

CITATION: Northwood (2003) Mortgage Investment Corporation v. Shearham, 2025 ONSC 7227
COURT FILE NO.: CV-23-699310
DATE: December 24, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Northwood (2003) Mortgage Investment Corporation and Malmac Enterprises Inc.
v. John Kenneth White Shearham and Maureen Shearham;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Fred Wu for John Kenneth White Shearham and Maureen Shearham (“the Defendants”);
Doug Bourassa for Northwood (2003) Mortgage Investment Corporation and Malmac Enterprises Inc. (“the Plaintiffs”);

HEARD: December 16, 2025

REASONS FOR DECISION

[1] This motion concerns a first mortgage on a residential property owned by the Defendants. The Defendants, mortgagors, move for an order setting aside the default judgment the Plaintiffs, mortgagees, obtained against the Defendants on October 20, 2023, the underlying noting in default, and the subsequent writ of possession the Plaintiffs obtained on March 25, 2025. In the alternative, the Defendants seek an order limiting the Plaintiffs’ recovery to the amount of the judgment and waiving post-judgment interest.

Background

[2] The Defendants filed two affidavits sworn by John Shearham, an affidavit sworn by Maureen Shearham, and an affidavit affirmed by a summer student of Mr. Wu’s, Lena Saleh. The Plaintiffs filed an affidavit sworn by the president of Northwood (2003) Mortgage Investment Corporation (“Northwood”), Nick Da Silva. Mr. Shearham was cross-examined on his affidavit, and the transcript of the cross-examination was filed as well.

[3] The following facts were gleaned from the filed evidence. The Defendants owned the subject residential lot. Mr. Shearham is a retired builder; Ms. Shearham is a retired teacher. They resided in the house until recently. The property is their single largest asset. They live on a fixed income.

[4] On February 13, 2017 the Shearhams obtained financing from the Plaintiffs to replace prior financing. The loan was for \$920,000 for 12 months at 8.50% per annum with monthly payments being interest only. This was secured by a first mortgage in the principal amount of \$941,000 with interest at 8.5% per annum payable monthly. The term ran from May 1, 2017 to April 1, 2018.

[5] Mr. Shearham did construction work on the house and did so without a permit. On March 22, 2018 the City of Toronto issued an Order to Comply to Mr. Shearham requiring that he cease construction and get a permit. Mr. Shearham did not comply for years and on June 1, 2021, the City registered the Order to Comply on title. The Shearhams did not inform the Plaintiffs of any of this.

[6] In the meantime, the mortgage was renewed seven times. The renewal offers were submitted after the terms expired. They indicated the approximate principal owing at maturity. The renewal agreements specified that the terms and conditions of the original mortgage applied. The renewed loan periods grew increasingly shorter. The renewals were all signed by the Shearhams.

[7] In October, 2021 the Defendants sought Northwood's assistance in brokering a refinancing of the mortgage with Home Trust. The Plaintiffs learned of the Order to Comply as a result. The refinancing failed. The Order to Comply concerned the Plaintiffs as it adversely affected the property value. Mr. Shearham promised the Plaintiffs that he would deal with the registered Order to Comply. He did not.

[8] The Plaintiffs became annoyed with Mr. Shearham's failure to deal with the Order to Comply. On December 29, 2022 Northwood sent the Shearhams a letter offering a seventh renewal for four months. This letter was signed by Mr. Da Silva. In it in bold type he stated that there would not be another renewal if the work order was not discharged from title. The renewal specified a much higher interest rate of 13.99% per annum for the first three months and an even higher 19.99% rate for the final month. In his affidavit, Mr. Da Silva stated that this was done to give the Shearhams incentive to deal with the Order to Comply. The Shearhams signed the renewal.

[9] The Defendants defaulted on the installment payments and when a bailiff pursued outstanding realty taxes. On May 10, 2023 the Plaintiffs commenced this action for judgment on the debt and possession. They served the Defendants with the statement of claim on May 12, 2023. On May 31, 2023 the Plaintiffs issued a Notice of Sale. On June 12, 2023 Mr. Shearham asked for a time extension to June 21, 2023 to serve a statement of defence, which request was granted.

