

CITATION: YF Capital Inc. v. Roy, 2025 ONSC 1292
COURT FILE NO.: CV-23-00703837-0000
DATE: 20250226

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
YF CAPITAL INC.) *Lu Yun Law*, for the Plaintiff
)
Plaintiff)
)
– and –)
)
HARRISON FRANK ROY and TRUNG)
TRAN)
)
Defendants)
)
) **READ:** February 23, 2024

2025 ONSC 1292 (CanLII)

PAPAGEORGIU J.

Overview

[1] The plaintiff is a lender suing on a mortgage loan over 519-7 Grenville St. Toronto, ON (the “Property”), such loan given to the defendant Harrison Roy. It also sues on a guarantee given by Trung Tran.

[2] The defendants failed to defend the proceeding and were noted in default.

[3] The plaintiff brings a motion for default judgment seeking damages, an order for possession of the Property, leave to issue a Writ of Possession against the Property, and an Order directing the Registrar to issue Writs of Seizure and Sale. The plaintiff served the defendants with this motion.

Decision

[4] For the reasons that follow I am granting the judgment in the amount of \$ 896,275.67 an Order for possession as well as the Writ of Possession. I do not order the Registrar to issue the Writ of Seizure and Sale as a court order is not required for this.

The Issues

[5] The main issues are:

- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the plaintiff is entitled?
- Issue 3: Do the materials provide a basis for ordering the Writs sought?

Analysis

Issue 1: Do the materials provide a basis for a finding of liability?

Consequences of noting in default

[6] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[7] However, pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[8] In particular, r. 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

The test on a motion for default judgment

[9] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[10] I am satisfied that the plaintiff has established liability based upon the following deemed admissions in the Statement of Claim together with the affidavit evidence filed:

- The Plaintiff and Harrison Roy entered into a mortgage that provided for a loan in the amount of \$680,000, secured against the Property.
- The defendant Trung Tran guaranteed the loan.

- The loan provides an interest rate of 9.5 % per annum until February 1, 2023, after which the rate increased to 19 % per annum. Monthly payments at that time increased from \$5,383.33 per month to \$10,766.7 per month.
- Section 13 of the Schedule to the mortgage stipulated that if there was a default by the mortgagor on any fee, interest, or principal payments, the mortgagee reserved the right to demand immediate payment of the entire principal amount outstanding. Additionally, any remaining balance became due immediately upon the loan's maturity. The mortgagor was also obligated to cover all of the mortgagee's legal fees, disbursements, and applicable taxes arising from actions taken post-default, encompassing but not limited to the issuance of notices, negotiations, court applications, eviction proceedings, and the sale of property under the Notice of Sale.
- The mortgage was registered as a first mortgage.
- The mortgage has been in default with no payments since March 1, 2023.
- The plaintiff served Notices of Default on March 9, 2023, and a Notice of Sale on April 12, 2023.
- The defendants did not remedy the default.

Issue 2: What are the damages to which the plaintiff is entitled?

[11] The outstanding balance on the mortgage as of November 1, 2024, is \$896,275.67 in principal and interest. Therefore, I am awarding this amount as against Harrison Roy on the mortgage and as against Trung Tran in respect of his guarantee.

[12] I award this amount with pre and post judgment interest at the contract rate of 19 %.

Issue 3: Do the materials provide a basis for ordering the Writs sought?

[13] Pursuant to r. 60.10 “the court may grant the court may grant leave to issue a writ of possession only when it is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief.” See also *Hyungjong Kim*, 2022 ONSC 2731 at para 19.

[14] The plaintiff has provided evidence that the home is owner occupied only. Therefore, I grant the writ of possession.

[15] I do not grant the Writ of Seizure and Sale as pursuant to r. 60.07 the creditor is entitled to one upon filing with the registrar a copy of the order. Leave is only required if six or more years have elapsed since the date of the order which is not the case here.

Costs

[16] The plaintiff's draft order seeks costs in the amount of \$12,056.51 on a substantial indemnity basis for the costs incurred prior to bringing the action and \$18,006.55 in respect of the costs of the motion on a substantial indemnity basis.

[17] The mortgage entitles the plaintiff to its costs on a substantial indemnity basis.

[18] However, some of the costs incurred related to the need for the plaintiff to address certain deficiencies including service issues.

[19] Therefore, I reduce the costs to \$20,000 in respect of all costs, which I find reasonable and within the reasonable contemplation of the defendants.

[20] The plaintiff shall send me a revised Judgment.

[21] I award pre and post judgment interest at the contract rate of 19 % commencing on November 1, 2024.

Papageorgiou J.

Released: February 26, 2025

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ENDORSEMENT

Papageorgiou J.

Released: February 26, 2025