

**SUPERIOR COURT OF JUSTICE – ONTARIO**

491 Steeles Avenue East, Milton ON L9T 1Y6

**RE:** TMSSD INC, Plaintiff  
**AND:**  
Atinuke Taibat Ojeikere, Defendant  
**BEFORE:** Justice Kurz  
**COUNSEL:** Olubunmi Ogunniyi, for the Plaintiff  
Atinuke Ojeikere, Self Represented  
**HEARD:** September 9, 2025, by video conference

**ENDORSEMENT**

***Introduction***

[1] This is a motion for summary judgment motion in an action arising from a mortgage which matured without payment.

[2] For the reasons which follow, I find that there is no genuine issue which requires trial and grant judgment to the Plaintiff, although I have reduced the Plaintiff's claims to additional charges on the subject mortgage.

***Background***

[3] The Defendant is the owner of a property located at 11 Pierpoint Place, Mississauga (the Property”).

[4] On or about January 10, 2025, the Plaintiff advanced \$120,000 to the Defendant. That loan was secured by an interest-only second mortgage against the Property (the

“Mortgage”). The Mortgage was for a six-month term, expiring July 8, 2025. It carried an interest rate of 12%. The Defendant obtained independent legal advice prior to entering into the Mortgage.

[5] On June 23, 2025, the Plaintiff’s counsel sent a letter to the Defendant, indicating that the Mortgage was maturing and would not be renewed. Instead it demanded payment upon maturity. The letter stated:

I confirm that I am Legal Counsel to TMSSD Inc., Second Mortgagee of the above-referenced Subject Property.

Please note that the subject mortgage will mature on July 8, 2025. Please be advised that my client will not be renewing the said mortgage.

Please further note that my client expects that all sums due and owing will be paid by July 8, 2025.

Please direct any and all requests relating to the pay-out of the subject mortgage to me at the following e-mail address:

[olu@ogunniylawoffices.com](mailto:olu@ogunniylawoffices.com).

I look forward to your request for a Discharge Statement prior to July 8, 2025.

[6] The Mortgage was not paid out when it matured and remains in default.

[7] On July 10, 2025, the Plaintiff issued its statement of claim in this action. It claimed \$120,000, possession of the Property, interest at 12% per annum and costs on a substantial indemnity basis.

[8] In her Statement of Defence, the Defendant pleaded that:

1. No legal demand was served on her;
2. The Plaintiff improperly added \$8,695.05 to the costs owing; and that
3. She questions how she can owe the Plaintiff \$120,000 without her having been provided with a statement by the Plaintiff.

4. She should be entitled to an added 120-day grace period to pay out the Mortgage.

### ***Issues***

[9] The key issue in this motion is whether there is a genuine issue which requires a trial. The sub-issues are as follows:

1. Is this an appropriate case for summary judgment?
2. If so, has the Plaintiff provided a *prima facie* case for summary judgment?
3. If so, has the Defendant raised a genuine issue requiring a trial?
4. In light of the above, what order should this court make?

### **Issue No. 1: Is this an appropriate case for summary judgment?**

#### **Applicable Authorities Regarding Summary Judgment**

[10] This motion is brought under r. 20.01 of the *Rules of Civil Procedure*. The terms of r. 20.04(2) are mandatory: "[t]he 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..." [emphasis added]. See also: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 ("*Hryniak*"), at para. 68 and *Mega International Commercial Bank (Canada) v. Yung*, 2018 ONCA 429, 141 O.R. (3d) 81 ("*Mega International*"), at para. 83.

[11] There will be no genuine issue requiring a trial if the summary judgment process allows the court to reach a fair and just determination on the merits on a motion for summary judgment. That 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 those facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result (see *Hryniak*, at paras. 49 and 66).

[12] Each party to a motion for summary judgment has an obligation to "...put its best foot forward' with respect to the existence or non-existence of material issues to be tried" (*Ramdial v. Davis (Litigation Guardian of)*, 2015 ONCA 726, 341 O.A.C. 78, at para. 27, citing *Papaschase Indian Band No. 136 v. Canada (A.G.)*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11).

[13] The onus for proving that there is no genuine issue requiring a trial rests with the moving party. However, in response to the evidence of the moving party, the responding party may not rest on mere allegations or denials in the party's pleadings. That party must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial. A self-serving affidavit is not sufficient itself to create a genuine issue requiring a trial in the absence of detailed facts and supporting evidence (see r. 20.02(2) and *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 31).

