

CITATION: Equitable Bank v. Mian, 2026 ONSC 467
COURT FILE NO.: CV-24-00004322-0000
DATE: 2026-01-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: EQUITABLE BANK, Plaintiff

AND:

ABID MIAN & BUSHRA YASIN, Defendants

BEFORE: Kurz J.

COUNSEL: Aaron Boghossian, for the Plaintiff

HEARD: January 22, 2026

ENDORSEMENT

Introduction

[1] This is a motion for summary judgment on a mortgage granted by the Defendant, Abid Mian (“Mian”) with the consent of his spouse, Bushra Yasin (“Yasin”) to the Plaintiff (the “Mortgage”). The Mortgage was registered on December 2, 2021, matured on September 1, 2023 and was renewed for two-year period on September 6, 2023, ultimately maturing on September 1, 2025. The Plaintiff alleges, without opposition that the Mortgage went into default on July 1, 2024 and has remained in default since then.

[2] The Defendants, who are now self-represented, failed to attend court today. They also failed to attend Triage Court on January 8, 2026. The Defendants were served with the motion materials and with the assistance of former counsel, have filed responding materials for this motion.

[3] Counsel for the Plaintiff informs me that he has provided the Defendants with notice of this motion date and Zoom coordinates before today and again as recently as 1:15 today. This motion is heard at apx. 2:15 p.m. I note that on December 16, 2025 the Defendants failed to attend the scheduled hearing of this motion before Chang J. Rather they emailed the court at some point after 10:30, claiming that Mian had been in a motor

vehicle collision five days earlier. Chang J. found that that accident did not explain their non-attendance before them. He noted that he had granted a previous adjournment of this motion to the Defendants on August 5, 2025. Accordingly, he adjourned the motion to triage court on January 8, 2026. He stated that the date set by triage court should be marked “absolutely peremptory” on the Defendants, subject only to the discretion of the presiding judge upon its return. Nonetheless, the Defendants failed to attend the triage court hearing at which this date was set.

[4] When the Defendants failed to attend court this morning, I held it down to allow Plaintiff’s counsel to attempt to contact the Defendants to inform them that the court was waiting for them. Counsel advised the court that he was not able to obtain a response from the Defendants. At the lunch break, I asked him again to try to contact the defendants. He advised that he made yet another attempt, again without success. He again provided the Zoom coordinates for this hearing.

[5] In light of the events cited above, I have proceeded in the absence of the defendants.

Background

[6] Mian granted the Mortgage on a property he owned, municipally known as 166 Squire Cres., Oakville, to the Plaintiff, which was registered on December 2, 2021. The terms of the Mortgage were: principal of \$892,000, interest at 3.04% annually and a two-year term. The Defendant Bushra Yasin is the spouse of Mian. She signed the Mortgage solely as a spouse or the mortgagor, consenting to the Mortgage.

[7] As set out below, I find that on September 6, 2023, Mian and the Plaintiff agreed to renew the Mortgage for a further two-year term. The terms of the renewal include an increased Mortgage rate of 6.3% annually and a maturity date of September 1, 2025.

[8] The Plaintiff, as stated above, has provided evidence that Mian went into default of payments on the Mortgage on July 1, 2024 and has remained in default ever since. Mian offers no evidence to the contrary. He admits that he stopped payments on the

Mortgage, which he claims was because of his protest at the Mortgage renewal interest rate.

[9] In any event, the Mortgage has matured as of September 1, 2025.

[10] The Defendant has raised a number of defences in his statement of defence and responding affidavit, but as set out below, the are vague, unparticularized and devoid of any supporting evidence.

[11] For the reasons set out below, I find that there is no genuine issue requiring a trial and grant summary judgment to the Plaintiff.

Issues

[12] 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

[13] 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.

[14] 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).

[15] 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).

[16] 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).

[17] 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.

[18] 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.

[19] 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.

[20] 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".

[21] 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

[22] I find that this is an appropriate case for summary judgment. I am entitled to assume that 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?

[23] 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.

[24] This is a straightforward case in which the parties agreed to a two-year extension of the original Mortgage when it matured on September 1, 2023.

[25] Mian does deny that he signed the renewal. But his denial, when viewed closely, is not a complete denial. Mian argues that he never signed the Mortgage renewal **on or after** the September 11, 2023 renewal date which is erroneously cited at one point in the Plaintiff's materials. However, the Plaintiff provides copies of the renewal form which the Plaintiff electronically signed on September 6, 2023, five days before the date Mian relies upon as the time following which he never signed the Mortgage renewal. In other words, Mian says that he never signed the Mortgage renewal after he actually electronically signed it. That is hardly a meaningful denial. Furthermore, he asserts that if he did sign it, the renewal was on the former Mortgage terms; that is a 3.04% interest rate rather than the 6.3% renewal rate. However, despite his bald allegation, Mian provides no proof to support that claim.

