

CITATION: Indigoblue Mortgage Investment Corporation v. Ahmad, 2025 ONSC 4161
COURT FILE NO.: CV-23-00703820
CV-23-00703820-00A1
DATE: 20250714

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
)
INDIGOBLUE MORTGAGE) *Robert B. MacDonald, for the Plaintiff*
INVESTMENT CORPORATION)
)
Plaintiff)
)
– and –)
)
MUHAMMAD AHMAD and SAJIDAH) *Louis Waring, for the Defendants*
KAUSAR)
)
Defendants)
)
– and –)
)
AWAIS AHMAD and TOLOUE) *James R. G. Cook, Abigail Corbin, for the*
GHAHRAEI and GHAHRAEI LAW) *third parties Toloue Ghahraei and Ghahraei*
PROFESSIONAL CORPORATION and) *Law Professional Corporation*
ROYAL BANK OF CANADA)
)
Third Parties)
)
) **HEARD:** March 12, 2025

KOEHNEN J.

REASONS FOR JUDGMENT

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OVERVIEW

- [1] These reasons relate to three separate motions for summary judgment.
- [2] The first is a motion by the Plaintiff against the Defendants for summary judgment on a second mortgage in the amount of \$596,000 plus interest and leave to issue a writ of possession.
- [3] The Defendants have in turn commenced third party claim against Awais Ahmad, Toloue Ghahraei, Ghahraei Law Professional Corporation, and Royal Bank Of Canada. They bring a motion for summary judgment against Toloue Ghahraei, Ghahraei and Law Professional Corporation (collectively “Ghahraei”), the lawyer who acted for the Defendant Mohammad Ahmad on the mortgage transaction.
- [4] Ghahraei brings her own motion for summary judgment against the Defendants dismissing the claim against them.

[5] For the reasons set out below, I grant the summary judgment motions of the Plaintiff and Ghahraei. I dismiss the Defendants' motion for summary judgment against Ghahraei,.

I. **Principles Applicable to Summary Judgment**

[6] The *Rules* provide that “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 defence.”¹ Put another way, I must grant summary judgment unless a trial is *required* to resolve an issue.

[7] There is no genuine issue that requires a trial if the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. “This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.”²

[8] Rule 20.04(2.1) allows the court on a motion for summary judgment to weigh evidence, evaluate credibility and draw any reasonable inference from the evidence, unless it is “in the interest of justice for such power to be exercised only at a trial”.³

¹ *Rules of Civil Procedure*, R.R.O., Reg. 194, Rule 20.

² *Hryniak v. Mauldin*, 2014 SCC 7 at para.49.

³ *Hryniak v. Mauldin*, 2014 SCC 7, at paras. 44-45.

[9] The summary judgment motion judge is entitled to assume that all parties have filed all the evidence that they would adduce at trial.⁴ The motion judge can draw adverse inferences from a party's failure to produce relevant evidence.⁵ A party cannot split their case and rely on evidence to be adduced at trial.⁶

[10] I turn then to address each of the three motions for summary judgment.

II. Plaintiff's Motion for Summary Judgment

[11] The Defendant Mohammad Ahmad⁷ is the sole registered owner of a property municipally known as 25 Chandler Drive in Scarborough, Ontario.

[12] On July 29, 2022 a mortgage was registered on the property in favour of the Plaintiff, Indigoblue Mortgage Investment Corporation, in the principal amount of \$596,000.

[13] The mortgage proceeds were used for two purposes: first to pay off a pre-existing mortgage on the property in the amount of \$403,360.52 in favour of Royal Canadian Mortgage Investment Corporation and to pay the balance of \$148,216.08 into a joint bank account at Royal Bank of Canada of which Mohammad and his wife, the Defendant Sajidah Kausar, are the account holders.

⁴ *Greenspan v. Goldman, Khosla and Cook*, 2022 ONSC 5578, para. 47-48, citing *2313103 Ontario Inc. et al. v. JM Food Services Ltd. et al.*, 2015 ONSC 4029 para. 40; *Gayle v. Cambridge Mercantile Corp.*, 2024 ONSC 1792, para. 66 & 91; *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200 para. 32, aff'd 2014 ONCA 878.

