

**CITATION:** Ali v. Tariq, 2020 ONSC 1695  
**COURT FILE NO.:** CV-20-TBD  
**SMALL CLAIMS COURT FILE NO.:** SC14-0006625-0000  
**DATE:** 20200319

**ONTARIO SUPERIOR COURT OF JUSTICE**

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

Anwar Ali, Plaintiff

– and –

Anum Tariq., Defendant

**BEFORE:** F.L. Myers J.

**COUNSEL:** Tanya C. Walker, for the Defendant

**READ:** March 19, 2020

**ENDORSEMENT**

[1] The application is for an order setting aside a default judgment dated July 23, 2015 and setting aside a writ of execution that has been filed pursuant to the default judgment against lands and premises belonging to the applicant. The applicant has sold her property and the sale is scheduled to close **tomorrow**. The applicant says she only learned of the default judgment and writ of execution in preparation for the sale closing.

[2] The respondent is the applicant's former father-in-law. The timing of the default judgment and issuance of the writ is contemporaneous with the applicant's divorce from the respondent's son. The applicant believes that the default judgment was obtained without notice to her to punish her for the divorce.

[3] The applicant has offered to pay the sale proceeds into her lawyer's trust account in return for the respondent's agreement to lift the writ of execution to allow the sale to close. The respondent has declined this offer to this point.

[4] A lawyer who has apparently acted for the respondent in past has advised that he is instructed not to disclose the respondent's whereabouts. The applicant believes the respondent may be in Pakistan.

[5] The default judgment was obtained from the Small Claims Court. Unless or until the action is transferred to this court, it is not clear to me that this court has any authority to set aside a judgment of the Small Claims Court. The applicant wishes an opportunity to argue that this court has inherent jurisdiction to deal with the title to her land on an urgent basis. Counsel for the applicant argues that the current state of emergency as a result of the COVID-19 pandemic necessitates that the motion be brought to this court given its access to the full panoply of equitable relief and the very short time available. She fears the loss of the sale and dramatic losses if the respondent prevents her from being able to close tomorrow. The hearing is therefore urgent within the meaning of the *Notice to the Profession* released by the Chief Justice of the Superior Court of Justice dated March 15, 2020.

[6] I note that the *Notice to the Profession* also calls upon counsel and clients to do their part during these urgent times. It says:

During this temporary suspension of regular operations, the Court calls upon the cooperation of counsel and parties to engage in every effort to resolve matters.

[7] As the purpose of a writ of execution is to seize a party's equity in her property to pay a judgment, allowing a sale to close with the proceeds to be held by counsel would seem to be steps that work in favour of the judgment creditor. It is hard to see any prejudice to either party by converting the land to cash rather than watching a sale disappear in a time of unprecedented market uncertainty. **This seems to me to be a matter that counsel acting in good faith ought to be able to lead their clients to settle today.**

[8] If the matter does not settle, then as delegate of the RSJ, I have designated Justice J. Leiper to hear this urgent application on March 20, 2020 at 10:00 a.m. E.D.T.

[9] Service of any materials for this application may be made by email as between Ms. Walker's office and Mr. Mohamed's office and shall be deemed effective on the date the email is sent or, if sent after 4:00 p.m., on

the next day. No acknowledgement of receipt for email service is required for this motion. If Mr. Mohammed is not retained, the court directs him to send all application materials that his firm receives to Mr. Tariq by email forthwith and to advise Mr. Tariq or those of his relative with whom he is in contact of this endorsement and tomorrow's telephone hearing.

[10] All evidence, motion records, and factums shall be filed with the court by delivering them as attachments to an email to the other parties and the Motions Coordinator in searchable PDF format. No Books of Authority or statutory materials are to be sent to the other parties or the Motions Coordinator. References to case law or statutory material shall be made by hyperlinks to CanLII contained in the parties' factums or in a separate list of authorities.

[11] The hearing will be held by telephone case conference to be held on a line arranged by the Motions Coordinator. The parties and the presiding judge may use videoconference technology (whether Skype or Microsoft Teams or otherwise) as may be available to them all and acceptable to the presiding judge.

[12] Upon the courthouse reopening to the public, each party shall file with the Civil Motions Office a copy of all the material he, she, or it delivered electronically for this motion, with proof of service, and pay the appropriate fees therefor.

[13] This endorsement is effective when made. No formal order is required.

[14] The applicant will give an undertaking to the court under Rule 37.17 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, to commence an application in this court forthwith.

[15] **All parties are given notice that:**

- a. **The presiding judge may convene one or more case conferences and make all orders as he or she deems appropriate under Rule 50.13(6) to ensure the efficient hearing of the urgent application that is the subject of this endorsement; and**

- b. Notwithstanding Rule 59.05, the outcome of the application, whether conveyed in typed or handwritten format, is an order of the court effective from the date it is made. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court.
- c. All of the provisions of this order may be varied by the presiding judge on such terms and he or she deems just; and**
- d. The hearing may be recorded for the court's purposes.**

---

F.L. Myers J.

**Date:** March 19, 2020