

CITATION: Tirecraft Ontario Inc. v. Mann Tire Ltd., 2026 ONSC 4678

COURT FILE NO.: CV-16/20

DATE: 20260813

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Tirecraft Ontario Inc. and Ayr Tire Inc., Plaintiffs (Defendants to the Counterclaim)

-and-

Mann Tire Ltd. and Hardeep Singh Mann, Defendants (Plaintiffs to the Counterclaim)

BEFORE: Justice Spencer Nicholson

COUNSEL: D. Kirwin for the Plaintiffs (Defendants to the Counterclaim)

M. Prosia for the Defendants (Plaintiffs to the Counterclaim)

HEARD: March 9, 2026

REASONS ON MOTION

NICHOLSON J.:

[1] The Defendants, Mann Tire Ltd. and Hardeep Singh Mann, its principal, move to set aside a default judgment dated October 19, 2023, in the amount of \$573,819.79 plus pre-judgment interest at the rate of 24% per annum, and the corresponding noting in default. The default judgment was signed by the Registrar.

[2] This action concerns the Plaintiffs' allegations that Mann Tire ordered tires from the Plaintiffs, the tires were delivered and payment was never received. The amount of that claim is approximately \$281,800. The claim against Mr. Mann personally is on a promissory note in the same amount.

[3] The counterclaim also arises from ordering tires. It is alleged that Mann Tire would pay a non-party company up front to purchase tires from Michelin. The non-party would order tires through the Plaintiff, who would receive the tires and were supposed to reimburse Mann Tire for obtaining the tires at a discounted price. According to Mann Tire, the Plaintiff was otherwise unable to acquire the tires at such a discount. Mann Tire alleges that approximately \$200,000 has been unpaid by the Plaintiff for the acquisition of tires under this arrangement. It is also alleged that Ayr Tire has failed to reimburse Mann Tire a further \$70,000 to \$140,000, representing the agreement to split the rebate.

Procedural Background:

[4] This action was commenced by Statement of Claim dated January 7, 2020. The Defendants delivered a Statement of Defence and Counterclaim on March 2, 2020. The Plaintiffs then delivered a Reply and Defence to Counterclaim.

[5] The Plaintiffs delivered their affidavit of documents in March of 2021, although a sworn copy was not provided until August 31, 2021. The Plaintiffs indicate that they attempted to schedule examinations for discovery with counsel for the Defendants on many occasions, but those attempts went unanswered by counsel. Eventually, the Plaintiffs had to bring a motion to compel the Defendants to adhere to a Discovery Plan, resulting in an order setting out a schedule for delivering their affidavit of documents by no later than December 16, 2021, and scheduling examinations for discovery no later than March 11, 2022.

[6] According to the Plaintiffs, the Defendants failed to comply with this order. It was necessary to serve a further motion to compel the Defendants to attend the examinations for discovery, although it does not appear an order was obtained as a result of that motion.

[7] The Defendants delivered a sworn affidavit of documents in July of 2022. Mr. Mann was examined for discovery on July 12, 2022. Mr. Mann's son, Manny, was examined for discovery as a representative of Mann Tire in October of 2022. Manny is an employee of Mann Tire and was heavily involved in the issues that resulted in this lawsuit. The principal of Ayr Tire was examined for discovery on October 17, 2022.

[8] Throughout that period, the Defendants were represented by counsel. Manny was chiefly responsible for dealing with counsel for the Defendants. Mr. Mann, from early to mid-2023, became ill with cancer and suffered a stroke. Manny deposes that his father was in and out of hospital. He also deposes that he was "completely engrossed in his [father's] illness and care and was unable to give this action due attention as a result. Nor was [his] father able to give this action proper attention".

[9] In June of 2023, Defendants' counsel brought a motion to be removed as solicitor of record for the Defendants. This order was granted by Dube J. on June 2, 2023.

[10] Importantly, the order removing counsel did not contain the wording prescribed by *Rules* 15.04(4)(d), 15.04(6) and 15.04(7) of the *Rules of Civil Procedure*.

