

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 127**

Date: **2026 07 20**
File No.: KBG-RG-00468-2023
Judicial Centre: Regina

BETWEEN:

INGRACE CANADA FARMS LTD.

PLAINTIFF/RESPONDENT

- and -

HUAILI LI

DEFENDANT/APPLICANT

Counsel:

Jason Clayards
Yens Pedersen

for the plaintiff/respondent
for the defendant/applicant

FIAT
July 20, 2026

ROBERTSON J.

Contents	Paras.
INTRODUCTION.....	1-2
BACKGROUND	3-4
Evidence	3
Chronology of litigation events	4
ISSUE	5
ANALYSIS	6-50
Jurisdiction of Court.....	7
<i>The King's Bench Rules</i>	8-11
Test for setting aside default judgment.....	12-47

1. Was the application made as soon as possible?	18-24
2. Has the applicant provided a satisfactory explanation for his failure to defend the claim?	25-41
3. Has the applicant disclosed a defence that raises arguable issues?	42-43
4. Would setting aside the judgment seriously prejudice the plaintiff?	44-45
5. Are the circumstances so exceptional to justify setting aside judgment on the principles of fairness and equity?	46-47
Conclusion.....	48
Costs	49-50

INTRODUCTION

[1] This decision addresses an application under Rule 10-13 of *The King's Bench Rules* to set aside default judgment and allow filing of a statement of defence.

[2] The application is dismissed because the applicant failed to satisfy the test for setting aside a judgment granted after a hearing at which the applicant did not appear and evidence was provided to support the judgment.

BACKGROUND

Evidence

[3] The parties relied upon the following affidavits.

By defendant-applicant, Huaili Li [Mr. Li]:

- (a) Lara Olayemi, lawyer, sworn December 15, 2025;
- (b) Huaili Li sworn December 22, 2025; and
- (c) Hongfeng Li, son of Huaili Li, sworn March 5, 2026.

By plaintiff-respondent, Ingrace Canada Farms Ltd. [Ingrace]:

- (a) Allen Sturgeon, bailiff, sworn August 11, 2023 (unsuccessful attempted service);
- (b) Whitney Leonard sworn August 29, 2023 (substitutional service by regular mail);
- (c) Mustafa Said, process server, sworn August 24, 2023, August 29, 2025 and October 21, 2025 (substitutional service by posting to gate);
- (d) Chidi Igwe, employee of Ingrace, sworn August 5, 2025;
- (e) Tina Laturas sworn August 21, 2025 (substitutional service by regular mail); and
- (f) Karissa Jolly sworn November 18, 2025 (substitutional service by regular mail).

Chronology of litigation events

[4] The Court file records the following events.

2023

February 21	Plaintiff's Statement of Claim issued
August 14	Plaintiff's application without notice for order for substitutional service on defendant
August 15	Smith J. order authorizing substitutional service on defendant
August 16	Order issued authorizing substitutional service on defendant

October 5 Mr. Li noted for default

2025

August 6 Plaintiff's application without notice for order for recovery of land or \$264,416.23 and pre-judgment interest and costs of action

August 11 Smith J. fiat directing application be brought with notice

September 2 Plaintiff's application with notice for recovery of land or \$264,416.23 with interest and costs of action

September 23 Plaintiff's application heard in Chambers by Currie J. with decision reserved

September 24 Currie J. fiat granting plaintiff's application in the form of a money judgment for \$264,416.23

September 25 Order of Currie J. issued for payment of \$264,416.23 and costs of \$968.49 [Order]

October 30 Mr. Li's acknowledged receipt of Order

2026

April 13 Defendant's Notice of Application to set aside noting for default returnable April 28

April 20 Defendant's application adjourned by consent to May 12

May 7 Defendant's application adjourned by consent to May 28

May 28 Robertson J. hears application in Chambers with decision reserved

ISSUE

[5] Should the noting for default and Order be set aside and leave be granted to file a statement of defence?

ANALYSIS

[6] In this part I will review the jurisdiction of the Court to set aside default judgment and the applicable test to be applied in making that decision. I will then apply that test to the facts of this case to reach my decision.

Jurisdiction of Court

[7] The Court has inherent jurisdiction to set aside a default judgment. In *Toronto-Dominion Bank v Prairie Gold Oilfield Servicing Ltd.*, 1990 CanLII 7824, 85 Sask R 192 (SKQB), the Court declined an application to set aside a default judgment. In doing so, Justice Wright, at para. 7, recognized the Court's inherent jurisdiction and gave examples of the "special circumstances" where the Court may exercise its discretion.