⁵ *Greenspan v. Goldman, Khosla and Cook*, 2022 ONSC 5578, para. 50; *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753 para. 9.

⁶ *2462192 Ontario Ltd. v. Paramount Franchise Group Inc.*, 2019 ONSC 593, para. 56.

⁷ Given the common surname between Mohammad Ahmad and the third party Awais Ahmad, who will figure prominently in these reasons, I will address each by their first name. I mean no disrespect in doing so.

- [14] As part of the closing documentation for the mortgage, Mohammad and Kausar also completed a preauthorized payment form which included a voided cheque for the RBC account and pursuant to which they authorized transfers out of the RBC account for monthly interest payments on the mortgage.
- [15] The mortgage went into default on May 1, 2023 when an interest payment was missed. After a conversation between the Plaintiff and Mohammad, the mortgage was put back into good standing. A further default occurred on June 21, 2023 which continues to this day.
- [16] Where a mortgage is legally valid, the principal of the mortgage was advanced and the Defendant has defaulted, the mortgagee is, *prima facie*, entitled to judgment in its favour.⁸
- [17] The defence here boils down to the allegation that the Defendants did not knowingly encumber their home in favour of the Plaintiff but that it was their 19 year old son, Awais, who fraudulently encumbered the property through a combination of pretending to be Mohammad, fraudulently signing documents on behalf of both parents and using the proceeds of the mortgages to pay off his own gambling debts and deposits on two pre-construction condominiums he had committed to purchase. Awais ultimately lost the deposits when he could no longer make further payments or close the transactions.

⁸ *The Effort Trust Company v. Sabaratnam*, 2017 ONSC 5594 at para. 19.

[18] In my view, these defences fail. The overarching difficulty with the defence is that \$403,360.52 of the mortgage proceeds were used to pay out another arm's-length mortgage which is not being challenged in this proceeding. The balance of the mortgage proceeds were deposited into an RBC bank account owned by Mohammad and Kausar. The Defendants' real complaint appears to be that Awais took funds out of the RBC account and used them for his own purposes. That, however, is not the fault of the Plaintiff or Ghahraei. It was the Defendants who allowed their son to have access to the RBC account and it was the Defendants who failed to monitor activity in the account.

i. Non Est Factum

[19] The Defendants next submit that the mortgage is unenforceable because of the principle of *non est factum*. The burden of proof with respect to *non est factum* lies on the party seeking to disown their signature.⁹ The Defendants have not met that evidentiary burden.

[20] The Defendants assert that they did not understand they were signing a mortgage but thought they were signing documents to discharge a previous line of credit on the property. They understood the line of credit was being closed because it had not been used and was no longer needed. They further state that their limited

⁹ *Farrell Estates Ltd v Win-Up Restaurant Ltd*, 2010 BCSC 1752 at para. 100; *Zhang v Soong*, 2012 BCSC 758 at para 77.

English proficiency prevented them from understanding the nature of the documents they signed.

[21] I accept that the doctrine of *non est factum* may apply to individuals who, due to limited proficiency in the English language, do not understand the nature of the documents they are signing.¹⁰ I do not accept that the Defendants fall into that category of individuals or that they otherwise did not understand the nature of the documents they were signing.

[22] At an early stage in the transaction Ghahraei says she spoke to Mohammad by phone and discussed, among other things, the need to obtain fire insurance. She had no concerns about Mohammad's ability to communicate in English. During that call, Mohammad directed her to deal with his son, Awais.

[23] Ghahraei deposes in her affidavit that she had a Zoom meeting with Mohamed on July 26, 2022 at 10 AM which lasted approximately 30 minutes and which she describes as follows:

- (a) Awais was present during the meeting to help with technology if Mohammad needed assistance.
- (b) Awais did not interfere in the conversation between Mohammad and herself and did not appear to be directing Mohammad about how to answer any questions she asked.
- (c) She shared her screen during the meeting, reviewed all the documents relating to the refinancing, and explained each document in detail. In particular she highlighted the interest rate, maturity date and the monthly payments required by the mortgage.