[11] Rule 15.04(4) sets out the mandatory information that an order removing counsel must include. Subrule (4)(d) provides that where the client is a corporation, the text of subrules (6) and (7) must be included. Where the client is not a corporation, subrule (4)(e) requires that the text of subrules (8) and (9) must be included.

[12] The purpose of subrules 15.04(6), (7), (8) and (9) are to inform clients, both corporate and individuals, that they have thirty days from the date of the order to either appoint a new lawyer of record or, for a corporation, move for leave to be represented by a person other than a lawyer, or

for an individual, serve a notice of intention to act in person. Those rules also inform the client of the significant consequences that may befall them should they fail to do one of the two options presented.

[13] In this case, Dube J. authored a brief endorsement removing counsel from the record and ordering that the lawyer “provide forthwith a copy of this endorsement to all parties, including the defendants”. His endorsement indicates that the Defendants did not attend court that day, nor did counsel for the Plaintiffs.

[14] I note that it is not surprising that counsel for the Plaintiffs would not appear. In my experience, it is rather hit or miss whether defendants appear at such motions.

[15] Typically, draft orders removing counsel are prepared by that counsel to present to the presiding justice. The order in this case did instruct both the corporate client and the individual client to, within 30 days, take one of the two paths available to both corporations and individuals. However, the order did not include the consequences of failing to take one of those two steps.

[16] Rule 15.04(5) obligates the lawyer obtaining an order to be removed as counsel to “as soon as possible after the order is served” serve proof of service of the order, together with a copy of the order, on every other party; and file proof of service of the order upon the clients.

[17] In its affidavit, the Plaintiff indicates that when the endorsement removing counsel from the record was served upon Plaintiff’s counsel, counsel wrote to the removed counsel and advised him of the requirements for the order. Despite that advice, the order was issued with the deficiencies described.

[18] There is an affidavit of service from the prior counsel indicating that Mr. Mann was served with the order by leaving a copy in a sealed envelope addressed to Mr. Mann with Manny. Manny deposes that he has no recollection of receiving this order. He also denies informing his father that the lawyer had been removed from the record.

[19] The Plaintiffs moved for an order striking the Statement of Defence and dismissing the Defendants’ counterclaim. That motion was heard by McArthur J. on September 1, 2023. His endorsement simply states “order signed” by the court registrar. The heading on the endorsement does identify counsel, but it is not clear who was present on that date. Given that counsel for the Defendants is identified yet had already been removed, I do not believe that he was in attendance. The preamble from the order states that no one appeared for the Defendants although they had been “duly served”.

[20] The Plaintiffs depose that on the eve of the return date of the motion, Plaintiffs’ counsel sent the docket and the zoom link to the email address contained within Dube J.’s removal order.

[21] Manny deposes that he has no recollection of receiving this motion to strike or the order to strike until late 2024. There is an affidavit of service indicating that the process server served Mann Tire on August 14, 2023, by leaving a copy with an individual who identified himself as the

“Front Desk/Mechanic”. There is a separate affidavit of service indicating that Mr. Mann was served with the motion by leaving a copy with him on August 14, 2023. Manny admits that he cannot be certain that he did not receive these, but since he believed that Mann Tire and Mr. Mann were still represented, he expected that counsel would deal with whatever the documents entailed.

[22] Default judgment was granted by the Registrar on October 19, 2023, in the amount of \$573,819.79 plus pre-judgment interest at the rate of 24% per annum, plus costs of the action to be assessed. That judgment is against both Mann Tire and Mr. Mann personally on the promissory note. This appears to be significantly higher than the claims made by the Plaintiffs.

[23] The Plaintiffs have filed a writ of execution against the Defendants, dated October 27, 2023. Steps have been taken to sell the home that Mr. Mann and his family reside in to satisfy the default judgment.

[24] Manny deposes that he did not discover the default judgment until July 2024, when he met with his commercial banking manager who informed him that the Plaintiffs were attempting to obtain a copy of a mortgage discharge statement in relation to a property owned by Mr. Mann.

