CITATION: World Financial Solutions Inc. v. 2573138 Ontario Ltd. Et al, 2025 ONSC 3111
COURT FILE NOS.: CV-18-00594161-0000 and CV-18-00594161-00A1
DATE: 20250530

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
WORLD FINANCIAL SOLUTIONS INC. Plaintiff and Defendant by Counterclaim	*Daniel Waldman*, for the Plaintiff
AND:	
2573138 ONTARIO LTD. And MARGUERITE ALFRED Defendants and Plaintiffs by Counterclaim	*Granville Cadogan*, for the Defendants
AND:	
ELISE BLOUIN, also known as ELIZABETH BLOUIN, also known as SUSAN ELIZABETH BLOUIN, SIETA & PIKES DEVELOPMENT LIMITED, 2868395 ONTARIO LIMITED, 2664358 ONTARIO LIMITED Third Parties	*Manmeet Dhaliwal*, for the Third Parties Elise Blouin, Sieta & Pikes Development Limited and 2664358 Ontario Limited *Tom Arndt*, for the Third Party, 2868395 Ontario Limited
	HEARD: April 11, 2025

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

[1] The defendants faced summary judgment motions from both the plaintiff and the remaining third parties.

[2] World Financial Solutions sought orders for possession and sale of a Toronto property encumbered by a collateral mortgage and for dismissal of the counterclaim. The grounds for the enforcement of the collateral mortgage are that the mortgage on the principal property remains in default. It cited various grounds for dismissing the counterclaim, but the main point is its assertion that the counterclaim is devoid of merit, as a matter of fact and law.

[3] The remaining third parties to the action, who previously obtained dismissal of the third party claim by the corporate defendant, seek to finish off the third party claim with a similar dismissal of the claim by the individual defendant, Marguerite Alfred.

[4] The events giving rise to the litigation are simple, despite the defendants' efforts to complicate them. To the extent that competing evidence seemed to raise some issues requiring trial in some instances, they were rendered moot or untenable by defects such as prescription or the dismissal of the corporate defendant's third party claim. Running each issue to ground, the court must conclude the defences, counterclaim, and the personal defendant's third party claim are certain to fail. The immutable barriers to the defendants' intricate claims to being the wronged parties are their use of the plaintiff's funds to finance virtually all of the property purchase and their inaction after the cheque for the first mortgage payment bounced.

[5] Apart from costs, the only substantive issue is the accounting of the sale of the Toronto property under the collateral mortgage. A reference will be directed. I will now provide additional background and list of issues arising from the motion and the defendants' response to it.

BACKGROUND AND ISSUES

[6] In 2017, 2573138 Ontario Ltd. acquired from Sieta & Pikes Development Limited, a company controlled by Elizabeth Blouin, an assignment of the agreement of purchase and sale to acquire a Haliburton resort property from the receiver of the previous owners. Ms. Alfred had been an investor in the mortgage syndicate and bought it in the name of her company, to recoup her investment. After court approval of the deal, 2573138 purchased the resort.

[7] Ms. Alfred financed 2573138's purchase with a one-year mortgage loan from World Financial in the principal amount of $2,031,662.50 and bearing interest of 14% in monthly payments of $22,152.08. The first six months of interest, totalling $132,912.50, were prepaid and deducted from the advance. 2573138 provided six post-dated cheques starting after the six months. Ms. Alfred had already provided post-dated cheques drawn on 2573138's operating account in the amount of $18,960.23, before the loan was restructured into the form registered. Rather than reissue new cheques for $22,152.08 each, she provided further cheques each in the amount of $3,191.85.

[8] As security for the loan, Ms. Alfred personally guaranteed the loan and granted a principal mortgage on the resort lands and a collateral mortgage on her Toronto home. World Financial's principal, Sunil Bhardwaj, also required as a condition of the financing that 2573138 make him a 25% shareholder through his daughter acting as a proxy.

[9] Upon World Financial's attempt to negotiate the first $18,960.23 cheque, it was returned NSF. After this default, on January 25, 2018, World Financial issued a notice of power of sale. On March 16, 2018, it issued the statement of claim in this action against the defendants. In November 2018, it exercised its right to enter the property and installed Elise Blouin as property manager.

