

ONTARIO

SUPERIOR COURT OF JUSTICE

**BETWEEN:** )  
 )  
Pasquale Minniti ) Jonathan L. Frustaglio, for the  
 ) Defendant/Appellant  
Defendant/Appellant )  
 )  
- and - )  
 )  
Canadian Tire Bank ) Todd R. Christensen and Regan S.  
 ) Christensen, for the Plaintiff/Respondent  
Plaintiff/Respondent )  
 )  
 )  
 )  
 ) **HEARD:** February 21, 2018

REASONS FOR DECISION

DE SA J.:

Overview

- [1] The issue on this appeal is whether Deputy Judge Kupferstein erred in exercising his discretion to proceed with the Respondent's motion to strike the defence, and grant judgment in favour of the Plaintiff/Respondent on May 19, 2017 despite the Defendant/Appellant's request for an adjournment.
- [2] The Appellant argues that the Deputy Judge over-emphasized the importance of procedure at the expense of considering relevant evidence. According to the Appellant, the Deputy Judge failed to appreciate that Mr. Minniti, as a self-represented party, was in a more vulnerable position. The Appellant seeks that the matter be sent back for a trial on the merits, and that Mr. Minniti be entitled to file an amended statement of defence.
- [3] While the Appellant seeks to have the matter sent back for trial, nothing in the material before me indicates that a trial on the matter would change the result. The original statement of defence makes clear that Mr. Minniti has acknowledged responsibility for the debt owing. In the circumstances, it was reasonable for the Deputy Judge to make the decision he did. In my view, sending the matter back would do nothing more than delay the inevitable.

[4] For the reasons outlined below, the appeal is dismissed.

**Facts**

[5] The Appellant (“Mr. Minniti”) is an individual residing in the City of Woodbridge in the Province of Ontario.

[6] The Respondent, Canadian Tire Bank (“CTB”), is a duly incorporated company and engaged in the business of providing financial services.

[7] On July 6, 2012, the Appellant received a letter from Credit Bureau Services Canada (“CBSC”), the legal representative of CTB, advising him that he owed \$20,739.01 in outstanding credit card debt to CTB. CBSC advised that it had instructions from CTB to proceed with an action and to issue a writ of seizure and sale of land if it did not receive payment of the debt.

[8] Mr. Minniti was served with CTB’s claim on September 12, 2016. In or around September 2016, Mr. Minniti effected service of his defence. In his defence, Mr. Minniti stated that the reason for disputing the claim was that he was unable to make the payments due to “illness”. More specifically, he stated that he was unable to pay because of:

- 1) Diabetic shock (hospitalization);
- 2) Disability due to unable to walk without assistance;
- 3) Cirrhosis of the liver
- 4) Unable to work – lost job
- 5) Required money for means of living
- 6) Fibromyalgia

[9] At the settlement conference on December 20, 2016, Mr. Minniti was represented by his daughter Ms. Mariangela Martino (“Ms. Martino”). The presiding judge gave Mr. Minniti 60 days to settle the claim after which “the plaintiff may proceed to request a trial or bring a motion for any other relief that they wish to bring.” The endorsement stated that this 60-day period expired on February 20, 2017.

[10] In the interim, neither Mr. Minniti nor Ms. Martino on his behalf, took any steps to settle the claim or negotiate a payment plan for the outstanding amounts.

[11] On or about April 3, 2017, CTB brought a motion to strike the defence and for judgment. The matter was scheduled to be heard on May 19, 2017.

[12] On or around May 14, 2017, Mr. Minniti retained counsel, who contacted CTB and sought an adjournment of the motion. Having not been given a valid reason for the adjournment, CTB refused.

- [13] On May 19, 2017, the date scheduled for hearing, counsel for Mr. Minniti sought an adjournment of the motion. Deputy Judge Kupferstein refused the adjournment, struck Mr. Minniti's defence and granted judgment in CTB's favour. Deputy Judge Kupferstein in his endorsement determining the motion states, "After reviewing the notice of motion and the affidavit of Amy Merritt Cook with exhibits filed, the Court grants judgment to the Plaintiff ...".
- [14] Deputy Judge Kupferstein granted judgment against Mr. Minniti in the amount of \$20,731.97 together with pre-judgment interest at a rate of 19.99% per annum, a rate consistent with the rate owing on the credit card. Costs were fixed at \$500.

### Issue on Appeal

- [15] The issue on this appeal is whether Deputy Judge Kupferstein erred in exercising his discretion to refuse the adjournment, and proceed with CTB's motion on May 19, 2017.

