

CITATION: Plainview Heights Property Ltd. v. Santos et al, 2026 ONSC 5309
COURT FILE NO.: CV-24-00725643-0000
DATE: 20260928

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Plainview Heights Property Ltd., Plaintiff

-and-

Jo-Ann Abella Santos, Gilbert B. Santos, Kimberly Anne Santos, Tiffany Amber Santos, Defendants

BEFORE: A. P. Ramsay, J.

COUNSEL: *Michael Citak* and *Dara Hirbod*, for the Plaintiff

The Defendants, Self-Represented

HEARD: In writing

ENDORSEMENT

[1] The plaintiff, Plainview Heights Property Ltd., brought this motion in writing for default judgment against three of the four named defendants, pursuant to r. 19 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. This action arises out of a failed real estate transaction. The plaintiff claims that the defendants entered into an Agreement of Purchase and Sale for property municipally located in Clarington, Ontario.

[2] The prayer for relief sought a declaration that the defendants breached the Agreement of Purchase and Sale, damages for breach of contract in an amount to be determined, a declaration that deposits held by the plaintiff in trust for the defendants are forfeited in favour of the defendants, punitive damages and pre-judgment interest.

[3] The plaintiff's motion for default judgment is dismissed, without prejudice to the plaintiff renewing the motion, subject to the issue of venue being addressed before it is renewed. Several concerns are raised by the record before me.

Service of the motion record

[4] The plaintiff seeks default judgment only against three of the four defendants, namely, Gilbert B. Santos, Kimberly Anne Santos and Tiffany Amber Santos. The Motion Record has only been served on these defendants. The record before me indicates that the defendants were served on August 27, 2024. Based on Mr. Botoni's affidavit, only the three defendants against whom judgment is sought were noted in default. However, the factum says that the "purchasers", which of course includes all the defendants, were noted in default. It is therefore not clear from the record

whether the defendant Jo-ann Abella Santos was also noted in default. If she has not been noted in default, r. 37.07 (1) mandates that she be served as she is a person affected by the order sought.

[5] The provision reads:

37.07 (1) The notice of motion shall be served on any party or other person who will be affected by the order sought, unless these rules provide otherwise.

[6] Assuming Ms. Santos was not noted in default, she still should have been served, as directed by Justice Merritt in her endorsement dated June 19, 2026. Justice Merritt did not carve out any exception for service of the record and directed that the motion record be served on the defendant (*sic*) in accordance with the practice set out in *Casa Manila Inc. v. Iannuccilli*, 2018 ONSC 7083, which requires service of a motion for default judgment to be served on a defaulting defendant.

[7] The plaintiff does not address the impact of its claim against Ms. Santos. Is the plaintiff seeking partial default judgment? What becomes of the claim against Ms. Santos? Another concern is that Ms. Santos has apparently declared bankruptcy, although, it is not clear to the court what the impact of Ms. Santos' bankruptcy would have on the action against her. Presumably the action is stayed against her, and at a minimum, there should be some explanation as to the impact on the claim for damages against the other defendant purchasers or an explanation as to whether the motion would result in partial judgment. At paragraph 4 of its factum, the plaintiff notes: "The Defendants as purchasers failed to pay the Deposit required ... and failed to close the transaction on the closing date".

Evidence before the court

[8] Under r. 19.02(1)(a), a defendant who has been noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim. Under r. 19.05(1), a plaintiff may move for judgment where a defendant has been noted in default. Under rule 19.05(2), the motion must be supported by evidence given by affidavit if the claim is for unliquidated damages.

[9] Under r. 19.06, a plaintiff is not entitled to judgment unless the facts deemed to be admitted "entitle the plaintiff to judgment". In *Paul's Transport Inc v. Immediate Logistics Limited*, 2022 ONCA 573, 472 D.L.R. (4th) 359, at para. 80, the Court of Appeal noted that r. 19.02(1)(a) does not deem everything in a statement of claim to be admitted, only allegations of fact.

