

Court File Number: CU-15-11148-COCL

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Zerhman Pether Inc  
Plaintiff(s)

AND

Aiello  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

The plaintiff once again seeks an order striking the defendant's statement of ~~fact~~<sup>fact</sup> defence.

This action has been before the court on a number of occasions given the defendant's failure to answer undertakings and the fact he has had three counsel represent him - all of

18 Sept 18  
Date

McE...  
Judge's Signature

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## Judges Endorsment Continued

whom have removed themselves as  
solicitor of record

I waited until 10:30 am  
today before proceeding with  
the motion. The def. was paged  
and there was no response.

Based on the record before  
me I am granting the order  
striking the Statement of Defence.

Pursuant to my July 20/18 order  
in which, inter alia, the third  
solicitor was removed Mr Aiello  
had 30<sup>my</sup> ~~30~~<sup>m</sup> days to appoint a  
lawyer or serve a notice to act in  
person. - He has done neither despite  
being served with the July 20/18  
order on that day.

Mr Aiello has also failed to  
comply with the other order  
I granted on July 20/18 (prior

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Judges Endorsment Continued

to the above order removing counsel) which compelled Mr Aiello to answer undertakings and pay costs by Sept 17/18.

Despite being properly served with plaintiff's motion record as per my Tel 20/18 <sup>order</sup> removing counsel Mr. Aiello has not responded and pl's counsel has heard nothing from him.

Given the above and Mr. Aiello's violation of three undertakings, the last of which was peremptory, it is appropriate to strike his defence.

The pl. has patiently and diligently tried to engage Mr Aiello to file or no award.

It continues to incur legal costs. Striking the defence is a

1. I should note that with respect to the peremptory order some answers were provided outside the timeline set out in the order.

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Judges Endorsment Continued

reasonable sanction

I have reviewed the pls Bill of Costs. In my view substantial incidental costs sought of \$3,193.82 inclusive is reasonable and is hereby awarded.

The order shall go as per the draft Bill & signed

McE

Addendum

I have set the motion for default judgment Oct 3/18 - 30 mins.

McE