

# COURT OF APPEAL FOR ONTARIO

CITATION: AST Trust Company (Canada) v. Joseph-Walker, 2025 ONCA 521

DATE: 20250714

DOCKET: M56124 (COA-24-CV-0791)

Roberts J.A. (Motions Judge)

BETWEEN

AST Trust Company (Canada)

Plaintiff (Respondent/Responding Party)

and

Janina Joseph-Walker

Defendant (Appellant/Moving Party)

Obaidul Hoque, for the moving party/appellant

Christopher J. Staples, for the responding party/respondent

Heard: July 9, 2025

## ENDORSEMENT

[1] On August 17, 2021, the responding party, AST Trust Company (Canada) (“AST”), advanced to the moving party, Janina Joseph-Walker, a mortgage in the amount of \$2,304,000, secured against her Richmond Hill property. There is no dispute that Ms. Joseph-Walker has been in payment default under that mortgage since March 1, 2022, and that she has made no payments since default.

[2] On June 17, 2024, Casullo J. granted AST’s motion for summary judgment and leave to issue a writ of possession.

[3] On July 17, 2024, Ms. Joseph-Walker delivered a notice of appeal and an appellant's certificate regarding evidence. No further appeal materials have been delivered. This court sent a notice of intention to dismiss the appeal for delay, dated October 4, 2024, advising that an extension of time for the perfection of the appeal could be obtained by the filing of the consent of the parties or by order of a judge of the Court of Appeal before the expiration of the stated October 28, 2024 deadline. Ms. Joseph-Walker took no steps to extend the time for perfection of the appeal. On December 12, 2024, the Registrar dismissed the appeal for delay.

[4] On May 1, 2025, a writ of possession was issued. The writ was filed with the sheriff's office and an eviction was scheduled for July 10, 2025. A notice to vacate dated June 5, 2025, was served on Ms. Joseph-Walker.

[5] On July 8, 2025, Ms. Joseph-Walker contacted this court's office to obtain an urgent motion date to seek an order: 1) setting aside the Registrar's administrative dismissal of her appeal; 2) extending the time for the perfection of her appeal; and 3) staying the writ of possession issued on May 1, 2025 and the eviction scheduled for July 10, 2025. The motion was heard on July 9, 2025. AST opposed the motion.

[6] On July 9, 2025, in a brief endorsement, I dismissed Ms. Joseph-Walker's motion with reasons to follow. These are those reasons.

[7] I start with Ms. Joseph-Walker's request to set aside the administrative dismissal and for an extension of time to perfect of the appeal. The tests for both are somewhat analogous although not identical. Importantly, "[m]ore justification must be shown by a party moving to aside an administrative dismissal of an appeal than would have been required had the party earlier availed itself of its rights to move for an extension of time to perfect the appeal": *Sickinger v. Sickinger*, 2017 ONCA 760, at para. 14; *Langer v. Yorkton Securities Inc.* (1986), 57 O.R. (2d) 555 (C.A.), at para. 14.

[8] The overarching consideration is whether the justice of the case requires the setting aside of the administrative dismissal and the extension of the time to perfect. Typically informing that consideration are the following factors: 1) a continuing intention to appeal; 2) the length of and explanation for the delay; 3) prejudice to the respondent; 4) the merits of the appeal. See: *Sickinger*, at para. 13; *Codina v. Canadian Broadcasting Corp.*, 2020 ONCA 116, at para. 2.

[9] I am not persuaded that the justice of the case warrants the reinstatement of the appeal.

[10] While Ms. Joseph-Walker's timely notice of appeal of Casullo J.'s judgment evidences an initial intention to appeal, her failure to take any further steps to advance the appeal – even in the face of the Registrar's notice of intention to dismiss for delay and then the dismissal of her appeal - until more than a month

following receipt of the notice to vacate, clearly belies a continuing intention to appeal.

[11] Ms. Joseph-Walker has failed to adequately explain the lengthy delay, the reasons for the delay and her failure to take the requisite steps to advance and then reinstate the appeal. Although she claims she had difficulty obtaining the issued and entered order, there is no evidence that she took any steps to settle the terms of the order following the receipt of the motion judge's reasons in June 2024 to the receipt of the issued an entered order on April 10, 2025. I note that it appears to have been counsel for AST and not Ms. Joseph-Walker who had requested the November 14, 2024 case conference to settle the terms of the motion judge's order. This conference was adjourned at Ms. Joseph-Walker's request to November 21, 2024, which did not proceed through administrative error. Counsel for AST requested the rescheduling of the conference.

