

**ONTARIO SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**ANWAR ALI**            Plaintiff/ Responding Party

**- and -**

**ANUM TARIQ**            Defendant/Moving Party

**BEFORE:**                Leiper, J.

**COUNSEL:**              T. Walker and J. Routliff, for the Defendant/Moving Party  
No counsel appearing for the Plaintiff/Responding Party

**HEARD BY TELECONFERENCE:**      March 20, 2020

**ENDORSEMENT**

- [1]    On March 19, 2020, Justice F.L. Myers acting as delegate of the Regional Senior Justice, scheduled this urgent motion in accordance with the *Notice to the Profession* issued on March 15, 2020 by the Chief Justice of the Superior Court of Justice (the "*Notice to the Profession*").
- [2]    Anum Tariq ("Tariq") brought this motion to set aside a default judgment made by the Small Claims Court in favour of the Plaintiff, Anwar Ali, ("Ali") for \$25,091.75 plus costs of \$500 and to discharge the writ of seizure and sale (the "Writ") related to the default judgment. The Writ has been registered against a Toronto residential property (the "Property") owned by Tariq.
- [3]    Ali was served with notice of this motion, as was counsel representing him on the collection of the judgment. Neither Ali nor counsel acting on his behalf attended the motion.
- [4]    The motion was brought on an urgent basis because:

- a) The sale of Tariq's property was scheduled to close on March 20, 2020, the day this motion was heard;
- b) Tariq only recently learned of the default judgment and the Writ registered against the Property;
- c) Tariq was unable to bring a motion to set aside the default judgment in the Small Claims Court—its operations are suspended due to the COVID-19 health measures being taken by the administration of justice;
- d) Tariq offered to have the sale proceeds paid into trust and held there to protect Ali's judgment pending further agreement or court order but Ali did not agree;
- e) Ali is not a resident of Canada and Tariq is concerned that if she was to pay the judgment and subsequently successfully defend, that Ali may not repay the amount;
- f) If the Writ remained in place, the closing of the Property was put in jeopardy.

#### **BACKGROUND TO THE MOTION**

- [5] On April 10, 2014, Tariq filed for divorce in Pakistan from Ali's son, Ziad Anwar Ali.
- [6] On July 23, 2015, Ali registered the Writ against the Property.
- [7] Tariq is the sole owner and titleholder of the Property.
- [8] On February 12, 2020, Tariq sold the Property with a closing date scheduled for March 19, 2020. On March 11, 2020, Tariq learned that a Writ in favour of Ali had been registered on title to the Property.
- [9] Tariq states that she was not served with Ali's claim and has no knowledge of the grounds for the claim against her. Counsel for Tariq has been unable to obtain a copy of the judgment or the statement of claim. The Writ was registered on July 23, 2015 against the Property.
- [10] On March 18, 2020, the purchaser of the Property stated through counsel that they may withdraw their offer or levy fines or penalties against Tariq if the Writ is not removed from title to the Property. Tariq is concerned that she stands to suffer immediate prejudice if the Agreement of Purchase and Sale is rescinded because the Writ is not discharged.

- [11] Given the public health response to the COVID-19 illness, Tariq is concerned that prospective future purchasers could be reluctant to leave their current place of residence to view prospective properties. Tariq believes that she could suffer significant financial losses if this sale does not close.
- [12] Tariq's affidavit filed on the motion included correspondence between her counsel at Walker Law Professional Corporation to Ali's collections lawyer, Allan Mohammed ("Mr. Mohammed). Tariq's counsel sought an agreement from Ali to lift the Writ if the amount of the Judgment and costs secured by the Writ was into trust pending resolution of their dispute.
- [13] Tariq's counsel did not receive a response from Mr. Mohammed regarding Tariq's proposal to have funds held in trust to lift the Writ while protecting Ali's judgment.
- [14] Further, Tariq's counsel contacted Mr. Mohammed on March 18, 2020. Mr. Mohammed informed counsel for Tariq that he had received express instructions from Ali not to disclose his place of residence and contact information. The Writ provides an Ontario address for Ali. Tariq states that Ali is not a resident of Canada. Tariq is concerned that if she pays the amount of the judgment, to clear the writ, she may not be able to recover the funds if the court finds in her favour on the merits of Ali's claim.

