

CITATION: Canadian Imperial Bank of Commerce v. Black Startups Inc. et al., 2026 ONSC 4143

COURT FILE NO.: CV-24-86864

DATE: 2026-07-16

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Canadian Imperial Bank of Commerce

Plaintiff/Respondent

– and –

Black Startups Inc. aka Startups Noires Inc.
and Karen Egesi

Defendants/Moving Parties

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) Alexander MacMillan, for the
) Plaintiff/Respondent
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) Ms. K. Egesi, representing herself and the
) Corporate defendant/Respondent
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) **HEARD:** April 16, 2026

REASONS FOR DECISION

JUSTICE S. ANTONIANI

[1] This is a motion to set aside a noting in default and a default judgment. The motion arises out of an action in relation to the corporate defendant's default on a loan from CIBC. Default judgment was also against the personal defendant, Karen Egesi, as guarantor of the corporate defendant's obligations under the loan.

[2] After obtaining judgement and registering writs of execution, the plaintiff has taken no steps to realize on the judgment, pending the outcome of this motion.

[3] The moving party defendants seek:

(a) an order setting aside the Default Judgment dated October 3, 2024; and

(b)an order to vacate the writ of seizure and sale, or, alternatively, a stay of enforcement.

[4] In the further alternative, they seek a stay enforcement against a 1% property interest of the personal defendant only. Further, the defendants seek leave to file a defence, and Karen Egesi, who is self represented, seeks leave to represent the corporate defendant.

[5] It was agreed that for the purposes of this motion Ms. Egesi would be permitted to make submissions on behalf of herself and the corporate defendant. She made submissions on the motion to set aside the default, and also on her motion to be permitted to represent the corporation if the default is set aside.

Issues

[6] Should the noting in default and the default judgment be set aside?

[7] If the action is to continue, should Ms. Egesi be permitted to represent the corporate defendant?

Decision

[8] The motion to set aside the default judgment is dismissed.

[9] Given the decision above, there is no need to address the motion to have Ms. Egesi represent the corporate defendant.

Discussion

[10] Rule 19.08 provides that a default judgment “may be set aside or varied by the court on such terms as are just”. A noting in default may be set aside at the same time as a default judgment.

[11] The leading case in relation to r. 19.08 is *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194, 119 O.R. (3d) 561. The Court describes the applicable test, at paras. 47-50:

[47] The court's ultimate task on a motion to set aside a default judgment is to determine whether the interests of justice favour granting the order. The approach

to be taken to this determination has been considered numerous times by this court...

[48] The court must consider the following three factors:

- (a) whether the motion was brought promptly after the defendant learned of the default judgment;
- (b) whether there is a plausible excuse or explanation for the defendant's default in complying with the *Rules*; and
- (c) whether the facts establish that the defendant has an arguable defence on the merits.

[49] To this list, I would add the following two factors the court should have regard to...

- (d) "the potential prejudice to the moving party should the motion be dismissed, and the potential prejudice to the respondent should the motion be allowed"; and
- (e) "the effect of any order the motion judge may make on the overall integrity of the administration of justice."

[50] These factors are not to be treated as rigid rules; the court must consider the particular circumstances of each case to decide whether it is just to relieve the defendant from the consequences of his or her default.

Background facts

[12] The basic facts are not in dispute. The parties entered into a Credit Agreement dated December 7, 2022. The defendant corporation would receive access to \$150,000 at a rate of interest of 7.950%. The personal defendant, Karen Egesi, is the director and controlling mind of the corporate defendant.

[13] The agreement included access to \$150,000, a Visa credit card with a \$10,000 limit, and interest only payments for the first 12 months.

[14] Ms. Egesi signed two personal guarantees: a limited guarantee up to \$160,000, and a second unlimited guarantee.

[15] The defendants drew the full allowable amount of credit: \$150,000. Interest only payments were withdrawn from the corporate account. Starting November 1, 2023, payments were to switch to \$12,500 per month, until the loan was repaid.

[16] The defendants did not begin making the higher payments as required in November 2023, but the plaintiff continued to accept automatic withdrawal payments of interest only for some months.

[17] During this time, the corporation's bank account went into overdraft. An overdraft amount of \$4,809.38 (as of May 31, 2023) was converted into an overdraft loan on June 24, 2024, and it thereafter formed part of the total indebtedness.

[18] The final interest only payment was made in March 2024. Thereafter, the corporation's bank account did not have sufficient funds, and no further payments were made.

[19] In July 2025, the plaintiff made a demand for payment. When the statement of claim was issued in October 2025, 7.950% per annum interest was calculated on the principal amount of \$150,000. The overdraft was calculated separately, at an interest rate of 21% per annum, per the terms of the loan documents.

Discussion

[20] In considering first whether the defendant acted promptly, a brief chronology will help frame the issue. The default judgment was obtained 17 months prior to the hearing of this motion.

Claim and default judgment:

- a) The statement of claim was issued on August 30, 2024
- b) The claim was served on the defendants on September 7, 2024
- c) The default judgment was obtained on October 3, 2024.