¹⁰ *Farrell Estates Ltd v Win-Up Restaurant Ltd*, 2010 BCSC 1752 at para. 150.

- (d) She reviewed the discharge statement for the existing second mortgage from Royal Canadian Mortgage Investment Corporation.
- (e) She asked Mohammad whether he fully understood the nature and effect of the documents she had presented because this was part of her practice in all private mortgage transactions to ensure that clients understand and agree to their obligations.
- (f) She saw Mohammad sign the documents via DocuSign during the Zoom meeting.

[24] Mohammad has a very different recollection of the meeting. He says the meeting lasted between two and five minutes during which Ghahraei spoke English to Awais who pretended to translate. In addition, Mohammad says that after the Zoom call, Awais signed and initialed the mortgage documentation via DocuSign without Mohammad's or Kausar's knowledge.

[25] Kausar received independent legal advice in relation to the mortgage from Spartak Hamzaj Weber who summarized his meeting with Kausar as follows:

- (a) Awais was present while he gave Kausar independent legal advice. Weber explained that it would be better if Awais were not present but Kausar insisted he remain.
- (b) Kausar appeared to understand and respond appropriately to questions he asked and explanations he gave.
- (c) Weber explained the mortgage documents, pointed to the lender fee of \$17,880, explained that all payments would go to interest only with no amount credited to the principal amount.
- (d) Kausar asked him questions including about how the lender fee would be paid and whether the interest payments could be made lower.
- (e) Weber does not remember Kausar asking Awais to translate anything he was telling her.

(f) After explaining the documents, Weber asked Awais to leave the room. Kausar asked that he stay. Weber insisted, Awais left and waited in the hallway and Weber kept the door open to accommodate Kausar's request that her son be present. During the signing process, Weber asked Kausar if anyone had threatened or pressured her to sign the papers. She answered no in response to both questions.

[26] Kausar has a very different version of that meeting. She says the meeting lasted approximately 10 minutes during which Weber spoke to her only in English while Awais instructed her in Punjabi "to sign, unidentified, a certificate of independent legal advice."

[27] As noted earlier, a judge on a motion for summary judgment is entitled to weigh evidence and evaluate credibility.¹¹

[28] Determining credibility is not simply a matter of arbitrarily preferring one witness' evidence over another's but deciding which version is in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."¹² In *The Toronto-Dominion Bank v. 2275518 Ontario Inc.*, my colleague Centa J. referred to the following factors as being specifically relevant to assessing credibility in affidavits:¹³

a. presence or absence of details supporting conclusory assertions;

¹¹ *Hryniak v. Mauldin*, 2014 SCC 7 at para.44-45.

¹² *The Toronto-Dominion Bank v. 2275518 Ontario Inc.*, 2023 ONSC 1050, para. 50, citing *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), aff'd 2024 ONCA 343.

¹³ *The Toronto-Dominion Bank v. 2275518 Ontario Inc.*, 2023 ONSC 1050, para. 52, aff'd 2024 ONCA 343.

- b. artful drafting which shields equivocation;
- c. use of language which is inappropriate to the particular witness;
- d. indications that the deponent has not read the affidavit;
- e. affidavits which lack the best evidence available;
- f. lack of precision and factual errors;
- g. omission of significant facts which should be addressed; and
- h. disguised hearsay.

[29] All of these factors are present here with respect to the Defendants' affidavits. They are present in such measure as to lead me to prefer the evidence of Ghahraei and Weber over that of the Defendants.

[30] Each Defendant swore an affidavit on the motion. Although the Defendants say that they do not speak or understand English well enough to understand what lawyers were telling them in meetings or to understand the nature of documents they were signing, both defendants signed their affidavits. Neither affidavit indicates the contents of the affidavit was translated for the affiant. If an affiant and does not understand English well enough to swear an affidavit, the affidavit must be translated for them and the jurat must indicate that the affidavit has been translated.¹⁴ As the Court of Appeal for Ontario noted in *Teefy Developments (Bathurst Glen) Limited v. Sun*:¹⁵

[10] ...The deponent of an affidavit is required to review its contents and swear or affirm to its truth. It is the obligation of the person commissioning the affidavit to ensure, among

¹⁴ *Teefy Developments (Bathurst Glen) Limited v. Sun*, 2021 ONCA 870, para. 9-11.