## **JURISDICTION TO CONSIDER A SMALL CLAIMS COURT MATTER**

- [15] The *Rules of the Small Claims Court, O/Reg 258/98* provide a procedure for setting aside default judgment:

### **Setting Aside Noting of Default by Court on Motion**

11.06 The court may set aside the noting in default or default judgment against a party and any step that has been taken to enforce the judgment, on such terms as are just, if the party makes a motion to set aside and the court is satisfied that,

(a) the party has a meritorious defence and a reasonable explanation for the default; and

(b) the motion is made as soon as is reasonably possible in all the circumstances. O. Reg. 78/06, s. 24.

- [16] Tariq was unable to move for relief in the Small Claims Court because effective Monday March 16, 2020, the Court suspended its operations as part of the public health response to COVID-19.

[17] The Superior Court of Justice has put in place procedures for hearing urgent matters in accordance with the *Notice to the Profession*.

[18] The *Courts of Justice Act* (“CJA”) provides that the Small Claims Court is a branch of the Superior Court of Justice. Section 22(3) provides that “Every judge of the Superior Court of Justice is also a judge of the Small Claims Court.”

[19] Section 11(2) of the CJA provides that the Superior Court of Justice has all of the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario. This broad remedial jurisdiction was articulated by the Court of Appeal for Ontario in *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.* [1972] 2 O.R. at p. 282:

As a superior court of general jurisdiction, the Supreme Court of Ontario has all of the powers that are necessary to do justice between the parties. Except where provided specifically to the contrary, the Court’s jurisdiction is unlimited and unrestricted in substantive law in civil matters.

[20] I find that I have jurisdiction to address the issues in this motion. I will begin with the motion to set aside the default judgment.

#### **SHOULD THE DEFAULT JUDGMENT BE SET ASIDE?**

[21] The test for setting aside a default judgment under the *Rules of the Small Claims Court* requires the defendant to satisfy the court that there is a meritorious defence to the claim.

[22] Here, due to the suspension of operations of the Small Claims Court, Tariq has not been able to obtain a copy of the claim or the judgment. Tariq has sworn an affidavit that she has never received this document. She believes that the claim may have been brought in retaliation for her divorcing Ali’s son. However, there is no evidence as to the merits of either the claim or Tariq’s belief about the claim at this stage. Counsel fairly submitted that it is difficult to satisfy this branch of the test without the details about Ali’s claim.


[23] The motion for default judgment should be decided on a complete record and on further notice to the Ali. The default judgment is not the source of potential prejudice to Tariq’s closing of her real estate transaction. I find that this portion of the motion for relief should be adjourned to be heard before the Small Claims Court upon its operations resuming.

## SHOULD THE WRIT OF SEIZURE AND SALE BE REMOVED?

- [24] The affidavit and material filed by Tariq shows that if the Writ is not removed that the sale of her property could be put in jeopardy. Tariq could suffer prejudice if unable to sell. While she could pay the judgment to lift the Writ, she has provided evidence of a concern that she might be unable to recover the monies paid under the judgment if she successfully sets aside the judgment and defends it on the merits.
- [25] Although Rule 11.06 of the *Rules of the Small Claims Court* also require a defendant to satisfy the court that there is a meritorious defence in order to set aside steps taken to enforce a judgment, in all of these circumstances, I would apply this court's remedial jurisdiction to grant relief. There are barriers to Tariq establishing a meritorious defence at this stage of the proceedings that are not of her making.
- [26] The proposal to hold sufficient funds in trust to pay the judgment, plus costs and interest in return for a court-ordered lifting of the Writ is a fair response. These steps will ensure that the necessary funds to pay the judgment to Ali are protected. Tariq will be able to close her transaction. The dispute over the funds can be addressed in the Small Claims Court or through future negotiations and the consent of the parties.
- [27] An order lifting the Writ on the terms proposed will do justice for the parties.

## COSTS

- [28] The matter of costs will be reserved to the Small Claims Court on the hearing of the motion to set aside the default judgment.

  
Leiper, J.

**Date: March 23, 2020**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

HONOURABLE JUSTICE  
J. LEIPER

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FRIDAY, THE 20<sup>TH</sup>  
DAY OF MARCH, 2020

BETWEEN:

**ANWAR ALI**

Plaintiff /  
Responding Party

- and -

**ANUM TARIQ**

Defendant/  
Moving Party

**ORDER**

**THIS MOTION**, made by the Defendant, Anum Tariq, on an urgent basis for an order setting aside the Judgment made in respect of this action and an order discharging the corresponding writ of execution was heard this day by teleconference.

