

COURT OF APPEAL FOR ONTARIO

CITATION: Freeman's Service Centre Ltd. v. Modern Auto Parts Limited,
2023 ONCA 195
DATE: 20230320
DOCKET: COA-22-CV-0078

Fairburn A.C.J.O., Brown and Sossin JJ.A.

BETWEEN

Freeman's Service Centre Ltd.

Plaintiff (Respondent)

and

Modern Auto Parts Limited, Paul Arthur,
Jacqueline Arthur, Ian Heulans, Todd Hope and
Cedarholme Farms Limited

Defendants (Appellants / Respondent)

David A. MacKenzie, for the appellants

Peter Karsten, for the respondent, Freeman's Service Centre Ltd.

Matthew Harmes, for the respondent, Ian Heulans

Eric Gionet, for Lawyers' Professional Indemnity Company

Heard: March 17, 2023

On appeal from the order of Justice David A. Broad of the Superior Court of Justice,
dated August 3, 2022.

REASONS FOR DECISION

[1] At the hearing, we dismissed the appeal, with reasons to follow. These are those reasons.

[2] The appellants, Paul Arthur, Jacqueline Arthur and Cedarholme Farms Limited (the “Cedarholme Defendants”), appeal the motion judge’s order striking out their statement of defence and crossclaim and granting the respondent, Freeman’s Service Centre Ltd. (“Freeman’s”), judgment against them in the amount of \$49,628.11 (the “Order”).

[3] The Lawyers’ Professional Indemnity Company sought an adjournment of the hearing of the appeal, which we refused.

[4] The Cedarholme Defendants seek to set aside the Order primarily on the basis that the motion judge failed to give any reasons for his decision. While the motion judge did not give any reasons for the Order made on an unopposed basket motion, the record clearly discloses the basis upon which it was made: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at paras. 37 and 46; *R. v. G.F.*, 2021 SCC 20, 459 D.L.R. (4th) 375, at paras. 70-71.

[5] Freeman’s commenced this action seeking damages in the amount of \$49,628.11 for goods sold and delivered and services provided to Modern Auto Parts Limited. The Cedarholme Defendants are related to or affiliated with Modern Auto Parts but were not parties to the transactions between Freeman’s and Modern Auto Parts. The Cedarholme Defendants were represented by the same counsel and filed a joint statement of defence and crossclaim. Paul Arthur was examined for discovery in June 2021. Many undertakings given on that

examination were never fulfilled, notwithstanding judicial orders setting deadlines by which to do so. Freeman's moved for an order striking out the statement of defence and crossclaim of the Cedarholme Defendants and granting judgment against them.

[6] In our view, the record clearly discloses the reason why Broad J. struck out the Cedarholme Defendants' pleading: notwithstanding the multiple opportunities they were given to answer undertakings, they failed to file any materials in response to Freeman's motion to strike and failed to provide answers to the remaining undertakings. The Cedarholme Defendants were treated fairly during this process but failed to avail themselves of the opportunities given to them by the court to satisfy their undertaking obligations and to respond to Freeman's motion. Striking out the Cedarholme Defendants' pleading for their default was a remedy available to the motion judge in the circumstances.

[7] Similarly, we conclude that the record discloses the reasons why the motion judge ordered the Cedarholme Defendants to pay Freeman's the liquidated sum claimed of \$49,628.11, together with interest and costs. A combination of items provided the requisite evidentiary support for the grant of judgment: the deemed admissions on the issue as pleaded in the statement of claim; the affidavit evidence filed by Freeman's on the motion for judgment; and the adverse inferences the motion judge could draw from the failure of the Cedarholme

Defendants to answer undertakings given and ordered fulfilled on the issue: see r. 34.15(1)(d).

[8] For these reasons, we dismissed the appeal.

[9] The Cedarholme Defendants shall pay the costs of the appeal as follows: \$3,500 to the respondent, Freeman's, and \$2,500 to the respondent, Ian Heulans, both amounts inclusive of disbursements and applicable taxes.

"Fairburn A.C.J.O."

"David Brown J.A."

"L. Sossin J.A."