[26] Further, Mian admits that he stopped payment on the Mortgage, albeit because, he claims, he objected to the interest rate. But the letter he provided as proof of his objection to the Mortgage renewal's interest rate makes no reference to such an objection. In fact, it makes no reference to anything improper in the renewal. Rather, the unsigned and undated document, addressed to the Plaintiff's counsel requests a:

Mortgage Arrear Statement for my mortgage with Equitable Bank. Kindly provide me with current details regarding all arrears on my mortgage. This information is crucial to manage payments and address any outstanding issues effectively...

[27] This document's reference to "all arrears on my mortgage" is an admission that the Mortgage is in default.

[28] In any event, the Mortgage has matured without payment. Thus, the Mortgage debt remains outstanding.

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

[29] 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.

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

[31] The Defendant raises following allegations in defence of this claim:

1. The terms of the original Mortgage were never explained to him, and he never received a copy of the applicable standard Mortgage terms;
2. He never renewed the Mortgage but if he did, it was on the former terms with the lower interest rate of 3.04% rather than 6.3% annually.
3. He was the victim of fraudulent misrepresentation.
4. The circumstances of signing the Mortgage were so egregious that it would be unconscionable to allow the Plaintiff to enforce it.
5. The property subject to the Mortgage home is not a matrimonial home.

[32] Dealing with those defences in order:

1. While Mian broadly claims that the terms of the original Mortgage were never explained to him, and he never received a copy of the applicable standard Mortgage terms:
 - i. Mian neglects to mention that he was represented by counsel when he entered into the original Mortgage. That lawyer was Teresa Maria Ander-Smith. He has failed to provide either her evidence or her file for the Mortgage. Further he has not added her as a third party to this action for what would be negligence or breach of contract regarding the execution of the Mortgage if she failed to explain its terms to him before he entered into it and failed to provide him with the applicable standard charge terms.

- ii. To the extent that Mian's claim is that he did not understand the terms of the Mortgage (which he has failed to explicitly state), he is arguing a defence of *non est factum*; that is that he failed to understand what he had signed. The test for the defence of *non est factum* was set out by the Supreme Court of Canada in *Marvco Colour Research Ltd. v. Harris*, 1982 Canlii 63 (SCC), [1982], 2 S.C.R. 774. There must be: a) a misrepresentation, b) which leads to the signer of a document signing it while mistaken as to its nature and character, but c) he is not careless in doing so.
- iii. Here, Mian fails to state what the misrepresentation was, who offered it, and how it influenced him to sign the Mortgage. He also fails to offer evidence demonstrating his lack of carelessness. All of this is particularly relevant in light of the fact that Mian had counsel when he entered into the Mortgage.

2. Mian's claim that he never signed the Mortgage renewal is undermined by the production by the Plaintiff of the Mortgage renewal form, which contains his electronic initial showing his consent to the renewal and its terms. The relevant excerpts of that form are reproduced below, with Mian's electronic initials:

B. YOUR MORTGAGE LOAN RENEWAL OPTIONS

Please select the renewal option of your choice by **initialing** in the appropriate box in the table below.

Initial ↓	Term (months)	New Annual Interest Rate (%)	Mortgage Type	Renewal Fee (\$)	New Regular Payment (Principal and Interest) (\$)	Property Tax Payment (\$)	New Total Payment (\$)	Payment Frequency and Day/Date	First Payment Date Based on Renewed Term	New Maturity Date (Last Payment for the Term)	Projected Mortgage Balance on New Maturity Date (\$)
AM.	24 Closed	6.30†	Fixed Rate	4,295.75	5,386.31	328.85	5,715.16	Monthly on the 1st	Oct 1, 2023	Sep 1, 2025	835,350.54
AM.	—	—	—	—	—	—	—	—	—	—	—

Later in the same renewal form, the costs of borrowing are specifically set out, as follows:

At the end of the form, Mian affixes his electronic signature, as follows:

The Borrower must sign below to indicate acceptance of the terms and conditions of this Agreement.

The terms and conditions as set out in this Agreement and all documents and schedules attached hereto are accepted and agreed to this _____ day of _____, 20____.

Borrower:

E-SIGNED by Abid Mian
on 2023-09-06 15:20:17 GMT

Abid N Mian



You acknowledge you have selected one of the above options.