**ON READING** the Moving Party's Motion Record, the Supplementary Affidavit of the Moving Party, the Factum of the Moving Party (with hyperlinked authorities), *80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd. et. al.*, 1972 CanLII 535 (ONCA) and the Endorsement of Justice Myers dated March 19, 2020, and on hearing the submissions of counsel for the Defendant and Moving Party, no one appearing for the Plaintiff despite being duly served:

1. **THIS COURT ORDERS** that Plaintiff's writ of execution issued on July 23, 2015 bearing execution number 15-0004147 and filed with the City of Toronto Sherriff's Office (the "Writ"), attached hereto as **Schedule "A"**, against title to the lands municipally described as 4801-25 Telegram Mews, Toronto, Ontario (PINS: 13016-0477, 13016-0936 and 13016-0997) (the "Property") is hereby deleted.
  
2. **THIS COURT ORDERS** that the Defendants real estate lawyer, Puneet Jatana, must register an Application General or an Application To Register Court Order to delete the Writ attached to PINS 13016-0477, 13016-0936 and 13016-0997.
  
3. **THIS COURT ORDERS** that the Land Registrar delete the Writ from title should it attach to title to the lands bearing PINS 13016-0477, 13016-0936 and 13016-0997.
  
4. **THIS COURT ORDERS** that, immediately upon the discharge of the Writ described in paragraph 1 above, the Defendant and Moving Party shall post security in the amount of \$27,969.51 (inclusive of costs and interest) into the trust account of Walker Law Professional Corporation ("**Walker Law**").
  
5. **THIS COURT ORDERS** that said security as described in paragraph 4 above will only be paid out of the trust account of Walker Law pending a further order from the Court or upon consent of the parties.
  
6. **THIS COURT ORDERS** that an application must be filed with the Superior Court of Justice pursuant to Rule 37.17 of the *Rules of Civil Procedure* as soon as practicable

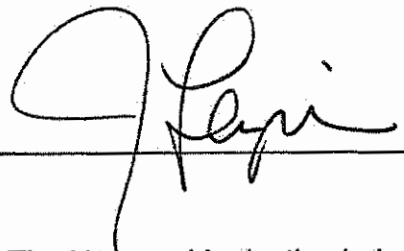
and that the application must contain all materials filed in connection with this motion.

7. **THIS COURT ORDERS** that the motion brought pursuant to Rule 11.06 of the *Rules of the Small Claims Court* to set aside the default judgment obtained by the Plaintiff is hereby adjourned to the first available date after the suspension of Small Claims Court hearings, which was precipitated by the COVID-19 pandemic, is lifted.
8. **THIS COURT ORDERS** that a copy of the Defendant's Moving Party materials referred to in the preamble above as well as a copy of this Order and, if applicable, the Endorsement in connection with this Order, be served upon the Plaintiff forthwith via email to his last known email address at [anwar.ali@hotmail.com](mailto:anwar.ali@hotmail.com) and that service shall be effective upon delivery.
9. **THIS COURT ORDERS** that service of any further documents in the course of this proceeding may be effected by emailing copies of said documents to Plaintiff's last known email address at [anwar.ali@hotmail.com](mailto:anwar.ali@hotmail.com) and that service shall be effective upon delivery.
10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05 of the *Rules of Civil Procedure*, the outcome of this motion, whether conveyed in typed or handwritten format, is an order of the court effective from the date it is made.
11. **THIS COURT ORDERS** that, in accordance with Rules 77.07(6) and 1.04 *Rules of*



*Civil Procedure*, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court.

12. **THIS COURT ORDERS** that costs are reserved pending the outcome of the motion to set aside default judgment to be brought before the Ontario Small Claims Court.



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The Honourable Justice Leiper



SCHEDULE "A"

WRIT DETAILS REPORT / RAPPORT DES DÉTAILS DU BREF

SHERIFF OF / SHÉRIF DE : CITY OF TORONTO (TORONTO)

CERTIFICATE # / 38979709-6015697B

N° DE CERTIFICAT :

DATE OF CERTIFICATE / 2020-MAR-10

DATE DU CERTIFICAT :

SHERIFF'S STATEMENT

IT IS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED BELOW IS A TRUE REPRESENTATION OF INFORMATIC WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE EXECUTION ACT, AT THE TIME OF THE REPORT REQUEST.

