



a term to January 1, 2024, and an interest rate of 8.49% per annum. A second renewal was executed on December 28, 2023, with a term to June 1, 2024, and an annual rate of interest of 9.44%. All of these agreements state that the Defendants had accepted and agreed to the terms and conditions in the agreements and their respective schedules.

### **The Mortgage Default**

- [5] The mortgage went into default on March 1, 2024, when the Defendants failed to make payments in accordance with the terms of the mortgage. The Defendants have failed to make any payments on the loan since that date yet have remained in possession of the property and have collected rent from a lease on a portion of the property.

### **The Proceedings to Date**

- [6] The Plaintiff issued its statement of claim on August 15, 2024, and served it on the Defendants under the Rules, which service became effective on September 4, 2024.
- [7] The Defendants did not file a statement of defence within 20 days and were noted in default. The Plaintiff obtained default judgment against the Defendants on November 13, 2024, for possession of the property and for payment of the sum of \$2,974,680.47 (“the principal amount”) together with contractual post judgment interest of 9.44% per annum.
- [8] On July 24, 2025, the Defendants obtained a stay of enforcement from Woodley J. of this court. I extended that stay on August 26, 2025, on certain terms and conditions. On October 9, 2025, I found that there had been imperfect compliance with my August 26 order but allowed a further adjournment to permit compliance.

### **The Test to Set Aside a Default Judgment**

- [9] Rule 19.08 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (“*Rules*”), governs setting aside a default judgment.
- [10] The traditional test for setting aside a default judgment is: i) whether the motion is brought without delay after the Defendant learned of the default judgment; ii) whether the circumstances giving rise to the default are adequately explained; and iii) whether the Defendant has an arguable defence on the merits: see *Canadian Pacific Railway Company v. Cobra Drain & Development Corp.*, 2007 CanLII 15795 (Ont. S.C.), at para. 6.
- [11] In recent years, courts have added other factors to their analysis: i) the potential prejudice to the Defendant should the motion be dismissed and the potential prejudice to the Plaintiff should the motion be allowed; and ii) the effect of any order the court might make on the overall integrity of the administration of justice: see *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194, 119 O.R. (3d) 561, at para. 49.
- [12] On a motion to set aside default judgment, the court’s ultimate task is to determine whether the interests of justice favour granting an order and show an arguable case on the merits: see *Leaf Homes Limited v. Khan*, 2022 ONCA 504, at para. 96.

### **The Test for Summary Judgment**

- [13] Rule 20.04 of the *Rules* governs granting summary judgment. The court must be satisfied that there is no genuine issue requiring a trial with respect to a claim or a defence.

### **The Evidence and the Defence**

- [14] The only affidavit in support of the Defendants' motion to set aside the judgment is the affidavit of Manpreet Bal, sworn January 29, 2025 ("the Bal Affidavit"). The Defendants have filed a statement of defence which essentially pleads *non est factum* based on their failure to read the renewal documents they signed. More specially, the Defendants allege that they did not understand or agree to the increased interest rates in the respective renewals.
- [15] The Supreme Court of Canada made it clear more than 40 years ago that a person who executes a document without taking the trouble to read it is liable on it and cannot plead that they mistook its content: see *Marvco Colour Research Ltd. v. Harris*, [1982] 2 S.C.R. 774, at para. 4.

### **Analysis**

- [16] For the reasons which follow, I decline to set aside the default judgment. The evidentiary record makes it clear that all the loan documentation, including the two renewals, were both executed by the two Defendants and that both set out the renewal interest rate. Not only were the two documents executed, but each page of the respective loan agreement was initialed by the Defendants.
- [17] The court is faced with the frankly outrageous situation where a \$2.9 million mortgage has remained in default for over 20 months. This is not a situation where the debtors are making partial payments based upon the lower interest rate in the original loan agreement. They are not making any payments at all.
- [18] Despite this ongoing and abject default, the defaulting Defendants remain in possession of the property. They are even deriving rental income from it without making any payment towards the principal amount of the mortgage debt. In the meantime, they have sought a stay of enforcement of a legally obtained writ of possession; they have sought adjournments of motions to set aside that stay and to reinstate the properly obtained default judgment. There is no plausible explanation for the default.
- [19] The Defendants have advanced no real defence on the merits in either their draft statement of defence or their motion materials.
- [20] The Defendants' motion for setting aside the default judgment, while initiated in a reasonably prompt fashion, has hardly been pursued with much energy. And nowhere on

the horizon is there the slightest prospect of the Defendants making any payments on the loan, let alone redeeming the mortgage.

- [21] The Defendants' pattern of conduct is not only delaying the inevitable; it makes a mockery of mortgage lending and enforcement.
- [22] If all a defaulting Defendant/debtor needed to do to avoid or delay judgment and enforcement in a mortgage action was to allege that it did not properly review or care to understand the details of the loan renewals it had signed, the efficiency and reliability of mortgage lending and enforcement would be very much undermined. This would serve to bring the administration of justice into disrepute. It would also endanger the integrity of mortgage lending which is unquestionably the most practical means by which many home buyers are able to acquire their residences.
- [23] The Defendants can hardly claim prejudice: they have been in default of payment for nearly 20 months; they have made use of the court system to delay legitimate enforcement on a mortgage. They have been given ample opportunity to redeem the mortgage or bring it into good standing but have failed to do so.
- [24] The Plaintiff is prejudiced with every passing day. Its properly obtained default judgment and writ of possession are on hold. It has been unable to realize on its security. It is not receiving any payments on the long overdue loan. It is not seeing any of the rent on the property being collected. It is incurring legal fees.
- [25] With respect to the Plaintiff's summary judgment motion, I also find in favour of the Plaintiff. There is no genuine issue requiring a trial. The Defendants' evidence is not compelling or credible. The defence of *non est factum* is untenable. The suggestion that the Defendants cannot be held to the written agreements and obligations they entered is nothing short of ludicrous. Even if there was some merit to the claim that the Defendants did not agree to the two increased borrowing rates (and there is not), this would not alter the fact that the mortgage has been in default for 20 months and that no payments have been made in that time span. I am in as good a position as any trial judge to determine the issues before me.

### **Disposition**

- [26] For the above reasons, the Defendants have failed to satisfy the test for setting aside the default judgment. The Defendants' motion to set aside the default judgment is dismissed. In any event, there is no genuine issue requiring a trial. The stay of enforcement of July 24, 2025, is hereby lifted. The Plaintiff is at liberty to enforce its judgment obtained on November 13, 2024, and to seek possession of the property under its writ of possession.
- [27] The Plaintiff is granted to leave to prepare and file a proposed draft order for the consideration of the court without seeking the approval as to form and content from the Defendants. That draft order may be sent to me through my judicial assistant ([BarrieSCJJudAssistants@ontario.ca](mailto:BarrieSCJJudAssistants@ontario.ca)).

[28] The parties may address the issue of costs of the motion according to the following schedule: Plaintiff's submissions limited to three pages to be served and filed by January 30, 2026; the Defendants' submissions limited to three pages to be served and filed by February 13, 2026; reply submissions limited to one page to be served and filed by February 20, 2026.

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MCCARTHY J.

**Released:** December 19, 2025