

**CITATION:** Marper Holdings Limited v. Foxpark Development Corporation, 2025 ONSC 1240  
**COURT FILE NO.:** CV-24-00000527-0000  
**DATE:** 20250224

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

MARPER HOLDINGS LIMITED

Plaintiff

James Quigley, for the Plaintiff

– and –

FOXPARK DEVELOPMENT  
CORPORATION, CARL STRAND and  
JOHN STRAND

Defendants

Carl Strand, Self-Represented

John Strand, Self-Represented

Foxpark Development Corporation, not  
represented

Martin Price - observing

**AND BETWEEN**

FOXPARK DEVELOPMENT  
CORPORATION, CARL STRAND and  
JOHN STRAND

Plaintiffs by Counterclaim

– and –

MARPER HOLDINGS LIMITED, MR.  
AND MRS. GILBERT KUIPER, MARTIN  
PRICE, MORTGAGE INTELLIGENCE,  
LAW FIRM, SPETTER-ZEITZ-KLAIMAN  
PC BARRISTERS & SOLICITORS

Defendants by Counterclaim

**HEARD:** February 21, 2025

## **REASONS FOR DECISION**

### **HEALEY J.**

#### **Overview**

- [1] This is an action to enforce the terms of a mortgage debt. The plaintiff, Marper Holdings Limited (“Marper”) moves for summary judgment on the claim, and the defendants by counterclaim, Marper and “Mr. and Mrs. Gilbert Kuiper” move for an order dismissing the counterclaim.
- [2] Marper seeks judgment in the sum of \$2,361,348.51 against all of the defendants - Foxpark Development Corporation (“Foxpark”), Carl Strand and John Strand - on a joint and several basis. Carl Strand is the president of Foxpark and John Strand is his adult son.
- [3] Marper also seeks post-judgment interest at the contractual interest rate of 12% per annum, as well as an order for possession of the mortgaged property and leave to issue a writ of possession immediately.
- [4] The mortgaged property, the legal description of which is contained in the notice of motion and charge, is municipally known as 77 Fox Street, Penetanguishene, Ontario (the “Property”), and comprised of seven parcels. The Property is development land which, the court surmises from the submissions, was intended to be developed into residential housing for seniors, and currently stands vacant.

#### **The Pleadings**

- [5] The statement of claim is straightforward. It alleges a \$2 million loan made by Marper as lender to Foxpark as borrower, secured against the Property and guaranteed by the individual defendants Carl Strand and John Strand, a default, and failure to remedy the default. It seeks the contractual remedies available to Marper arising from the default.
- [6] The statement of defence and counterclaim was drafted by Carl Strand, who is not a lawyer. It claims \$34 million in damages from the defendants by counterclaim. It references Marper’s claim as being a “vindictive and malicious legal action”.
- [7] The counterclaim to the added party, Spetter Zeitz Klaiman PC Barristers & Solicitors (who are Marper’s lawyers), was dismissed by order of Justice Sutherland dated July 25, 2024, whose endorsement states “upon my review of the counterclaim, I see no cause of action”.
- [8] The statement of defence and counterclaim has never been served on Martin Price and Mortgage Intelligence. Pursuant to Rule 27.04 (2)(a), that pleading was to have been served 30 days after issuance, and leave has never been sought from the court to extend the time for service. Mr. Price appeared today to observe the proceeding and made brief submissions. None of his submissions have been considered in my deliberations, as Mr. Price sought to introduce facts not in evidence.

- [9] The remaining defendants to the counterclaim are Marper and “Mr. and Mrs. Gilbert Kuiper”. Gilbert Kuiper and his spouse Jennifer Marley are the shareholders of Marper and presumably are the defendants by counterclaim referred to as “Mr. and Mrs. Gilbert Kuiper”.
- [10] Even reading the claim most generously and broadly, its narrative does not disclose any recognizable legal cause of action against the defendants by counterclaim. As noted by Justice Sutherland, it alleges collusion on the part of the “defendant” to use the legal process to cause damage to Foxpark and the Strands. It seeks to have the court declare the mortgage “null and void” along with an award of “costs both direct and punitive for the obvious utilization of the legal system in a vindictive and malicious manner, and collusion for an unwarranted financial gain”. It is difficult to tell which allegations are being made against a particular defendant to the counterclaim. The facts pled outline why Carl Strand believes that he has been unfairly dealt with by Marper, and suggests that the Kuipers are too wealthy to need their loan repaid and are motivated by greed, but contains no real defence or basis to claim damages from the defendants by counterclaim.
- [11] The pleading does, however:
- (a) admit that Foxpark receive the \$2 million mortgage loan: “[t]he main defendants (the Kuipers) have a \$2 million dollar mortgage on the Plaintiff’s property, at 77 Fox St. Penetanguishene [the asset]...The Defendant’s mortgages earning 12% per annum” and “Marper Holdings Limited has a \$2 million dollar first mortgage on a property that is worth \$10 million”;
  - (b) admits that the mortgage is in default: “These negotiations... would place a short-term standard mortgage of \$400,000 from the defendants in place allowing the Defendant’s mortgage to be brought into good standing during negotiations between the Plaintiff and the Defendant”; and
  - (c) admits that Foxpark would not agree to the terms of a forbearance letter delivered on behalf of Marper: “Marper’s lawyers...sent a forbearance letter with onerous terms that the Plaintiff could not, in good conscience, agree to. The terms of this letter created a totally untrusting relationship between the Plaintiff and the Defendant”.
- [12] The statement of defence and counterclaim also denies that Carl Strand is a guarantor. The evidence proves that he is.