[10] The Shearhams decided not to defend, and instead to seek refinancing. The Plaintiffs waited three months and had the Defendants noted in default on October 20, 2023. They then obtained a default judgment on October 20, 2023, which default judgment required payment of \$912,780.47 plus \$1,195 in costs and delivery of possession. The specified post-judgment interest was the 19.99% per annum rate. On November 1, 2023 the Plaintiffs served the Shearhams with the default judgment and a notice of possession. The Shearhams did nothing about this until this motion.

[11] From May, 2023 to September, 2023 the Shearhams obtained several unsigned commitment letters from lenders for refinancing. None proceeded. The Shearhams blame the Plaintiffs for not providing requested discharge statements; the Plaintiffs blame the Order to Comply.

[12] On November 3, 2023 Mr. Shearham obtained the permit that was the subject matter of the Order to Comply; but the Shearhams elected to have the City keep the Order on title as they wanted to use the Order to Comply as leverage in their negotiations with the Plaintiffs on the issues.

[13] In January, 2024 the Shearhams hired lawyer Julie DiGregorio to assist them with the refinancing. She obtained commitment letters from lenders. Northwood helped broker a loan

commitment from RFA Bank of Canada. On May 9, 2024 Ms. DiGregorio asked the Plaintiffs for a discharge statement. On May 29, 2024 the Plaintiffs provided her with one showing the principal and interest as of April 30, 2024 as being \$1,083,791.89 along with other charges. Attached was a full statement of account detailing the history of the loan. On May 31, 2024 Ms. DiGregorio delivered an undisclosed settlement offer from the Shearhams that was not accepted. The alternate financing did not proceed. There were no more commitment letters from other lenders.

[14] The Plaintiffs proceeded with enforcement measures. In October, 2024 the Plaintiffs obtained an occupancy inspection. On February 27, 2025 they obtained a writ of possession. The Sheriff conducted the eviction on April 23, 2025, which put the Plaintiffs in possession. They observed that the construction was incomplete. They learned that the permit was obtained but was outstanding. They gave access to the Defendants to remove belongings. The Defendants removed some on June 30, 2025. The Plaintiffs stored the remainder. On July 24, 2025 the Plaintiffs obtained an appraisal that valued the property (unencumbered) at \$1.3 million. The property remains unsold.

[15] In April, 2025 the Defendants hired Fred Wu as their lawyer. Mr. Wu tried to resolve the dispute but failed. In August, 2025 he brought this motion.

Governing test

[16] The test under Rule 19.08 on a motion to set aside a default judgment is well-known and uncontroversial. The moving party must prove three things: (a) that the motion was brought without delay after the defendant learned of the default judgment; (b) that the circumstances giving rise to the default are adequately explained; and (c) that the defendant has an arguable defence on the merits; see *HSBC Securities (Canada) Inc. v. Firestar Capital Management Corporation*, 2008 ONCA 894 (CanLII) at paragraph 21.

[17] In addition, the court must determine whether the interests of justice favour an order setting aside the default judgment. In this regard, the court must weigh the potential prejudice to the moving party with a dismissal of the motion against the potential prejudice to the respondent with a granting of the motion; see *Peterbilt of Ontario Inc. v. 1565627 Ontario Ltd.*, 2007 ONCA 333 (CanLII) at paragraph 2.

Delay and default

[18] I will deal with the first two parts of the three-part test together. The evidence is clear that the Shearhams made a deliberate choice not to defend this action, and then made another deliberate choice not to bring this motion for almost two years after learning about the default judgment. They did so because they wanted to obtain alternative financing to replace the Plaintiffs' loan and to renegotiate the terms of the Plaintiffs' loan using the registered Order to Comply as leverage.

[19] The use of the Order to Comply this way is particularly galling as the Order to Comply is the result of Mr. Shearham's own dubious conduct, namely proceeding with construction without a permit and then not complying with the Order to Comply by not getting a permit for over five years. It was only when their strategy choice failed and they were evicted, that the Defendants decided to bring this motion; but interestingly they continued to keep the Order to Comply on title no doubt in the hope of negotiating a settlement with the Plaintiffs.