¹⁵ *Teefy Developments (Bathurst Glen) Limited v. Sun*, 2021 ONCA 870

other things, that he or she administers the oath or declaration in the manner required by law before signing the jurat or declaration: *Commissioners for Taking Affidavits Act*, R.S.O. 1990, c. C.17, s. 9(3). If the deponent does not understand English, then the affidavit must be translated for the deponent and the jurat on the affidavit must be changed to reflect that fact.

[11] The result, in this case, from the apparent failure to follow those fundamental procedures, is that it calls into question the reliance that I can safely place on the contents of the moving party's affidavit.

[31] Kausar admitted on cross-examination that she did not read her affidavit before signing it.

[32] It was only after the Plaintiff and Ghahraei raised this issue on cross-examination that the Defendants reproduced their affidavits with the required jurat. The reproduced affidavits made no further changes to the originals.

[33] The re-sworn affidavits fall into the category of too little, too late. It is unusual that Kausar, who never read the original affidavit, did not make a single change to it when it was translated to her orally. There is no evidence in the affidavits or elsewhere which explains whether counsel used a translator in his meetings with the Defendants to prepare the original affidavits. The affidavits contain no description of the degree of limitation on ability of the Defendants to understand or read English. The defendants have lived in Canada since the nineteen nineties. Mohammad had his own butcher business. Mohammad's affidavit merely states:

4. My first language is Punjabi.

5. At no material time was I fluent in the English language.

- [34] Those statements do not mean that Mohammad was not able to understand the nature of the documents he was signing or what lawyers were telling him.
- [35] Moreover, Mohammad says that in December 2023 he discovered the existence of Awais' preconstruction condominiums when he found transaction documents in Awais' closet. It would appear that his knowledge of English was sufficient to understand the nature of the documents he had found.
- [36] Kausar's affidavit does not even contain the minimal descriptions about language proficiency that Mohammad's does. It contains no statements at all about any limitations on her ability to understand or read English. In her initial affidavit she merely states she believes that neither Weber nor any of his staff present on the day of her meeting with him were conversant in Punjabi.
- [37] She then goes on to say that Awais told her in Punjabi that she should sign the certificate of independent legal advice. Critically, nowhere does she say that she required a Punjabi interpreter to understand what Weber was explaining to her or what the documents meant.
- [38] This amounts to "artful drafting which seek shields equivocation" that Centa J. warned of in *The Toronto-Dominion Bank v. 2275518 Ontario Inc.*¹⁶

¹⁶ *The Toronto-Dominion Bank v. 2275518 Ontario Inc.*, 2023 ONSC 1050, para. 52, aff'd 2024 ONCA 343.

[39] Mohammad's evidence is also contradictory on critical points. For example, his affidavit states that he was present while an appraiser was visiting the property during the course of the mortgage transaction. On cross-examination he changed his evidence and stated, "Hundred percent I was not there."¹⁷ Yet after his cross-examinations he re-swore his affidavit but did not change the statement that he was present during the appraiser's visit.

[40] Mohammad also admitted that Awais was having people come in and out of the property in relation to the transaction. He did not explain why Awais would have to have people coming in and out of the property if the object of the transaction was simply to discharge an unused line of credit from title.

[41] The Defendants' materials contains significant omissions that would have been critical in support of their defence. By way of example:

- a. They do not explain whether they used a translator to meet with their lawyer.
- b. They do not provide evidence from the mortgage broker(s), real estate agent(s), or lawyer(s) about their use of translators for the Royal Canadian mortgage or the three previous real estate purchases in which the Defendants were involved.

¹⁷ Ahmad Affidavit ¶39; Ahmad Transcript P.33 Q.156-157. The moving parties also told the investigator for the title insurer that Mr. Ahmad was present: Ahmad Third Supplementary Affidavit, Ex "A", ¶26.