### Analysis

#### Granting adjournments are in the discretion of the trial judge

- [16] Adjournments are within the discretion of the trial judge to decide based on the material before him or her. It is not the function of an appellate court to second-guess the exercise of that discretion unless there is an error in principle that infected the result. *MacDonald v. Stace*, [1958] O.W.N. 1 (C.A.); *Limironi Inc v. Susin*, 1992 CarswellOnt 2766, 33 A.C.W.S. (3d) 1230 (C.A.).
- [17] Where there are no reasons given by the judge for denying an adjournment, the court hearing an appeal of that denial should consider the question afresh based on reviewing the material before the trial judge. The trial judge's decision should be supported if the appeal court finds based on those materials no error in the exercise of the original discretion.
- [18] The Appellant claims that the Deputy Judge's decision to refuse the adjournment failed to give proper consideration to the fact that Mr. Minniti was a self-represented party and was in a more vulnerable position. The Appellant submits that the jurisprudence recognizes that the fundamental objective of the Small Claims Court is to provide easier access to justice, especially to self-represented litigants who are the most frequent users of the Small Claims Court system.
- [19] I agree that courts are required to be sensitive to the circumstances of a self-represented litigant. A court should not be too quick to dismiss an action on the basis of rigid formalities or on a strict application of the rules when dealing with parties that may be limited in means, and/or may lacking in the necessary skills, knowledge or experience. To do so would impede access to justice for many and would only serve to undermine the administration of justice. Fairness and access to justice must always be a consideration in the application of the rules.
- [20] That being said, a jurist must consider the interests of all parties when faced with an adjournment request. An adjournment routinely causes actual prejudice to the party

unwillingly subjected to it. Courts must be alive to the fact that unwarranted adjournments can also frustrate meaningful access to justice, and can undermine respect for the proper administration of justice. If an adjournment is merely delaying the inevitable result, an adjournment will likely be unwarranted. Provided the party has been given the opportunity to be heard on the issue, a court is entitled to refuse the adjournment: *MacDonald v. Stace*, [1958] O.W.N. 1 (C.A.), para. 4; *Limironi Inc v. Susin*, supra, paras. 1-3.

- [21] In this case, there is a danger that delaying the matter may prejudice the interests of the Respondent (CTB) in a very tangible way. The Appellant's assets are uncertain, and he is currently ill. His only known asset is a property held jointly with his spouse. This property will vest with his spouse upon death, and will eliminate any known assets available to CTB to realize on the amounts owing.
- [22] Moreover, the Appellant's statement of defence raises no valid defence to the claim for a credit card debt. By remitting the matter back for trial, the Appellant will only be subjected to additional costs in the long run. A court is not assisting the debtor by prolonging this process where the defendant has raised no valid defence. *Canadian Imperial Bank of Commerce v. Prasad*, 2010 ONSC 320, 2010 CarswellOnt 108, 184 A.C.W.S. (3d) 67, paras. 14-16.
- [23] Having regard to the circumstances here, I find that this was an appropriate case for the Deputy Judge to have refused the adjournment and granted judgment in favour of the Respondent. Over three months after being served with CTB's claim, Ms. Martino appeared on behalf of the Appellant at the settlement conference. At that settlement conference the presiding judge granted the Appellant an additional 62 days before CTB could move for judgment. CTB's motion to strike the defence and grant judgment was brought 42 days after that. A total of 104 days total after the settlement conference. The motion to strike was heard 46 days after that notice was given and a total of 150 days after the settlement conference. Over that entire period, there was no meaningful defence raised to the existence of the debt, and no articulated challenge to the validity of the amounts owing. Even on the appeal, the Appellant has not pointed to a meaningful defence to the matter. I find no error in the Deputy Judge's decision to refuse the adjournment, and to grant judgment in favour of CTB.
- [24] In light of the above, the appeal is dismissed.
- [25] I will also grant the order that the joint tenancy of the Appellant (defendant) with his spouse Francesca Minniti in the property at 70 Lewis Drive, Woodbridge be severed with the Appellant and his spouse now holding the property as tenants-in-common with a 50 percent share each.
- [26] The Respondent may register the amounts owing on title of that property.
- [27] I will accept written submissions on costs within 3 weeks of this decision. The submissions should be no more than 2 pages in length.

[28] I thank counsel for their submissions.

*de Sa J.*

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Justice C.F. de Sa

**Released:** April 4, 2018

**CITATION:** Minniti v. Canadian Tire Bank, 2018 ONSC 2128

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Pasquale Minniti

Defendant/Appellant

**– and –**

Canadian Tire Bank

Plaintiff/Respondent

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**REASONS FOR DECISION**

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Justice C.F. de Sa

**Released:** April 4, 2018