[25] Manny then contacted his previous lawyer, who advised him that he was no longer representing the Defendants and sought a further retainer to continue acting.

[26] The Defendants retained the current law firm, Miller Thomson LLP in October of 2024.

[27] The Plaintiffs’ affidavit indicates that on August 1, 2024, Plaintiffs’ counsel received correspondence from a different law firm advising that they were being retained and requesting a copy of the Statement of Claim. Plaintiff’s counsel provided the Statement of Claim to that lawyer.

[28] Plaintiffs’ counsel was contacted by a different lawyer on August 27, 2024, requesting copies of the issued orders/judgments. These were provided on September 6, 2024.

[29] Miller Thomson obtained the prior counsel’s file in late 2024. There were delays in obtaining the court file, although I accept that Miller Thomson took reasonable steps to do so promptly. The Defendants served and filed this motion to set aside the default judgment and noting in default on February 5, 2025.

[30] I note that there was a mix-up and Manny accidentally electronically swore an affidavit in his father’s name. He has set out the circumstances of this mix-up, and the affidavits were corrected and re-sworn. I accept this explanation. Thus, the motion record had to be amended and was re-served on March 14, 2025

[31] The motion was first in court on February 28, 2025, when it was adjourned on consent to March 14, 2025. It was then administratively adjourned to March 21, 2025. Gorman J. adjourned the motion to May 30, 2025, cancelling the pending sheriff’s sale, pending the hearing of the motion. On October 24, 2025, the motion was scheduled to a Special Appointment date for long motions and was argued before me on March 9, 2026.

[32] Manny deposes that one of the reasons for parting ways with his previous counsel was his perception that Mann Tire was being over-billed (I render no opinion on that issue). Mann Tire had paid counsel approximately \$90,000 up until the point where he ceased to act. Manny also deposes that the lawyer rarely provided updates on the case.

Legal Analysis:

[33] The parties agree that the applicable test for setting aside a default judgment is set out in *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194. The Court of Appeal described that the ultimate task on a motion to set aside a default judgment is to determine whether the interests of justice favour granting the order. In doing so, the court must consider:

- (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*;
- (c) Whether the facts establish that the defendant has an arguable defence on the merits;
- (d) The potential prejudice to the moving party should the motion not be dismissed, and the potential prejudice to the respondent should the motion be allowed; and
- (e) The effect of any order the court may make on the overall integrity of the administration of justice.

[34] At paragraph 50, after reciting these factors, it was noted that they 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.

[35] There is a strong preference to decide civil actions on their merits and not have them defeated by technical application of procedural rules (see: *Franchetti v. Huggins*, 2022 ONCA 111 at para. 8).

Motion Brought Promptly:

[36] In *TELUS Communications Inc. v. Marche et al*, 2019 ONSC 5273, Leiper J., at para. 55, noted that the time frame identified in *Mountain View Farms* begins from the time the defendant learns of the default judgment, and not from the point at which a defendant becomes aware that enforcement proceedings are imminent.

[37] In *TELUS*, the defendant had received notice of intention of the plaintiff's motion to strike the defence, the motion for noting in default, motion materials from the plaintiff for the default judgment motion and notices of garnishment. Leiper J. found that the defendant had attempted to shield herself from having actual knowledge of the details of the default proceedings. She held that the defendant did not move promptly, waiting approximately 10 months from the date of the default judgment and on the eve of enforcement proceedings.

[38] It is noteworthy that in *TELUS*, Leiper J. found that the defendant had not established any of the other factors in her favour. She found that there was no merit to the proposed defences.

[39] *TELUS* was appealed to the Ontario Court of Appeal (2021 ONCA 873), although I see that decision as standing for the proposition that it is difficult to interfere with the discretion of a motions judge on these motions. The Court did focus on the finding that there was no air of reality to any of the defences proposed.