[10] In December 2020, Ms. Alfred's lawyer, Granville Cadogan, arranged for his client Genua 1944 Inc. to purchase the resort from World Financial for $2,800,000. World Financial and Genua executed the Agreement of Purchase and Sale on December 15, 2020. In advance of this sale, on December 22, 2020, World Financial, 2573138, and Ms. Alfred executed an agreement that a total of $3,490,094.86 due as of December 31, 2020, on the principal mortgage and that the collateral mortgage on the Toronto property would be adjusted by deducting the sale proceeds. The discharge statement accompanying the agreement was also signed by Ms. Alfred and witnessed by Mr. Cadogan.

[11] The sale to Genua did not proceed. On January 5, 2021, World Financial and Genua, in a document witnessed by Mr. Cadogan, released each other from the APS and arranged for the return of the deposit. Ms. Alfred stated in her affidavit that World Financial never intended to proceed with the sale and that Mr. Bhardwaj orchestrated it to "stop my attempt to sell the property." At this point, her company had lost control of the property. There was no evidence from Genua on this point. Mr. Cadogan did not remove his gown and give evidence, either. The only enduring facts from this aborted sale were to draw lines under two issues to prevent them from later being contested: the amount due under the defaulted mortgage and a provident sale price.

[12] On October 28, 2021, World Financial sold the resort to 2868395 Ontario Limited, a company controlled by Ms. Blouin for $2,875,000, an amount $75,000 more than the sale to Mr. Cadogan's client approved by Ms. Alfred and 2573138.

[13] In response to the motions for summary judgment, the defendants advanced the following points:

1. The case involves complex triable issues unsuitable for summary judgment.

2. World Financial and 2573138 were not lender and debtor but co-venturers in the resort development.

3. The sale to Ms. Blouin's company was a nullity because of her status as an undischarged bankrupt, and because of a conspiracy to dispossess 2573138 of the property.

4. The notice of sale was invalid because the mortgage was not in default. The delay between the mortgage and the funding meant the first post-dated cheque should have been negotiated in January 2018 and not in December 2017.

5. The mortgagee in possession failed to account for revenues.

6. Errors or illegitimate charges in the discharge statement.

7. Mortgage renewal arising from one or more of the above breaches.

8. Counterclaim for $30,000,000 and vesting the property back to 2573138.

[14] Several of these arguments emerged only after the defendants' lawyer, Mr. Cadogan, drew the statement of defence and counterclaim, in 2023. The indirect and technically convoluted defences advanced the notion that the mortgage default never occurred. The argument that World Financial was wrong to have negotiated the first post-dated cheque on the date of the cheque ran counter to Part III of the *Bills of Exchange Act*, Bills of Exchange Act, R.S.C. 1985, c. B-4. If Ms. Alfred and 2573138 had understood the first mortgage payment was due a month after the first cheque, they could have inserted a different date on the cheque. Nothing substantive can turn on this point. Moreover, once the first cheque bounced, Ms. Alfred's response was to put a stop-payment on the cheques without protesting to World Financial that they had tried to deposit the first one. On examination for discovery, at q. 412, she testified that she did not recall contacting Mr. Bhardwaj to tell him he should not have tried to deposit it. At q. 453, she stated she could not remember contacting World Financial after the issuance of the notice of sale. This was not the conduct of a defaulting borrower making amends or to preserve her equity of redemption in the mortgaged property.

[15] The defendants tendered no evidence of Ms. Alfred or her company's efforts to treat the dishonoured cheque as an oversight or to replenish the company's bank account to rectify the default in the immediate aftermath. The significance of the bounced cheque, as the first of six months of post-dated cheques was that the borrower failed to make a single payment to service the debt. Nor did the record reveal any attempt to suspend enforcement or to refinance under ss. 21 and 22 of the *Mortgages Act*, R.S.O. 1990, c. M.40. Whatever the value of the technical defences to the claim, the lodestar in this mortgage enforcement case remains the corporate defendant's default at the first instance of its obligation and failure to make up for it during the ensuing months and years. To relieve the borrower of the default and to enable its pursuit of an order vesting the property back to it after miles of water under the bridge would defy this court's jurisdiction as a court of conscience.