[20] In *Luciano v. Spadafora*, 2004 CanLII 34510 (ONSC) Justice H.J.W. Seigel dealt with a motion by a defendant to set aside a default judgment. The action appeared to be a personal injury action. The defendant decided not to respond to the action thinking it would go away. The defendant also disregarded the default judgment when he learned about it, and only brought the motion over a year later after garnishment proceedings were undertaken. The judge held in paragraph 13 that, “the defendant made a conscious decision not to participate in the action. Absent special circumstances, I believe this should be a complete bar to this motion in accordance with the decision in *Schill*.” In *Schill & Beninger Plumbing & Heating Ltd. v. Gallagher Estate*, 2001 CanLII 24134 (ONCA) at paragraph 11 the Court of Appeal had held that, “even if a viable defence was presented the intentional refusal to defend as recorded in the correspondence stands as a permanent bar to intervention” to overturn the noting of pleadings closed. The reason for this rule is that by deliberately not defending, the Defendants have accepted the claim and its consequences.

[21] Mr. Wu argued orally that the imposition of the 19.99% post-judgment interest in the default judgment was a “special circumstance” as such an unusually high interest amounted to a windfall for the Plaintiffs. I disagree. This was the interest rate on the loan in the seventh renewal that the Defendants agreed to and defaulted on. This rate was instituted for the purpose of incentivizing the Defendants to remove the Order to Comply from title within the seventh renewal term, a removal that should have been done years earlier and was not. It was the rate claimed in the Statement of Claim that the Defendants decided not to defend. It was the rate specified in the default judgment that the Defendants did nothing about for almost two years. By their conduct, the Defendants accepted this rate; this is not a “special circumstance.”

[22] For this reason alone, I have decided to dismiss this motion.

Merits

[23] I will comment nevertheless on the issue of merits. The standard of proof for the merits on this motion is that the Defendants must show that there is an arguable defence; see *Mountain View Farms Ltd. v. McQueen*, 2014 ONCA 194 (CanLII) at paragraph 61. The Defendants made the following arguments on this point:

- They argued that there is an issue concerning the interest component of the default judgment on account of what they allege is a violation of the *Interest Act*, R.S.C. 1985, c. 1-15 (“*IA*”) section 6 in the mortgage renewal agreements, namely the requirement to clearly identify the principal and interest when there are blended payments under a loan agreement secured by a mortgage, thereby rendering the interest incapable of collection;
- They also argued that the seventh renewal on which the default judgment was based was a violation of the *Unconscionable Transaction Relief Act*, R.S.O. 1990 c. U.2, section 2, as it contained, what they argued was, the unreasonably high interest rate of 19.99% per annum and as the Defendants had no choice but to agree to the seventh renewal, thereby justifying an order setting the default judgment aside;
- They also argued that only discharge statement the Plaintiffs provided on May 29, 2024 was inconsistent with the default judgment and was therefore not a proper discharge statement,

thereby putting the Plaintiffs in default of the *Mortgages Act*, R.S.O. 1990, c. M.40 (“*MA*”), subsections 22(2) and 22(3), namely the requirement for a timely and accurate discharge statement upon request from the mortgagor, with the result being a suspension of the Plaintiffs’ mortgage enforcement until the Plaintiffs are compliant.

[24] Concerning the first argument, *LA* section 6 specifies that, with loans secured by a mortgage where the payments are blended between principal and interest, the principal and interest must be clearly identified, failing which the interest is not chargeable. Mr. Wu showed that the renewals consistently failed to show a clear principal amount. He also showed that the balance on each renewal diminished leading to the inference that, contrary to the original loan agreement, the payments on the renewals were blended between principal and interest. This arguably engaged *LA* section 6 and the argument that the interest components on the renewals were not chargeable. In support this proposition, Mr. Wu referred me to the decision of Justice Pardu in *Lacroix v. Bank of Montreal*, 2004 CanLII 42931 (ONSC) and the *obiter dicta* comments in paragraphs 20 and 21.

[25] While this may all be the case, it does not, in my view, justify setting aside the default judgment. First, the liability for the principal debt is not challenged by this argument. There is no doubt that the principal debt is the by far the largest portion of the default judgment despite the evidence of balance decline in the renewals. The principal debt is conceded to be over \$912,000, while the overall debt was estimated by the Shearhams to be just over \$1.2 million. Second, the actual amount that this argument puts in issue was not articulated by the Shearhams. In answer to an undertaking given by Mr. Shearham during his cross-examination, he confirmed that he could not and would not determine the absolute amount owing to the Plaintiffs.