[7] ... the domestic judgments now impugned must be viewed as judgments entered after a hearing at which evidence was introduced by both parties. The Queen's Bench has an inherent power to set aside judgments: *Royal Trust Company v. Jones et al.* (1962), 37 W.W.R. (N.S.) 1 (S.C.C.). It will do so in special circumstances. For example, where a judgment has been obtained by fraud the court will set it aside *ex debito justitiae*. Other categories include: lack of jurisdiction, irregularity, perjury and new evidence. ...

The King's Bench Rules

[8] *The King's Bench Rules* in Rule 10-13 allows the Court to set aside

default judgment.

Setting aside default judgment

10-13 Subject to rule 9-13, in the case of any judgment by default, whether by reason of non-delivery of defence or non-compliance with any of these rules or with any order of the Court, the Court may set aside or vary the judgment on those terms as to costs or otherwise that the Court considers fit.

[9] The purpose of Rule 10-13 is to ensure the application of the Court's rules does not violate the principles of fundamental justice.

[10] In *Blackbird Security Inc. v EyeQ Security Services Inc.*, 2026 SKKB 34 at para 19 [*Blackbird*], Chief Justice Popescul distinguished between a default judgment granted because of the defendant's failure to file a defence and a judgment granted on the merits.

[19] A default judgment obtained pursuant to Rule 3-22, even one supported by an affidavit asserting that the allegations in the statement of claim are true, cannot be equated with a judgment rendered after a trial or other judicial determination. It is not a decision on the merits but rather a consequence of a defendant's failure to comply with procedural requirements. This distinction, along with the recognition that there may be extenuating circumstances or other legitimate reasons why defence materials were not filed within the prescribed time, is reflected in *The King's Bench Rules*, which expressly provide for applications to set aside or vary default judgments. Rule 10-13, upon which EyeQ primarily relies to found its application, states as follows:

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[20] An application to set aside a default judgment is not based on a legal right to nullify a properly entered judgment, but

is, in substance, a request for an indulgence. As Klebuc C.J.S. (as he then was) said in *Willrun Payroll Services Inc. v Prairie Land & Investment Services Ltd.*, 2010 SKCA 42:

34 ... it essentially is a request for an indulgence; a request that the court intervene and grant the applicant relief from the consequences of the applicant having failed to comply with the law. ...

[11] In *Sparrow v Schnurr*, 2017 SKQB 358, Chief Justice Popescul applied Rule 10-13 in setting aside a default judgment. In doing so, he set out the following test for deciding such an application.

[16] The task of the court when considering an application to set aside a default judgment involves determining if the rigid application of the Rules should yield to the justification set forth by the defendant as to why a default judgment was obtained. Each situation is unique and must be assessed by carefully examining the specific circumstances. In the end result, the court, in exercising its discretion must simply do what is fair. When the court acts fairly, by implication, it is ensuring that the principles of fundamental justice and equity are respected.

[17] While there cannot be hard and fast rules as to what will be fair in any given circumstances, the jurisprudence provides some guidance to the court as to how its judicial discretion might be exercised. The following are often referred to as factors to be taken into account by the court when exercising its discretion and deciding what is fair:

- (1) The application to set aside should be made expeditiously after the default judgment comes to the attention of the applicant;
- (2) The applicant should provide a satisfactory explanation for the failure to respond to the claim;
- (3) The applicant should disclose a defence that raises arguable issues; and
- (4) The applicant should satisfy the court that an order setting aside a default judgment will not seriously prejudice the plaintiff.

Test for setting aside default judgment

[12] The test for setting aside a default judgment, while similar to that for setting aside noting for default of defence, is more stringent because the action has proceeded from noting to judgment. Where, as here, the default judgment is issued after a hearing with supporting evidence presented, more is required. There must also be “exceptional circumstances” to justify the Court’s exercise of its discretionary jurisdiction.

[13] In *Montgomery v Jahnke*, 2017 SKQB 374 at para 34 [*Montgomery*], Tholl J. (as he then was) dismissed an application to set aside an order for accounting under a power of attorney. In doing so, Justice Tholl questioned the applicability of Rule 10-13, suggesting Rule 9-13 was more likely applicable. Justice Tholl went on at para. 36 to state that a fifth factor of “exceptional circumstances” should be considered on the application.

Should the Order be Set Aside

[36] In determining whether the court should set aside the order in this matter, the court will first examine the four factors that are applied in a Rule 10-13 application and then examine whether the circumstances of the matter constitute exceptional circumstances creating an unjust result that should be set aside based on the principles of fairness and equity.