[16] I will now turn to the issues as framed by the defendants.

1. SUITABILITY FOR SUMMARY JUDGMENT

[17] The summary judgment motion is governed by rule 20.04 of the *Rules of Civil Procedure*, the relevant provisions of which I reproduce below:

> **Disposition of Motion**
> ***General***
>
> 20.04 (2) The court shall grant summary judgment if,
>
> (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all, or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

Powers

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.

2. Evaluating the credibility of a deponent.

3. Drawing any reasonable inference from the evidence.

…

Only Genuine Issue is Question of Law

(4) Where the court is satisfied that the only genuine issue is a question of law, the court may determine the question and grant judgment accordingly, but where the motion is made to an associate judge, it shall be adjourned to be heard by a judge. R.R.O. 1990, Reg. 194, r. 20.04 (4); O. Reg. 438/08, s. 13 (4); O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Only Claim Is For An Accounting

(5) Where the plaintiff is the moving party and claims an accounting and the defendant fails to satisfy the court that there is a preliminary issue to be tried, the court may grant judgment on the claim with a reference to take the accounts. R.R.O. 1990, Reg. 194, r. 20.04 (5).

[18] Rule 20.04(2) requires the court to grant summary judgment if there is no genuine issue requiring a trial. Prior to the current wording of the rule, there was considerable uncertainty about whether "for trial" meant "requiring a trial," and whether any single issue, such as one of credibility, necessitated a trial: *Irving Ungerman Ltd. v. Galanis (C.A.)* (1991), 4 O.R. (3d) 545 (Ont. C.A.), at p. 551. The rule was amended in 2010 to now require the court to consider whether the case can be determined more expeditiously and preserve a "fair and just adjudication": *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 47-51.

[19] Because of the *Irving Ungerman* interpretation of the rule, motions judges often sent cases to trial because of disputed facts, such as the opinions of the doctors in this case, even if the resolution of such disputes did not affect the legal outcome and the construction of "for trial"

offended the rule against mootness. Since the replacement of "for" with "requiring," rule 20.04 has eliminated the need for many lengthy and expensive trials and has enhanced access to justice.

[20] The Supreme Court's guidance in *Hryniak*, at paras. 66-68, requires the court to first determine whether there is a genuine issue requiring trial, based on the evidence in the motion records, without resort to the three fact-finding powers in r. 20.04(2.1).

[21] Subrule 20.04(4) is significant because the court must consider whether a claim is legally tenable. This is the principal argument of the third parties' motion. It is also germane to the viability of the counterclaim.

[22] The claim for undoing the transfer of title to the current resort owner, 2868395, has been dismissed procedurally because of the corporate defendant's failure to post security for costs. The appeals from that outcome have been exhausted.

[23] World Financial's claim is premised on the unassailable evidence of the borrower's default of the mortgage loan and terms. The third party's defence is based on Ms. Alfred's lack of standing to sue for the losses of the corporation. Given the *prima facie* proof of these points on the clear facts, the baton is handed to the defendants to persuade the court that a trial is necessary. I will now turn to the points they raised.

2. PLAINTIFF AS COVENTURER AND NOT MORTGAGEE/CREDITOR

[24] World Financial's statement of claim pleaded a straightforward mortgage enforcement action by the mortgage lender against the borrower and guarantor. The defendants pleaded that the borrower 2573138 was not required to make any payments until it recouped the debt by selling the cottages. The premise of this defence and the counterclaim for damages were based on:

1. amalgamation of 2573138 and World Financial

2. verbal agreement by World Financial not to require payment

[25] The amalgamation argument is that 2573138 agreed to make Mr. Bhardwaj a 25% shareholder through issuance of shares and a directorship to his daughter, Meenakshi Bharwaj, as proxy. The defendants plead ss. 182(1)(e) and 134 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA").

[26] Section 182(1)(e) refers to arrangements by transfer of all or substantially all the property of a corporation. Perhaps the intended pleading was clause (c), which allows for amalgamations. Arrangements are corporate restructurings based on mergers and acquisitions. This provision has no bearing on the fact in this case. The evidence in the record was that Mr. Bhardwaj acquired the 25% as a sweetener to the mortgage transaction. The defence argument is that it was coerced into handing over the shares and entering the shareholder agreement because Mr. Bhardwaj refused to disburse the loan proceeds without this further concession.

