CITATION: Med Group Ontario Inc. v. Owemanco Mortgage Holding Corp., 2026 ONSC 703
COURT FILE NO.: CL-25-753550
DATE: 20260213

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MED GROUP ONTARIO INC., 2713339 ONTARIO INC., RICARDO AGRASO and ANN ANTONIA AGRASO

Applicants

AND:

OWEMANCO MORTGAGE HOLDING CORPORATION

Respondent

BEFORE: Justice Dunphy

COUNSEL: *Obaidul Hoque*, for the Applicants

J. Wortzman, for the Respondent

HEARD: February 4, 2026

REASONS FOR DECISION

[1] This case arises from a receivership application brought by the respondent Owemanco Mortgage Holding Corporation to enforce a certain mortgage and other security granted by the applicants in this proceeding following the failure of the current applicants to repay the secured loan facility at maturity on May 1, 2025. Following demand for payment of the entire loan, issuance of a s. 244 Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, notice of intention to enforce security and on the eve of a hearing to appoint a receiver to market and sell the property, the debtors repaid the loan in full, including certain amounts that were disputed. This application seeks an accounting of the disputed amounts and a refund of the amounts found to have been demanded without lawful foundation.

[2] The chronology of relevant events may be summarized as follows:

a. May 1, 2025: $5 million mortgage loan matured and was not repaid;

b. May 2025: negotiations regarding potential loan extension until September 1, 2025 fail to reach agreement;

c. June 3, 2025: Owemanco delivers notice purporting to exercise unilateral 1 year renewal right under loan documentation. Demand made for renewal fee of $105,900 due June 1, 2025 and interest on such amount.

d. June 9, 2025: formal demand of secured loan and s. 244 BIA notice served.

e. July 17, 2025: Owemanco issues Notice of Application seeking appointment of a receiver with power to market and sell the properties. Return date is August 13, 2025.

f. August 13, 2025: Dietrich J. adjourns the receivership application to an August 21, 2025 case conference to establish a case timetable.

g. August 21, 2025: debtors (current applicants) notify intention to bring an emergency injunction seeking to lift security on one property to enable a sale to proceed. Urgent motion scheduled for September 2, 2025.

h. September 2, 2025: urgent motion abandoned prior to formal filing. Debtors announce intent to repay loan in full.

i. September 3, 2025: loan repaid in full and all mortgages discharged.

[3] The debtors/applicants challenge the following payments they were required to make on September 3, 2025 to obtain the discharge of their mortgages:

a. $46,666.67 for one month's interest for payment prior to maturity;

b. $10,739.73 for 7 days interest in lieu of 30 days written notice;

c. $105,900 for renewal fees unpaid;

d. $988.40 for interest on renewal fees; and

e. $15,198.55 plus $53,999.65 (total $69,198.20) for legal fees.

[4] The first four amounts all turn upon the question of the legitimacy of the "automatic renewal" purportedly undertaken in June 3, 2025 and the fees demanded in connection therewith. Owemanco justified the first two amounts in part by reference to s. 17 of the *Mortgages Act*, R.S.O. 1990, c. M.40, s. 17 requirement for a debtor to pay three months interest to obtain a discharge for which it made a stand-alone claim during the course of oral argument.

[5] There are thus three issues to be determined which are dispositive of the dispute between the parties:

a. Was the purported automatic renewal effective and, if so, what fees if any were properly charged in relation thereto?

b. Is Owemanco entitled to three months interest under s. 17 of the *Mortgages Act*?

c. What costs if any of the two applications should be borne by whom and at what rate?

First Issue: Automatic Renewal and Fees

[6] The dispute regarding the automatic renewal issue requires me to interpret the provisions of the March 22, 2024 Commitment Letter governing the loan advanced by Owemanco to the debtors and in particular s. 5 thereof which reads as follows:

> "5. Term: 1 year (the "Term"). If the Borrower fails to repay the principal and interest outstanding on the balance due date and fails to accept a renewal offer, if offered, Owemanco may at its sole and absolute discretion, consider the Loan renewed for an additional year, at an interest rate equal to the interest rate set out herein, and at a renewal fee equal to two percent (2%) of the outstanding loan balance plus legal fees, disbursements and H.S.T. (hereinafter "Renewal Fee") irrespective of whether the Loan is in default or if Owemanco has pursed any enforcement proceedings. The Renewal Fee will be deemed fully earned and shall be due and payable on the first day of the month immediately following the balance due date together with the monthly payment due under the registered charge failing which the Renewal fee will be added to the Mortgage with interest accruing thereon at the interest rate outlined in the registered charge."