[14] In *Blackbird* at paras 23-27, Chief Justice Popescul discussed the possible inapplicability of Rule 10-13 where default judgment was granted after a hearing which considered the merits of the claim. He concluded at para. 25 that even if Rule 10-13 did not directly apply, the Court could still rely on its inherent jurisdiction.

[15] In *Blackbird*, Chief Justice Popescul dismissed an application to set aside a default judgment granted in Chambers. In doing so, he referred to *Montgomery* in adding a fifth factor or criteria of “exceptional circumstances”.

(5) Do the circumstances of this matter constitute exceptional circumstances that create an unjust result, such that the noting for default and the judgment should be set aside on the principles of fairness and equity?

[85] Even if a consideration of the four traditional factors for opening the noting for default and setting aside a regularly obtained judgment supported the relief sought, which I have found it has not, it would still be incumbent upon EyeQ to establish that this is an exceptional case warranting relief on the basis of fairness and equity.

[86] “Exceptional circumstances” does not mean circumstances that are merely unfortunate, inconvenient or the product of a party’s own inattention. Rather, it refers to situations that are out of the ordinary and that, if left uncorrected, would undermine confidence in the administration of justice. Examples may include: fraud; perjury; new evidence; irregular service; a serious illness that genuinely prevents timely action; the death of a close family member during the relevant period; situations where the plaintiff has deliberately concealed the proceedings or misled the defendant; a severe mental health crisis or disability that renders timely participation impossible; a natural disaster or similar event that prevents access to legal assistance; or a strong defence on the merits coupled with prompt action once the default is discovered. In rare cases, a fundamental flaw in the underlying proceedings, such as a jurisdictional defect, may also constitute an exceptional circumstance, as substantive justice may require the matter to be determined on the merits.

[87] The common thread in all such cases is that the circumstances are genuinely extraordinary and that they give rise to concerns about the fairness or integrity of the process. By contrast, ordinary errors, neglect or disorganization do not meet this threshold. The doctrine is not a safety net for parties who simply fail to comply with procedural requirements. Finality and respect for the orderly conduct of litigation remain essential considerations.

[16] In this case, Justice Currie granted the Order after a hearing at which the plaintiff presented evidence to support its claim. Justice Currie, at para. 2 of his fiat, found that “Ingrace has proven that the defendant owes Ingrace \$264,416.23 plus

interest and costs.” Given these circumstances, the proper analysis is that applied in *Blackbird*.

[17] I will therefore follow the analysis used in *Blackbird* in deciding this application.

1. Was the application made as soon as possible?

[18] The Order was issued September 25, 2025. The defendant’s application to set aside was filed April 13, 2026 or just over six months later.

[19] The Affidavit of Mr. Li at para. 3 states he first became aware of the Order when it was received in his mailbox on October 30, 2025. The Affidavit of Hongfeng Li at para. 3 states he became aware of the Order on October 30, 2025. The Affidavit of Lara Olayemi states at para. 4 that on October 30, 2025 Hongfeng Li told her that he had received the Order.

[20] Accepting that Mr. Li became aware of the Order on October 30, 2025, over five months elapsed before the application to set aside the Order was filed. Mr. Li’s lawyer argued that this delay should not be attributed to Mr. Li, but rather was the fault of his lawyer. The affidavit evidence filed by Mr. Li does not really speak to this delay, apart from paras. 4 and 9 of the Affidavit of Hongfeng Li. While the Court may, in some cases, rely upon oral submission of counsel as an officer of the Court, there is no good explanation provided for the delay in making the application.

[21] In *Blackbird* at paras 48–53, Popescul C.J. found a delay of three months between the date of judgment and filing of application to set aside to be unacceptable. In doing so, Popescul C.J., at paras. 48 and 52, commented on the need for quick and diligent action and that “Delay, particularly unexplained or poorly explained delay, undermines any claim for equitable relief.”

(1) Was the application made as soon as possible after the judgment sought to be set aside came to the attention of the applicant. In the event of any delay, the applicant must justify and satisfactorily explain the reasons for the delay?

[48] An applicant seeking to set aside a noting for default and reopen a judgment must demonstrate that they acted with diligence once the default came to their attention. Delay, particularly unexplained or poorly explained delay, undermines any claim for equitable relief. Courts will not indulge a party who, through inattention, indifference or tactical delay, allows a matter to proceed to judgment and only later seeks to revive it when the outcome proves unfavourable. If there is any delay between when one finds out about the judgment and when one brings the application, the burden is on the party seeking to set aside the noting for default and judgment to explain why they waited and show that the delay was reasonable and justified. If one wants to ask the Court to set aside a judgment, the party applying to do so must apply promptly upon learning about the judgment. One cannot just sit on it. There is an obligation, when seeking an indulgence from the Court, to move with reasonable dispatch.

