



[3] OCMI brings this motion for summary judgment and seeks the following relief:

- a) Damages in the amount of \$517,858;
- b) Pre-judgment interest on that amount at the rate of 8.75 percent per year, calculated monthly, not in advance, from July 31, 2024;
- c) An order for vacant possession of the Property;
- d) An order for leave to issue a writ of possession for the Property;
- e) Post-judgment interest at the rate of 8.75 percent per year, calculated monthly, not in advance; and
- f) Costs, on the full indemnity scale, of the motion and the action.

[4] The defendants have been self-represented throughout this proceeding. They delivered a statement of defence. In response to the OCMI motion record and factum, the defendants delivered a document titled “Defendants’ Statement and Affidavit”.

[5] The defendants, Paul Kurt Joseph and Karen Patricia John, attended on the return of the motion and each made oral submissions. Ms. John’s mother, the defendant, Cleopatra John, did not attend on the return of the motion.

[6] The defendants question the approaches taken by OCMI, from May 2021 when the Mortgage was arranged and following the default in payment in August 2023. The Defendants believe that OCMI is motivated to force the defendants to leave the property.

***The Pleadings and the Evidence***

[7] The parties’ respective pleadings are before the court. In support of its motion, OCMI relies on two affidavits sworn by Grant King (“the First King Affidavit” and “the Second King Affidavit”, respectively). Mr. King is the President of OCMI.

[8] OCMI’s motion was initially scheduled to be heard on August 29, 2024. Mr. Joseph and Ms. John both appeared on that date. They requested and were granted an adjournment, of approximately two weeks, to September 12, 2024. In the adjournment endorsement, Justice McVey set September 5, 2024 as the deadline for the delivery of the defendants’ materials; emphasized to the defendants that their materials had to be in proper form; and made it clear to the defendants that the adjournment was peremptory to them.

[9] The document on which the defendants rely—the “Defendants’ Statement and Affidavit”—is a two-page, twenty-paragraph document in which the defendants set out their position on the motion. The document is not dated, is not signed, and does not include any evidence. The document is more akin to a factum than it is to an affidavit.

### ***Disposition***

[10] For the reasons which follow, OCMI is granted summary judgment and entitled to the relief listed in sub-paragraphs 3(a), (c), and (d), above. The claims related to pre-judgment interest, post-judgment interest, and costs (“Remaining Claims”) will be determined on the next stage of the motion for summary judgment.

### ***Summary Judgment***

[11] The parties have exchanged pleadings; they are each entitled to bring a motion for summary judgment: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 20.01(1) and (3). The discretion available to and powers of the court on a motion for summary judgment are set out in r. 20.04.

[12] Of particular importance is the mandatory language in r. 20.04(2)(a): “The court shall grant summary judgment if [ ] the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or a defence”. In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 SCR 87, the Supreme Court of Canada sets out the key principles applicable to motions for summary judgment. Those principles include the principles listed below:

- “There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment” (at para. 49);
- For a determination on the merits to be fair, the motion judge must be confident that they “can find the necessary facts and apply the relevant legal principles so as to resolve the dispute” (at paras. 49-50, 57);
- When determining whether there is a genuine issue requiring a trial, the motion judge must consider whether the summary judgment procedure is timely, affordable, and proportionate (at paras. 49, 66).

[13] The principles listed above and others set out in *Hryniak* are applied in the context of a two-step process. The first step requires the motion judge to determine “if there is a genuine issue requiring a trial based only on the evidence before [them], *without* using the new fact-finding powers”: *Hryniak*, at para. 66.

[14] If there appears to be a genuine issue requiring a trial, the motion judge moves to the second step in the process. At that step, the motion judge determines “if the need for a trial can be avoided by using the [ ] powers under [rr.] 20.04(2.1) and (2.2).” The use of those powers, “will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole”: *Hryniak*, at para. 66.

[15] The moving party bears the onus of demonstrating there is no genuine issue requiring a trial: *Toronto Dominion Bank v. Hylton*, 2012 ONCA 614, at para. 5. If the moving party succeeds in doing so, then the burden shifts to the responding party. Where the responding party is a defendant, that shift in the burden requires the defendant to prove that a defence to the claims has a real chance of success: *Hylton*, at para. 5.