[40] In *Snell v. SUGI Financial Services Inc.*, 2022 ONSC 2201, Corbett J. was critical of a delay of 10 months in providing an affidavit from the time that the moving party knew that they had failed to defend and that default judgment had been granted against them. The motion to set aside was brought approximately 16 months after knowledge of the default judgment. Corbett J. described, at para. 10, that a motion to set aside default judgment is a “litigation emergency” and should be served within days or weeks of discovering the default judgment.

[41] Again, in *Snell*, the other factors weighed against setting aside the default judgment too. There was no viable defence in respect of the corporate defendant and a weak defence in respect of the individual defendant. Corbett J. also noted the lack of corroborating medical evidence of incapacity to deal with the claim. That is also an issue in the case before me.

[42] In *Embryo v. Stojadinovich*, 2009 CanLII 9376, Gordon J. found there was undue delay where the defendant retained a solicitor in March 2008 to address the default judgment and did not give instructions to bring the motion until December 2008. Again, the passage of time was not the only one of the factors mitigating against setting aside the default judgment.

[43] There are multiple delays that I consider.

[44] The first is the assertion that the Defendants did not become aware of the default judgment until July of 2024, even though it was obtained in October 2023. Pursuant to Rule 19.02, a defendant in default is not entitled to notice of many steps in litigation, including a motion for default judgment. However, many courts have noted that it is best practice to serve default judgment motion materials on a defendant to guard against the default judgment later being set aside (see, for example: *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062 at para. 10). I note that this was not done in this case, although in my view, that is not necessarily fatal to the Plaintiffs’ position. The Plaintiffs simply do not have that argument available to them.

[45] There is no evidence to rebut that Manny first learned of the Default Judgment when he spoke to his banker, although I note it is Manny’s onus on this motion. I have little concern with the fact that there appear to have been multiple contacts between potential lawyers for the Defendants and Plaintiff’s counsel. I infer that the Defendants were having difficulty securing counsel until Miller Thomson LLP was retained.

[46] I accept that Miller Thomson LLP made reasonable attempts to fact-find before bringing this motion to set aside the default judgment. Default judgment was not granted simply based on

a failure to defend in this case. It was, in my view, reasonable for counsel to ascertain how a claim that had progressed to examinations for discovery had resulted in a default judgment.

[47] Accordingly, although this motion was not brought about with the utmost dispatch, the delay in bringing this motion is not so inordinate as to countervail against the other factors which I find favour setting aside the default judgment. I will address those below.

Plausible Excuse:

[48] The Plaintiffs rely upon *Snell* in arguing that it was incumbent upon the Defendants to adduce medical evidence supporting Mr. Mann's health concerns.

[49] However, I find that the Defendants' explanation for not dealing with the default in this litigation goes beyond Mr. Mann's health concerns.

[50] This case is also significantly complicated by the deficiencies with respect to the order removing defence counsel from the record. I wish to stress that neither the Plaintiffs, nor their counsel, bear any responsibility for the deficiencies, and I accept, made reasonable efforts to ensure that the order was drafted properly. The failure appears to lie with former defence counsel. However, while responsibility for this error does not rest with the Plaintiffs, it also is not the fault of the Defendants. They had no role in drafting the order and would not know the requirements under the *Rules*.

[51] The record is clear that the relationship between the Defendants and their counsel had soured to the point that counsel moved to be taken off the record. There is no dispute that there was a defective order that did not inform the Defendants of the consequences of failing to appoint new counsel or move for leave to have a non-lawyer represent the corporate defendant.

[52] *Cunningham v. Hutchings*, 2018 ONCA 365, dealt squarely with an order removing counsel that did not contain the requisite language under the *Rules*. The action had been dismissed because the Plaintiff had not filed an intention to act in person or appointed new counsel within 30 days of the order. The Court of Appeal described as follows:

[3] The order of Reilly J. was deficient in that it did not include the text of rules 15.04(8) and (9) of the *Rules of Civil Procedure*, as required by r. 15.04(4). The importance of these provisions in an order removing a solicitor cannot be overstated. The obvious purpose is to bring home to the now unrepresented litigant the fact that she is required to give notice to the court and other parties to the litigation that she has either appointed alternate counsel or will be acting in person and that failure to do so can result in the court dismissing her proceeding or striking out her defence.