[10] The plaintiff asserts that the matter arises out of "the Defendants' default on a binding Agreement of Purchase and Sale entered into between the Defendants and Plainview, entered into on August 22, 2023, for the purchase of a residential home for \$1,099,900.00 ... municipally described as 215 Flood Avenue, Clarington, Ontario".

[11] The plaintiff claims that it mitigated its damages by selling the property for \$865,000. The plaintiff says it sustained damages in the amount of \$235,126.90. On the motion, the plaintiff asks that the deposits made by the defendants in the amount of \$60,226.90 be forfeited. The plaintiff says its damages would then amount to \$174,900.00.

[12] Conclusions of law, and of mixed law and fact, are not to be deemed admitted under r. 19.02(1)(a) where a defendant has been noted in default: *Paul's Transport*, at para. 77. If the facts pleaded do not support the conclusion of law pleaded, the motion judge may decline to grant judgment despite the failure of the defendant to defend the action: *Paul's Transport*, at para. 77, citing *Salimijazi v. Pakjou* (2009), 58 B.L.R. (4th) 113 (Ont. S.C.), at para. 19, *per* Strathy J. (as he then was).

[13] The plaintiff must prove the claim for damages on a motion for default judgment. In *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062, at para. 14, Brown J. sets out the following inquiry that must be undertaken by the court on a motion for default judgment:

- i. What deemed admissions of fact flow from the facts pleaded in the statement of claim?
- ii. Do those deemed admissions of fact entitle the plaintiffs, as a matter of law, to judgment on the claim?
- iii. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitles it to judgment on the pleaded claim?

[14] The motion for judgment is supported only by the affidavit of Alex Bottoni, who is the plaintiff's general counsel. Mr. Bottoni's evidence is based on the review of the documents and is therefore replete with hearsay. Statements in an affidavit based on information and belief ought to be restricted to matters which are not contentious: *R. v. Chan*, 2007 CanLII 52429 (Ont. S.C.), at para. 12; *CPC International Inc. v. Seaforth Creamery Inc.* (1996), 49 C.P.C. (3d) 363, at para. 28.

[15] On a motion for default judgment before a judge, the plaintiff must prove the claim for damages. Mr. Bottoni makes bald statements regarding the amount of damages. He deposes as follows:

18. The Plaintiff incurred damages including the difference between the initial purchase price with the defendant Purchasers and the amount received under the Mitigation Sale.
19. The Plaintiff has suffered damages in the amount of \$174,860.00, net of all expenses, including carrying costs, taxes, utilities, mortgage interest, security, alarm system, cleaning, maintenance fees, and other costs.

[16] Aside from Mr. Bottoni's evidence on damages, he also deposes that the plaintiff has mitigated its damages, again based on hearsay evidence. In *Alfonso Izzo v. Tonnina Ministro*, 2020 ONSC 6703, at para. 8, on a motion for default judgment, Sanfilippo J. stated:

The use of hearsay evidence on a motion is permitted by *Rule* 39.01(4). However, the inclusion of hearsay evidence on a central point in issue is not proper: *Beach v. Toronto Real Estate Board*, 2010 ONSC 30001, 97 C.P.C.

(6th) 127, at para. 5; *Shah v. LG Chem, Ltd.*, 2015 ONSC 2628, 125 O.R. (3d) 773, at para. 71; *Glasjam Investments Ltd. v. Freedman*, 2014 ONSC 3878, at para. 33.

Venue

[17] On a final note, it does not appear that any of the parties are connected to Toronto. The plaintiff carries on business in Clarington, Ontario. The defendants are from Whitby. The property that was the subject of the failed transaction is in Clarington.

[18] Before renewing its motion, counsel for the plaintiff may schedule a case conference before me, or any other judge, to address the question of whether the action ought to be transferred pursuant to r. 13.1.02 (4).

Disposition

[19] In the result, the motion is dismissed, without prejudice to the plaintiff renewing its motion.

[20] Before renewing its motion for default judgment, a case conference shall be convened under r. 13.1.02 (5).

Justice A. P. Ramsay

Date: September 28, 2026