

COURT OF APPEAL FOR ONTARIO

CITATION: Dreamfund Holdings Inc. v. Yusuf, 2024 ONCA 335

DATE: 20240501

DOCKET: COA-23-CV-0525

Brown, Paciocco and Nordheimer JJ.A.

BETWEEN

Issa Yusuf

Plaintiff (Respondent)

and

Dreamfund Holdings Inc., 10268054 Canada Corp., Dreammaker Realty Inc. also known as Dream Maker Developments Inc., and Isaac Jr. Olowolafe also known as Temitope Olowolafe

Defendants (Appellants)

Suen Olowolafe, for the appellants

Bode Odetoyinbo and Anthony Appadoo, for the respondent

Heard: April 29, 2024

On appeal from the judgment of Justice M. Claire Wilkinson of the Superior Court of Justice, dated April 12, 2023 with reasons reported at 2023 ONSC 2153.

REASONS FOR DECISION

[1] The appellants seek to set aside a default judgment issued against them on April 12, 2023, after an uncontested trial, and they request related relief.

[2] The default judgment relates to an October 14, 2021 settlement agreement that arose from the failure of the appellants to comply with investment contracts

entered into with Mr. Yusuf. The trial judge found that the appellants did not pay Mr. Yusuf according to the agreed terms of that settlement agreement. No evidence has been presented before us contesting those findings.

[3] The statement of claim that led to the default judgment was issued on December 7, 2021, and served on the parties with some difficulty. The appellants have made no concrete attempts to defend the action, other than serving a December 29, 2021 Notice of Intent to Defend. Before having the appellants noted in default, Mr. Yusuf repeatedly alerted the appellants of his intention to do so, even though there is no requirement under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, that a plaintiff provide such notice. Moreover, the appellants repeatedly failed, despite being granted extensions, to provide Statements of Defence. Then they agreed to, but repeatedly cancelled, scheduled settlement discussions on short notice. Only then did Mr. Yusuf note the appellants in default.

[4] In these circumstances, the appellants have not satisfied us that Mr. Yusuf or his counsel acted inappropriately. There is no reasonable basis for their allegations that Mr. Yusuf or his counsel acted in a high-handed manner or deprived the appellants of their legal right to participate. Given that the appellant 10268054 Canada Corp. provided a Notice of Intent to Defend, the complaints it is now raising about the manner in which it was served with the Statement of Claim cannot provide a basis for setting aside the default judgment.

[5] Nor is there merit to the appellants' claim that it was an error to order and conduct an uncontested trial. There is no obligation on a trial judge to make inquiries regarding the absence of a defendant when the trial judge is satisfied that the defendant has been properly noted in default. Indeed, r. 19.02(3) of the *Rules of Civil Procedure* provides that a defendant who has been noted in default "is not entitled to notice of any step in the action".

[6] We do not accept the appellants' claim that the trial judge misapprehended the evidence before her during the uncontested trial by commenting that the appellants were unrepresented at trial. Since the trial was uncontested, her recital that no-one appeared on behalf the appellants, is entirely accurate.

[7] Finally, we would observe that, in circumstances such as these, an appeal is not the proper route to seek to set aside the default judgment. Rather, the affected party should bring a motion to set aside a default judgment under r. 19.08(2). It is only if such motion is unsuccessful, that an appeal should be brought. In that regard, this case is entirely different than the situation in *HSBC Securities (Canada) Inc. v. Firestar Capital Management Corporation*, 2008 ONCA 894, 245 O.A.C. 47, which is referred to in *Male v. The Business Solutions Group*, 2013 ONCA 382, 115 O.R. (3d) 359, at para. 15, on which the appellants rely.

[8] The appeal is dismissed.

[9] Costs of \$9,000.00, inclusive of disbursements and applicable taxes, are payable by the appellants.

“David Brown J.A.”

“David M. Paciocco J.A.”

“I.V.B. Nordheimer J.A.”