[16] To defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party is not entitled to rest solely on allegations in a pleading. Each side must “put their best foot forward” with respect to the existence or non-existence of material issues to be tried: *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9.

[17] The court is entitled to assume the record includes all the evidence the parties would present at trial: *Hylton*, at para. 5.

### ***The Record Before This Court***

[18] In the statement of claim, OCMI sets out the material facts upon which it relies in support of the claims for damages, pre-judgment interest, post-judgment interest, vacant possession of the Property, and costs on the full indemnity scale. The statement of claim is comprised of fifteen numbered paragraphs, including the particulars of the relief claimed (paragraph nos. 1 and 14) and a request for the action to be tried in Ottawa (paragraph no. 15).

[19] The statement of defence includes one unnumbered paragraph and seven numbered paragraphs. In their pleading, the defendants,

- a) deny the allegations in paragraph nos. 1, 7, 8, 9, 11 and 13 and dispute the accuracy of the quantum of damages claimed in paragraph 1(a) of the statement of claim;
- b) question OCMI’s handling of an issue that arose in relation to a policy of homeowner’s insurance the defendants were required to maintain on the Property (see paragraphs 2, 3, 5, and 6 of the statement of defence);
- c) allege that they “were provided no avenue to cure their default” in payment of the Mortgage (see paragraph 4 of the statement of defence); and

- d) allege that OCMI refused to accept monthly mortgage payments from the defendants in both September and October 2023.

[20] Pursuant to r. 25.07(2), “all allegations of fact that are not denied in a party’s defence shall be deemed to be admitted unless the party pleads having no knowledge in respect of any of the allegations in the statement of claim.” When the rules of pleading, including r. 25.07(2), are applied to the pleadings in this proceeding, the defendants are deemed to admit the following material facts alleged in OCMI’s statement of claim:

- The relevant terms of the Mortgage, both in 2021 when the principal sum was first advanced and in June 2023 on renewal;
- That OCMI served a notice of sale on September 5, 2023; and
- The terms of the Mortgage entitle OCMI, following default by the defendants, to vacant possession of the Property.

[21] Regarding the status of the Mortgage in August, September, and October 2023, the defendants plead a different version of the facts from those alleged in the statement of claim. Paragraph 3 of the statement of defence reads as follows:

The Defendants dispute a failure to make subsequent monthly payments, as the Plaintiff’s have ceased direct debit withdrawals on or about August 1, 2023. The Plaintiff’s Statement of Claim is dated September 5, 2023, and alleges two months of default in advance. The alleged defaults of August, September and October 2023 were the results of the Plaintiff’s actions that ultimately added costs to the Defendants, and denied the Defendants an opportunity to pay the Plaintiffs to resolve the matter.

[22] Regardless of the specific denials and different version of the facts alleged by the defendants in their pleading, the defendants may not rest on those denials and allegations as their response to the motion for summary judgement. For a party to put their best foot forward requires that they file evidence; the defendants did not do so.

[23] The defendants did not cross-examine Mr. King on either of his affidavits. Mr. King’s evidence is unchallenged and uncontested.

### ***The Claim for Damages***

[24] Included as an exhibit to the Second King Affidavit is a “Mortgage Statement for Information Purposes” (“MSIP”) setting out the total amount that OCMI submits was owing under the terms of the Mortgage as of July 31, 2024: \$517,858.

