

CITATION: The Toronto-Dominion Bank v. The Other End Inc., 2024 ONSC 5377
COURT FILE NO.: CV-24-00000513-0000
DATE: 2024/09/27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THE TORONTO-DOMINION BANK, Plaintiff

AND:

THE OTHER END INC. and AMIR ENDALAH, Defendants

BEFORE: Justice I.F. Leach

COUNSEL: Natalie Marconi, for the Plaintiff

Fred Wu, for the Defendants

HEARD: September 27, 2024

ENDORSEMENT

- [1] Before me is a motion brought by the plaintiff bank, seeking summary judgment against the defendants in relation to loan and credit card arrangements in respect of which the defendants are said to be in default.
- [2] I will indicate at the outset that the motion is one of many before me in a typically busy “regular motions” hearing date here in London, (i.e., the weekly date scheduled for the hearing of motions said to require a hearing lasting a maximum 60 minutes or less), with two judges assigned to hopefully address all the matters on today’s docket. Time constraints prevent me from rendering a more fulsome endorsement, but these reasons, (prepared over the lunch interval), hopefully will suffice to make clear the concerns raised today in relation to the plaintiff’s motion and the manner in which those concerns will be addressed.
- [3] By way of brief further background and context:
- a. The plaintiff has filed substantial motion material, (e.g., a 224-page motion record as well as a factum), providing a detailed background to the plaintiff’s claim, with supporting documentation, and is anxious to proceed with its motion for summary judgment. It contends that the statement of defence filed by the defendants, (at a time when both were self-representing), raises no genuine issue for trial and simply intends to delay the plaintiff’s entitlement to relief. Counsel for the bank emphasizes that today’s return date for the plaintiff’s motion was scheduled in consultation with the then self-representing defendants.

- b. The defendants now have formally retained counsel, (Mr Wu), who delivered a brief responding motion record and factum just this past Monday. That material essentially raises two arguments as to why the plaintiff's motion should not proceed to hearing and determination today:
- i. The defendants argue that this matter should not be proceeding here in Middlesex County, (in respect of which London is the judicial centre), as it has no discernible links with Middlesex County, and appears to have been brought in London solely for the purpose of obtaining an earlier hearing than that which might be available in other centres, (such as Toronto), which seem to represent a more appropriate forum for the proceeding and motions herein.
 - ii. The defendants argue that the plaintiff's motion for summary judgment is premature, insofar as there are genuine issues the defendants wish to raise concerning the extent to which the defendants' alleged indebtedness to the plaintiff has been or should have been satisfied via guarantees, associated with the underlying credit arrangements, provided by specified government entities and/or loan support programs, in respect of which contemplated and/or required payments and assignments would and should have meant that the defendants thereafter should have been dealing only with enforcement measures employed by corresponding government institutions. In that regard, the defendants contemplate third party claims if and as necessary. At the very least, however, they wish to exercise rights of discovery in that regard as a concomitant of necessarily putting their "best foot forward" in response to the plaintiff's motion. In that regard, counsel now formally representing the defendants also candidly indicates his desire to deliver additional responding material before the motion is heard.
- c. Plaintiff counsel, (Ms Marconi), acknowledges the potential concerns regarding the plaintiff's selection of Middlesex County as a venue for this proceeding and corresponding motions, and emphasizes that such concerns will be relayed to her client going forward, with a promise that her client thereafter will take such concerns seriously, although it admittedly has further similar motions returnable here in London over the coming months. However, her immediate emphasis was on the suggested injustice to the plaintiff of delaying a hearing of its motion for summary judgment in response to what were said to be simple delay tactics on the part of the defendants.

[4] As I indicated to plaintiff counsel, the phenomenon of financial institutions increasingly initiating collection proceedings and corresponding motions here in London, when the underlying matters seem to have no discernible connection with Middlesex County, (or the Southwest Region more generally), is a growing concern that has been noted by court staff and numerous judges here in London.

[5] Our already busy motions court dockets increasingly are seeing material-intensive and time-consuming motions for summary judgment and similar collection measures in relation

to credit arrangements agreed upon elsewhere, (usually in the Greater Toronto Area), between financial institutions dealing with debtors residing elsewhere and/or whose businesses are based elsewhere, and/or in relation to property located elsewhere. Such motions usually reserve the maximum 60-minute permissible hearing time, in relation to motions that realistically require longer to be heard if they are contested, and require review of material extending into many hundreds of pages. Several such motions, brought on any particular “regular motions” hearing day, are easily capable of occupying the majority of available hearing time, making it more difficult to address motions with an obvious connection to Middlesex County.