[27] If 2573138's argument is correct, then the issue of past consideration could apply to nullify the share transfer. However, a 25% share transfer to World Financial's principal is not an amalgamation and does not even make one a subsidiary of the other.

[28] 2573138 also advanced an argument that World Financial became a fiduciary of 2573138, possibly because the daughter became a director and officer of 2573138. Shares in a company do not give rise to a fiduciary obligation. Taken at its highest and at a most generous reading of the pleading and the circumstances, the duties of an officer or director are not incompatible with exercise of a mortgage remedy after the borrower defaults on the loan. This, as in the case of several of the defendants' arguments, raise miscellaneous and *non sequitur* technical grounds as magic wands absolving them of liability for repayment of a $2,031,662.50 loan. Whether one interprets the 25% share transfer as Mr. Bhardwaj exacting a share in the profits or as further security for the loan, the court cannot read into it an amalgamation extinguishing the loan by making the two companies one. That never happened.

[29] Ms. Alfred's evidence was that Mr. Bhardwaj postponed all loan payments by agreeing that the payments "would come from the sale of the cottages being built." Her assertion that he said or meant to say this is legally problematic, because not having to pay until satisfaction of an uncertain future event is a fundamental variation of the mortgage loan agreement. Even the "surrounding circumstances" rule for extrinsic evidence did not derogate from the continued function of the parol evidence rule in achieving certainty and excluding "fabricated or unreliable evidence to attack a written contract": *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 SCR 633, at para. 59.

[30] When asked to identify any evidence in the record that Mr. Bhardwaj communicated an intention not to enforce the mortgage, the defendants' counsel referred to a May 24, 2017, requisition from Mr. Bhardwaj to 2573138 prior to the mortgage transaction. Requisition #22 stated (italics added):

> 22. We require an estimate to make an initial determination of financial feasibility as our clients are advancing the funds to purchase the land. Financing land development projects is a key component of running a business. When embarking on a land development project, the construction of developments requires more money and what is the source of funds other than your clients' own resources? Additionally, because your clients' ability to *repay* our clients is dependent on the successful sale of the lots, our clients would like to satisfy themselves whether you will be able to sell enough lots fast enough to pay off the loan.

[31] The above requisition does not support an agreement that no payments were due under the mortgage loan until the cottages were sold. At most, it could have raised an expectation that the one-year mortgage could be renewed, depending on the progress of the development or sale of the lots. *Repayment*, however, means paying back the principal. The mortgage here was not a repayment mortgage but an interest-only mortgage. At the end of the 12-month term, 0% of the principal would have been repaid. Whatever expectation may have been in the commercial atmosphere leading to the loan, including renewal at the end of one or more terms, the above

requisition #22 cannot support an expectation that the lender would not act if the borrower missed an interest payment.

[32] The real surrounding circumstances to the mortgage, beyond its basic written terms, were that the lender expected 2573138 to service the loan. Since the first six months of interest were prepaid by the lender adding to the principal, the post-dated cheques created a certain expectation that World Financial would start receiving payments from 2573138 after six months, by presenting the first cheque to its bank for deposit.

[33] Finally, the requisition letter and other lawyers' correspondence exchanged at the time of the loan transaction provided ample opportunity for 2573138 to obtain a written waiver of interest payments under the mortgage, but there was nothing of this kind in the record. Requisition #22 was the closest that counsel could identify. The surrounding circumstances thus establish that the written terms of the mortgage prevail, and no evidence exists to counter World Financial's right to mortgage enforcement.

3. SALE TO BLOUIN'S COMPANY A NULLITY OR OBJECT OF CONSPIRACY OR IMPROVIDENT

Nullity or Nullification

[34] The contention that the sale to 2868395 was a nullity, as with the other defence arguments, had several facets.

[35] The first argument was that the company lacked corporate personality because Elise Blouin was an undischarged bankrupt. Under s. 4(2) of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, a bankrupt is precluded from incorporating a corporation by signing articles of incorporation. Similarly, she was precluded by s. 118(1) from serving as a director.