[26] Mr. Wu argued that, for this reason, the default judgment should be set aside to allow for a proper accounting as to what interest and principal is owed. This argument does not, in my view, rise to the level of an arguable defence to the Plaintiffs’ claim. It is more about process than the substance of the default judgment. The time for the accounting requested by the Defendants was in the litigation of this action, which they deliberately gave up by not defending. To allow them now, over 2.5 years later, to reverse that decision on account of some evidence of a potential issue concerning the interest portion of the debt, which is a fraction of the debt, simply is not acceptable.

[27] Concerning the second argument about the alleged unconscionability of the 19.99% per annum interest rate in the default judgment, the issue is whether the seventh renewal was the result of an inequality of bargaining power (ie. an incapacity of the Defendants to protect their interests giving the Plaintiffs an undue advantage) and an improvident bargain for the Defendants; see *Uber Technologies Inc. v. Heller*, 2020 SCC 16 (CanLII), [2020] 2 SCR 118, at paragraph 64. Mr. Wu argued that the Defendants had no choice but to agree to the seventh renewal with its unusually high rates as they could not find another financier due to the Order to Comply.

[28] I do not accept this argument. The evidence shows that these circumstances were of the Shearhams’ own making. They should have dealt with the Order to Comply years earlier but, despite promises to the contrary made to the Plaintiffs, they chose not to do so. Mr. Shearham openly admitted using the Order to Comply as leverage against the Plaintiffs. It was indeed the Defendants’ steadfast refusal to deal with the Order to Comply that caused the Plaintiffs to take the more extreme measures they did with the seventh renewal, as that Order to Comply adversely affected the

Plaintiffs' security. These measures were understandable. Furthermore, the Shearhams then accepted the higher rates by signing the seventh renewal. Their acceptance was reenforced by their subsequent decisions not to defend the Plaintiffs' action and not to move expeditiously to overturn the default judgment when they learned of it. Having been evicted, they now claim unconscionability in this motion when it suites them. In my view, there is no triable issue of an unconscionable bargain in the seventh renewal.

[29] Concerning the third argument about the alleged inconsistency between the May 29, 2024 discharge statement and the default judgment, this also does not justify setting aside the default judgment. First, this point concerns the Plaintiffs' mortgage enforcement, not the merits of the default judgment. *MA* subsection 22(2) requires that, upon request of the mortgagor, a mortgagee must provide a mortgagor with a written statement of the principal and interest with respect to which the mortgagor is in default, the nature of the default on the covenant, and the amount of any expenses incurred by the mortgagee. Subsection 22(3) states that if "without reasonable excuse" the mortgagee takes longer than 15 days to respond or if the statement is incomplete or inaccurate, "any rights that the mortgagee may have to enforce the mortgage shall be suspended until the mortgagee has complied with subsection (2)." I note that there is no request for relief in the notice of motion in this motion calling for a suspension of the mortgage enforcement.

[30] Second, the Shearhams' argument as to an inconsistency between the discharge statement and the default judgment is not at all clear. The default judgment dated October 20, 2023 showed the principal amount of \$912,780.47 plus costs of \$1,195 and a post-judgment interest rate of 19.99% per annum. The discharge statement dated May 29, 2024 showed principal and interest owing as of April 30, 2024, six months after the default judgment, as being \$1,083,791.89. There was then a list of additional charges. Attached to the statement was a detailed history of the calculation of principal and interest starting on January 1, 2021.

[31] On the other hand, in answer to undertakings, Mr. Shearham stated that, according to his calculations of the interest on the default judgment, the total owing as of May 29, 2024 should be only \$1,026,100.48, namely only \$57,691.41 less than what appeared in the discharge statement. However, unlike the Plaintiffs in their discharge statement, Mr. Shearham did not produce the detail of his calculations. In my view, this is not clear evidence of a discrepancy between the default judgment and the discharge statement. I, therefore, reject this argument.

[32] Therefore, I find that the Defendants have failed to show that there are arguable defences on the merits, certainly none that justify overturning the default judgment.

