

SUPERIOR COURT OF JUSTICE – ONTARIO

491 Steeles Avenue East, Milton ON L9T 1Y7

RE: MARSHALLZEHR GROUP INC., Plaintiff

AND:

MAHFOOTH, NAWAR, Defendant

BEFORE: JUSTICE CUDJOE

COUNSEL: SARA ROMEIH, for the Plaintiff

IAN LITEROVICH, for the Defendant

HEARD: August 17, 2026, in-person attendance

ENDORSEMENT

- [1] The plaintiff seeks an order compelling two defendants, Mr. Sarmad Ganni and Nawar Mahfooth to attend an examination in aid of execution. The defendants seek an order setting aside a default judgment.
- [2] Both defendants are represented by Mr. Leterovich and their interests are aligned. The endorsements for both matters shall be similar.
- [3] The plaintiff and the defendants settled two issues. If the motion to set aside is granted, the motion to compel will be abandoned. However, if the motion to set aside is dismissed, the order to compel shall issue. Secondly, there is a joint submission for \$10,000 in costs to the successful party

BACKGROUND

- [4] MarshallZehr (MZ) is a mortgage broker and administrator. On 29th February 2024, Mr. Ganni and Mr. Mahfooth executed an unlimited guarantee in support of all debts and liabilities owing or remaining unpaid by the borrowers to MZ.
- [5] The loan was for condominium developments in and around Oakville.
- [6] By early 2025, there were defaults due to unpaid interests, the loan had entered its wrap-up period, and significant interest arrears had accumulated.
- [7] The parties had discussions but could come to no resolution. On May 15, 2025, MZ sent a demand letter to Mr. Ganni. MZ informed Mr. Ganni that the total amount owing was \$27,679,074.68, exclusive of accruing interest and enforcement-related costs.
- [8] On June 16, 2025, MZ served a Statement of Claim on Mr. Ganni and Mr. Mahfooth. MZ's process server swore an affidavit that he served Mr. Ganni personally, on July 3, 2025, at Mr. Ganni's offices at 3190 Harvester Road, Suite 201A, Burlington, Ontario, L7N 3T1.
- [9] I note that Mr. Hayes (CEO of MZ) swears that his colleague, Mr. Sean Atkinson, had also sent written correspondence to Mr. Ganni and Mr. Mahfooth (including the statement of claim).
- [10] Mr. Ganni says he first learnt that he had been sued in November 2025, when he received a letter for the notice of examination in aid of execution. He says he checked his calendar for July 3, 2025, and he was in Niagara Falls that day and he did not go to the office. Mr. Ganni provides a reservation for a Steakhouse in Niagara Falls at 7.30 pm as proof that he was in Niagara Falls that day.
- [11] Mr. Mahfooth does not dispute service of the statement of claim. His evidence is that he approached Mr. Ganni to discuss the lawsuit and Mr. Ganni assured him that he would work out a resolution (but the May 15, 2025, letter was clear that MZ was taking legal action from that point).

[12] On August 11, 2025, the defendants were noted in default. On August 20, 2025, judgment was granted in favour of MZ in the amount of \$24,699,125.51 with an interest rate of 10.7% compounded monthly and \$3,871,620.71 with an interest rate of 15% compounded monthly and costs of \$1,906.47 with an interest rate of 4% per annum.

[13] The factors I should consider in determining if I should set aside the default judgment is the test set out in *Franchetti v. Huggins*, 2022 ONCA 111(CanLII) at 9–

- The parties' behaviour;
- The length of the defendant's delay;
- The reasons for the delay;
- The complexity and value of the claim;
- Whether setting aside the noting of default would prejudice a party relying on it;
- The balance of prejudice as between the parties; and
- Whether the defendant has an arguable defence on the merits.

[14] The above factors are not rigid rules and should be weighed in relation to the facts of the case.

[15] In relation to the parties behaviour, I note that the defendants have not made any payments since early 2025.

[16] Mr. Ganni purports to have only known about this lawsuit after he became aware that he was to attend an examination in aid of execution. He says he was never served. Even if Mr. Ganni says he was not in the office all day on July 3, 2025, I do not doubt that the process server was at his office. The process server swore

his belief that served Mr. Ganni at his offices. It may be possible that he served a person other than Mr. Ganni, but Mr. Ganni's evidence gives me no confidence that there was not service at his office.