[25] I am satisfied that OCMI has discharged its evidentiary burden of establishing that there is no genuine issue requiring a trial regarding the claim for damages. Based on Mr. King's evidence, I make the following findings of fact:

- a) In May 2021, when the defendants accepted the OCMI mortgage loan commitment and, specifically, when on May 12, 2021, the defendants each signed the document titled "Mortgage Loan Commitment", the defendants had legal counsel.
- b) The defendants were fully aware, when they entered into the mortgage transaction with OCMI in May 2021, that the monthly payments required were for interest only.
- c) The defendants were also fully aware of the standard terms, which appear as Additional Provisions, Schedule "A" to the Charge registered on the title to the Property in May 2021.
- d) The defendants were fully aware, when the Mortgage was renewed in June 2023, that the Additional Provisions described in sub-paragraph (c), above, continued in force and effect.
- e) On at least fifteen occasions between December 1, 2021 and March 1, 2023, the defendants failed to make the requisite monthly payment. On each occasion, the defendants remedied their default.
- f) When the defendants defaulted on their August 1, 2023 payment, they were aware of the options available to them to remedy that default and failed to remedy that default.
- g) The defendants remain in default of the amounts owing pursuant to the Mortgage, including the full amount due on the June 2024 maturity date.

[26] The Additional Provisions include terms setting out OCMI's rights and the defendants' obligations in the event of a default in payment or in the event of the defendants' failure to pay the amount owing on the maturity date. Regarding the former, the Additional Provisions address administrative and service fees as follows:

In the event of any default, including non-payment of any monies due at the time or times provided in this Charge, and/or non-payment of any renewal fees payable by the Chargor to the Chargee, non-payment of the full principal amount on the Maturity Date, and early maturity by reason of the occurrence of an event of default and the acceleration of the repayment date of this Charge at the option of the Chargee, the Chargor agrees to pay to the Chargee all costs, charges, expenses, and legal fees (as between solicitor and client) incurred or suffered by the Chargee in relation to any activities and proceedings taken in connection with the collection or attempted collection of the monies due, or protection or realization of the security given in the Charge, including, and not less than:

NSF cheque/PAC, stop payment:	\$200 per occurrence
Inspection Fee:	\$150 per inspection
Insurance Placement Fee:	\$1,500 per placement of insurance plus premium
Property Maintenance and security:	\$200 per day
Collection fee for the broker & lender:	\$400 per hour, per person
Other General Administrative Services:	\$200 per hour, per person

[27] In the event of a failure to pay the principal balance owing at the maturity date, OCMI's rights and the defendants' obligations are as follows:

In the event of non-payment of the principal balance outstanding on the Maturity date, including early maturity by reason of the occurrence of an event of default and the acceleration of the repayment date of this Charge at the option of the Chargee and/or in the event that the Chargee otherwise initiates charge enforcement proceedings, the Charge shall be entitled and the Chargor agrees to pay (in addition to the other administrative and collection fees and costs set out herein) an administrative fee equal to three months' interest on the full unpaid principal amount.

[28] The defendants were fully aware that administrative fees, service fees, and costs arising from default would be added to the principal amount of the Mortgage and form part of the charge against the Property.

[29] I find that the MSIP accurately reflects the principal amount of the Mortgage as of July 31, 2024 (\$455,250); interest accrued, to July 31, 2024, at the rate of 8.75 percent per year (calculated at the end of each month and compounded); property tax payments made by OCMI in March, April, and July 2024; and administrative and service fees reasonably incurred and which OCMI is entitled to charge the defendants. As of July 31, 2024, the defendants owed OCMI a total of \$517,858 on the Mortgage.

[30] There is no genuine issue requiring a trial of OCMI's claim for damages as of July 31, 2024. The defendants have not discharged their burden to satisfy the court that they have a defence to the claim for damages, which stands a real chance of success.

[31] OCMI is entitled to summary judgment granting them damages in the amount set out in paragraph 3(a), above (i.e., \$517,858). In the concluding section of these reasons, I address the claims for pre-judgment interest (from July 31, 2024 to the date of these reasons), post-judgment interest, and costs. I turn next to the claim for vacant possession.

***The Claim for Vacant Possession***

[32] The claim for vacant possession is set out in paragraph 1(c) of the statement of claim and pursued on this motion. In support of the claim for vacant possession, OCMI relies on the following Additional Provision: "Upon default in payment of principal or interest under this Charge or in performance of any other terms and conditions hereof, the Chargee may enter into and take possession of the charged property free from all manner of former conveyances, mortgages, charges or encumbrances without the let, suit, hindrance or denial of the Chargor or any other person whatsoever."