DÉCLARATION DU SHÉRIF

IL EST CERTIFIÉ, PAR LA PRÉSENTE, QUE LES RENSEIGNEMENTS CI-APRÈS REPRODUISENT EXACTEMENT L'INFORMATION CONTENUE DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERME DE L'ARTICLE 10 DE LA LOI SUR L'EXÉCUTION FORCÉE AU MOMENT DE LA DEMANDE DE RAPPORT.

FILE DETAILS / DÉTAILS DU DOSSIER

EXECUTION # / N° D'EXÉCUTION FORCÉE : 15-0004147  
ISSUE DATE / DATE DE DÉLIVRANCE : 2015-JUL-23  
EXPIRY DATE / DATE D'EXPIRATION : 2021-JUL-22  
EFFECTIVE DATE / DATE DE PRISE D'EFFET : 2015-JUL-24  
COURT FILE OR REFERENCE # / N° DE DOSSIER DU TRIBUNAL OU DE RÉFÉRENCE : SC14-00006625-0000  
COURT TYPE / TYPE DE TRIBUNAL : SCJ - CIVIL  
JURISDICTION / TERRITOIRE DE COMPÉTENCE : TORONTO

DEBTOR SEARCH NAME(S) / NOM(S) DU(DES) DÉBITEUR(S) RECHERCHÉ(S)

#	DEBTOR TYPE / TYPE DE DÉBITEUR	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
1.	PERSON / PERSONNE	TARIQ, ANUM

PARTY DETAILS / COORDONNÉES DES PARTIES

DEFENDANT / DÉFENDEUR

1.	NAME / NOM	TARIQ, ANUM
	ADDRESS / ADRESSE :	25 TELEGRAM MEWS APT 4801, TORONTO, ONTARIO, CANADA, M5V 3Z1

CREDITOR / CRÉANCIER

C/O LAWYER/AGENT / A/S PROCUREUR/AGENT

1.	PERSON / PERSONNE	ALI, ANWAR
	ADDRESS / ADRESSE :	12 DUCKETT AVE., MARKHAM, ONTARIO, CANADA, L6B 0L9

LAWYER/AGENT / PROCUREUR/AGENT

SAME AS FIRST CREDITOR / MÊME QUE LE PREMIER CRÉANCIER

**JUDGMENT/COST DETAILS (FROM ORIGINAL WRIT) / DÉTAILS DU JUGEMENT/DÉPENS (DU BREF ORIGINAL)**

#	JUDGMENT OR COSTS / JUGEMENT OU DÉPENS	AMOUNT / MONTANT	INTEREST RATE / TAUX D'INTÉRÊT	START DATE / DA DE DÉBUT
1.	JUDGMENT / JUGEMENT	CDN 25,091.75	0.0000%	
	COSTS / DÉPENS	CDN 500.00	0.0000%	
	AGAINST DEBTORS / CONTRE LES DÉBITEURS	ALL DEBTORS SEARCH NAME		

**FINANCIAL TRANSACTIONS / OPÉRATIONS FINANCIÈRES**

#	FEE OR PAYMENT / FRAIS OU PAIEMENT	TRANSACTION DATE / DATE D'OPÉRATION	AMOUNT / MONTANT	REFERENCE OR NOTES / RÉFÉRENCE OU NOTES
1.	FEE / FRAIS	2015-JUL-23	CDN 50.00	LAWYER'S FEE FOR ISSUANCE
2.	FEE / FRAIS	2015-JUL-23	CDN 55.00	ISSUANCE FEE
3.	FEE / FRAIS	2015-JUL-23	CDN 100.00	FILING FEE

**COMMENTS / REMARQUES**

2015-07-23 - POST-JUDGMENT INTEREST CONTINUES TO ACCRUE AT THE RATE OF 2% PER ANNUM FROM JULY 23, 2015

**CAUTION:**

ENSURE THAT THE NAME AND EXECUTION# (NUMBER) MATCH YOUR REQUEST.

**AVERTISSEMENT :**

ASSUREZ-VOUS QUE LE NOM ET LE NUMÉRO DU DOSSIER D'EXÉCUTION FORCÉE SONT LES MÊMES QUE CEUX QUI S' TROUVENT DANS VOTRE DEMANDE.

**CHARGE FOR THIS REPORT /**      **CDN 6.50**  
**FRAIS POUR CE RAPPORT :**

**ANWAR ALI**  
Plaintiff/Responding Party

- and -

**ANUM TARIQ**  
Defendant/Moving Party

Court File No. SC-14-0006625-0000

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**WALKER LAW**  
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Lawyers for the Defendant/  
Moving Party