

CITATION: Canadian Imperial Bank of Commerce v. Kucherenko, 2026 ONSC 1104
COURT FILE NO.: CV-25-00738313-0000
DATE: 20260220

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Canadian Imperial Bank of Commerce

AND:

Irina Kucherenko

BEFORE: Justice Carissima Mathen

COUNSEL: Amanda Jackson, for the Plaintiff

Irina Kucherenko
Self-Represented Litigant

HEARD: February 20, 2026

DECISION ON SUMMARY JUDGMENT MOTION

OVERVIEW

[1] This is a motion for summary judgment in relation to enforcement of a mortgage. It was argued in a 2-hour motion before me, virtually. The Defendant is self-represented.

[2] In 2020, the Plaintiff, CIBC, entered into a mortgage with the Defendant, Irina Kucherenko in relation to a property municipally known as 19 Albani Street, Etobicoke, Ontario. The charge was for three years securing a principal sum of \$948,000. On May 8, 2023, the mortgage was renewed at a rate of 6.15%. Though the Defendant initially paid in accordance with the charge sheet, in or around June 2024 she started to miss payments. Default occurred on September 8, 2024. The Defendant has not made payment since December of 2024.

[3] The Plaintiff issued a Demand Letter on September 11, 2024. It issued a Notice of Sale on January 14, 2025. After an appearance at Civil Practice Court on July 30, 2025, the Plaintiff issued a Notice of Motion on July 31, 2025. The Defendant issued a Notice of Intent to Defend March 28, 2025.

[4] CIBC seeks, among other things:

- a. Payment of the amount owing in principal and interest.
- b. The right to issue a writ of possession.
- c. Costs.

[5] Ms. Kucherenko opposes the motion because:

- a. The matter is not suitable for summary judgment because the bank's affiant, Cynthia Fontecilla, should testify at trial.
- b. Enforcing the contract would be unconscionable.
- c. The "balance of convenience" favours a 6-month stay. This, she says, will protect the house from a forced sale which will result in a lower price. In addition, other persons, including her elderly mother who lives with her, will be negatively affected if the bank moves immediately to sell the home.
- d. Ms. Kucherenko deserves leniency.

[6] In her materials, Ms. Kucherenko made allegations that resemble Organized Pseudo-legal Commercial Arguments: *Meads v. Meads*, 2012 ABQB 571 (CanLII). I refer particularly to bullet points 2 and 3 in her unsworn document entitled "Responce [*sic*]" dated September 16, 2025. To her credit, the Defendant did not repeat these arguments in her oral submission. When I invited her to speak to them, she withdrew them. I therefore confine my analysis to her oral submissions and factum.

[7] Accordingly, the questions for the court are:

- a. Is there a genuine issue for trial on whether the Defendant defaulted on the mortgage?
- b. Is the Plaintiff entitled to the relief that it seeks?

[8] Briefly, I find that this case is appropriate for summary judgment. There is no genuine issue for trial on whether the Defendant is in default of the mortgage. The affidavit of the Bank's employee does not demonstrate any deficiencies that would require her to testify at trial. The Defendant has not challenged the core allegation that she is in default of the mortgage. The Defendant's arguments about unconscionability, balance of convenience, and a request for leniency are not persuasive. The motion is granted.

BACKGROUND

[9] The Defendant is a licensed real estate professional. She has owned other properties and taken out mortgages before. The property in question is her principal residence. The Defendant is the Registered Owner of the Property.

[10] In 2020, the Defendant entered into a mortgage with CIBC. The Defendant was represented by Anam Mahmood Khan who acted on a joint retainer for her and CIBC. The Defendant signed a Consent to Act re Conflict.

[11] In addition to the signed mortgage, the record contains:

- a. A Mortgage Disclosure Statement dated May 8, 2020. The Statement was shortly thereafter revised to reflect the variable interest rate on May 15, 2020 rather than May 8, 2020. That rate was 2.450%.
- b. Defendant's Acknowledgement of Receipt of Standard Charge Terms.
- c. Two Acknowledgments and Directions, signed by the Defendant, authorizing Mr. Khan to register the mortgage.

[12] The mortgage came up for renewal on May 8, 2023. CIBC provided the Defendant with standard information regarding the renewal including several possible interest rates and terms. Due to the change in global and domestic financial conditions, the renewal rates were higher than in 2020.

[13] The Defendant agreed to renew on a Three Year Variable Flex Closed basis, with an interest rate of 6.15%.

[14] The current interest rate is 4.400% per annum.