The defendants' actions

- d) The defendants notified the plaintiff of an intention to move to set aside the default judgment on October 7, 2024.
- e) Thereafter, the defendants served more than a dozen motions on the plaintiff. Most of the motions were refused by court administration on filing.
- f) The first of these attempts was October 24, 2024. The motion was brought in writing and therefore had to be re-filed.
- g) On January 2, 2025, the motion was returnable again. However, no moving materials were filed, and no confirmation of motion was prepared and filed. Another motion date was returnable for January 9, 2025, but was also not accepted for filing.
- h) On January 13, 2025, Ms. Egesi advised the plaintiff that she intended to bring a motion to transfer the matter to Newmarket. Counsel for CIBC notified her that the motion would have to be brought in writing and before the RSJ for the region.
- i) On February 3, 2025, the defendants served the plaintiff with a motion in writing for a change of venue to Newmarket, or, in the alternative, to Toronto.
- j) After about three months, in April 2025, the defendants retained counsel. Discussions were had between plaintiff's counsel and newly retained defendants' counsel. The plaintiff was requested to, and did, provide documents to substantiate the quantum of the judgment. On June 16, 2025, counsel advised she was no longer representing the defendants.
- k) Between the months of April and June 2025, plaintiff's counsel engaged in various discussions with newly retained counsel for the defendants. On June 16, 2025, that counsel advised that they were no longer retained.

- l) On July 3, 2025, Ms. Egesi informed the defendants that her motion to transfer had yet to be filed.
- m) In November 2025, RSJ Firestone ruled that the motion for change of venue could not be brought while a judgment remains outstanding. The within motion would have to be brought first.
- n) There have been several additional attempts to bring this motion which failed for procedural reasons, before arriving at today's hearing.

[21] The defendants do not accept any responsibility for the 17-month delay. Rather, by her original motion materials, and per her submissions made on the hearing of this motion, Ms. Egesi suggests that the fault lies primarily with courthouse staff, who were unhelpful and biased against the defendants for being black (in the case of the corporate defendant, a "black person's organization"). The materials also suggest bad faith and collusion on the part of opposing counsel, and on the part of the various court administrative personnel who, at various times, communicated with the defendants regarding procedural irregularities.

[22] I reject these submissions. Any communications with court administration that are included in the record demonstrate that Ms. Egesi made numerous errors in preparing or in attempting to file her materials, apparently on account of inexperience or inattentiveness, since all of the information necessary to bring a motion is available on the SCJ website. There is no support in the record for the defendants' allegations regarding court staff.

[23] There is no explanation offered for the failure to file materials and confirmations for the January 2 and January 9, 2025, return dates. There is no explanation offered for the three-month gap in hiring counsel. There is no explanation offered for the further three-month gap during the time when counsel was retained. Finally, there is no explanation as to why the motion to change venue was not filed between January and June 2025. Even if the period that the motion to change venue was being considered by RSJ Firestone is viewed neutrally, there is no reasonable explanation for the additional several months' gap in arriving at the present motion date thereafter.

[24] On considering all of the above circumstances as a whole, I do not find that the defendants acted promptly. Even allowing for extra latitude given to self-represented litigants, the many repeated erroneous attempts to file motion materials, whether intentional or genuinely in error, and the several instances where months passed between any steps being taken, are not reasonable in the circumstances where the defendants knew that there was judgment against them.

[25] Although I do not find that the defendants acted promptly, this factor alone would not be determinative if the other factors strongly supported the setting aside. They do not.

No Arguable defence on the merits

[26] In relation to this factor, there is no support whatsoever for defendants' motion. The defendants raise numerous concerns and frame them as "triable issues", or an "arguable defence". None of the arguments present an arguable defence on the merits.

[27] The record amply demonstrates that the defendants entered into a credit agreement with CIBC on December 7, 2022, which included terms and conditions and incorporated the CIBC Small Business Credit Terms and Conditions booklet and the Business Account Operating Terms and Agreements.

- **A 30% rate of interest and other calculation errors**

[28] The defendants argue that the plaintiff has charged a 30% interest rate in obtaining the default judgment. This claim is not supported and is simply and plainly inaccurate. The plaintiff charged 7.950% interest from the date of the last payment of interest by the plaintiff. The demand for payment is dated July 2025.

[29] Ms. Egesi appears to believe that the approximately \$8,000 in interest shown in the statement of claim, on the principal amount of \$150,000, relates to the period between the demand in July 2025 and the issuance of the claim in August 2025. This is not the case. The record demonstrates that the plaintiff calculated that interest amount from March 2024, which was the last month in which the defendants paid interest on the principal.

[30] There is other calculation errors alleged, including an allegation that “internal corrections” raise a triable issue. The internal correction amounts represent the addition of monthly payment amounts that were returned for insufficient funds due to the overdraft account having reached its limit, and do not present any triable issue.

