

CITATION: Royal Bank of Canada v. Sakthivel, 2024 ONSC 4070
COURT FILE NO.: CV-23-1828-0000
DATE: 2024 07 18

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Royal Bank of Canada

AND:

Aravind Sakthivel, terra metal Inc., Justwing Group Inc., Bank of Montreal

BEFORE: Kurz J.

COUNSEL: G. Bowden

No one appeared for any of the Defendants

HEARD: July 17, 2024

ENDORSEMENT

[1] The Plaintiff bank (“RBC”) moves for what it describes as :

An Order on consent for the release of funds to the maximum amount of \$812,000.00 from Bank of Montreal, at its branch at 275 James Street, Hamilton, 155 Rexdale Blvd., Rexdale, Ontario, M9W 5Z8, and may have the account number 2416-1979-287.

[2] RBC claims that it is the owner of the funds held in the BMO bank account cited above (the “BMO Account”) and should be entitled to have them released to it without reference to the ordinary procedure by which a judgment is enforced by execution or garnishment.

[3] While this is described as a “consent” motion in the Amended-Amended Simplified Procedure Motion Form, I have been provided with no evidence of a consent by any of the Defendants to the relief claimed in this motion. Nonetheless, as set out below, default judgment has been entered by RBC against the Defendants other than the Bank of Montreal (“BMO”). Further BMO appears to make no claim to the funds in question.

[4] The BMO Account is held by the defendant, Justwing Group Inc. (“Justwing”). RBC has already obtained a judgment, dated April 2, 2024, against Justwing and the Defendant, Terra Metals Inc. (“Terra”) for \$966,658.19 plus costs of \$1,493.

[5] By way of background, it is not disputed in this action that the individual Defendant, Aravind Sakthivel (“Sakthivel”) is the sole director of Terra. Sakthivel opened an account with RBC on behalf of Terra in May 2023. He deposited four cheques, totalling \$1,756.53 into that RBC account. All were dishonoured. RBC describes them as “worthless”.

[6] Nonetheless, Sakthivel was able to transfer the proceeds of those four dishonoured cheques into other bank accounts, which placed them out of RBC’s reach. One such deposit was for \$812,000 into the BMO Account. RBC claims that Sakthivel is the directing mind of Justwing, just as he is of Terra.

[7] RBC obtained an order freezing the funds in the BMO Account under s. 437(2) of the *Bank Act*. In its factum for this motion, RBC concedes that it “cannot expect that the freeze operates like a court ordered injunction. The Plaintiff gains no rights to the funds merely by making a claim”.

[8] That being said, RBC offers no statutory or common law authority for the proposition that it is entitled to all of the funds in the BMO Account, to the exclusion of all others who may have a claim to those funds. While RBC asserts that it has obtained similar orders from other judges, it concedes that none of those orders were accompanied by reasons which analyse its claim or have any precedential value.

[9] It is completely open to RBC to enforce its judgment against Justwing and serve a writ of seizure and sale or a notice of garnishment on BMO to allow the sheriff to seize the BMO Account. It chooses not to do so because of what its counsel describes as problems with the execution process, including delays.

[10] However RBC is unable to say how much is actually in the BMO Account or whether other funds are intermingled in that account. I note that the letter of a BMO

senior paralegal dated February 20, 2024 provided RBC with monthly bank statements for the BMO Account from April 2023 onward. However those statements are not included in RBC's motion materials.

[11] RBC also offers no evidence of any execution search which would tell it whether there are any judgment claims but its own against Justwing.

[12] I have not been made aware of any authority which holds that in circumstances such as this, RBC may simply bypass the ordinary process for collecting on its judgment debt and in doing so, gaining priority over any other claimants to the money in an account such as the BMO Account.

[13] Based on the evidence before me, I cannot say, as RBC claims, that all of the funds in the BMO Account belong to it or whether any funds from the Terra cheque to Justwing remain in that account.

[14] For the reasons cited above, I dismiss this motion.

Date: July 18, 2024

Justice Marvin Kurz