[12] As for the merits of the appeal, while my function on this motion is not to definitively determine whether the appeal grounds will succeed, I must assess whether "the appeal lacks merit to the extent that, in the circumstances, it is just to deny the appellant the right to proceed with it": *Clancy v. Farid*, 2024 ONCA 568, at para. 38. Having considered the two grounds of appeal pressed during the motion, I conclude that Ms. Joseph-Walker does not meet this relatively low bar.

[13] Ms. Joseph-Walker argues that the motion judge made two principal errors: 1) she erred in concluding that the mortgage agreement provided for a three-month interest bonus on default; and 2) she erred in finding that the mortgage agreement allowed for an escalation in the interest rate. Neither ground has any chance of success.

[14] First, with respect to the three-month interest bonus on default, the motion judge found, at paragraph 37 of her reasons, as follows:

In respect of AST's entitlement to a payment of three months' interest, I find this to be an enforceable term of the Mortgage. In so finding, I am guided by the Court of Appeal's recent decision in [*Devi Financial Inc. v. Everwood Place Ltd.*], 2022 ONCA 104, [2022] O.J. No. 569. There, the Court upheld the lower court's ruling that the bonus, a term agree to between the parties, was properly included in the amount owing to the mortgagee.

[15] The motion judge's interpretation of the mortgage agreement with respect to the three-month interest bonus is reasonable and reflects its plain language in paragraph 17 as follows:

In the event that the loan is not repaid at the time or times provided within the Charge or in the notice to prepay earlier, the Chargee will not be required to accept payment of the principal monies without first receiving three (3) months additional notice in writing or receiving three (3) months interest bonus in advance of the payment of the principal monies. [Emphasis added.]

[16] Ms. Joseph-Walker has not highlighted any error that would displace the deference owed on appeal to the motion judge's contractual interpretation of the

mortgage agreement: *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20, 491 D.L.R. (4th) 389, at paras. 27-28; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, 2 S.C.R. 633, at paras. 50-51; *Callidus Capital Corporation v. McFarlane*, 2017 ONCA 626, 51 C.B.R. (6th) 1, at para. 36.

[17] Second, in support of the interest rate ground, Ms. Joseph-Walker highlights paragraph 7 of the motion judge's reasons: "Interest was the higher of the rate of the Royal Bank of Canada's prime rate of interest plus 3.80% or 7.00% per annum, whichever was higher. The current mortgage interest rate is 11.00%" (emphasis added).

[18] Ms. Joseph-Walker submits that the motion judge escalated to 7.00% the 6.25% base interest rate provided for in paragraph 2 of the mortgage agreement:

For the eight (8) months of the Term of the Loan, the balance outstanding on the Charge from time to time will bear interest at a rate per annum of the greater of either six point twenty five (6.25%) percent per annum or the Royal Bank of Canada's Prime Commercial Lending Rate, as adjusted from time to time, plus three point eighty (3.80%) percent per annum. Interest is calculated and compounded on a 365/actual number of days basis and payable monthly in arrears.

[19] This ground has no merit. While the motion judge may have noted 7.00% rather than 6.25% in her factual narrative of the case, she correctly stated that, as supported by unchallenged evidence, the current mortgage interest rate charged by AST was 11.00%. There was no escalation of the interest rate.

[20] AST does not allege any specific prejudice from the delay. However, the consideration of the overall justice of the case requires me to take into account the undisputed facts that AST advanced funds to Ms. Joseph-Walker under the mortgage almost four years ago, which she did not pay back to AST, and that she has been in default for over three years. I also note Ms. Joseph-Walker's further default under paragraph 12 of the AST mortgage by the registration of six subsequent mortgages on title without notice to AST. Her affidavit evidence that she has now secured funding and is supposedly ready to redeem her mortgage does not affect the equities that are firmly in AST's favour. I note that there is a shortfall in her funding that does not cover the entirety of the mortgage debt owing to AST.

[21] For these reasons, I dismiss the motion to set aside the administrative dismissal of the appeal and to extend the time for perfection of the appeal.

[22] While I do not reach the issue of the stay, if I did, I would not grant it, largely for the reasons that I have already set out. Moreover, I am not persuaded that Ms. Joseph-Walker would suffer irreparable prejudice. The eviction is the result of her default under the mortgage and her failure to take the requisite steps to proceed with the appeal. She has been aware of the potential eviction for some time. While she claims in her second affidavit that the property is her "only available residence", there is no evidence that she does not have the means to move to other premises. Indeed, her evidence that she has apparently secured alternate

funding, paid out subsequent mortgages, and has tenants who presumably pay rent, suggests otherwise.

[23] The responding party is entitled to its costs of the motion from Ms. Joseph-Walker in the amount of \$3,000.

“L.B. Roberts J.A.”