

CITATION: *Maestra v. Blue Line Distribution Limited et al.*, 2026 ONSC 4784
COURT FILE NO.: CV-23-00698929-0000
DATE: 20260818

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Terry Della Maestra Plaintiff
-and-
Blue Line Distribution Limited, and Automan Express Inc., and
Harjinder Chhinjer Defendants
BEFORE: Justice A. P. Ramsay
COUNSEL: Sarah Cvetkovski, for the Plaintiff
HEARD: In-writing

ENDORSEMENT

- [1] The plaintiff says that after over 15 years of service, the defendants terminated his employment without notice to him. He commenced this proceeding against the defendants in May 2023 for wrongful dismissal.
- [2] The defendants, initially represented by counsel, delivered a statement of defence in February 2024. The defendants' former counsel got off the record, and by virtue of the order of Associate Justice Abrams dated September 2025, the defendants were required to appoint counsel or file a notice of intent to act in person within a prescribed period. They failed to do so. In March 2026, the plaintiff obtained an order from Associate Justice Rappos to strike the statement of defence. The plaintiff then noted the defendants in default in March 2026.
- [3] The plaintiff initiated this motion for default judgment under r. 19.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- [4] I would adjourn the motion, without prejudice to the plaintiff, for the reasons that follow.
- [5] There are several threshold issues raised by the materials before me including service, monetary jurisdiction, the appropriate venue, and the evidentiary issues.
- [6] The first issue is service of the motion materials. The plaintiff must prove his claim for damages on a motion for default judgment. The defendants have a right to contest the claim for damages. It appears that none of the defendants have been served with the Motion Record for damages.

- [7] By order of Justice Akazaki, the plaintiff was directed to serve the defendants. Based on the affidavits filed, none of the defendants have been served with the Motion Record. It is not clear from the record whether the corporate defendants, or any of the defendants, are still in existence, and if not, how service can be effected having regard to s. 242(2) of the *Business Corporations Act*, R.S.O. 1990, c. B.16.
- [8] Second, the claim was commenced under r. 76, which governs simplified procedure actions. Under r. 76.02(1), the amounts claimed by the plaintiff cannot exceed \$200,000 exclusive of interest and costs. The damages claimed by the plaintiff on this motion exceed the monetary jurisdiction of actions governed by r. 76. The plaintiff has not provided any authority for the court to award damages in excess of the monetary jurisdiction.
- [9] On the motion, the plaintiff is seeking damages for wrongful dismissal in the amount of \$460,636.94, damages for unpaid wages in the amount of \$22,788.48, and unpaid expenses in the amount of \$2,183.17. In the result, the claims are well more than the monetary jurisdiction of a simplified action. The plaintiff is also seeking aggravated and “bad faith damages”.
- [10] The plaintiff has not provided any authority for the court to award damages in excess of the monetary jurisdiction of r. 76. There is no evidence before me that the plaintiff sought to continue the action under the ordinary procedure even though the prayer for relief claimed relief in excess of the monetary jurisdiction of the simplified procedure.
- [11] Third, there is the question of forum. The proceeding appears to have been commenced in the wrong venue. All the defendants have addresses in Brampton or Burlington. The plaintiff’s former employers are not connected to Toronto. The plaintiff resides in the City of Hamilton.
- [12] None of the parties have any connection to Toronto, nor does it appear that the factors set out in r. 13.1.02(2)(b) are met: see r. 13.1.01(2). The court may transfer a proceeding to the proper county on its own initiative: see r. 13.1.02(4). Pursuant to r. 13.1.02(5), such an order may be made only after a case conference is convened under r. 50.13 to determine. Under subsection (6), a judge may transfer the proceeding to another county if satisfied that it is desirable to do so in the interest of justice having regard to the enumerated factors in r. 13.1.02(b).
- [13] In the result, I am directing that the plaintiff convenes a case conference under r. 50.13 so that the threshold issue of venue can be determined.
- [14] Finally, the extent of the hearsay evidence in the record before me, including a statement of a witness, on this motion for judgment for significant damages, is also problematic. The statement is hearsay. On a motion for default judgment, the court must consider the factors articulated by Brown J. (as he then was) in *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062, at para. 14, wherein he stated the court must consider: (i) what deemed admissions of fact flow from the facts pleaded in the statement of claim; (ii) whether those deemed admissions of fact entitled the plaintiff, as a matter of law, to judgment on the claim; and (iii) if they

do not, whether the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitles the plaintiff it to judgment on the pleaded claim.

[15] Rule 19.06 makes it clear that a judge hearing a motion for default judgment must not grant judgment unless the facts entitle the plaintiff to judgment: *Salimijazi v. Pakjou* (2009), 58 B.L.R. (4th) 113 (Ont. S.C.), at para. 17, *per* Strathy J. (as he then was). The plaintiff claims unliquidated damages, which must be proven and supported by evidence given by affidavit: r. 19.05(2); *Kaur v. Virk*, 2022 ONSC 6697; and *Beals v. Saldanha* (1998), 42 O.R. (3d) 127 (Gen. Div.), at pp. 141-42, *rev'd* on other grounds, 54 O.R. (3d) 641. A motion for judgment should be supported by admissible evidence: *Drummond v. Cadillac Fairview Corporation Limited*, 2019 ONCA 447, at paras. 21-23.

[16] The plaintiff also refers to a T4 as an exhibit, but annexes what appears to be a partial tax return. It also appears that the plaintiff is attempting to prove the content of several exhibits attached to his affidavit merely by appending them to his affidavit. The jurisprudence is well-established that the content of an exhibit is not sworn evidence: see *Katz v. Katz*, 2014 ONCA 606, 377 D.L.R. (4th) 264; *Sears v. Coristine*, 2020 ONSC 7968; and *Buffa v. Gauvin*, 18 O.R. (3d) 725, at pp. 727-28.

Disposition

[17] The motion is adjourned without prejudice to the plaintiff.

[18] Counsel may schedule a virtual conference before me, or any available judge, to address the issue of venue, before a return date can be established.

[19] I am not seized of the motion.

Justice A. P. Ramsay

Date: August 18, 2026