

COURT OF APPEAL FOR ONTARIO

CITATION: Rout v. Firm Capital Mortgage Fund Inc., 2025 ONCA 287

DATE: 20250417

DOCKET: COA-24-CV-1145

Huscroft, Coroza and George JJ.A.

BETWEEN

David Rout, Jack McGee, Carol McGee, Roy McGee, Michele Russo and
Antionietta Russo

Applicants (Respondents)

and

Firm Capital Mortgage Fund Inc. and Firm Capital Corporation

Respondents (Appellants)

Alexander Soutter, for the appellants

Steven Chadwick, for the respondents

Heard: April 14, 2025

On appeal from the judgment of Justice Colin P. Stevenson of the Superior Court of Justice, dated September 17, 2024.

REASONS FOR DECISION

[1] This is a dispute between the appellants, a first mortgagee, and the respondents, a second mortgagee, over a three-month interest amount charged to the mortgagor by the appellants in discharging their mortgage. The appellants purported to charge this amount pursuant to s. 17 of the *Mortgages Act*, R.S.O. 1990, c. M.40.

[2] The application judge found that the respondents had standing to challenge this payment despite having discharged their second mortgage. Further, he found that the appellants were precluded from charging the three months' interest under s. 17 of the *Mortgages Act* because the notice of sale they had issued remained in effect. As a result, the interest payment constituted a prohibited penalty under s. 8 of the *Interest Act*, R.S.C. 1985, c. I-15. The appellants were ordered to pay the respondents the amount of the penalty, \$65,625, given the respondents' shortfall after discharging the second mortgage.

[3] The appellants argue that the application judge erred in finding that the respondents had standing to challenge the interest payment once they discharged their second mortgage on closing. We see no error in the application judge's treatment of this issue. Bringing an application before mortgage discharge may well be advisable, but it was not required. The respondents did not lose their right to pursue the matter on this account. We agree with the application judge that the respondents' decision to facilitate the sale by providing a discharge was a practical solution to challenging the amount paid to the appellants.

[4] The appellants argue, second, that the application judge erred in finding that the notice of sale they issued remained in effect and thus precluded the additional interest charge. We do not agree.

[5] The parties agreed to let the mortgagor sell the properties itself and the appellants did not proceed with the power of sale. But the application judge found that the parties did not agree on new financial terms. There was no forbearance agreement and the notice of sale remained in effect. Accordingly, the appellants were not permitted to charge the mortgagor the three months' interest. We see no error, much less a palpable and overriding one, in this finding.

[6] The appeal is dismissed. The respondents are entitled to costs in the agreed amount of \$23,000, all inclusive.

“Grant Huscroft J.A.”
“S. Coroza J.A.”
“J. George J.A.”