[36] The point was litigated in separate litigation involving some of the same parties. In *Sieta & Pikes Development Limited v. 2573138 Ontario Ltd*., 2023 ONSC 4974, at paras. 40-51, the court held that Ms. Blouin's company could not bring an action because she could neither incorporate a company nor be a director. This is consistent with the public policy behind the cited OBCA provisions to preclude bankrupts from incorporating or managing companies when they face no personal financial accountability for corporate acts. For example, directors face liability to shareholders under s. 130 and to employees for wages under s. 131.

[37] The argument that the sale to Ms. Blouin's company must be reversed and title be restored to 2573138 founders because the right to assert that relief was extinguished by the dismissal of the corporate defendant's third party claim after it failed to post security for costs. Even if that had not occurred, the relief would create a windfall for the defendants but would prejudice the various parties who acquired mortgages and other security interests from 2868395 or in subsequent mortgage transactions. The reversal of the power of sale to 2868395 would violate s. 19 of the OBCA:

> 19. A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that,
> (a) the articles, by-laws or any unanimous shareholder agreement have not been complied with;
> …
> (d) a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer, or agent;
> …
> except where the person has or ought to have, by virtue of the person's position with or relationship to the corporation, knowledge to that effect.

[38] This provision codified the so-called "indoor management" rule preventing a corporation from undoing the consequences of dealings with a company to the detriment of others: *The Midas Investment Corporation v Bank of Montreal*, 2016 ONSC 3003, at para. 4; *Wallerstein v. 2161375 Ontario Inc.*, 2013 ONSC 976, at para. 18; and *2383003 Ontario Inc. v. Big Lobster Seafood Incorporated*, 2017 ONSC 5635, at para. 25.

[39] The exception for persons with actual or imputed knowledge of the defect does not assist the defendants. In the plain and grammatical meaning of the exception, it means that 2868395 cannot rely on Ms. Blouin's statutory incapacity to undo the transaction. While there was no evidence on the question, an assumption that Mr. Bhardwaj knew or ought to have known about Ms. Blouin's bankruptcy could permit 2868395 to invoke the incapacity to unravel a contract or other transaction. The OBCA confers no such right on the defendants.

[40] All these provisions protect those dealing with the company formed or directed by an undischarged bankrupt, but they confer no status on a party outside the transaction to attack it. World Financial received the proceeds of sale and is required to apply it to the indebtedness of the defendants. It has no basis for complaint against Ms. Blouin or her company. The only parties who could, in theory, complain about her and her company's capacity are those who financed her company's purchase. Those parties, BIP Management Corporation and Olympia Trust Company, were allowed out of the third party claim early in this proceeding, but not before admitting that their counsel had performed their due diligence that 2868395 was a validly existing corporation directed by Ms. Blouin as duly elected director. However questionable this admission might seem, the only parties who could complain about Ms. Blouin's status elected to waive any complaint.

Conspiracy

[41] In *Canada Cement LaFarge v. B.C. Lightweight Aggregate*, 1983 CanLII 23 (SCC), [1983] 1 SCR 452, the Supreme Court outlined the two forms of civil conspiracy:

1. when two or more persons combine to use lawful or unlawful means for the predominant purpose of causing injury to the party alleging conspiracy

2. when the conduct of two or more persons is unlawful and directed at the party, such that the harm to the party was likely and did occur.

[42] In either instance, a party asserting conspiracy must prove the agreement of the defendants, actual or constructive intent to cause the harm, the commission of the acts, and the suffering of the harm.

[43] Although the corporate defendant's third party claim has been dismissed, I will entertain the possibility that the alleged collusion between World Financial and Ms. Blouin could remain a live issue as against World Financial. The case for conspiracy, as I understood the defendants' submission, was that World Financial installed Ms. Blouin to manage the property to the exclusion of 2573138, misappropriated or did not account for revenues, and manufactured a fraudulent mortgage default to exercise power of sale.