### **Evidentiary Record**

- [13] None of the defendants/plaintiffs by counterclaim have filed sworn evidence for the purpose of this motion. A document that purports to be a factum of the defendant Carl Strand has been uploaded to Case Center, attaching various documentation. The court must disregard this document in its entirety, as it is not evidence, attaches documents not in evidence, and contains no legal argument.

- [14] Accordingly, the evidence of the plaintiff/defendants by counterclaim is before the court on an unopposed basis. Cross examinations on their evidence were not undertaken.
- [15] It is important to note that two case conferences were held in this matter by Justice Charney. Following the first, which was heard in writing on September 24, 2024, Justice Charney set out a litigation schedule which set a deadline of October 4, 2024 for delivery of the defendants' responding motion records for this motion, and delivery of a motion record by Carl Strand or another director or officer of Foxpark to seek leave to represent Foxpark as a non-lawyer, or alternatively, for a lawyer to go on record. The defendants were permitted to cross-examine Gilbert Kuiper as a representative of Marper on or before October 25, 2024. None of that occurred.
- [16] At a second case conference held on October 9, 2024, Carl Strand was given until November 1, 2024 to serve his notice of motion and any supporting affidavits to seek leave to represent Foxpark. That did not occur.
- [17] All of the procedural issues related to this motion have been thoroughly canvassed at both case conferences, including the representation of Foxpark and delivery of material, including factums.
- [18] Accordingly, Foxpark did not have proper representation at the motion, but it is too late at this point to grant an adjournment to Foxpark. The plaintiff has been waiting a long time to obtain judgment in what should have been a simple mortgage enforcement action, but complicated by having to deal with a self-represented individual who has not complied with court orders. On inquiry from the court, Carl Strand advised that the other director, William Carley, generally knows about this litigation but has never seen the statement of claim. Mr. Carley has not appeared today. In the result, the court made clear to Carl Strand that any submissions that the court received from him were to be given in his own personal capacity and related to his guarantee, and not made on behalf of Foxpark.
- [19] John Strand was also present for the hearing but deferred to his father to represent his position to the court.

### **Law of Summary Judgment**

- [20] The applicable principles that guide a summary judgment motion derive from *Hryniak v. Mauldin*, 2014 SCC 7.
- [21] With respect to when summary judgment may be granted, Karakatsanis J. stated, at para. 49:

There will be no genuine issue requiring trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This 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 the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

- [22] At para. 50, the Court defined the overarching issue to be “whether summary judgment will provide a fair and just adjudication.” Karakatsanis J. went on to say that “the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.”
- [23] In terms of the approach to a motion for summary judgment, *Hryniak* directs at para. 66 that the judge should first determine if there is a genuine issue requiring a trial based only on the evidence before her, without using the new fact-finding powers. If there appears to be a genuine issue requiring a trial, she should then decide if the need for a trial can be avoided by using the new powers under rules 20.04(2.1) and (2.2) of the *Rules of Civil Procedure*. These powers may be used by the motion judge in her discretion provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole.
- [24] The evidence adduced on a summary judgment motion need not be equivalent to that at trial. A documentary record may be enough, if it allows the motion judge to have confidence that she can fairly resolve the issues: *Hryniak*, at para. 57.
- [25] The law from the Ontario Court of Appeal is clear that the court must take a hard look at the evidence on a motion for summary judgment to determine whether there is a genuine issue requiring a trial and may freely canvas the facts and law in doing so. No party is entitled to rely on the prospect of additional evidence that may be tendered at trial; all parties have an obligation to put their best foot forward on a summary judgment motion: *Switzer v. Petrie*, 2024 ONCA 474, at para. 8. The motions judge is entitled to assume that the record contains all the evidence which the parties will present if there is a trial.
- [26] The requirement to put one’s best foot forward means that although the onus is on the moving party to establish the absence of a genuine issue requiring a trial, there is an evidentiary burden on the responding party, who may not rest on the allegations or denials in the party’s pleadings, but must present specific facts showing that there is a genuine issue for trial. This requirement was discussed in *Cuthbert v. TD Canada Trust*, 2010 ONSC 830, at para. 12 and confirmed in *Sanzone v. Schechter*, 2016 ONCA 566, at para. 30 and *Broadgrain Commodities Inc. v. Continental Casualty Company*, 2018 ONCA 438, at para. 7.