...

[52] Too often, parties proceed on the assumption that a lack of diligence will be overlooked and that indulgence will be granted simply because relief is sought. That is not a sound or acceptable course of action. The Rules establish timelines for a reason: to ensure fairness, certainty and the orderly progression of proceedings. Parties who miss deadlines are expected to respond quickly upon discovering the omission. Repeated or unexplained delay undermines the integrity of the process and weighs heavily against the exercise of the Court's discretion.

[22] In *Bank of Nova Scotia v Piecowye*, 2025 SKKB 116 at paras 18–20, Currie J. held that the applicant had not provided a satisfactory explanation for her failure to respond to notice of application for summary judgment where she assumed her lawyer was still acting and she chose not to read or respond to the notice.

[23] The explanation provided by or on behalf of Mr. Li, such as it is, does not excuse the over five-month delay between Mr. Li's knowledge of the Order and filing

of his application to set aside. I find that the application was not made as soon as possible.

[24] This factor weighs against setting aside the Order.

2. *Has the applicant provided a satisfactory explanation for his failure to defend the claim?*

[25] Mr. Li's lawyer argued that there is no proof that Mr. Li received actual notice of the claim, which was served by substitutional service. Ingrace pointed out that there is no denial of receipt of the Statement of Claim. Rather, the affidavit of Mr. Li at para. 5 states "I do not recall receiving the court documents". The affidavit of Hongfeng Li at para. 6 states "I have never seen the court documents".

[26] Against these less than definitive statements are the Affidavits of Allen J. Sturgeon and Mustafa Said which attach as exhibits photographs taken of the gate to the property at 4589 Blenkinsop Road, Victoria, British Columbia. Those photographs match the photographs of the gate and house attached as exhibits "C" and "D" to the Affidavit of Hongfeng Li. Mr. Li's lawyer acknowledged at the hearing of this application that the photographs show Mr. Li's house and gate.

[27] The order of Smith J. authorizing substitutional service required service by posting copies to the gate of the residence at 4589 Blenkisop Road, Victoria, British Columbia, V8X 237 and by regular mail to that address.

[28] From my review of the court file, I find that the correct address is 4589 Blenkinsop Road, Victoria, British Columbia, V8X 237. There were errors in the description of the property address in the order authorizing substitutional service and in some of the affidavits of service, in particular: in the name of the street, which was sometimes misspelled as "Blenkisop" rather than the correct "Blenkinsop"; and in the street number, which was sometimes misdescribed as "4586" rather than the correct

“4589”.

[29] The order authorizing service misspells the street name as “Blenkisop”.

[30] The three affidavits of Mustafa Said confirming service by posting use the correct address. Those affidavits also attach as an exhibit a photograph of the posting on the gate, which I accept is the correct address and home of Mr. Li.

[31] The three affidavits of service by regular mail, however, all use the incorrect address of “4586 Blenisop” Road, Victoria. The misspelling of the street name would not be likely to interfere with delivery, given the correct postal code, but the error in street number might well result in non-delivery.

[32] Although the Affidavit of Hongleng Li at para. 3 identifies their home address as 4586 Blenkinsop Road, Victoria and expressly refers to the mailbox at that address, he goes on at para. 8 to state that there is no such address as 4586 Blenkisop or 4586 Blenkinsop Road in Victoria. The photograph in Exhibit “C” of his affidavit shows a mailbox with the number “4589”. This matches the mailbox shown in the Affidavits of Allen Sturgeon at exhibit “A” and of Mustafa Said at exhibit “A”.

[33] The evidence of the plaintiff is that the Statement of Claim was served in the authorized manner on August 21, 2023: Affidavit of Mustafa Said sworn August 24, 2023 by posting to the gate at 4589 Blenkinsop Road, Victoria; and Affidavit of Whitney Leonard sworn August 29, 2023 by regular mail to 4586 Blenkisop Road, Victoria, which also state the mailed service was not returned.

[34] The evidence of the plaintiff is that the application for default judgment was similarly served: Affidavit of Mustafa Said sworn August 29, 2025 by posting to the gate at 4589 Blenkinsop Road, Victoria; and Affidavit of Tina Lurnas sworn August 21, 2025 by regular mail to 4586 Blenkisop Road, Victoria.

[35] The evidence of the plaintiff is that the Order was similarly served: Affidavit of Mustafa Said sworn October 21, 2025 by posting to the gate at 4589 Blenkinsop Road, Victoria; and Affidavit of Karissa Jolly sworn November 18, 2025 by regular mail to 4586 Blenkisop Road, Victoria.

