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COURT OF APPEAL FOR ONTARIO

RE: THREEMOR ENTERPRISES LIMITED (Plaintiff/Respondent)
– and – INTAR CORPORATION, and MOLDENHAUER
DEVELOPMENTS (ISLINGTON VILLAGE) INC., Formerly
known as 1306282 ONTARIO INC. (Defendants/Appellants)

BEFORE: BORINS, SHARPE and JURIANSZ JJ.A.

COUNSEL: Alan S. Price
for the appellants

Maxwell M. Steidman
for the respondent

HEARD &
ENDORSED: May 13, 2004

On appeal from the order of Justice Blenus Wright of the Superior Court of Justice dated December 23, 2003.

A P P E A L B O O K E N D O R S E M E N T

[1] It would appear from the materials and submissions before us that the motion judge was given less than a full picture of the merits of the motion. For example, the status of the plaintiff to commence the action was not raised before him. In our view, there are several factors that strongly favour the setting aside of the motion in default: (1) the haste with which the defendants were noted in default; (2) the relatively short period of delay; (3) the absence of any prejudice to the plaintiff; and (4) the availability of a defence.

[2] Accordingly, the appeal is allowed and the order of Wright J. dismissing the motion and his subsequent default judgment are set aside. There will be an order that the noting of the defendants in default be set aside and that time for delivery of a statement of defence is extended to May 27, 2004. There will be no costs of the appeal. The order of Moldaver J.A. is extended to July 31, 2004.