

FLORENCE LAI FONG MAN  
PLAINTIFF

- and -

YIN ZHENG  
DEFENDANT  
Court File No. 06-CV-318789P

JANUARY 27, 2012

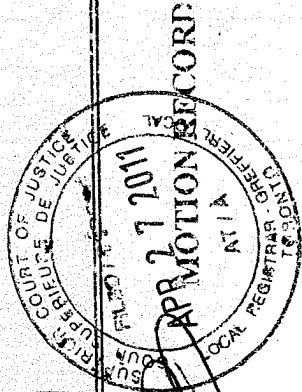
COUNSEL: YAN DAVID PAYNE AND ANDREW BEULETTEK FOR DEFENDANT APPLICANT HARVEY S. CAISKY AND DENNIGER MENDERSOHN FOR PLAINTIFF RESPONDENT.

THE OFFENDANT MOVES TO SET ASIDE THE DEFAULT JUDGMENT OF COURTS ENTERED ON JUNE 12, 2007. THE LEGAL TEST IS WELL-SETTLED, AND THE PARTIES AGREE, THAT IN ORDER TO SUCCEED ON THIS MOTION THE DEFENDANT MUST ESTABLISH: (1) THAT SHE MOVED QUICKLY TO SET ASIDE THE DEFAULT JUDGMENT ONCE BECOMING AWARE OF IT; (2) THAT SHE HAS PROVIDED A PLAUSIBLE EXPLANATION AS TO WHY THE DEFAULT OCCURRED; AND (3) THAT SHE HAS A REASONABLE DEFENCE ON THE MERITS. BASED UPON ALL OF THE EVIDENCE FILED ON THIS MOTION I AM SATISFIED THAT THE DEFENDANT DID NOT PERSONALLY BECOME AWARE OF THIS DEFAULT JUDGMENT UNTIL NOVEMBER OF 2010 WHEN SHE RECEIVED A LETTER FROM MR. CAISKY. WHILE THERE IS SOME EVIDENCE THAT SUGGESTS IT IS POSSIBLE THAT THE DEFENDANT LEARNED OF THE JUDGMENT EARLY, THE DEFENDANT DENIES ANY SUCH KNOWLEDGE, AND HER DENIAL IS CONSISTENT WITH HER COURSE OF CONDUCT SUBSEQUENT TO

(OVER)

Ontario  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto



PAYNE LAW PROFESSIONAL CORPORATION  
Barristers & Solicitors  
OFL Building  
15 Gervais Drive, Suite 605A  
Toronto, Ontario M3C 1Y8

Yan David Payne (48587N)  
Tel: (416) 447-4529  
Fax: (416) 447-7529

Lawyers for the defendant

RECEIPT OF THE NOVEMBER, 2010 LETTER, AND WITH THE VAST (2)  
MAJORITY OF THE REST OF THE EVIDENCE.

IMMEDIATELY UPON LEARNING OF THE DEFAULT JUDGMENT THE  
DEFENDANT MOVED WITH DISPATCH TO TRY TO HAVE THE DEFAULT  
JUDGMENT SET ASIDE. ACCORDINGLY, THE DEFENDANT HAS SATISFIED  
THE FIRST LEGAL CRITERION.

I AM ALSO SATISFIED WITH THE EXPLANATION THAT THE DEFENDANT  
HAS PROVIDED AS TO HOW AND WHY THE DEFAULT OCCURRED.  
THE DEFENDANT CLEARLY INTENDED TO DEFEND AGAINST THE ACTION,  
SHE RETAINED A PARALEGAL AND A LAWYER TO ASSIST HER IN HER  
DEFENCE. A STATEMENT OF DEFENCE WAS PREPARED AND  
SERVED ON THE PLAINTIFF ON NOVEMBER 28/2006, JUST ONE  
DAY AFTER THE DEFENDANT HAD BEEN NOTED IN DEFAULT.  
ACCORDING TO THE EVIDENCE, THE DEFENDANT NEVER PERSONALLY  
LEARNED THAT SHE HAD BEEN NOTED IN DEFAULT AS SHE HAD  
MOVED TO CHINA, ONLY HAD DIRECT CONTACT WITH HER  
PARALEGAL, AND HE HAD ONLY EVER TOLD HER THAT THE  
CASE WAS NOT MAKING ANY SIGNIFICANT PROGRESS. ACCORDINGLY THE  
DEFENDANT HAS SATISFIED THE SECOND ASPECT OF THE LEGAL TEST.  
I AM ALSO SATISFIED THAT THE DEFENDANT HAS A REASONABLE  
DEFENCE ON THE MERITS OF THE CASE (AS OUTLINED IN THE  
STATEMENT OF DEFENCE) AND, ACCORDINGLY, SHE HAS SATISFIED  
THE THIRD AND FINAL ASPECT OF THE GOVERNING LEGAL TEST.  
IN CONCLUSION, I AM SATISFIED THAT IT IS IN THE INTERESTS OF  
JUSTICE TO ALLOW THE APPLICATION BY THE DEFENDANT, AND  
TO SET ASIDE THE DEFAULT JUDGMENT OF CONWAY J.

TO SET ASIDE THE NOTING OF THE DEFENDANT IN DEFAULT,  
AND TO PERMIT THE DEFENDANT TO FILE HER STATEMENT OF  
DEFENCE TO DEFEND THE ACTION ON ITS MERITS.

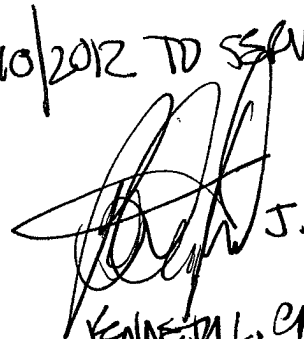
AS TO THE ISSUE OF COSTS, THE PLAINTIFF REMAINS ENTITLED TO  
THE \$7,500.<sup>00</sup> IN COSTS THAT WERE ORDERED BY CONWAY J. AS  
PART OF THE DEFAULT JUDGMENT PROCEEDINGS. IN ALL OF THE  
CIRCUMSTANCES OF THIS CASE, AND HAVING REGARD TO THE NATURE  
OF THE WAY THE LITIGATION OF THIS MOTION UNFOLDED I  
DECIDE TO MAKE ANY FURTHER ORDER AS TO COSTS.

THE WRIT OF SEIZURE AND SALE ISSUED JUNE 14, 2007 AS A  
CONSEQUENCE OF THE DEFAULT JUDGMENT IS ALSO SET ASIDE.  
THE DEFENDANT HAS FORMALLY UNDERTAKEN THROUGH HER COUNSEL  
NOT TO SELL OR IN ANY WAY ENCUMBER HER PROPERTY

(212 HAMMERSLEY BLD, MARKHAM) UNTIL MAY 25/2012. THE  
PLAINTIFF REMAINS FREE, OF COURSE, TO BRING ANY FURTHER MOTION  
CONSIDERED APPROPRIATE TO SEEK TO PRESERVE ANY ASSETS FOR  
POTENTIAL EXECUTION IN THE EVENT OF EVENTUAL SUCCESS ON THE  
~~WRIT~~ ACTION.

THE DEFENDANT HAS UNTIL FEBRUARY 10/2012 TO SERVE AND FILE  
HER STATEMENT OF DEFENCE.

THE \$7,500.<sup>00</sup> IN COSTS SHALL BE  
PAID TO THE PLAINTIFF BY THE  
DEFENDANT WITHIN 30 DAYS.

  
KENNETH L. CAMPBELL, J.