- [6] There frankly seems to be little reason for such proceedings to be pursued here apart from the reality that the parties are able to do so, pursuant to the *Rules of Civil Procedure*, and the newfound ability of parties to have their counsel just as easily argue matters “here” in London, rather than more suitable and appropriate judicial centres, after our court has transitioned to presumptively virtual hearings. In other words, the practical constraints that formerly encouraged litigants and their counsel to pursue litigation in the appropriate forums, associated with their respective disputes, have largely disappeared.
- [7] Providing timely access to justice is an understandable concern across the province. However, potential “forum shopping” raises other concerns about justice from a broader perspective. In particular, while plaintiff counsel emphasized concerns about possible injustice to her client, our court needs to be mindful of broader concerns in that regard, including the potential injustice caused to other litigants, whose matters have clear and obvious connections with Middlesex County, having their access to justice delayed and complicated by litigants from elsewhere choosing to impose an additional inappropriate burden on the limited resources of this judicial centre and/or region, when their matters properly should be dealt with elsewhere.
- [8] In my view, it was only a matter of time before a responding litigant raised such venue issues, and that now has been done in the context of this proceeding. In particular, the responding defendants seek an adjournment of the hearing of the plaintiff’s summary judgment motion here in London that provides sufficient time for them to bring a motion in Toronto to transfer this civil proceeding there, pursuant to Rule 13.1.02 of the *Rules of Civil Procedure*. Pursuant to the *Consolidated Civil Provincial Practice Direction*, (amended as of February 1, 2024), and paragraph 49 thereof in particular, that motion nevertheless must be brought in Toronto; i.e., the court location to which the moving defendants seek to have the proceeding transferred. That motion is then to be dealt with by the Regional Senior Judge for Toronto, or that RSJ’s designate.
- [9] For the reasons outlined above, I think the defendants should be provided with that opportunity, not only for their sake but for the sake of the court’s resources here in London and the Southwest Region more generally.
- [10] While the plaintiff argues that it should not be faced with the delay associated with such a venue motion, in circumstances where it contends that the merits of its motion are clear, it seems to me that the risk of such delays is inherent in the plaintiff choosing to initiate a proceeding and bring motions here in London in circumstances where there appears to be

no connection with this judicial centre, or indeed this region. Going forward, perhaps litigants in the position of the plaintiff will factor such risks into their decision-making when it comes to venue selection.

- [11] For now, the plaintiff's motion will be adjourned to allow the defendants the opportunity to bring that contemplated Rule 13.1.02 motion in Toronto.
- [12] While the venue concerns I have identified provide sufficient justification for that adjournment, my willingness to grant the adjournment is reinforced by the defendants' arguments that the plaintiff's motion is premature. Although the defendants' initial responding material in that regard is somewhat cursory, it is sufficient to persuade me that the matters the defendants wish to pursue in that regard, through the filing of further material and examinations, are not baseless delay tactics.
- [13] That having been said, the plaintiff's motion for summary judgment will be heard in one venue or the other, and I think it appropriate to make further directions, applicable in any event, to ensure that the motion is readied for hearing without further delay once the venue issue has been raised by way of a formal motion in that regard, (with the defendants being given only a relatively short time to bring such a motion, if at all), and formally decided.
- [14] To that end, and after further submissions from counsel in that regard, I make the following directions designed to allow the venue issue to be addressed in the manner mandated by the *Consolidated Civil Provincial Practice Direction*, while ensuring that the plaintiff's motion is readied for a hearing on the merits:
- a. The motion shall be adjourned in the first instance to October 11, 2024, here in London, simply to be spoken to, at which time defence counsel is to provide the court with an indication, (supported as necessary by a copy of delivered motion material), that the defendants have brought their contemplated Rule 13.1.02 motion seeking a change of venue. If the defendants have not done so by then, they shall thereafter be precluded from bringing such a motion. In any event, the plaintiff's summary judgment motion thereafter shall be adjourned to November 15, 2024, here in London, unless the matter has been ordered to be transferred elsewhere by then.
 - b. To ready the plaintiff's summary judgment motion for hearing:
 - i. The defendants shall deliver any and all further responding motion material on or before October 11, 2024.
 - ii. The plaintiff shall deliver its reply motion material, (if any), on or before October 18, 2024.
 - iii. Any examinations on the delivered motion material shall be completed on or before October 31, 2024.
 - c. Whether or not the plaintiff's motion shall be heard on its merits on November 15, 2024, here in London, shall be left to the discretion of the judge presiding that day;

e.g., having regard to further updated information provided by the parties as to the status of any venue motion brought by the defendants in Toronto or elsewhere, and/or whether the matter is suitable for hearing in regular motions court or needs to be adjourned to a special appointment hearing date. In that regard, counsel should confer and provide the court, in their required motion confirmation, with indications as to the status of the defendants' contemplated venue motion and their respective positions as to what should transpire on November 15, 2024, having regard to that information. Return of the motion on its merits, here in London, shall be peremptory on the defendants, subject to the specific considerations I have indicated; i.e., the impact of the defendants' contemplated venue motion, and whether or not the interests of the court require further adjournment of the matter to a special appointment hearing date, all in the discretion of the presiding judge.

- [15] The costs of today's appearance are reserved to the judge deciding the plaintiff's summary judgment motion on its merits.

Ian F. Leach

Justice I.F. Leach

Date: September 27, 2024