[44] Some of the alleged misdeeds are the subject of other sections of these reasons. Focusing on the manufactured default and power of sale, the argument ignores the approbation of the power of sale by Ms. Alfred and her lawyer in signing off on the collateral agreement for the APS between World Financial and Genua. By this point, the defendants had acknowledged the default and the quantum of the indebtedness. Because foreclosure is also a mortgage remedy available to a mortgagee, once the defendants acknowledged default on the mortgage to World Financial, the lawfulness of the mortgagee's position cancelled any possibility of any assertion of a conspiracy on the part of World Financial and Blouin in selling the resort property to Blouin's company.

[45] The defendants argued that the sale to 2868395 for $2,875,000 was improvident. However, the price was $75,000 more than the APS with Genua arranged by Mr. Cadogan and signed off by Ms. Alfred. The provident sale argument does not require a trial to resolve in favour of World Financial's sale to Blouin.

4. SALE INVALID BECAUSE THE MORTGAGE WAS NEVER IN DEFAULT

[46] The defendants argued that the notice of sale was invalid, because the first interest payment cheque was returned NSF before the first payment came due after the six-month prepaid interest period. They say the advance was not funded until the month after the start of the mortgage, thus delaying the first "real" interest payment until January 2018.

[47] The claim for a declaration of the sale's invalidity suffers from the mootness arising from the dismissal of the corporate defendant's third party claim. Declaring the sale invalid as against World Financial as vendor is meaningless without the purchaser and current owner being subject to it. World Financial would not be required to disgorge the proceeds from the sale, if the current owner cannot be dispossessed of title to the property. Despite this mootness, I will deal with the defendants' submissions on this point in the event it impacts World Financial's claim for enforcement of the collateral mortgage.

[48] The mortgage as filed stated that the first interest payment date would be June 30, 2017, leading to a December 30, 2017, payment date for the first cheque. If one were being overly technical about it, the December 31, 2017, cheque was non-compliant. That issue aside, it is hard to argue that the payment was not due when the mortgage stated it was due. The terms of the mortgage loan agreement should prevail.

[49] Since an NSF cheque was a separate act of default triggering a service charge, this was problematic even if the December 31, 2017, cheque was meant to be applied to the January payment. In her cross-examination, Ms. Alfred stated she might have put a stop-payment on the remaining cheques and talked about the cheques with Mr. Bhardwaj. If this evidence lacked a semblance of reliability, it showed that the defence evidence on this point has no likelihood of being more concrete at trial.

[50] The parties agreed that 2573138 never made a single interest payment beyond the interest World Financial paid itself and added to the principal. Instead of the defendants' argument that the sale was invalid, the better argument is that World Financial bought the property and the property was for it to sell.

[51] The defendants did not tender evidence of their contribution to the purchase, but their counsel located a passing reference to the deposit having been $250,000. This would not have been an insubstantial sum, had 2573138 in fact paid it on closing. I pause to observe, however, that $250,000 represents about 12.6% of the purchase consideration relative to the $1,725,000 advance by World Financial toward the purchase. That ratio will not change. The disproportionate leverage for the purchase, the bounced first cheque, and the stop-payments on the remaining interest payments, all make it difficult for the court to relieve the borrower against the default based on highly technical contestations of the loan default made long after the mortgage fell into default.

[52] Contrary to the argument that the mortgage never fell into default, the basic facts of the case were that the borrower was never willing nor able to service the debt. The defence and the multi-million-dollar counterclaim and third party claim were blatant attempts to grab a judgment out of the ether. The equities of the case favour approbation of the mortgagee's conduct. While Equity follows the law, the legal result here and at trial would be that the borrower did nothing to bring the mortgage loan into good standing. Even if the first payment were deferred by a month because of delay between the registration of the mortgage and the $1,725,000 advance of funds, the stopped cheques and allowing the one-year term to expire provided ample grounds for the mortgagee to take possession and sell it under its notice of sale.

5. THE MORTGAGEE IN POSSESSION FAILED TO ACCOUNT

[53] In the March 2, 2023, statement of defence and counterclaim, the defendants alleged that the plaintiff, as mortgagee in possession since March 2019, failed to account for earnings of $4,209,262.99 from the operation of the resort. The defendants stated they were entitled to set off that amount from any amounts owed to World Financial.

[54] World Financial, in its reply and defence to counterclaim, pleaded the two-year limitation defence under ss. 4 and 5 of the *Limitations Act, 2002*, c. 24, Sched. B. The defendants submitted that the limitation could not have been discovered, because the plaintiff has not provided an accounting.