***Fixed Rate Mortgage Loan:** With the **Fixed Rate** Mortgage Loan option, your payment amount and interest rate remain the same for the entire term of the Mortgage Loan. Interest is compounded semi-annually, not in advance, and is charged at the frequency selected. Interest will be calculated and charged from the Effective Date of Renewal.

The numbers in the table above may not reflect changes initiated by you or us that take effect after the date this Agreement was produced.

Your Cost of Borrowing:

Refer to the row in the table below that contains the Term and Annual Interest Rate of the selection you made in Section B, above. This row sets out the borrowing costs that will apply to the Mortgage Loan you selected.

Term (months)	New Annual Interest Rate (%)	Mortgage Type	Annual Percentage Rate (APR) (%)	Amortization Period (months)	Total Annual Account Maintenance Fee for the Term (\$)	Total Amount of all Regular Payments (Principal and Interest) for the Term (\$)	Total Interest Cost for the Term (\$)	Total Cost of Borrowing for the Term (\$)
24 Closed	6.30†	Fixed Rate	6.515	339	720.00	129,271.44	105,471.08	110,486.83

- Mian claims that he was the victim of fraudulent misrepresentation. However, as stated above, he fails to state who is responsible for the misrepresentation, the contents of the alleged misrepresentation, and how it influenced him to sign the Mortgage. I add that an allegation of fraud or fraudulent misrepresentation is a serious one. It must be proven with clear and conclusive evidence rather than a boilerplate pleading, As McClung J.A. wrote for the Alberta Court of Appeal in *Canada (Attorney General) v. Bourassa (Trustees of)*, 2002 ABCA 205, at para. 9:

Fraud and its proof have their own distinct biosphere. In commercial disputes, allegations of fraud are frequently levelled. But they must be levelled with caution. At common law the claim must be specified and with particulars, or it will be struck: see *Canadian Abridgement*, vol. R17D, (2d) ed. (Toronto: Carswell, 1991) at Digest 1689 *et seq.* Regarding evidence of fraud, *Kerr on Fraud and Mistake* notes

that; "fraud is not to be assumed on doubtful evidence. The facts constituting fraud must be clearly and conclusively established."

McClung J.A. concluded on the point at para. 10 that "[h]e who alleges must prove. It is that simple." Mian has failed to do that.

4. Regarding the allegation of unconscionability, the term has been defined as "among other things, conduct that is harsh and shocking to the conscience, repugnant to anyone's sense of justice, or shocking to the conscience of the court: *Kelly v. Rubatscher*, [2021] OJ No 6660 (S.C.J.) at para 22, citing *LeVan v. LeVan*, [2006] O.J. No. 3584, at para. 258. Mian has failed to provide evidence of any conduct by anyone regarding the Mortgage which meets that criterion.
5. Whether or not the home subject to the Mortgage is a matrimonial home is irrelevant to the issue of the validity of the Mortgage or its renewal. If it is not a matrimonial home, Yasin need not have been a party to this action. However, again there is no evidence which supports Mian's claim. Yasin did sign the Mortgage as a consenting spouse.

[33] For the reasons cited above, I find that the Defendants have failed to raise a genuine issue requiring a trial.

Issue No. 4: In light of the above, what order should this court make?

[34] In light of the calculation set out at Case Centre p. A232, I find that Mian owes the Plaintiff \$946,408.35 as of today. Order to go per draft order set out at Case Centre pp. A233-235.

[35] Costs under the Mortgage are to be at a full indemnity scale. Notwithstanding that contractual term, the costs must still be fair, reasonable, and proportionate in the circumstances.

[36] In considering all of the factors set out in r. 57.01(1), I find that the Defendants and Mian in particular, have raised a number of spurious defences, requiring the Plaintiff to

expend significant resources to bring this motion and respond to Mian's spurious claims. False allegations of fraud can also attract enhanced costs. Here, in consideration of all of those factors, and having reviewed the Plaintiff's bills of costs (which does not include the costs of two previous attendances on two previous adjournments at the behest of the Defendants), but recognizing that on December 16, 2025, Chang J. granted costs of \$5,000 to the Plaintiff, payable by January 30, 2026, I find that costs of \$10,000 are fair reasonable and proportionate in the circumstances.

[37] Those costs shall be paid by Mian, as Yasin is only a party for the purposes of her role as a spouse of Mian and regarding a writ of possession. My costs award is in addition to the costs award granted by Chang J.

Kurz J.

Date: January 23, 2026