- [17] If Mr. Ganni wanted to challenge the assertion that the process server was at his office and served the documents, he could have sought leave to cross examine the process server. He chose not to. I am not sure if he is asserting that the process server is lying or mistaken about who he served the documents on that day.
- [18] Mr. Hayes from MZ swore that his colleague also sent written correspondence that included the statement of claim.
- [19] Finally, Mr. Ganni did not dispute that he was aware that his business partner informed him of the lawsuit (albeit in Mr. Mahfooth's name). Under all these circumstances, I find that Mr. Ganni was served and should have been aware of the lawsuit.
- [20] Once served both Mr. Mahfooth and Mr. Ganni did not file a defence. Mr. Mahfooth takes the position that Mr. Ganni said he would take care of it and he trusted him to do so. One would think that once it got close to the date to file a defence, that Mr. Mahfooth would at least ask for an update. They were facing a lawsuit for an extremely large amount of money, and nothing was done.
- [21] Mr. Ganni complains that he was not served when the motion for default judgment was brought. After August 11, 2025 (the date of the default notation), no notice was required.
- [22] However, I note the courts have warned parties that despite a party in default not being entitled to notice, the better practice is to serve the default judgment motion in the defendant in any event- See *Royal Bank of Canada v Streetsville Eyecare Inc.*, 2022 ONSC 4609 (CanLII) at 59.

- [23] I also draw counsel's attention to R. 37.07(4) where the *Rules of Civil Procedure* stipulate that the order, the motion record and materials shall be served upon the party affected by the order.
- [24] The plaintiff argues that once the defendants were aware of the default. They were required to act with haste. The defendants argue that they were awaiting responses from the plaintiffs and only received answers on January 22, 2026. The defendants only made written requests in January 2026, even though they were aware of the default in November, 2025. The defendants did file the motion on February 20, 2026, which is a short time after January 22, 2026.
- [25] The plaintiff points out that the defendant knew what was at stake at the time and could have gotten all the records from the Court. I once again note R. 37.07 (4).
- [26] I view the reasons for the delay in two steps. The defendants knew that they had not filed a defence and there were no further negotiations with MZ. They were not paying anything, and they were content to sit back.
- [27] The defendants did not immediately act and only filed this motion after receiving the motion to compel attendance. The delay was not inordinate but not showing a convincing intention to defend.
- [28] The plaintiff is out of a lot of money whilst waiting for the defendants to act. Comparatively, this action is not long in the tooth, but I bear in mind that the defendants chose not to act.
- [29] This brings me to prejudice. As stated in *Equitable Bank v. Bal*, 2025 ONSC 7130 (CanLII) at 23, "the defendants can hardly claim prejudice: they have been in default for early 20 months, they have made use of the court system to delay legitimate enforcement on a mortgage. They have been given ample opportunity to redeem the mortgage or bring it into good standing but have failed to do so."

- [30] The plaintiff remains without their capital and are incurring legal costs at every stage.
- [31] I am aware that the courts are leery of deciding matters without hearing both parties and default judgments should be remedies of last resort. However, failure to respond and delay in the process is also not in the interest of justice.
- [32] Do the defendants present a defence that has an “air of reality” in providing some form of defence. The court’s overarching goal in a motion to set aside is whether it is in the interest of justice to set aside the default judgment.
- [33] Does the statement of defence identify a ground that could be an arguable case?
- [34] In *Kantor v. Grewal et al.*, 2025 ONSC 1542 (CanLII) at 34 the court found that the judge must “take a good hard look at the merits and analyze whether the moving party has established an arguable case”. The court goes on to cite *HSBC Securities (Canada) Inc. v. Firestar Capital Management Corporation*, 2008 ONCA 894, at para. 28 – “a self-serving affidavit does not create a triable issue in the absence of detailed facts and supporting evidence”.
- [35] Both defendants plead the following:
- they deny that they are liable for the amounts claimed in the statement of claim being \$27,679,074.68 or any amount whatsoever
 - they deny the quantum and calculation of indebtedness
 - they deny any amounts owing with respect to legal costs and expenses incurred by the plaintiff
 - they allege that the plaintiff has failed to act in good faith or has breached their duties owed the defendant as borrower, including but not limited to their duty to mitigate damages

- the defendant argues invalid guarantee, material alteration and failure of consideration
- the defendant argues that they did not receive proper notice of any alleged default. This argument is a non-starter as the May 15, 2025 letter was clear that there were defaults and discussions had been ongoing.

[36] These denials and assertions are not supported by a scintilla of evidence in this motion and they remain bald assertions.

[37] In balancing all the factors, I do not find that it is in the interest of justice to set aside the default judgment.

[38] The plaintiff is the successful party in this motion, and I shall order cost of \$10,000 (all inclusive) in favour of the plaintiff (spread equally between both defendants - \$5000 each).

[39] As agreed upon by the parties, the order for the defendants to attend examination in aid of execution is hereby confirmed.