## Evidence

- [27] Marper is an Ontario business corporation. Gilbert Kuiper and his spouse Jennifer Marley are the shareholders of Marper. Foxpark is a federal business corporation whose directors are Carl Strand and William Carley. Mr. Carley was not a director at the time of the mortgage transaction.

- [28] Foxpark is the registered owner of the Property. Foxpark is in the process of developing the Property by constructing residential units on the land. Currently the construction is incomplete and no one resides on the Property.
- [29] Marper agreed to provide a \$2 million loan to Foxpark pursuant to the terms of a commitment letter dated January 4, 2023, signed by Gilbert Kuiper on behalf of Marper and John Strand on behalf of Foxpark. Foxpark was authorized to enter into the loan and grant the mortgage when Carl Strand executed the “Resolution of the Sole Director of Foxpark Development Corporation” dated January 17, 2023. The loan was secured by a first mortgage against the Property.
- [30] Foxpark granted a first charge on the Property to the plaintiff on January 18, 2023 to secure the principal sum of \$2 million, registered as instrument no. SC 1958297. The interest rate on the mortgage is 12% with monthly payments of \$20,000 commencing February 13, 2023, with the balance due date of December 13, 2023. It was agreed that the interest would be due and payable on the first day of each month, and post-dated cheques provided to Marper were dated for the first day of each month following a 6-month prepayment period.
- [31] Both John and Carl are identified as being guarantors of the indebtedness on the face of the mortgage. Foxpark’s indebtedness is secured by two guarantees provided by Carl and John, which provide an unlimited personal guarantee of each with respect to Foxpark’s obligations to Marper under the mortgage.
- [32] John received independent legal advice when he provided his unlimited personal guarantee and provided a certificate of independent legal advice.
- [33] Foxpark defaulted on November 1, 2023, when its cheque was dishonoured and payment was not made. The cheque was not replaced.
- [34] No further loan payments have been made by Foxpark to Marper, and accordingly the loan is in default under the terms of the loan and the mortgage.
- [35] Marper, through its lawyers, made demands upon Foxpark, Carl and John pursuant to their respective obligations by correspondence dated November 13, 2023, and enclosed a notice of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.
- [36] The defendants have not paid the amount due and owing and interest has continued to accrue at the contractual rate of 12% per annum.
- [37] Upon its maturity on December 13, 2023, the mortgage was not repaid, which constitutes a second default.
- [38] Pursuant to the evidence of Gilbert Kuiper contained in his supplementary affidavit sworn February 18, 2025, as the date the motion was argued, total accrued interest is \$361,348.51. This amount is due and owing by Foxpark, in addition to the principal amount of the loan.

- [39] Schedule A to the mortgage states that the sum of \$1,000 will be due and owing for payments not made. Foxpark has failed to pay 2 months of interest payments in November and December 2023 and accordingly, the sum of \$2,000 is due and owing to Marper. Marper seeks to have the court assess interest on that amount at the 12% interest rate, totaling \$306.05. I agree that section 8 of the Standard Charge Terms that govern this mortgage applies to have the \$2,000 considered a charge upon the land with interest at the rate provided for in the mortgage.
- [40] Further, paragraph 8 of the Standard Charge Terms provides that Foxpark is liable to pay Marper's legal fees.
- [41] Paragraph 10 of the Standard Charge Terms state that upon default Marper is entitled to quiet possession of the Property.

### **Issues**

- [42] The issues to be decided by this court are as follows:
1. Is this an appropriate case for summary judgment?
  2. Should judgment be rendered against Foxpark for the amount owing under the loan and mortgage?
  3. Should the court grant possession of the Property to Marper pursuant to the terms of the mortgage, and should leave be granted to issue a writ of possession immediately?
  4. Should judgment be rendered against Carl strand and John strand on their guarantees?
  5. Should the counterclaim be dismissed?
  6. What costs should the defendants be ordered to pay, and on what scale?

### **Analysis**

#### ***Issue #1***

- [43] There is no need for a trial in this case. The evidence led by Marper clearly establishes that a debt is owed by the Defendants under the mortgage, and that Marper is entitled to the accrued interest and penalties pursuant to the charge. These obligations and the debt have been personally guaranteed by the individual Strand defendants. Under the terms of the charge, these amounts become due and owing upon default and Marper is entitled to possession of the property.
- [44] In not filing any responding evidence, the defendants have entirely failed to meet the evidentiary burden required to show that there is a genuine issue requiring a trial.