[36] The Affidavits of Mustafa Said include as exhibits photographs of the posting to the gate near the mailbox. Again, the address on the mailbox is “4589”. I am satisfied this this was the mailbox for the house occupied by Mr. Li.

[37] Notice is fundamental to a fair hearing. The other party cannot respond without notice. There is always a risk that substitutional service will not achieve actual notice. It is for this reason that the Court takes care in authorizing substitutional service. Where the intended recipient claims no actual notice, the onus is on them to establish that claim. See: *Procyk v Young’s Equipment Ltd.*, 2025 SKKB 136 at paras 53-54; and *B2B Bank v Short*, 2025 SKKB 128 at paras 51-54 [*B2B Bank*].

[38] Lack of actual notice may be grounds for setting aside an order. See *Ernst & Young Inc. v Koroluk*, 2024 SKCA 19 at para 40. Lack of actual notice from substitutional service was accepted as sufficient reason for setting aside in *Desbiens v Warken*, 2020 SKQB 145 at para 61 and *Rennebohm v Rennebohm*, 2020 SKQB 350 at para 29. However, the claim of no actual notice was rejected as insufficient in *B2B Bank* at paras 63–66. At the same time, in *B2B Bank* at para 74, I held that a separate failure to comply with the manner of service ordered by the Court meant that the order *nisi* was not yet effective.

[39] Given the dual modes of service and the fact that service was done in those ways on three separate occasions, with photographic records of the posting, it is difficult to accept that Mr. Li did not receive actual notice. Mr. Li acknowledged receiving the mailed notice of the Order. If he did not receive actual notice of the Statement of Claim or application for judgment, then the conclusion I draw is that the

failure of service was attributable not to defective service, but rather to the neglect or deliberate indifference of Mr. Li to the postings.

[40] In coming to this conclusion, I do not overlook or condone the likely error in address which could have affected the mailed service. But there is photographic evidence in the affidavits of service of the postings on the gate of what is established and acknowledged to be Mr. Li's home.

[41] This factor weighs against setting aside the Order.

3. *Has the applicant disclosed a defence that raises arguable issues?*

[42] The defendant filed a draft statement of defence which alleges that Ingrace failed to complete the contract for purchase and sale and Mr. Li opted to void the contract and requested return of his deposit, which the realtor continues to hold. The draft statement of defence was filed as exhibit "A" to the Affidavit of Mr. Li. This criteria is satisfied in that an arguable defence is disclosed.

[43] This factor weighs in favour of setting aside the Order.

4. *Would setting aside the judgment seriously prejudice the plaintiff?*

[44] Both the plaintiff and defendant will suffer prejudice from this decision. If the judgment is set aside, the plaintiff is put back into the position it was in after service of its Statement of Claim in August 2023. I accept that the 23-month interval and delay is prejudicial to the plaintiff. At the same time, if the judgment is not set aside, the defendant suffers prejudice in having to pay a significant judgment. That prejudice is reduced by the fact that Mr. Li may keep the property which he agreed to acquire and make payment.

[45] This factor weighs against setting aside the Order.

5. *Are the circumstances so exceptional to justify setting aside judgment on the principles of fairness and equity?*

[46] Mr. Li was aware from correspondence received by his lawyer in 2022 that Ingrace was seeking either repayment of the purchase price or return of the land (Affidavit of Lara Olayemi at para. 3). Ingrace issued its Statement of Claim on February 21, 2023. Ingrace, after unsuccessful attempts to serve Mr. Li, obtained an order for substitutional service by posting on the gate of his home and regular mail to that home. The Statement of Claim, application for judgment and Order were served in at least partial compliance with that order. The Order was granted after a hearing at which evidence was presented which proved the claim. Mr. Li only acknowledges receipt of the Order. Even after becoming aware of the Order, Mr. Li waited over five months before filing application to set aside.

[47] Having regard to all the circumstances, I do not find exceptional circumstances which justify setting aside judgment on the principles of fairness and equity. This final factor then weighs against setting aside the Order.

Conclusion

[48] On balance, I find that the factors weigh against setting aside the Order. I also find, on the facts of this case, that dismissal of the application to set aside the Order accords with the principles of fundamental justice. The application is therefore dismissed.

Costs

[49] Ingrace has been successful in defending this application and would normally be entitled to an award of costs. I exercise my discretion to make no order for costs, given the errors in the description of the address for mailed service.

[50] I thank counsel for their helpful submissions.

J.
D.N. ROBERTSON