[14] In the oft-repeated maxim of Justice Coulter Osborne of the Ontario Court of Appeal, the responding party to a motion for summary judgment must "lead trump or risk losing": *106150 Ontario Ltd. v. Ontario Jockey Club*, [1995] O.J. No. 132 (Ont. C.A.), at para. 35. The principle was reaffirmed in *Ramdial*, at para. 28.

[15] The court is entitled to assume that the record before it is complete and that it contains all of the evidence that a party would present if there were a trial: *Broadgrain Commodities Inc. v. Continental Casualty Company (CNA Canada)*, 2018 ONCA 438, 80 C.C.L.I. (5th) 23 ("*Broadgrain Commodities Inc.*"), at para. 7, citing *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 111 O.A.C. 201 (C.A.), at para. 17; *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at paras. 27, 33-34, aff'd 2014 ONCA 878, leave to appeal to S.C.C. refused, [2015] S.C.C.A. No. 97; and *Tim Ludwig Professional Corporation v. BDO Canada LLP*, 2017 ONCA 292, 137 O.R. (3d) 570, at para. 54.

[16] Once the moving party discharges the burden of showing that there is no genuine issue for trial, the onus shifts to the responding party. That party must then

provide evidence of specific facts showing that there is a genuine issue requiring a trial: *Ramdial*, at para. 30. An adverse inference may be drawn from a failure to support the allegations or denials in a party's pleadings: *Pearson v. Poulin*, 2016 ONSC 3707, at para. 40.

[17] Under r. 20.04(2.1) the court may exercise enhanced powers on the motion in order to determine the presence or absence of a genuine issue requiring a trial, unless it is in the interests of justice to do so at trial. Those enhanced powers allow the court to weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence. As Paciocco J.A. wrote for the Court of Appeal for Ontario at para. 83 of *Mega International*, those powers "...are presumptively available to a summary judgment motion judge to use to fairly and justly adjudicate a claim at a motion for summary judgment: *Hryniak*, at para. 45".

[18] Nonetheless, the court is not required to resort to those powers to make up for a party's evidentiary shortcomings (see *Broadgrain Commodities Inc.*, at para. 7).

This is an appropriate case for summary judgment

[19] I find that this is an appropriate case for summary judgment. All of the relevant evidence is already before the court and if necessary, it can draw the necessary inferences from that evidence or the lack of such evidence.

**Issue No 2: Has the Plaintiff demonstrated a *prima facie* case for summary judgment?**

[20] The initial onus rests on the moving party to prove that it has raised a *prima facie* case for summary judgment. I find that it has.

[21] This is a straightforward case in which the parties agreed to a six-month mortgage which matured on July 8, 2025. No payment was made at maturity and the debt remains outstanding.

**Issue No. 3: Has the Defendant raised a genuine issue requiring a trial?**

[22] Once the moving party meets its onus of showing that there is a *prima facie* case for summary judgment, the onus shifts to the Defendant.

[23] Here I find that the Defendant fails to meet her onus. The use of this court's enhanced powers would not assist in that regard.

[24] As set out above, the Defendant raises four claims:

1. No legal demand was served on her;
2. The Plaintiff improperly added \$8,695.05 to the costs owing; and that
3. The \$120,000 principal is not owing.
4. She should be entitled to a 120 day "grace" period in which to refinance or sell the Property.

**Legal Demand was Served on the Defendant**

[25] Regarding the demand, as set out above, I have found that the demand was made in writing by email to the Defendant. The Plaintiff has not only provided the letter but the covering email. The Defendant, who has not filed any responding materials, does not allege that the email address which the Plaintiff's counsel used to send its demand letter to her was not the correct address.

**Application of s. 8 of the *Interest Act* Regarding Additional Fees**

[26] Regarding the \$8,695.05 in additional charges; they are set out in the statement of claim as follows:

- For interest to July 9, 2025 \$39.45
- Default correspondence \$500.00
- Three months' interest \$3,600.00

- Default proceedings fee \$500.00
- Mortgage statement fee \$565.00
- Legal Costs including HST \$3,490.60

[27] The Plaintiff states that these figures are based on paragraph 8 of the Standard Charge which applies to the mortgage, which states as follows:

The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges which shall from time to time fall due and be unpaid in respect of the land, and **that such payments, together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of the land** and of negotiating the Charge, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize upon the security given in the Charge (including legal fees and real estate commissions and other costs incurred in leasing or selling the land or in exercising the power of entering, lease and sale contained in the Charge) **shall be, with interest at the rate provided for in the Charge, a charge upon the land in favour of the Chargee pursuant to the terms of the Charge** and the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the land, which payments with interest at the rate provided for in the Charge shall likewise be a charge upon the land in favour of the Chargee. **Provided, and it is hereby further agreed, that all amounts paid by the Chargee as aforesaid shall be added to the principal amount secured by the Charge and shall be payable forthwith with interest at the rate provided for in the Charge, and on default all sums secured by the Charge shall immediately become due and payable at the option of the Chargee, and all powers in the Charge conferred shall become exercisable.**

[Emphasis added]

[28] The added charges set out above are a mixed bag of properly charged interest, legal fees that the Plaintiff is already claiming as costs of this motion and action as well as penalties to which the Plaintiff is not entitled to collect.