[55] The responding motion record did not contain the foundation for the assertion that mortgagee in possession did not account for $4,209,262.99 in earnings – a very exact figure – or when the defendants first became aware of the earnings. The responding motion record included a copy of an affidavit used in a previous motion which referred to profits collected by Ms. Blouin on behalf of World Financial for which it has failed to account. At para. 60 of that affidavit, Ms. Alfred stated:

> The profits from the operation of the Resort are being collected by Ms. Blouin on behalf of the Plaintiff. Sunil has not accounted to 257 for $1,175,391.14 in income received in 2018; $1,074,006.11 in 2019 and $1,959,865.74 collected in 2020. The Plaintiff is a shareholder under the sole direction of Sunil and is receiving the income from the operation of the Resort. 257's share of the income is $881,542.58 in 2018; $805,504.58 in 2019 and $1,469,899.31 in 2020. Sunil and the Plaintiff owe 257 approximately $3,156,947.57 plus interest for a total amount of $3,230,609.68 from 2018 and 2020.

[56] In the next paragraph, Ms. Alfred projected 2573138's loss of income of $10,908,483 from being dispossessed of the resort. Exhibit "AA," to which the repurposed affidavit referred, was a "Pro Forma Statement of Development Operation – 2018" updated as of November 2017. The verbal description in the affidavit was consistent with the repeated assertion that the loan would not be in default if World Financial applied the development value of the property. The problem with this argument is that any property developer who fell behind on financial obligations could argue that the lender would be paid out in full once the property was developed and sold. The defendants tendered no evidence of the alleged profits.

[57] A further problem with Ms. Alfred's evidence on the mortgagee's failure to account for rent in 2018 is that she pleaded the mortgagee took possession in 2019 and deposed in her responding affidavit on the motion, at para. 58, that "The Plaintiff along with Ms. Blouin operated the resort from November of 2018." If the project earned income of $1,175,391.14 during 2018, all or ten months of which 2573138 was in possession, the court is left wondering why World Financial would need to account for income collected by 2573138, the company Ms. Alfred controlled. Even though it was not part of the mortgage agreement, it would have been understood in this and any interest-only business loan that the borrower would service the interest out of income.

[58] A speculative assertion that the mortgagee failed to account cannot displace the more relevant question why the court should relieve the borrower of the default if the resort was earning income. Six years after the fact, the defendants' failure to provide evidence answering these basic questions about the case, except by attempts to deflect them, means no trial is required to reject the defences raised against the enforcement of the mortgages.

[59] Insofar as the claim for accounting is a set-off against mortgage arrears, the limitation period does not bar the defence, even if it bars the counterclaim: *Canada Trustco Mortgage Co. v. Pierce*, 2005 CanLII 15706 (ON CA), at paras. 43-46. If World Financial's claim had not extended to enforcement of the collateral mortgages, the equities favouring the set-off for accounting by the mortgagee would have been less compelling, because the loan shortfall was so great. The enforcement of the claim against the collateral mortgages will require a reference to allocate the proceeds of sale of the Toronto property. This issue therefore warrants a mortgage accounting reference, but not a trial.

6. ERRORS OR ILLEGITIMATE CHARGES ON THE DISCHARGE STATEMENT

[60] The defendants contend the discharge statement and the notice of sale contained illegitimate or invalid charges. Such charges would have inflated the amount owing and made it harder to exercise the right of redemption.

[61] Chief among these objections was that the mortgage proceeds advanced amounted to $1,725,000.00 and not $2,031,662.50 as stated in the notice. Since the mortgage provided for six months of prepaid interest by adding it to the principal, this point bears no further comment.

[62] The second objection was the interest prepayment penalty claimed in the amount of $132,912.48. This was essentially an acceleration provision reflecting the expectation damages arising from default resulting in the loss of interest payments after the default. It is not a penalty in the sense of inflation of actual damages contrary to the law of contract.

[63] The defendants' and Mr. Cadogan's agreement to the accounting in the discharge statement preclude them from advancing accounting irregularities in the discharge statement as a defence to the World Financial claim. Therefore, this point raised no triable issue.