- c. They do not provide evidence from the mortgage broker who referred them to Ghahraei. The only evidence about his involvement is hearsay.

[42] Those are critical omissions in a case where the defences is *non est factum*.

[43] As noted earlier, on a motion for summary judgment, the motion judge is entitled to assume that the parties have filed all of the evidence that they would use at trial. On the record before me, the Defendants have not made out the defence of *non est factum*.

ii. The Forgery Defence

[44] The Defendants submit that the mortgage is unenforceable as a fraudulent instrument under the *Land Titles Act*¹⁸ (the “Act”).

[45] The fundamental element of the land titles regime is found in section 78 (4) of the *Act* which provides that an instrument registered on title is deemed to be “effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register.” For purposes of this case, once registered on title, a mortgage binds the land.

[46] The *Act* was amended in 2006 to create a protection for some types of fraudulent instruments by adding s. 78(4.1) which provides:

¹⁸ *Land Titles Act*, RSO 1990, c L.5

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.

[47] The Defendants submit that the mortgage falls into this exception. Whether it does turns on the meaning of “fraudulent instrument” which s 1 of the *Act* defines as follows:

“fraudulent instrument” means an instrument,

- (a) under which a fraudulent person purports to receive or transfer an estate or interest in land,
- (b) that is given under the purported authority of a power of attorney that is forged,
- (c) that is a transfer of a charge where the charge is given by a fraudulent person, or
- (d) that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument;

“fraudulent person” means a person who executes or purports to execute an instrument if,

- (a) the person forged the instrument,
- (b) the person is a fictitious person, or
- (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument;

[48] In paragraph 48 of their factum, the Defendants submit that Awais was a fraudulent person in the sense that he held himself out as owner and in doing so “purported to receive or transfer and interest in land”.

- [49] I do not accept that the facts of this case fall within the exception of a fraudulent instrument under the *Act*.
- [50] Although it appears that Awais may have written emails to Ghahraei in which he spoke in the first person appearing to be Mohammad, the definitions above require that the holding out be “in the instrument” that is to say that Awais held himself out in the mortgage to be the owner of the property but was not.
- [51] I have found that Mohammad received legal advice from Ghahraei in which she explained the mortgage to him. I have found that Mohammad signed the mortgage by DocuSign which Ghahraei saw him do in the Zoom call. Whatever holding out there may have been in the emails was superseded by Ghahraei’s explanation of the mortgage to Mohammad and his consent to it.
- [52] Even if it was Awais who actually affixed the electronic signature to the documents instead of Mohammad, the meeting as described by Ghahraei, was one in which Mohammad expressed sufficient agreement with the mortgage documents to make the electronic signature bind him regardless of who actually clicked the computer mouse to affix the signature. Ghahraei had reviewed all of the documents with him and confirmed that he was acting voluntarily and without coercion. That amounts to consent, even if Awais clicked the mouse to sign.
- [53] Kausar is in a similar position. She received legal advice from Weber and signed the documents in his presence.

[54] As a result of the foregoing, I do not accept that the mortgage is a fraudulent instrument under the Act.

[55] Given that both the Defendants' defences of *non est factum* and fraud/forgery have failed, the plaintiff is entitled to summary judgment.

III. Defendants' Summary Judgment Motion against Ghahraei

[56] The Defendants move for summary judgment against Ghahraei. They allege that Ghahraei was negligent when acting for them by failing to determine whether they had sufficient capacity to understand the transaction, by failing to ensure an interpreter was present, by allowing a family member to act as an interpreter, and by failing to consider that "red flags of undue influence".

[57] As an opening observation, Ghahraei never purported to act for Kausar. She acted only for Mohammad. As noted earlier, Kausar was sent for independent legal advice to protect her interests.

[58] The Defendants rely heavily on my reasons in *Chand Morningside Plaza Inc v Healthy Lifestyle Medical Group Inc.*,¹⁹ for the proposition that a presumption of undue influence attaches in a parent-child relationship, especially when the parents have limited English language skills, and the child is Canadian educated.

