

COURT OF APPEAL FOR ONTARIO

CITATION: Protrans Personnel Services Inc. v. Stevens Resource Group – USA
Inc., 2024 ONCA 483
DATE: 20240619
DOCKET: COA-23-CV-1265

MacPherson, Paciocco and Wilson JJ.A.

BETWEEN

Protrans Personnel Services Inc.

Plaintiff (Respondent)

and

Stevens Resource Group – USA Inc.* , Stevens Resource Group
Inc. (Ontario) and Sherri Stevens*

Defendants (Appellants*)

Edwin V. Upenieks and Frank Pinizzotto, for the appellants

Martin Forget and Jeremy Hanigan, for the respondent

Heard: June 13, 2024

On appeal from the order of Regional Senior Justice Leonard Ricchetti of the
Superior Court of Justice, dated October 17, 2023.

REASONS FOR DECISION

[1] In January 2019, the respondent Protrans Personnel Services Inc. (“Protrans”) purchased assets of the appellant Stevens Resource Group (SRG Ontario, SRG USA, collectively “SRG”). The parties also had a separate side agreement pursuant to which SRG would pay Protrans \$100,000 if sales did not meet \$5 million in the first year (the “Side Agreement”). The Side Agreement also provided that Sherri Stevens, SRG’s owner and President, would assist in the transition period and would promote Protrans’ acquired business for six months.

[2] On May 27, 2021, Protrans started proceedings against SRG relating to the \$100,000 component of the Side Agreement and \$5,808 that Protrans alleged was diverted to SRG rather than to Protrans.

[3] On July 14, 2021, SRG’s counsel filed a Notice of Intent to Defend. SRG did not file a defence; instead it took the position that there were deficiencies in Protrans’ pleadings and indicated its intention to bring a motion to strike portions of Protrans’ Statement of Claim.

[4] On March 14, 2022, SRG sought to resolve the issue by requiring Protrans to deliver a Fresh as Amended Statement of Claim. Protrans obliged and delivered a draft Amended Statement of Claim on March 24, 2022. It suggested SRG deliver its defence by April 14, 2022.

[5] Considerable time passed. On November 11, 2022, approximately eight months later, SRG consented to an Amended Statement of Claim. Protrans then

delivered a Fresh Amended Statement of Claim on November 25, 2022, and suggested that the defence be delivered by December 14, 2022.

[6] Over the next two months, SRG asked for and was granted several extensions of time to file its defence. SRG did nothing except terminate the retainer of its original counsel.

[7] On February 11, 2023, SRG was noted in default. On April 4, 2023, SRG's new counsel indicated that they were in the process of obtaining instructions for a defence and requested consent to set aside the noting in default. Protrans' counsel refused.

[8] SRG brought a motion to set aside the noting in default and the motion record was delivered on May 25, 2023. The first draft of the Statement of Defence was attached.

[9] The motion judge dismissed the motion. He wrote thorough reasons (76 paragraphs). He explicitly applied a leading case dealing with setting aside a noting in default, *Nobosoft Corporation v. No Borders, Inc.*, 2007 ONCA 444, wherein this court said, at para. 3:

[T]he full context and factual matrix in which the court is requested to exercise its remedial discretion to set aside a noting in default are controlling factors. In particular ... such factors as the behaviour of the plaintiff and of the defendant, the length of the defendant's delay in seeking to respond to the plaintiff's claim, the reasons for the delay and the complexity and value of the claim involved, are all relevant matters to be taken into consideration.

[10] The motion judge was aware of, and explicitly acknowledged, the main factor that favoured the appellants in its motion below: “This is not a typical case of setting aside a noting in default. This one is highly unusual given the unusually short time....”

[11] However, the motion judge felt that this factor was offset by a constellation of other factors:

... the many repeated deadlines (set by the Defendant’s counsel) for filing the Defence which remained unmet and then added to that by the Defendants choosing to terminate counsel’s retainer at these numerous delays and then taking two months to retain new counsel to deal with the problem.

Surely, the Plaintiff cannot wait forever for the Defence. There are *Rules* to be complied with. At some point the Plaintiff is entitled to say “enough”....

[12] The motion judge made a comprehensive and careful analysis of all the relevant facts. He applied the relevant law to those facts. We see no basis for concluding that he erred in his analysis or conclusion.

[13] The appeal is dismissed. The respondent is entitled to its costs of the appeal fixed at \$15,000, inclusive of disbursements and HST.

“J.C. MacPherson J.A.”
“David M. Paciocco J.A.”
“D.A. Wilson J.A.”