Interests of justice

[33] In the interest of justice, the court must weigh the potential prejudice to the moving parties of a dismissal of the motion against the potential prejudice to the responding party in granting the motion. The Defendants argue that this exercise favors them as they are seniors on fixed incomes with the subject property being their primary asset in which they have lived much of their lives, and as the Plaintiffs have full security for their debt through their mortgage.

[34] I do not accept that argument. First, the Plaintiffs' appraisal of July 24, 2025 (ie. \$1.3 million) indicates that the Plaintiffs may in fact not be fully secured for the debt. I note that the appraisal did not account for the Order to Comply which remains on title. Certainly, time is not on the side of the Plaintiffs, as it would appear they need to "cut their losses."

[35] Second, the Defendants here ask for the intervention of equity when they themselves do not have "clean hands." As stated several times in these Reasons, the Defendants created the core issue that led to the default - the Order to Comply. This Order to Comply arose from Mr. Shearham's dubious conduct, namely his failure to obtain a building permit. Then there was further dubious Defendant conduct: the Order to Comply remained for years and was eventually registered on title due to the Defendants' steadfast refusal to obtain a building permit. The Defendants then cynically came to view the registered Order to Comply as suiting their negotiating strategy with the Plaintiffs. They got the required building permit but kept the Order to Comply on title as a "bargaining chip," thereby damaging the Plaintiffs' security. This conduct does not merit the sympathy of the court.

[36] Third, I take guidance from the decision of Justice D. M. Brown in *Hanratty v. Woods*, 2009 CanLII 43649 (ON SC). This was also a motion by a defendant to set aside a default judgment. His Honour dismissed the motion. While he found that the motion had been brought with dispatch, he did not accept the explanation given for the default. Indeed, he found that the default was intentional. He also did not find that the defendant put forth evidence of an arguable defence on the merits. Concerning the issue of the interests of justice, His Honour had this to say:

While debtors have rights, so too do creditors. It is not open to an alleged debtor to turn his back deliberately on a claim initiated against him and then, when it suits his purposes (and may protect his pocket book) seek to do that which he should have done a good year before. Such conduct, in my view, is simply an attempt by a debtor to game the system and no interest of justice is served by rewarding such conduct.

[37] I echo those comments in relation to this motion. It is not in the interests of justice to allow the Defendants to turn their backs deliberately on a claim against them and then, when it suits their purpose, allow them to do what they should have done 2.5 years ago. Such conduct is indeed "gaming the system" and the interest of justice is not served by rewarding such conduct.

Conclusion

[38] For these reasons, I dismiss the motion.

[39] Concerning costs, the parties filed costs outlines. The Defendants costs outline shows full indemnity costs of \$50,417.33 and partial indemnity costs of \$30,717.17. The Plaintiffs' costs outline shows actual costs of \$31,188, substantial indemnity costs of \$24,950.40 and partial indemnity costs of \$18,712.80.

[40] It seems unlikely that offers to settle were made given the issues. Therefore, I have decided to take a different approach to my award of costs. I have decided to award the Plaintiffs **\$17,000** in partial indemnity costs to be paid by the Defendants in 60 days from the date of this ruling. The Plaintiffs were successful and deserve costs. However, this is not the kind of case that qualifies for a substantial indemnity award of costs. The Defendants, while unsuccessful, made worthwhile

arguments, particularly about the interest liability. Such an award would also be what the Defendants should reasonably expect to pay in the event of a loss, given the amounts in the Defendants' costs outline. The quantum of the Plaintiffs' costs outline is also reasonable, as the work on this motion involved not only the motion case conference, an affidavit, a factum and oral argument, but also a cross-examination. The importance of this motion was obvious for both sides, as the Plaintiffs' mortgage enforcement process hung in the balance. This justified the experience level and hourly rate shown for the legal fees in the Plaintiffs' costs outline.

[41] If either party does not accept this award, they may serve and file written submissions on costs of no more than three pages on or before **12 noon on January 12, 2026** explaining their position. If that happens, my award will be deemed to be set aside. If that does not happen, my award stands and can be enforced. If my award is challenged, responding written submissions on costs of no more than two pages may be served and filed on or before January 17, 2026.

[42] Parties are warned that, if my costs award is set aside, my final costs award will include the costs of the written costs submissions, and may go in any direction and in any amount.

DATE: December 24, 2025

ASSOCIATE JUSTICE C. WIEBE