[31] The defendants do not challenge the claim that the full principal amount was drawn, or that the 7.950% rate of interest was agreed to.

- **No right to overdraft**

[32] The defendants argue that they did not agree to accept any overdraft (i.e., there is no overdraft agreement) and that they did not agree to pay interest at a rate of 21% for any such overdraft. Again, the loan documents, which are not challenged by the defendants, specifically provide that amounts drawn in excess of the principal amount agreed to, will bear interest of 21% per annum.

- **Limited guarantee or unlimited guarantee**

[33] The bank secured both an unlimited guarantee from Karen Egesi, and a second documented guarantee which limited her personal exposure to \$160,000 principal, plus costs and interest. The defendants argue that the two different guarantees are another triable issue to which they have an arguable defence.

[34] I note that there was no argument as to what the defence would be. There is no basis in law to argue that the defendant Ms. Egesi is not liable under each guarantee, as she does not dispute that she signed both.

[35] However, I note in any event that the plaintiff secured judgment for a total amount owing of less than \$160,000 in principal, plus costs and interest.

- **No right to register a mortgage and disproportionate enforcement measures**

[36] The defendants argue that the plaintiff has improperly registered a mortgage when the loan agreement does not contemplate any such thing, and that enforcement measures have been disproportionate.

[37] There is no triable issue. The plaintiff has not registered a mortgage. Upon obtaining default judgment, the plaintiff registered a writ of execution against each of two real properties owned by the personal defendant. The plaintiff was exercising its rights after having obtained judgment. The writs are not mortgages.

- **Complex calculation to be reviewed and challenged**

[38] The defendants argue that there was a delay in obtaining a proper accounting from the plaintiff, and that they are entitled to review and challenge the complex accounting. This is not a defence. First, the accounting is straight forward. It is a principal amount and one rate of interest since default, plus costs. The defendants have the accounting and did not provide an arguable defence or triable issue in that regard.

- **Allegation that funds were advanced prior to execution of loan**

[39] The defendants allege that there is a triable issue because the funds were advanced prior to the execution of the loan documents, when \$150,000 was advanced on October 13, 2024. There is neither factual nor legal support for this position in the record. The defendants first executed a credit agreement on October 4, 2022. Subsequent to execution of the initial credit agreement, Ms. Egesi requested a credit card facility in the amount of \$10,000. The card was granted and the credit agreement was subsequently amended to reflect the additional credit.

[40] Ms. Egesi asserts that the plaintiff chose to bring its action in Hamilton due to some improper relationship between the plaintiff's law firm and Hamilton court staff. There is nothing in the record to support this assertion.

The other Mountainview Factors

[41] There is no issue as to whether the defendants were properly served with the Statement of Claim. The record does not offer any information explaining the failure to serve a Statement of Defence in time in the first instance.

[42] Ms. Egesi's evidence is that service was made personally, "late at night" (after 9 pm) and was disorienting to her due to the late hour. Accepting this fact does not explain the failure to file a Statement of Defence in time, or a failure to serve a notice of intent to defend.

[43] The plaintiff, having obtained its judgment, is under no obligation to consent to setting the default aside, even where the defendant acts promptly. While counsel are generally encouraged to be reasonable and civil, I accept the plaintiff's position that the allegations the defendants have made against the plaintiff, its counsel, and the court administration, are so blatant and egregious that the plaintiff felt that they demanded a response.

[44] In any event, the defendants were free to bring this motion many months ago, as local practice and scheduling in Hamilton allows parties to bring these motions before a judge within a matter of weeks. This fact is seen in the number of motion dates for which the plaintiff was notified and attended to hear the motion when it did not proceed.

[45] Every factor weighs in favour of dismissal. The matter is straightforward and there is no arguable defence articulated. If the motion to set aside was granted, the impact on the overall administration of justice would be to encourage parties to expend private and public resources without basis. The plaintiff has already been put to excessive expense in relation to a straightforward debt matter.

[46] The plaintiff currently has some priority over the assets of the personal defendant. They have not made any attempt to recover on their judgment, which is now 17 months old. Interest continues to accrue, and the interests of justice favours finality in these circumstances.

[47] The motion is dismissed.

Costs

[48] I would urge the parties to agree on costs. If the parties are unable to come to an agreement, then costs submissions may be made as follows:

- a. Within 15 calendar days of the distribution of these reasons to counsel, the plaintiff/respondent shall serve and file its bill of costs, along with any written costs submissions, not exceeding three pages, double-spaced;
- b. Within 25 calendar days of the distribution of these reasons, the defendants/moving parties shall serve and file any responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs;
- c. The plaintiff/moving party's reply submissions, if any, are to be served and filed within 30 calendar days of the distribution of these reasons, and are not to exceed two pages;
- d. If no submissions are received from either party within the timeline allocated, that party shall be deemed to have no submissions; and
- e. If no submissions are received from either party, the parties will be deemed to have resolved the issue of the costs, and costs will not be determined by me.

Justice S. Antoniani

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