Caselaw Report

HUNT v RIEHL, 2024 ABCA 298

JUDGEMENT – SEPTEMBER 16, 2024

OCTOBER 7, 2024

A Judgment was delivered from the Court of Appeal to decide if a defendant, who was subject to a Noting in Default, should have the Noting in Default set aside.

The Court explained that when a party is noted in Default, the Court maintains discretion under rule 9.15 to set aside the Default and allow a party to file a Statement of Defence. The governing principles are:

A) Where there is a non-trivial flaw in the process leading up to the Noting in Default or Default Judgment, the Defendant must act promptly to have it set aside; or

B) Where the procedure leading up to the Noting in Default is ‘regular’ (i.e., not A above), then the applying party is generally called upon to show:

1) That they have an arguable defence,
2) that they did not intend to allow judgment to go by default and have a reasonable excuse, and
3) they acted promptly once aware of the default.

In Hunt, the first factor above was not satisfied (i.e. there was no serious flaw in the process). The Court of Appeal reviewed and approved the analysis in the second factor and ruled that the appellant did not act promptly, and no other overriding factor supported the exercise of the Court’s discretion in his favour. The Court of Appeal agreed with the lower Court, in that the Chambers Justice found the respondents did not promptly take steps to apply to the Court to set aside the Noting in Default.

Keeping the above test in mind is important if you are ever managing a file where you are noted in default. At a minimum, acting promptly to set it aside is always necessary.