¹⁹ *Chand Morningside Plaza Inc v Healthy Lifestyle Medical Group Inc.*, 2024 ONSC 7285

Quite apart from my findings earlier in these reasons about the Defendants' failure to demonstrate lack of English language skills, *Chand* is readily distinguishable. In *Chand*, the mortgagee had a decades long relationship with the parties and was aware of the truly limited English language skills of the parents and their unsophisticated nature. Moreover, in *Chand*, the parents were being asked to act as accommodation guarantors for a mortgage their son intended to place on a property owned by the son's corporation. As part of the guarantee accommodation, the parents were being asked to provide a collateral mortgage on their home.

[59] The case before me here is entirely different. On its face, the transaction here was not for the benefit of Awais but was for the benefit of the Defendants. The Defendants were having a mortgage discharged from title to the home in which they lived. Additional funds were being transferred into their bank account at RBC. That the Defendants allowed Awais access to their RBC account was a decision they made and is not one of which Ghahraei was or ought to have been aware. Moreover, if such a presumption did arise, I am satisfied that it has been rebutted by evidence in the record that the Defendants entered into the transaction as a result of their own "full, free and informed thought"²⁰ as reflected in the evidence of Ghahraei and Weber.

²⁰ *Geffen v Goodman Estate*, [1991] 2 SCR 353 at 379.

[60] In support of their third-party claim against Ghahraei, the Defendants rely on an expert report of Joel Kadish dated December 9, 2024. Mr. Kadish opines that Ghahraei did not meet the standard of care of a reasonably competent solicitor as follows:

The critical failure was that Ghahraei did not communicate with Ahmad and Kausar in a way which allowed them to understand the nature and effect of the documentation presented to them via electronic delivery. Another breach of the standard of care of the reasonably competent solicitor was to allow Awais to be present on the virtual call and to act as de facto translator.

[61] The fundamental flaw with the Kadish report is that it was prepared before either Ghahraei or Weber filed their affidavits. As a result, it is based solely on the affidavits of Mohammed and Kausar. Given that I have rejected their evidence in favour of that of Ghahraei and Weber, the entire report falls on that basis alone. More particularly: (i) Kadish assumes that Ghahraei acted for Kausar Which she did not; (ii) I have found that Ghahraei and Weber communicated with their respective clients in a way so as to ensure that they understood the documents they were signing; and (iii) I accept the evidence of Ghahraei and Weber that Awais did not act as a translator for his parents during their meetings with lawyers.

[62] The Defendants refer to additional “red flags” which they submit ought to have alerted Ghahraei to the fact that something was amiss. I disagree.

[63] The Defendants submit that the presence of a third party who is overly involved in the transaction is a red flag. I agree that this could potentially be a red flag. It

does not rise to one here because in an early conversation, Mohammad directed Ghahraei to deal with Awais. If a client directs a lawyer to deal with someone else on his behalf, the client does so at their own risk. Moreover, the involvement of Awais was not excessive because he did not interfere in the meetings between his parents or their lawyers.

[64] The second “red flag” to which the Defendants refer is Ghahraei’s communication with Mohammad through Awais’ email account. Whether that is a red flag depends on the circumstances. I am satisfied that it does not rise to the level of a red flag here because Mohammad told Ghahraei to deal with Awais and because Ghahraei spoke with Mohammad directly to explain the nature of the documentation being signed.

IV. Ghahraei’s Summary Judgment Against the Defendants

[65] Ghahraei brings what is referred to as a “boomerang” summary judgment motion against the Defendants even though she has not formally brought a notice of motion to that effect.

[66] On a motion for summary judgment, the court has authority to grant “boomerang” summary judgment in a responding party’s favour where no formal cross-motion has been brought.²¹ To do so requires the court to be satisfied that summary judgment is warranted by the record, that it is in the interests of justice, and is

²¹ *1062484 Ontario Inc. v. McEnergy*, 2021 ONCA 129, para. 37; *King Lofts Toronto I Ltd. v. Emmons*, 2014 ONCA 215, para. 14-15.

proportionate.²² I am satisfied that it is appropriate to grant summary judgment in Ghahraei's favour.

