

- [5] Section 2.4 of the Charge deals with mortgage renewals. Para. 2.4(a) provides that the Lender may “at our option and by agreement with you in writing” renew the initial loan.
- [6] Para. 2.4(b) provides that the initial loan “may also be automatically renewed where, before the balance due date or maturity date, we send to you a notice offering to renew the outstanding indebtedness at certain rates and terms...”
- [7] Para 2.4(c) provides: “You do not have a right to renew the initial loan. Renewal of the initial loan and any of the fixed term loan is at our discretion”.
- [8] The Plaintiff did not renew the mortgage.
- [9] The Plaintiff asserts that default in payment under the Charge occurred on May 9, 2024, and still continues. Additionally, the Charge matured on May 1, 2024 at which time the balance of the principal, together with any outstanding interest and expenses, became payable and were not paid, nor have they been paid since. No agreement has been entered into between the Plaintiff and the Chargors to amend, extend or renew the Charge.
- [10] The amount due under the Charge as of August 26, 2024 was \$1,639,856.42.
- [11] The Plaintiff issued a Notice of Sale under Charge on June 5, 2024.
- [12] The Defendants, Lauriston Maloney and Amber-Lee Maloney, are the registered owners of the Property. Lauriston Maloney, Amber-Lee Maloney, Shelly Breedon, and Amanda Paquette are believed to be in possession of the Property. A Notice Demanding Possession was served on Lauriston Maloney, Amber-Lee Maloney, Shelly Breedon, Amanda Paquette, and all adult occupants on August 8, 2024.
- [13] The Defendants do not dispute the mortgage or the terms of the mortgage, or that the mortgage was not renewed or extended when it matured on May 1, 2024, or that they did not pay out the mortgage or make payments since that date. The Defendants argue that, based on discussions with an unidentified representative of Home Trust, they understood and expected that they would have the option to renew the mortgage following the maturity date.
- [14] The Defendants explain that even though the original charge was with Computershare Trust Company, they always understood that Home Trust was the lender and during the entire term of the mortgage, all of their correspondence had been with a representative of Home Trust.
- [15] On November 6, 2023 the Defendants received a letter from Home Trust stating that they will not be offering a renewal of the mortgage, and that the entire remaining balance would be due on March 1, 2024, the maturity date. Ms. Maloney states in her affidavit filed for this motion:

In January 2024, I had telephone conversations with Jay Anderson from Home Trust, asking why they were not offering a renewal of our mortgage.

Mr. Anderson refused to give us reasons, however, I believe that it was due to the ongoing criminal charges that Lauriston and I were facing.

- [16] On July 20, 2023, the Defendants were arrested and charged with various *Criminal Code* offences. Some of those charges have been dropped, but the Defendants remain charged with trafficking in persons (s. 279.01), obtaining a material benefit from trafficking in persons (s. 279.02) and, with respect to Mr. Maloney only, assault contrary to s. 266 of the *Criminal Code*. The Defendants have pled not guilty and their trial is currently scheduled for October 26, 2025.
- [17] Between January 2024 and May 2024, the Defendants made repeated efforts to secure alternative financing in order to pay off the balance owed to Home Trust, but were not successful in securing alternative financing. They have continued, without success, to seek alternative financing.
- [18] The Plaintiff has filed a reply affidavit by Anna Campoux, the Senior Mortgage Underwriter at Home Trust who was responsible for dealing with the Defendants' mortgage application. She states that she dealt with the Defendants' mortgage broker, and never directly with the Defendants. She states that the Defendants were given a choice of a one year or two year term, and that she did not promise the broker that the mortgage would be renewed or extended upon maturity or that the Defendants could renew the mortgage without issues. All of her communications were with the mortgage broker acting for the Defendants. There were no telephone calls or conversations directly with the Defendants.

Motions for Summary Judgment

- [19] Rule 20.04(2)(a) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 provides: "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."
- [20] Rule 20.04(2.1) sets out the court's powers on a motion for summary judgment:

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.

- [21] These powers were extensively reviewed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, where it laid out a two-part roadmap for summary judgment motions, at para. 66:

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

- [22] Even with these extended powers, a motion for summary judgment is appropriate only if the material provided on the motion “gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute” (*Hryniak*, at para. 50).
- [23] In *Hryniak*, the Supreme Court held (at para. 49) that there will be no genuine issue for trial when the summary judgment 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.”
- [24] To defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party may not rest on mere allegations or denials of the party’s pleadings, but must set out—in affidavit material or other evidence—specific facts establishing a genuine issue requiring a trial. The parties may not rely on the prospect that additional evidence may be tendered at trial: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200 (Ont. S.C.J.), at para. 26, aff’d 2014 ONCA 878 (Ont. C.A.), leave to appeal to SCC refused, [2015] S.C.C.A. No. 97 (S.C.C.)
- [25] It is well settled that “both parties on a summary judgment motion have an obligation to put their best foot forward” (see *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9). Given the onus placed on the moving party to provide supporting affidavit or other evidence under Rule 20.01, “it is not just the responding party who has an obligation to ‘lead trump or risk losing’” (see *Ipex Inc. v. Lubrizol Advanced Materials Canada*, 2015 ONSC 6580, at para. 28).
- [26] A plaintiff or defendant bringing a motion for summary judgment has the initial onus of proving that there is no genuine issue for trial and must file some affidavit evidence to

support that position. See for example, *Sanzone v. Schechter*, 2016 ONCA 566, at paras. 30-32, confirming the initial evidentiary obligation borne by the moving party (in that case the defendant) on a summary judgment motion.