[53] *Cunningham* also makes it clear that the dismissal of a proceeding is the "most draconian remedy available", for non-compliance with rule 15.04(8). The striking of a defence leading to a default judgment must be viewed as comparably harsh, especially when a defendant has, albeit in

this case imperfectly, been participating in the litigation and has expended approximately \$90,000 in defence costs.

[54] It is not clear to me whether the shortcoming in the removal order was brought home to McArthur J. when he ordered the Statement of Defence and Counterclaim struck.

[55] Given the breakdown in the relationship between counsel and the Defendants, but given the deficiencies in the order removing counsel, the importance of which is made clear in *Cunningham*, I am persuaded that there is a plausible explanation for failing to participate in the motion to strike. I make that finding even though I accept that Plaintiff's counsel notified the Defendants of the motion and provided the zoom link.

[56] I have considered that this may well constitute a situation in which default judgment was irregularly obtained (see, for example, *Redabe Holdings Inc. v. I.C.I. Construction Corporation*, 2017 ONCA 808 at para. 7), in which case a defendant, as a general rule, is entitled to an order setting the default judgment aside without the requirement of establishing a defence against the plaintiff's claim and without the imposition of terms, other than possibly costs. Nevertheless, I am going to proceed with the *Mountain View Farms* analysis, given the way arguments were made.

Defence on the Merits:

[57] The Plaintiffs rely upon *Citifinancial Services of Canada v. 1472354 Ontario Inc.*, [2003] O.J. No. 525, where the court noted that it was incumbent upon the Defendants to attach a Statement of Defence setting out a defence to the merits.

[58] I am not confident that this decision represents the state of the current law with respect to this obligation. I agree that there must be some evidence by which the court can evaluate whether the defence set out by the Defendants has an "air of reality". I do not accept that this can only be accomplished by reviewing a draft Statement of Defence.

[59] I keep in mind that in the case before me, the Defendants did file a Statement of Defence. It was simply struck for failing to appoint new counsel in a timely fashion.

[60] The Defendants assert that in this claim the Plaintiffs are seeking to hold them responsible for the debt of a non-party. The Defendants also assert that Mr. Mann's native language is Punjabi and that he would not have understood the promissory note that he executed. Although Manny now contradicts his own evidence on the examination for discovery that he was present when a document was signed by his father, whether he was present does not necessarily impact the issue of whether Mr. Mann's language barrier was adequately addressed.

[61] More importantly, I am troubled by the amount of the default judgment obtained, which appears to be twice the amount that the Plaintiffs claimed was owing to them. The Statement of Claim seeks the sum of \$281,798.91 for indebtedness, and in the alternative, the same amount from Mr. Mann under the promissory note. However, the default judgment was for \$573,819.79 plus pre-judgment interest. The default judgment also includes 24% pre-judgment interest upon

the promissory note, when the terms of the promissory note appear to indicate that no pre-judgment interest is to be applied.

[62] From *Mountain View Farms*, it is clear that I am not empowered to address these concerns by varying the amount of the default judgment. However, these amounts should not be allowed to stand, in my view. Default judgment should not have been granted in excess of what the amount claimed was.

[63] In their factum, the Plaintiffs refute the Defendants' proposed defence, noting that it has evolved since the initial pleadings and that the Defendants now seem to have a better recollection of the issues than they did when they were examined for discovery.

[64] The difficulty with those arguments is that they require the court to evaluate the merits of the defence to an extent that, in my view, is not called for in the *Mountain View Farms* analysis (see: *Zeifman Partners Inc. v. Aiello*, 2020 ONCA 33).

[65] The Defendants need not show that the defence will inevitably succeed but must only show that it has an air of reality (*Mountain View Farms*, *supra*, at para. 51).