[7] There are only two possible interpretations of this provision and under neither does the claim for automatic renewal and related fees survive. If s. 5 can survive challenge under s. 8(1) of the *Interest Act*, R.S.C. 1985, c. I-15 as not exacting a "fine, penalty or rate of interest", the claimed renewal must be capable of actually existing as more than just a legal fiction to justify a penalty for default. However, for this to be the case, it is necessary to imply certain terms into s. 5 without which there would be no actual renewal possible. Since one of those terms is that the renewal must occur *before* the obligations of the borrower consequent upon renewal fall due (in this case, one month following the payment due date or June 1, 2025), the lender's right to renew had already expired unexercised by June 3 when the purported notice of renewal was given. Alternatively, the effect of the notice was to do nothing more than to add the additional fees claimed to the amounts already due and payable without any actual consideration passing to the borrower in violation of s. 8(1) of the Interest Act. Either way, the amounts claimed by the lender were improperly claimed and collected and must be returned.

[8] The conditions precedent for the renewal in s. 5 existing is (i) the failure of the borrower to repay the loan on its balance due date; and (ii) decision of the lender to apply it. The automatic renewal feature in s. 5 of the Commitment Letter is set in motion by a single act: the unilateral decision of the lender. The consent of the borrower is supplied by the original Commitment Letter. Since no further consent of the borrower is required to renew, all of the conditions necessary for an operating, renewed loan must be found in s. 5 (or the Commitment Letter in which it is found). As drafted, a considerable amount of "reading in" of s. 5 of the Commitment Letter is required to fashion from it an actual living, breathing loan renewal instead of a thinly-disguised penalty.

[9] The first necessary implied term is that the lender must *communicate* its decision to renew in some way to the borrower. Once the decision to renew is reached by the lender, the clock starts ticking on the borrower's obligation to make the required payments on the first of the month following the balance due date. To be capable of operating, it is necessary to imply a requirement that the lender's renewal decision be communicated. I do not consider that to be a particularly difficult stretch in the circumstances applying ordinary principles of contractual interpretation.

[10] Since the first action required of the borrower following renewal is payment of the fee and of the monthly payment on the first of the following month (June 1), it stands to reason that by the plain terms of s. 5, the effect of notice by the lender of its decision to renew is that the loan is *in fact* renewed as soon as the lender makes that decision in its sole discretion. Given the only condition precedent to the lender exercising the renewal right is that the borrower shall have failed to repay the loan on its balance due date, and since no action by the borrower is required under s. 5 until the first of the month following the balance due date, it follows that the effect of renewal is just that: the loan is *renewed*. The loan cannot be fully due and payable as of the balance due date and *also* renewed for a year (with interest only payable) at the same time. This implies that a consequence of renewal is that until the next payment default if any, the loan is in good standing as far as payments are concerned at least *as soon as the decision is made*. Since the decision can be made "irrespective of whether the Loan is in default or if Owemanco has pursed any enforcement proceedings", this would necessarily imply that any such prior payment default is cured by the renewal and any such enforcement proceedings must be discontinued. Absent implying such a term into an otherwise silent s. 5, the renewal would be nothing but a hollow fiction and the violation of s. 8(1) of the *Interest Act* would be plain and obvious. This is the second implied term that must be read in for s. 5 to have any viability.

[11] The third condition that must be read in for s. 5 to be viable is timing. Upon renewal, s. 5 imposes certain specific obligations to make payments (the Renewal Fee and the monthly payment) that must be satisfied by June 1, 2025 (the first of the month following the balance due date). A renewal to be effective must occur in such a way as to allow the borrower to actually make use of it, at least potentially. A "renewal" that triggers retroactive fees *that are already in default* is an obvious penalty. This means that the decision to renew must impliedly occur prior to June 1, 2025 when the borrower's first set of payment obligations under the renewed contract fall due. Indeed, the decision would have to be made and communicated sufficiently in advance of that date – a "reasonable time" in advance – to permit the borrower to actually perform the obligations that are triggered by the lender's unilateral decision. This in turn means that the lender's unilateral right to trigger renewal expired a reasonable time in advance of June 1, 2025 as well[1].

[1] Our courts have long interpreted the concept of "reasonable time" in connection with payment obligations: c.f. *R.E. Lister Ltd. v. Dunlop Canada Ltd.,* 1982 CanLII 19 (SCC), [1982] 1 SCR 726

[12] Absent the three implied terms I have identified, the renewal would be a pure fiction and an obvious breach of s. 8(1) of the *Interest Act*. The problem for Owemanco is that its renewal decision was not made until June 3, 2025.

[13] It follows that the lender had no subsisting contractual right to exercise the automatic renewal option on June 3, 2025 and the demanded fees and interest which are predicated on the loan having been renewed are null and void and, since these were exacted without justification as a condition of discharge of the mortgages, must be recovered back as claimed.

Second Issue: s. 17 Mortgages Act

[14] Owemanco did not assert a claim to three months interest under s. 17 of the *Mortgages Act* when it delivered its mortgage payout statement and ultimately accepted payment and discharged its mortgages on September 3, 2025. The claim to three months interest under s. 17 was advanced in argument as one reason why the automatic renewal fee was not a penalty contrary to s. 8 of the *Interest Act*.