[67] In defence of her position, Ghahraei filed her own expert report from Tannis Waugh. Both sides agree that both experts were competent to be qualified as experts in real estate practice which I accept them as.

[68] Waugh's report walks through the alleged red flags the Defendants raise and addresses them in detail. She also addresses the fundamental question of whether Ghahraei met the applicable standard of care for a real estate lawyer acting for borrowers in relation to a private mortgage. She concludes that Ghahraei met that standard of care. I accept and agree with Waugh's opinion. Waugh's report is based on the assumption that I accept Ghahraei's evidence about the length of the meeting with Mohammad and the contents of that meeting. I have accepted Ghahraei's evidence in that regard. Her report follows a similar structure with respect to the advice provided by Weber.

[69] Kadish filed a one-and-a-half-page reply report in which he essentially says that Mohammad's evidence should be preferred to that of Ghahraei.

[70] I have come to a contrary conclusion and have accepted the evidence of Ghahraei and Weber about the nature of the advice they provided to the

²² *Asghar v. Dial and File Process Servers Inc.*, 2024 ONCA 864, para. 3-4.

Defendants. I have found that the mortgage was explained to the Defendants in a way that the Defendants understood.

[71] As noted earlier, I am entitled to assume that the evidence before me on the motion for summary judgment is the same evidence that will be available at trial. That evidence makes it clear that there is no genuine issue that requires a trial to determine and that the matter can be determined on a motion for summary judgment.

[72] Although none of the parties raised it, the respective motions for summary judgment give rise to potential concerns about partial summary judgment given that there are third-party claims that may continue after this motion.

[73] In *Malik v. Attia*²³ the Court of Appeal required the moving party on a motion for partial summary judgment to:

- (i) Demonstrate that dividing the determination of this case into several parts will prove cheaper for the parties;
- (ii) Show how partial summary judgment will get the parties' case in and out of the court system more quickly; and
- (iii) Establish how partial summary judgment will not result in inconsistent findings by the multiple judges who will touch the divided case.

²³ *Malik v. Attia*, 2020 ONCA 787.

[74] I am satisfied that the three factors all militate in favour of summary judgment here. The motions for summary judgment will take the Plaintiff and Ghahraei out of the picture. That will certainly make the litigation cheaper for them but will also make any continuing litigation cheaper for the remaining parties by simplifying that litigation and removing the issues associated with the Plaintiff and Ghahraei. Similarly, granting the Plaintiff's and Ghahraei's summary judgment motions will get the case in and out of court more quickly by removing two parties immediately and making the balance of the litigation considerably simpler. I am equally satisfied that granting summary judgment will not result in inconsistent findings. The remaining claims against RBC and Awais are discrete claims that do not turn on findings made on the motions for summary judgment. The claim against Awais will turn on whether he improperly took funds from his parents' bank account. The claim against RBC will turn on whether it acted improperly in allowing Awais to remove those funds.

Conclusion and Costs

[75] For the reasons that are above, I grant the plaintiff's motion for summary judgment against the Defendants and grant the Plaintiff leave to issue a writ of possession against the property municipally known as 25 Chandler Drive, Toronto, Ontario. I also grant Ghahraei's motion for summary judgment dismissing the third party claim against her. I dismiss the Defendants' summary judgment motion against Ghahraei.

[76] Any party seeking costs arising out of these reasons will have three weeks to deliver written submissions. The responding party will have two weeks to deliver its answer with a further one week for reply.

Released: July 14, 2025

Koehnen J.

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COURT FILE NO.: CV-23-00703820
CV-23-00703820-00A1
DATE: 20250714

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

INDIGOBLUE MORTGAGE INVESTMENT
CORPORATION

Plaintiff

– and –

MUHAMMAD AHMAD and SAJIDAH KAUSAR

Defendants

– and –

AWAIS AHMAD and TOLOUE GHAHRAEI and
GHAHRAEI LAW PROFESSIONAL CORPORATION
and ROYAL BANK OF CANADA

Third Parties

REASONS FOR JUDGMENT

Koehnen J.

Released: July 14, 2025