

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
YBAWS! INC.)	Ari A. Lokshin, for the Plaintiff
)	
)	Plaintiff
)	
– and –)	
)	
RAMO CANADA INC.)	
)	
)	Defendant
)	
)	
)	
)	READ: January 3, 2024

2024 ONSC 69 (CanLII)

PAPAGEORGIU J.

Overview

- [1] The plaintiff is a consultant who assists with securing business loans.
- [2] On August 2, 2021, the plaintiff and defendant entered into an agreement whereby the plaintiff would provide assistance with the defendant obtaining debt capital financing in exchange for 10 % of any amounts raised through the plaintiff’s introductions (the “Agreement.”)
- [3] The plaintiff provided these introductions, the defendant obtained \$2,000,000 in financing, and the defendant has failed to pay the amounts due.
- [4] The defendant failed to defend the proceeding and was noted in default.
- [5] The plaintiff brings a motion for default judgment.

Decision

[6] For the reasons that follow, I am granting default judgment as sought in the amount requested.

The Issues

[7] The main issues are:

- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the plaintiff is entitled?

Analysis

Issue 1: Do the materials provide a basis for a finding of liability?

Consequences of noting in default

[8] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[9] However, pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[10] In particular, r. 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

The test on a motion for default judgment

[11] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[12] I am satisfied that the plaintiff has established liability based upon the following deemed admissions in the Statement of Claim and the affidavit evidence:

- The plaintiff and defendant entered into the Agreement as defined above.
- The Agreement provided for a ten per cent fee for any introductions that resulted in financing.

- The plaintiff was initially aware that \$1,750,000 in financing was obtained by the defendant in accordance with the Agreement such that the plaintiff would be entitled to a fee of \$175,000.
- The plaintiff and defendant agreed that the defendant could pay this amount in 12 equal monthly instalments in exchange for the defendant paying an additional fee of \$35,000 (the “Deferral Agreement”).
- The plaintiff subsequently learned that the defendant in fact had obtained a further \$250,000 in financing through the plaintiff’s efforts such that the full fee pursuant to the Agreement was \$200,000.
- The defendant has only made partial payments and has not made any payments since December 1, 2022.

Issue 2: What are the damages to which the plaintiff is entitled?

[13] The plaintiff is entitled to be compensated for the loss of bargain which means he is entitled to be placed in the same position he would have been in if the breaches had not occurred, or in other words as though the contract had been performed without any breaches.

[14] I am satisfied that pursuant to the Agreement and the Deferral Agreement, the plaintiff is owed the sum of \$265,550 consisting of \$226,000 pursuant to the Agreement inclusive of HST¹ and \$39,550 pursuant to the Deferral Agreement inclusive of HST.

[15] The defendant has made payment in the amount of \$34,358 leaving a total of \$231,192 outstanding.

Costs

[16] The plaintiff requests costs on a partial indemnity basis in the amount of \$4,500 inclusive of disbursements. I have reviewed the rates and time charged which I find fair and reasonable. I also find that such costs were within the reasonable contemplation of the defendant.

Interest

¹ Pursuant to the Court of Appeal's decision in *National Money Mart Company v. 24 Gold Group Ltd.*, 2018 ONCA 812 at para 70, where an agreement is silent as to HST, HST is presumed to be payable in addition to amounts owed under an agreement.

[17] The plaintiff claims interest at the rate of 4.8 % pursuant to the Courts of Justice Act which amounts to \$11,918.11 and which I award.

Conclusion

[18] Therefore, I award the plaintiff damages in the amount of \$231,192 plus pre-judgment interest in the amount of \$11,918.11 for a total of \$243,110.11 plus costs in the amount of \$4,500 as well as post judgment interest at the rates in the Courts of Justice Act.

Papageorgiou J.

Released: January 3, 2024

CITATION: Ybaws! Inc. v. Ramo Canada Inc., 2024 ONSC 69

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

YBAWS! INC.

Plaintiff

– and –

RAMO CANADA INC.

Defendant

REASONS FOR JUDGMENT

Papageorgiou J.

Released: January 3, 2024