[15] Despite this originally limited scope claim under s. 17 of the *Mortgages Act* as advanced in Owemanco's factum, the argument as advanced in oral argument evolved into a stand-alone claim should I find (as I have) that the automatic renewal fees were never properly exigible. The answer to this claim is (i) s. 17 of the *Mortgages Act* has no application to payment made in response to enforcement of security by the mortgagee; and (ii) the mortgagee having accepted payment and discharged the mortgage without requiring such payment, there is nothing in s. 17 that creates a free-standing claim that survives discharge of the mortgage at all events.

[16] Owemanco conceded in its factum that payment of three-months interest under s. 17 of the *Mortgages Act* cannot be required where the creditor is enforcing. However, Owemanco submitted that the *current* application of the debtors is not technically an enforcement proceeding and denied that the prior one could be so considered either. The first argument is beside the point since the current proceeding is functionally no different than a motion made in the former. As to the second argument, the suggestion that the actions of Owemanco in the prior proceeding "is not considered enforcing its security" is preposterous.

[17] Owemanco delivered its notice of its intention to enforce its security under s. 244(1) of the BIA on June 9, 2025. Such notice must be delivered by "a secured creditor who intends to enforce a security on all or substantially all of the … property" of an insolvent person in relation to a business: *BIA*, s. 244(1). The July 17, 2025 Notice of Application seeking court-appointment of a Receiver claimed such appointment would be "just and convenient … to facilitate a fair and transparent marketing and sales process of achieving a definitive disposition of the Properties". A similar statement as to the rationale for a court-appointed receiver was made by Mr. Tobe at para. 33(g) of his affidavit dated July 14, 2025.

[18] The repayment of the demanded principal amount – being the entire loan – was made on the eve of the hearing to confirm the appointment of such receiver. Owemanco's actions were clearly and unequivocally aimed at the enforcement of its security to repay the secured obligations

in full. The events preceding payment of the debt here are the very definition of enforcement proceedings.

[19] The case of *First National Financial GP Corporation v. Golden Dragon HO 10 Inc. et al*., 2020 ONSC 6994 (CanLII) is of no assistance to Owemanco. The receivership in that case has carefully tailored to avoid being characterized as enforcement and the receiver was *not* authorized to market or sell the properties. While it may be possible to tailor receivership proceedings that do not trigger the debtor's equitable right to redeem as *First National* demonstrates, those cases are rare and this is most certainly not one of them.

[20] Owemanco did not demand payment of three months interest on September 3, 2025 because it had no lawful right to do so. There is no basis to this claim whether as an answer to the dispute regarding the automatic renewal fees claimed or as a stand-alone claim in the alternative.

Third Issue: Costs of the two applications

[21] At the hearing of this matter on February 4, 2026, I made the following determination on the matter of costs of the current and the prior application. I am repeating the operative parts of my February 4, 2026 endorsement below just to be clear:

> "On the matter of costs, I confirm that I have decided that the Applicant (Owemanco) will be entitled to its costs of the receivership application and the abandoned injunction brought in the course of that part of the proceeding. My decision under reserve will include my decision on entitlement to costs for the second part of this proceeding being the hearing before me to determine which amounts, if any, paid by the mortgagor to obtain a discharge of the mortgage shall be returned. Obviously until success is determined on that part of this hearing, costs cannot be determined either.
>
> The parties will be required to prepare their submissions on costs as to (i) scale; and (ii) quantum for the entire proceeding, but broken down as between the two segments I have identified (the second segment still to be decided). Unless my decision is later than the end of next week (it won't be), I am directing the following timetable to be followed:
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> a. Applicant (Owemanco) – submissions as to scale and quantum of costs to be awarded (segment 1 and segment 2) by February 27, 2026. Written submission will be limited to 10 pages in total (excluding cover page, bills of costs (may be separately delivered on the same timetable) and lists of cases.
> b. Respondent Med Group Ontario Inc. et al – Responding written submissions as to scale and quantum of costs for both segment 1 and segment 2) by March 16, 2026 subject to the same limitations as above regarding size.
> c. Reply – shall not exceed 3 pages in length excluding cover page.
> d. All submissions to be uploaded to Case Centre."

[22] Having now decided the issues taken under reserve, it is my ruling that the debtors/applicants are entitled to their costs for the second segment. They were substantially successful in their claim. The contested payments at issue (with the exception of legal costs) have all been decided in their favour. There was a further claim in the debtors' application regarding the discharge of the letter of credit. That issue has not yet arisen as the debtors have not yet obtained a replacement letter of credit. The process of replacing one letter of credit with another should not tax the skills of two sophisticated law firms who know what escrow accounts are and Owemanco acknowledges that it must return the $500,000 cash collateral it holds for the Tarion letter of credit as soon as it is cancelled. That issue is neither difficult nor contested.

[23] I have to this point made no ruling on scale or amount of costs payable to (or from) either party for either of the two time frames I have described. The applicant debtors have paid a total of $64,198.20 in legal costs which stand to their credit when I make my final ruling on costs of both proceedings.

[24] Orders accordingly.

Justice Dunphy

Date: February 12, 2026