[33] OCMI has discharged its evidentiary burden and established that there is no genuine issue requiring a trial of OCMI's claim for vacant possession. As noted in paragraph 20, above, the defendants admit that OCMI is entitled to vacant possession of the Property. The defendants do not raise a defence which stands a real chance of success.

[34] OCMI is entitled to summary judgment in the form of an order for vacant possession of the Property.

***The Claim for Leave to Issue a Writ of Possession***

[35] The claim for this form of relief is made exclusively on the motion for summary judgment. OCMI relies on r. 60.10 and submits that the pre-requisites, set out therein, for granting leave to issue a writ of possession are met. I agree.

[36] Based on the rules of pleading, including r. 25.07(2), the defendants are deemed to admit that they are the sole owners of the Property. Mr. King's uncontradicted evidence is that the defendants reside at the Property. In the more than three years that OCMI has been dealing with the defendants, there has never been any indication or notice from the defendants that anyone else resides at the Property.

[37] In September 2023, the defendants were served with a notice of sale. By the final quarter of 2023, the defendants were aware of this action; they filed their statement of defence in November 2023. In May 2024, the defendants participated in a case conference; they were provided with a copy of the endorsement from that conference. At no time during this proceeding have the defendants asserted that anyone other than the three of them resides at the Property.

[38] In these circumstances, it is cost-effective and proportionate to the complexity of and monetary amounts involved in this proceeding to grant summary judgment in the form of an order for leave to issue a writ of possession.

### ***Disposition***

[39] For the reasons set out above, OCMI is entitled to summary judgment granting them the following relief: (a) damages in the amount of \$517,858; (b) an order for vacation possession of the Property; and (c) an order for leave to issue a writ of possession for the Property. The portion of the motion related to the Remaining Claims is adjourned.

[40] As self-represented litigants, the defendants have not demonstrated that they familiarized themselves with the *Rules of Civil Procedure*, including the relevant forms. OCMI is not to be delayed in having a judgment issued and entered, which sets out the relief granted in these reasons. The court dispenses with the requirement for OCMI to obtain the approval of the defendants to the form and content of a draft judgment.

[41] OCMI shall prepare a draft judgment and submit it to the court, to my attention, for consideration. The draft judgment shall be electronically filed with the court in the usual manner and sent to the SCJ Assistants' generic email address, to my attention.

### ***The Remaining Claims***

[42] OCMI shall arrange a case conference, to proceed before me by video conference. The purpose of the case conference is to address the logistics for the determination of the Remaining Claims. The defendants are entitled to participate in the case conference. OCMI shall use reasonable efforts to arrange for the case conference on a date when the defendants are available to participate. The defendants shall take reasonable steps to make themselves available for the case conference.

[43] Regarding the claim for pre-judgment interest from July 31, 2024 to the date of these reasons, I note the following. OCMI claims that, as of that date, based on the stipulated interest rate of 8.75 percent per year, interest was accruing at \$120.77 per day. In the MSIP, the per diem rate at which interest is calculated increased with each passing month.

[44] The per diem rate of \$120.77 appears to be applicable only for the month of August 2024. Additional evidence is required to permit the court to determine the pre-judgment interest which accrued from July 31, 2024 to the date of these reasons.

[45] At the case conference, the court will address the additional materials to be filed regarding the claims for pre-judgment and post-judgment interest, including evidence and facta. The court will also address the requirement for an up-to-date bill of costs from OCMI. Last, the court will consider whether to address the Remaining Claims in writing or on the continuation of the oral hearing.

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Madam Justice Sylvia Corthorn

**Date:** March 7, 2025

**CITATION:** *Ottawa-Carleton Mortgage Inc. v. Joseph and John*, 2025 ONSC 1498  
**COURT FILE NO.:** CV-23-93557  
**DATE:** 2025/03/07

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**OTTAWA-CARLETON MORTGAGE INC.**

Plaintiff

– and –

**PAUL KURT JOSEPH, KAREN PATRICIA JOHN  
AND CLEOPATRA JOHN**

Defendants

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**REASONS FOR DECISION**  
**(Motion for Summary Judgment)**

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Corthorn J.

**Released:** March 7, 2025