[29] Section 8 of the *Interest Act*, R.S.C.1985, c. I-15, is legislation which protects mortgagees from certain unfair lending practices. It reads as follows:

**8(1)** No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real Properties or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

**(2)** Nothing in this section has the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrears.

[30] In *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18, [2016] 1 S.C.R. 273 ("*Krayzel*"), at para. 21, Brown J., writing for the majority of the Supreme Court of Canada, explained that the purpose of s. 8(1) is to protect landowners from charges "that would make it impossible for [them] to redeem, or to protect their equity" (adopting *Reliant Capital Ltd. v. Silverdale Development Corp.*, 2006 BCCA 226, 270 D.L.R. (4th) 717, at para. 53, leave to appeal refused, 2006 CanLII 39436 (SCC)).

[31] The court in *Reliant Capital* further explained at para. 53 that "[i]f an owner were already in default of payment under the interest rate charged on monies not in arrears, a still higher rate, or greater charge on the arrears would render foreclosure all but inevitable."

[32] In *Krayzel*, Brown J. summarized the effect of s. 8(1) as follows at para. 24:

**24** Section 8(1) identifies three classes of charges - a fine, a penalty or a rate of interest - that shall not be "stipulated for, taken, reserved or exacted" if "the effect" of doing so imposes a higher charge on arrears than that imposed on principal money not in arrears. Section 8(2) affirms that subs. (1) does not prohibit a contract from requiring payment of interest on arrears of interest or principal at a rate equivalent to or lower than that payable on principal money not in arrears.

[33] The leading Ontario case on the application of s. 8(1) is *P.A.R.C.E.L. Inc. v. Acquaviva*, 2015 ONCA 331, 126 O.R. (3d) 108 ("*P.A.R.C.E.L.*"). There, Cronk J.A., writing for the Court of Appeal for Ontario, explains at para. 51 that:

8(1) creates an exception to the general rule that lenders and borrowers are free to negotiate and agree on any rate of interest on a loan. Section 8 prohibits lenders from levying "fine[s], penalt[ies] or rate[s] of interest" on "any arrears of principal or interest" that are "secured by mortgage on real property".

[Citation omitted]

[34] At para. 50 of *P.A.R.C.E.L.*, Cronk J.A. cited with approval the comment of the British Columbia Court of Appeal at para. 56 of *Reliant Capital*, cited above, which was also adopted by the majority in *Krayzel*, above, that:

8 is intended to "protect property owners against abusive lending practises, while recognizing that generally speaking parties are entitled to freedom of contract".

[35] At paras. 52-56 of *P.A.R.C.E.L.*, Cronk J.A. lays out four prerequisites for the court's application of s. 8(1) to prohibit a mortgagee from charging certain fees or other amounts to a mortgagor:

1. The covenant in question must impose a "fine", "penalty" or "rate of interest". If it does not, then s. 8(1) is not engaged.
2. The "fine", "penalty" or "rate of interest" must relate to "any *arrears* of principal or interest secured by mortgage on real property", whether before or after maturity of the relevant debt instrument.
3. "[T]he covenant must also have the prohibited effect of 'increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears'."
4. "[T]he arrears of principal or interest must be 'secured by mortgage on real property'."

[Citations omitted]

[36] The court in *P.A.R.C.E.L.* placed the onus on the mortgagee claiming the amounts following default to prove that they "reflect real costs legitimately incurred by the mortgagee for the recovery of the debt, in the form of actual administrative costs or otherwise": para. 96.

[37] In the absence of that proof, the court concluded that:

the only reason for the charges was to impose an additional penalty or fine, apart from the interest otherwise payable under the Mortgage, thereby increasing the burden on the appellants beyond the rate of interest agreed upon in the Mortgage. The courts have not hesitated to disallow similar charges on the basis that they offend s. 8 of the *Interest Act*...

[38] While the parties are entitled to agree on the terms of their mortgage, they cannot contract out of the provisions of s. 8(1): *Greenpath Capital Partners Inc. v. 1903130 Ontario Ltd.*, 2022 ONSC 7316, at paras. 81-84.

