

- a. The mortgagor had defaulted both before and at maturity;
- b. The first mortgagee issued notice of sale under its mortgage;
- c. The property was sold consensually by the parties, rather than pursuant to the power of sale.

[3] For reasons released on September 17, 2024 I decided that the first mortgagee (the respondent) was not entitled to charge the three months' interest or any part of that sum. This charge was not permitted by the terms of the mortgage or s.17 of the *Mortgages Act*. It was a penalty prohibited by s.8 of the *Interest Act*. I also found that the second mortgagees (the applicants) had standing to challenge this payment, notwithstanding any delay in pursuing the application and notwithstanding they had discharged their mortgage to facilitate the sale of the property.

[4] The result was that \$65,625.00 was payable by the respondent to the applicants with pre-judgment interest at the *Courts of Justice* rate from the closing date of the sale of the second property.

[5] The parties subsequently exchanged written submissions on costs. This is my decision on costs.

[6] Costs are presumptively payable by the losing respondent to the successful applicants. The issue here is the quantum. The applicant seeks a total of \$41,497.84, which comprises \$25,988.97 on a partial indemnity basis up to its August 12, 2024 offer to settle, plus \$15,508.87 on a substantial indemnity basis after that date, based on the application of rule 49.10(1).

[7] There is no doubt that the applicants did better (they were awarded \$65,625) than their offer to settle (requesting \$58,000). As they "beat" their offer I award the requested \$15,508.87 on a substantial indemnity basis for the period after the offer, which was made only 9 days before the hearing. This sum was within the reasonable contemplation of the parties if they continued the fight after receiving the offer. The time spent after that offer is reasonable and the hourly rates are fair for the Toronto area. Both parties put a similar effort into fighting over a relatively small sum, and the winners are entitled to their costs on the higher scale after that offer, notwithstanding the amount in issue.

[8] I will not, however, award the applicants all of their request for \$25,988.97 on a partial indemnity basis for the period prior to the date of the offer. The preparation time for the short cross-examinations was very high and, more importantly, the applicants from the outset pursued various issues which they abandoned prior to the hearing (they were abandoned for good reason—the claim was overly broad).

[9] In the circumstances I will allow the applicants the all-inclusive sum of \$10,011.03 for the period prior to the offer.

[10] As a practice note, there has been a significant delay in issuing these costs' reasons because I was unaware that the written submissions had been posted to Case Center. In future, it might be

prudent to notify a judicial assistant when costs' submissions have been completed and are ready for review. The court apologizes for the delay.

[11] The result is that the respondent shall pay the applicants forthwith the all-inclusive sum of \$36,000 by way of costs.

C. Stevenson J.

Date: August 12, 2025

CITATION: *Rout v. Firm Capital Mortgage*, 2024 ONSC 4657
COURT FILE NO.: CV-22-00685050
DATE: 20251012

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID ROUT

Applicant

– and –

FIRM CAPITAL MORTGAGE

Respondent

REASONS FOR COSTS DECISION

C. Stevenson J.

Released: August 12, 2025