[27] If the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party's evidence or risk a summary judgment.

[28] As held by Perell J. in *Levac v. James*, 2016 ONSC 7727, at para. 132:

Hryniak v. Mauldin does not alter the principle that the court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial. The court is entitled to assume that the parties have advanced their best case and that the record contains all the evidence that the parties will present at trial...

[29] While Rule 20.04 provides the court hearing a summary judgment motion with "enhanced forensic tools" to deal with conflicting evidence on factual matters, the court should employ these tools and decide a motion for summary judgment only where it leads to "a fair process and just adjudication": *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44; *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6 (and cases cited therein).

[30] Having reviewed the material filed by each party, I am satisfied that this is an appropriate case in which to proceed by way of motion for summary judgment. Few of the relevant facts are in dispute, and I am satisfied that I can make the necessary factual findings based on the affidavit evidence filed by the parties to determine the legal questions raised.

Analysis

[31] The Defendants submit that there are genuine issues of both fact and law that require a trial. First, the Defendants argue that the mortgage charge agreement was unconscionable as there was an inequality in bargaining power between the two parties. Second, the Defendants argue that the Plaintiff's misrepresentation of the mortgage unjustly prejudiced the Defendants.

[32] The Defendants submit that with respect to the renewal of the mortgage, there was an inequality of bargaining power between them and the Plaintiff. Given the criminal charges that they were facing, they were in a vulnerable position. The Defendants argue that the Plaintiff took advantage of this vulnerability by refusing to offer a renewal of the mortgage. This had the resulting effect of an improvident bargain, since it unduly disadvantaged the Defendants as the vulnerable party.

[33] I reject both of the Defendants' arguments for the following reasons:

[34] The mortgage agreement is dated February 3, 2022. That fact is not in dispute.

- [35] As indicated above, section 2.4 of the Charge deals with mortgage renewals. It is clear from the passages quoted above at paras. 5 to 7, that there was no guarantee that the mortgage would be renewed, and that renewal was at the discretion/option of the lender.
- [36] This agreement was signed in February 2022, many months before July 20, 2023, when the Defendants were arrested and charged with various *Criminal Code* offences.
- [37] Since the July 20, 2023 Criminal charges post-date the mortgage agreement, they cannot reach back to make the terms of the February 2022 Agreement “unconscionable”. The Defendants had not been charged when they agreed to these terms and so the Criminal charges are not relevant to the February 2022 Agreement.
- [38] Moreover, the Defendants are not asking that the February 2022 agreement be set aside. They are not asking that any agreement be set aside, they are arguing that the Court should require the lender to enter into an agreement with the Defendants and renew the mortgage.
- [39] The doctrine of unconscionability is a doctrine in equity that may be used to set aside unfair agreements that result from an inequality of bargaining power: *Uber Technologies Inc. v. Heller*, 2020 SCC 16, at para. 54. There is no authority for the Defendants’ position that the doctrine of unconscionability can be used to compel an unwilling party to enter into an agreement with another party.
- [40] In my view, the terms of the February 2022 agreement are clear and unambiguous. I do not accept the Defendants’ allegation that they were assured by an unidentified representative of Home Trust that they could renew the mortgage at the end of the term. It strains credulity to suggest that any lender would offer such a guarantee, particularly in light of the express wording of the agreement to the contrary.

Conclusion

- [41] The Plaintiff’s motion for summary judgment is granted as follows:
- a) Payment by the Defendants, Lauriston Maloney and Amber-Lee Maloney, of the sum of \$1,639,856.42 up to and including August 26, 2024, together with interest at 2.990% per annum from that date to the date of Judgment or payment;
 - b) The Defendants deliver to the Plaintiff possession of the lands and premises described as follows:

PT E 1/2 LT 22 CON 7 ESSA TWP PT 1, 51R19257; ESSA. Property Identification Number: 58113-0060 (LT) and municipally known as 7582 8th Line, Utopia, ON L0M 1T0;
 - c) The Plaintiff shall be at liberty to issue to issue a Writ of Possession in respect of the Property;
 - d) Post-judgment interest at 2.990% per annum;

[42] Costs are payable by the Defendants on a joint and several basis and are fixed at \$17,383 on a substantial indemnity basis pursuant to Para. 9.17 of the Standard Charge Terms: *Everest Finance Corporation v. Jonker*, 2023 ONCA 87, at para. 8; *Everest Finance Corporation v. Jonker*, 2023 ONCA 146, at para. 3.

Justice R.E. Charney

Released: September 2, 2025

CITATION: Home Trust Company v. Maloney, 2025 ONSC 5016

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HOME TRUST COMPANY

Plaintiff

– and –

LAURISTON MALONEY AND AMBER-LEE
MALONEY

Defendants

REASONS FOR DECISION

Justice R.E. Charney

Released: September 2, 2025