[39] In *BMMB Investments Ltd. v. Naimian*, 2020 ONSC 7999, at para. 36, Myers J. differentiated the right of mortgagees to provide an advance estimate of their enforcement costs of a defaulted mortgage and illegal disguised penalties as follows:

Case law has consistently held that lenders may lawfully recoup from mortgagors who are in default of their payment obligations the administrative costs incurred by the lenders caused by the defaults. The common law recognizes that for good business reasons such costs can be estimated in advance and fixed in a contract. But fees and charges levied on a mortgage default that are not genuine pre-estimates of costs actually incurred by a lender are penalties that can be void at common law and may violate the statute.

[40] Myers J. added at para. 40 that "[t]he test at common law is whether a fee is a genuine pre-estimate of damages incurred by the lender. The test under s. 8 of the *Interest Act* is as set out above in *P.A.R.C.E.L.* Both apply and satisfying either will invalidate a fee."

#### Analysis of the Plaintiff's Claims to Additional Charges

[41] Here I make the following findings regarding the additional charges set out in the statement of claim:

1. For interest to July 9, 2025 \$39.45 – the Plaintiff is entitled to prejudgment interest at the rate of 12% per annum under the terms of the mortgage.

2. Default correspondence \$500 – no proof is offered that this is a proper expense, over and above the costs claimed by the Plaintiff.
3. Three months' interest \$3,600 – The Plaintiff is, as set out above, entitled to interest at the rate of 12% per annum under the terms of the mortgage. Any additional interest charges represent an improper penalty and are not payable.
4. Default proceedings fee \$500 – I see no evidence that this is a pre-estimate of costs in addition to the costs already being claimed.
5. Mortgage statement fee \$565 – this is a proper charge as the Plaintiff will have to prepare a mortgage discharge statement.
6. Legal Costs including HST \$3,490.60 – this becomes part of the costs award set out below.

[42] In sum, in addition to interest at the rate of 12% per annum, and costs, the Plaintiff is entitled to the additional fee of \$565 for a mortgage discharge statement.

#### \$120,000 Mortgage Principal

[43] Regarding the \$120,000 face amount of the Mortgage, that remains outstanding. It was an interest only mortgage. There is no issue that the funds were advanced by to the Plaintiff and that they have not been repaid.

#### Entitlement to a 120-Day Grace Period

[44] The Plaintiff pleaded that she is entitled to a 120-day grace period. She argues that she is entitled to that grace period because she says that she is acting in good faith in attempting to resell her home.

[45] During the course of argument, the defendant conceded that she has already enjoyed the advantage of approximately 60 of those 120 days. I suggested to the Plaintiff's counsel that it agree to allow the Plaintiff until December 1, 2025 before

executing on a writ of possession. The Plaintiff has agreed. At various times during argument, the Defendant seemed willing to accept the December 1, 2025 date and at others she has sought even more time.

[46] Despite the fact that the Plaintiff's concession would grant her 145 days since the maturity of her mortgage, 25 more days than she requested in her statement of defence, the Defendant ultimately rejected the December 1, 2025 date. She argued instead for both a full trial and relief from forfeiture. In light of the fact that she has failed to raise a genuine issue requiring a trial other than with regard to fees charged by the Plaintiff, which I have substantially reduced above without trial, and the concession of the Plaintiff regarding execution of the writ of possession on the Property, I see no reason to entertain that argument any further. It does not raise a genuine issue requiring a trial

### **Costs**

[47] The mortgage allows the Plaintiff to claim its costs on a solicitor and own client scale. However the Plaintiff is only claiming its costs on the lower substantial indemnity scale, a concession to the Defendant. I have reviewed the Plaintiff's counsel's bill of costs, claiming \$9,915.58 and find it to be fair, reasonable and proportional in the circumstances. In fact, it could reasonably have been higher as the parties were before the court for much of the day, while the bills of costs anticipated a short attendance.

[48] While the Defendant is self-represented and has thus not presented the court with a bill of costs of her own, I find that the fees and disbursements charged should have been within her reasonable contemplation had she attempted to ascertain what costs would be appropriate in the circumstances.

### **Issue No 4: What order should this court make?**

[49] Order to go per draft order, filed with the exception that para. 1 should read \$120,000 and para. 2 should refer to costs of \$9,915.58 plus \$565 for a mortgage discharge statement. I differentiate this amount from the claim to a principal amount

because the defendant should not pay 12% prejudgment interest on a discharge statement she has not yet received.

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Kurz J.

**Released:** September 12, 2025