7. MORTGAGE WAS RENEWED BECAUSE OF PLAINTIFF'S BREACHES

[64] I was not directed to any authority for the proposition that a breach of mortgage terms or conditions could result in the formation of a new loan agreement, essentially perpetuating the loan without payment. It clearly made no sense, by any understanding of the law of contract. If the proposition were correct, it would mean that a breach by the lender renews the mortgage for another term on expiry. There would have been no consideration for the new contract. In any event, it would have entered default from inception because the defendants never made any interest payments.

[65] Since I could not identify any breach of contract by World Financial negativing the effect of the defendants' principal default on the loan, this issue does not require further consideration.

8. COUNTERCLAIM AND THIRD PARTY CLAIM FOR $30,000,000 AND VESTING THE PROPERTY BACK TO 2573138.

[66] The claim by 2573138 against the third parties was dismissed, for its failure to post security for costs. All appeals from the security for costs order and dismissal have been exhausted. There can be no claim for reversing the sale and restoring the title to 2573138.

[67] Ms. Alfred's status as guarantor of the loan from World Financial does not give her status to sue the third parties or the defendant by counterclaim, World Financial. Her third party claim and counterclaim must be dismissed. This issue does not require a trial to resolve.

[68] Finally, the counterclaim by 2573138 against World Financial for the long-term profits or resale value of the resort depends on a breach of contract by World Financial giving rise to such expectations. On the evidence before the court, the only potential right to a share of profits or value would arise from the shareholder agreement for the share held by World Financial's principal, through his proxy. No such claim by the minority shareholder appears on the face of the record. As between 2573138 and World Financial, there was only a mortgage loan. The nature of a contract debt, secured by a mortgage, is for the lender to advance the funds and the borrower to repay it. If the loan calls for interest, then the interest must be paid to service the loan. None of the perceived breaches by World Financial in taking possession and selling the property give rise to a contractual liability for hypothetical profits or enhanced value of the resort property, had the borrower and guarantor not defaulted on the loan. There is no legal support for the counterclaim. It, too, must be dismissed.

CONCLUSION

[69] None of the various points raised by the defendants raises a genuine issue requiring trial. The World Financial motion for summary judgment must be granted, subject to a reference to ascertain the allocation of proceeds from the sale of the Toronto property. Since none of the defences to the mortgage enforcement claim were valid, World Financial's request directing possession and sale of the Toronto property will be granted.

[70] As observed during the motion, there was no claim in the notice of motion for damages against Ms. Alfred beyond the enforcement of the collateral mortgage. Accordingly, the monetary claim against her as guarantor beyond enforcement of the collateral mortgage is considered merged with the judgment and therefore dismissed.

[71] The third parties' motion for dismissal of the balance of the claim against them must also be granted.

[72] I will invite counsel to provide me with a set of draft orders implementing the above rulings. In the event of disagreement over the wording of the order for summary judgment in World

Financial's favour, I will resume my role as case management judge to shepherd the case toward a reference by an associate judge, on the limited issues arising from the sale.

[73] I expect the parties to resolve the costs consequences of the outcome of the motions. If they are unable to do so, counsel are at liberty to contact my judicial assistant with a reasonable schedule for the exchange of bills of costs and submissions.

Akazaki J.

Date: May 30, 2025

CITATION: World Financial Solutions Inc. v. 2573138 Ontario Ltd. Et al, 2025 ONSC 3111
COURT FILE NOS.: CV-18-00594161-0000 and CV-18-00594161-00A1
DATE: 20250530

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

WORLD FINANCIAL SOLUTIONS INC.

Plaintiff and Defendant by Counterclaim

AND:

2573138 ONTARIO LTD. And MARGUERITE ALFRED

Defendants and Plaintiffs by Counterclaim

AND:

ELISE BLOUIN, also known as ELIZABETH BLOUIN, also known as SUSAN ELIZABETH BLOUIN, SIETA

& PIKES DEVELOPMENT LIMITED, 2868395 ONTARIO LIMITED, 2664358 ONTARIO LIMITED

Third Parties

REASONS FOR JUDGMENT

Akazaki J.

Released: May 30, 2025