[15] The Defendant fell into default on September 8, 2024. While she made some irregular payments after that date, they stopped completely by the end of December 2024.

[16] There are at least three other charges on the home, including more than one to the Canada Revenue Agency and two to private lenders. There are also property taxes owing.

[17] The maturity date for the mortgage is May 8, 2026.

[18] Under the Charge, the Defendant is required to pay on a substantial indemnity basis all lawyers' fee incurred with respect to any action to collect or otherwise enforce the Charge.

[19] CIBC submitted an Affidavit and a Reply Affidavit sworn by its employee, Cynthia Fontecilla. The record does not contain a sworn Affidavit from the Defendant.

ANALYSIS

[20] The facts as I find them on a balance of probabilities are contained in the following analysis.

Is there a genuine issue for trial on whether the Defendant defaulted on the mortgage?

The Law

[21] Rule 20.04(2)(a) provides: “The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”.

[22] Therefore, to obtain summary judgment in this case, the Plaintiff must first establish that there is no genuine issue for trial on enforcement of the mortgage and associated relief. The onus then shifts to the Defendant to prove that its claim has a real chance of success: *Sanzone v. Schechter*, 2016 ONCA 566, 402 DLR (4th) 135, at para. 30. The court must take a hard look at the evidence. While the onus is on the moving party to establish there is no issue requiring a trial, the responding party must “lead trump or risk losing”: *1061590 Ontario Ltd. v. Ontario Jockey Club*, 1995 CanLII 1686 (ON CA), 1995 CarswellOnt 63 (Ont. C.A.), at para. 36.

[23] There is no genuine issue requiring a trial if, on a summary judgment motion, the court can reach “a fair and just determination on the merits”: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 49. Such a determination is warranted if the process (a) allows the court to make the necessary findings of fact, and to apply the law to the facts and (b) is a proportionate, more expeditious and less expensive means to achieve a just result.

[24] In determining whether there is a genuine issue for trial, a court may weigh the evidence, evaluate credibility, and draw reasonable inferences from that evidence: Rule 20.04 (2.1). The court can assume that the record contains all the evidence the parties would present if the matter proceeded to trial.

[25] The court should use its enhanced powers and decide a motion for summary judgment only where it leads to “a fair process and just adjudication”: *Ang v. Lin*, 2023 ONSC 4446, at para. 15, citing *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44, and *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6 (and cases cited therein).

Application

[26] This case is a straightforward issue of mortgage default that is appropriate for summary judgment. The Plaintiff’s materials allow me to reach a fair and just determination on the merits. Based on the record before me, I can make the necessary findings of fact and apply the law to those facts. I also find summary judgment a proportionate and less expensive means to achieve a just result.

[27] The Defendant argues that this matter is not appropriate to summary judgment because of the affidavits sworn by Cynthia Fontecilla. The Defendant argues that:

- a. The Affiant's "precise position and authority are undisclosed".
- b. The record does not establish Ms. Fontecilla's "personal knowledge" of the Defendant's file.
- c. Therefore, Ms. Fontecilla's affidavit is "hearsay" that requires evidence at trial.

[28] I confirmed with the Defendant that she does not have another reason why this court should order this matter to proceed to trial.

[29] The Defendant appears to misunderstand the role of Ms. Fontecilla. Ms. Fontecilla speaks for CIBC. CIBC is entitled to select any affiant it wants. It need not disclose an affiant's exact role within the organization where the case does not depend on whether that person obtained any knowledge in the course of their specific duties. In this case, Ms. Fontecilla is simply the person through which the CIBC seeks to introduce documents that show how the mortgage was initially entered into in 2020, how it was renewed in 2023, what documents were sent to the Defendant, what documents she signed or acknowledged, and what the discharge sheet shows in terms of payments made. None of this information is hearsay. All of this information is appropriate to a sworn affidavit.

[30] The Bank argues that the Defendant has not provided any evidence to counter the substantive evidence of Ms. Fontecilla. I agree. The record does not contain a sworn affidavit from the Defendant. Other than the Defendant's objections to the affiant herself, the facts deposed to in Ms. Fontecilla's affidavits are essentially unchallenged. The Defendant's bald objections do not create a triable issue.

[31] Accordingly, I find that there is no genuine issue for trial on any aspect of this motion, and proceeding by way of summary judgment is appropriate.

Is the Plaintiff entitled to the relief that it seeks?

[32] The Plaintiff seeks, among other things, possession of the mortgaged property and judgment on the loan.

