminal trial, where facts must be proved beyond a reasonable doubt. Nor is it an undefended trial in which the plaintiff must prove the allegations in his statement of claim. It is a civil case where the court is required to decide the case on the basis of facts deemed to be true, including reasonable inferences drawn from those facts on a balance of probabilities.

[10] On the basis of the facts deemed true, this vehicle had a major issue with its brakes that was identified by the appellant on the day after he took possession of it, when he was driving at higher speed than he had been the day before. The appellant pleads that this problem existed at the time he picked up the vehicle, and this is an inference that is compelling on the deemed facts. There is no reasonable basis for supposing that this problem developed as a result of “wear and tear”. The legion of problems that arose shortly afterwards are a basis for inferring that these problems, or many of them, existed and should have been discovered on a competent safety inspection. These facts, in turn, support an inference that the vehicle was not safe when sold, was not of merchantable quality, and that the appellant was entitled to rescind the sale contract, which he tried to do.

[11] This, then, leads to the question of damages, a question for which no findings of fact are available to this court from the decision of the motion judge.

[12] The appellant has incurred repair expenses and continuing carrying costs for the vehicle. On the other hand, he received some value from his possession of the vehicle (which has been driven at least 8,000 km since it was acquired). He sought rescission immediately, and is still entitled to that remedy, but his damages should be calculated including his acquisition cost and expenses, less some value attributed to his use of the vehicle.

[13] Finally, the respondent, who did not appear on this appeal or on the motion for judgment, is in default and under the Rules is not entitled to notice unless the court orders otherwise. Typically, in a case such as this, the court does require notice but does not permit the defendant to file material so long as it remains in default.

[14] At the hearing of the appeal, the appellant advised that he still had possession of the vehicle. We provided the appellant with a general summary of the kinds of evidence he will need to provide so that the court can assess his damages, including:

- (a) The purchase price and carrying costs for the vehicle;
- (b) The costs of testing the vehicle incurred by the appellant;
- (c) The mileage on the vehicle when it was acquired and at the time of the damages assessment hearing; and
- (d) If the appellant has not sold the vehicle by the time of the assessment hearing, information on its fair market value at that time, given its age, the mileage, and its condition.

[15] The appellant is entitled to rescission of the sales contract shortly after he took possession of the vehicle. On the deemed facts, the appellant was led along by the respondent, by a series of requests that he continue with the vehicle while they tried to address problems. We would fix the date of rescission at the start of this process on the deemed facts, being the first time the appellant asked the respondent to take the vehicle back, which we would fix at May 31, 2022.

[16] With respect, it was not necessary for the motion judge to enter into a probing analysis of the merits of this case on a motion for default judgment: the appellant's claim was that he was sold a "junker" of a vehicle that was obviously not in saleable condition, and the deemed facts clearly made this claim out. The issue for the motion was fixing the amount to be paid to the appellant.

[17] The appeal is allowed on the following terms:

- (a) The motion judge's decision is quashed;
- (b) Default judgment shall be entered for the appellant;
- (c) This court directs a reference to an Associate Justice to fix the amount owed by the respondent to the appellant on the basis of rescission of the sales contract effective May 31, 2022, to be calculated on the following basis:
 - (i) Credit to the appellant for the purchase price of the vehicle, including carrying costs;
 - (ii) Credit to the appellant for any reasonable costs incurred by him to maintain, repair and/or assess or evaluate the vehicle;

- (iii) Less the value of the vehicle, if any, as at the date of the assessment (if the Appellant still owns the vehicle);
 - (iv) Less any proceeds of sale of the vehicle, if the vehicle is sold by the appellant to an arm's-length purchaser prior to the assessment;
 - (v) Less any value obtained by the appellant from his possession and use of the vehicle to the date of the assessment; and
 - (vi) Subject to any proper adjustments to arrive at a fair amount to put the appellant in the position he would have been in if the sales contract had been rescinded on May 31, 2022, and he had received his full purchase price back as of that date.
- (d) Costs of the action, including the assessment are in the discretion of the Associate Justice on the reference;
 - (e) The reference report shall be confirmed automatically in accordance with the Rules of Civil Procedure since the respondent is in default and is thereby not permitted to bring a motion in the proceeding to oppose confirmation of the assessment report;
 - (f) The reference shall be held before Associate Justice Mak on September 11, 2026, or as the associate Justice may hereafter direct.
 - (g) Although the respondent is not entitled to notice in this proceeding, since it is in default, the court has discretion to require that notice be given. We would require that a copy of this endorsement be sent to the respondent at the following email address: dbaker@ontariomotorsales.com. It will be in the discretion of the Associate Justice as to what, if any, notice be given to the respondent of the assessment.

“D.L. Corbett J.”

“Cullin J.”

“Brownstone J.”

Released: June 30, 2026