[66] I am persuaded that this factor weighs heavily in favour of setting aside the default judgment, on the basis that the amount of the default judgment appears grossly in excess of the amount of the Plaintiffs' claim, and what was plead.

Potential Prejudice to the Parties:

[67] I consider that this is a case that was defended initially, and with significant expense, by the Defendants. I accept that the Defendants, whether it was attributable solely to their counsel, did not readily comply with the discovery process. That is a factor which does count against them.

[68] However, the fact remains that the current default judgment appears to be double the amount claimed by the Plaintiffs and potentially owed by the Defendants. If the Defendants truly owe the amount claimed by the Plaintiffs, then they should be found liable for the amount owed, but not twice as much. It is extremely prejudicial for the Defendants to have a judgment against them far more than what was even claimed.

[69] Against this I must consider that it appears that Mr. Mann has other judgment creditors, owed far more than what the judgment in favour of the Plaintiffs is likely to be. The Plaintiffs' judgment was first in time, and their writs provided some measure of protection against the other claims.

[70] It is therefore possible that if the Plaintiffs are successful, they will not be able to realize their judgment.

[71] In my view, however, the irregularity by which the default judgment was obtained, including the amount of the default judgment, creates a prejudice to the Defendants that outweighs

the loss of priority that the Plaintiffs may have over other judgment creditors. The judgment arguably should not have been issued meaning that the Plaintiffs would not have enjoyed that priority.

The Integrity of the Administration of Justice:

[72] Again, this is not a circumstance where the Defendants simply chose not to participate from the outset of the litigation. Rather, albeit with hesitancy, they participated in the discovery process. They then had a breakdown with their counsel who failed to draft the proper order removing him from the record. As noted, while I do not visit that failure on the Plaintiffs, I cannot blame the Defendants.

[73] In my view, the administration of justice would suffer a greater blow if the Plaintiffs were entitled to keep a default judgment in these circumstances, that far exceeds the amount they claimed, and could be entitled to.

Disposition:

[74] Considering all the factors, and mindful of the delay in bringing this motion, I am of the view that this is a case where justice requires that the case be determined on its merits. Accordingly, I set aside the default judgment dated October 19, 2023. I also set aside the noting in default.

[75] I am not persuaded that the writs that have been filed should be allowed to stand and accordingly, I lift those writs as well. I note the Ontario Court of Appeal case of Leaf Homes Limited v. Khan, 2022 ONCA 504, at para. 157, where Gillese J.A. stated:

[157] I do not accept this submission. Asking this court to leave in place the writ, after ordering that default judgment is set aside, is asking for the enforcement of a judgment that does not exist. It is axiomatic that the respondent is not entitled to relief to which it is not entitled. The same reasoning applies to the respondent's request that the appellants pay its costs of enforcement. I would set aside the default judgment. Consequently, until a trial of this matter takes place, it cannot be known whether the respondent was entitled to take the enforcement steps that it did, so it would be wrong to order payment of those costs now.

[76] The Defendants' Statement of Defence and Counterclaim shall be considered revived. If the Defendants are to make any amendments, they must do so by way of motion.

[77] The Defendants have offered, and in any event, I would have found it appropriate to pay costs thrown away.

[78] If the parties cannot resolve the issue of costs thrown away, as well as the costs of this motion, I will address both following the receipt of written submissions. The Plaintiffs are to identify to the Defendants the costs sought thrown away before August 21, 2026. If the issue of costs cannot be resolved, the Defendants are to serve and file written submissions to my attention

through my assistant, Nadine Long at LondonSCJAdminTeam@ontario.ca on or before September 4, 2026. Those submissions are not to exceed three pages double spaced and should address costs thrown away.

The Plaintiffs responding submissions, which are to be within the same length parameters, are to be served and filed on or before September 14, 2026.

Date: August 13, 2026

Justice Spencer Nicholson

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REASONS ON MOTION

NICHOLSON J.

Released: August 13, 2026