[33] The Defendant's substantive arguments do not address the substance of the claim that she has defaulted on the mortgage. Rather, the arguments are about:

- a. *Whether the contract is unconscionable due to lack of independent legal advice:* I am not persuaded that the circumstances were unconscionable. The Defendant signed a Consent to her and CIBC's Joint Retainer of Mr Khan with respect to the charge. The Defendant is a licensed real estate professional. Her submissions rely on her expertise as part of the reason that the court should enter a stay (discussed below), because she is in a better position to sell the home. The Defendant cannot simultaneously cite her real estate expertise and argue that she was taken advantage of when she signed a standard mortgage on her home. I am persuaded that the process leading to the original mortgage was common and would have been

familiar to a real estate professional. Any lack of independent legal advice does not make the original loan unconscionable.

- b. *Whether the court should impose a 6-month stay:* The Defendant urges the court to impose a 6-month stay of enforcement during which the Defendant proposes to pay CIBC \$3700 a month which is lower than what the mortgage currently requires, and to sell the home herself. The Defendant provides no legal basis for this outcome. She says the “balance of convenience” justifies this compromise. The Defendant refers to (a) her elderly mother who lives in the home and (b) other creditors, all of whom will be prejudiced by a forced sale. None of these people is a party to the case or appeared before the court. I am sympathetic to an elderly person who may be forced to leave her home. However, loss of a residence is not the sort of prejudice that the court can take into account when deciding on appropriate relief in this context: *Starkman v. Home Trust Company*, 2015 ONCA 436 (CanLII).
- c. *Whether justice requires granting the Defendant some leniency:* The Defendant argues that this is not a case of a borrower walking away from their responsibilities but someone who faced difficult circumstances making compliance with the charge impossible. The Defendant signed the mortgage renewal in May 2023 at a higher rate that ultimately, she could not sustain. She was also dealing with additional obligations from two properties which have since sold. She is now in a much better position. The problem is that the Defendant does not propose to honour the current charge terms but wants the court to order CIBC to accept something less than what it is entitled to. Absent extraordinary circumstances, which do not exist here, a mortgagee is entitled to seek satisfaction under the contract up to and including sale of the property: *Arnold v. Bronstein et al.*, 1970 CanLII 245 (ON SC).

[34] Therefore, I find, the Defendant has not established a basis on which the Court can or should decline to grant the relief requested.

[35] I am satisfied that the Plaintiff has proved its case based upon its Statement of Claim together with the evidence from the affidavits of Cynthia Fontecilla sworn July 30, 2025 and February 13, 2026 and the documents attached thereto:

- a. The parties entered into an initial mortgage for \$948,000.
- b. The Defendant and CIBC jointly retained Anam Mahmood Khan. The Defendant signed a Consent to Act re Conflict.
- c. Mr. Khan witnessed the Defendant’s acknowledgment of receipt of the Mortgage Disclosure Statement.
- d. The Defendant executed an acknowledgment that she had received a copy of the Standard Charge Terms. The Defendant says she signed the acknowledgement but

never actually received the terms. I find this unlikely. The Defendant is a real estate professional who would have known what she was signing.

- e. The Charge provides that, on default, the principal shall be payable, and CIBC shall be entitled to possession of the property.
- f. On April 6, 2023, CIBC advised the Defendant by letter that the mortgage was up for renewal on May 8, 2023.
- g. The Defendant agreed to renew the mortgage with CIBC at an interest rate of 6.15%. There is no evidence that she was under any duress or pressure from CIBC to do so.
- h. Because the charge is a variable rate mortgage, the current interest rate is 4.400% per annum.
- i. Default in payment occurred on September 8, 2024, after the Defendant had missed some earlier payments. The default has not been rectified.
- j. The amount due under the charge as of July 8, 2025 is \$925,629.92 with interest thereafter at the rate of 4.400% per annum.
- k. The mortgage will mature on May 8, 2026.

[36] In view of all the evidence and arguments presented, the Plaintiff has made out its case. The motion is granted.

[37] The Plaintiff seeks costs of \$12,136.59. Under the Charge, in the event of default the Defendant is liable to pay CIBC's legal costs. Having reviewed the work outlined and the rates charged, I find the costs reasonable. The Defendant shall pay the Plaintiff's costs on a substantial indemnity basis, fixed at \$12,136.59.

ORDER

[38] In conclusion, I make the following order:

- a. The Plaintiff's motion for summary judgment against the Defendant Irina Kucherenko is granted.

- b. The Defendant shall pay costs of this action fixed at 12,136.59.
- c. The Plaintiff's draft Order submitted for this motion shall issue.

Date: February 20, 2026

Mathen, J.