- [45] During submissions neither of the Strands contested the interest calculation prepared on behalf of Marper, or the costs being sought.
- [46] While Carl Strand submitted that this claim should proceed to trial because there was a genuine issue for trial, his submissions indicated that he believes there is a genuine issue about whether he will be able to secure financing to satisfy the debt owed to Marper. This of course does not raise the sort of genuine issue about the issues on this motion: whether the debt is owed, its quantum and who is obligated to pay it. As noted by Mr. Quigley, a monetary judgement does not prevent the defendants from redeeming the mortgage if financing can be obtained.
- [47] Carl Strand is obviously in a precarious financial position and has advised this court that his wife is very ill and that he has power of sale proceedings pending for his personal residence. While Mr. Strand may have my sympathies as an individual, as a judge I must set aside all sympathy and deliver a judgment based only on the evidence and the law.
- [48] I have confidence that a proper determination can be made on the record before me. Granting summary judgment on this evidentiary record is a fair and just result and will serve the goals of timeliness, affordability, and proportionality, as it is assumed that no further or better evidence is available to the defendants, and the statement of defence and counterclaim does not raise a recognizable defence to the statement of claim.
- [49] According, there being no issue requiring a trial, the court must grant summary judgment pursuant to Rule 20.04(2).

***Issue #2***

- [50] The evidence supports the claims made. Although the defendants have admitted through their pleading that the \$2M loan was advanced, there is also a trust ledger in evidence that shows receipt of the money.
- [51] There is no evidence refuting the two non-negotiable cheques. There is no evidence refuting the calculation of interest and Gilbert Kuiper's interest calculation is unimpeached.
- [52] Judgment should be rendered against all of the defendants on a joint and several basis, requiring them to pay Marper the sum of \$2,361,348.51, plus post-judgment interest at the rate of 12% per annum compounded monthly on the first day of each month, in accordance with the terms of the mortgage.
- [53] Additionally, in accordance with Schedule A of the mortgage, the sum of \$2000 plus interest, being the sum of \$2306.05, is to be paid by the defendants to Marper on a joint and several basis, plus post-judgment interest at the rate of 12% per annum compounded monthly on the first day of each month, in accordance with the terms of the mortgage.

***Issue #3***

[54] Marper is entitled to possession of the Property under the terms of the mortgage. As the Property is not inhabited and any structures only partially built, it is an efficient use of judicial resources to allow Marper to immediately apply for a writ of possession.

***Issue #4***

[55] The signed guarantees are in evidence. John Strand obtained independent legal advice before signing the one that binds him; the certificate of the attesting lawyer has been produced.

[56] The guarantees provides:

The Guarantor irrevocably and unconditionally herein gives an unlimited personal guarantee of the due and punctual payment of all debts, liabilities and obligations of Foxpark Development Corporation (the “Debtor”) pursuant to a land charge/mortgage to be registered upon Lot 6, 7, 8, 9, Blocks 10, 11, 12 & 14 on Plan 51M653, 77 Fox Street, Town of Penetanguishene, County of Simcoe.

[57] No evidence has been adduced as to why these guarantees would not be enforceable, or would not bind the individual defendants.

[58] In the result, judgment should be rendered against Carl and John Strand on their guarantees.

***Issue #5***

[59] The counterclaim should be dismissed. There is no evidence to prove any allegations made therein, and as previously stated, the pleading does not disclose any recognizable legal cause of action against the defendants by counterclaim.

***Issue #6***

[60] Mr. Quigley has filed the costs outline. His clients seeks costs on a full indemnity basis in the amount \$28,215.50. It is his submission that this scale is permitted by section 8 of the Standard Charge Terms. In the alternative, he submits that the defendants’ behaviour in this case, and particularly their conduct in commencing a frivolous and vexatious counterclaim, merits costs on the highest scale.

[61] While reasonable people could disagree on this point, it is my view that the term “legal fees (as between solicitor and client)” allows for costs on what is now known as the substantial indemnity scale.

[62] Costs on the highest scale being sought by the Marper parties require exceptional circumstances that go beyond those that would merit an award of substantial indemnity

costs. In cases in which full indemnity costs have been ordered, the “overriding common thread ... is the strong sentiment that the matter, or the issue at least, should never have been brought before the court in the first place, leading to a reaction that the innocent party should not have had to pay a penny toward the cost of litigation”: *Envoy Relocation Services Inc. v. Canada (Attorney General)*, 2013 ONSC 2622, [2013] O.J. No. 1999, at para. 116.

[63] The type of considerations that have attracted full indemnity costs are summarized at paragraph 125 of *Envoy*, as follows:

- (a) “grave positive misconduct” on the part of the blameworthy party;
- (b) but for the blameworthy party’s misconduct, the matter, or at least a significant component of the litigation, should never have reached the courts;
- (c) the non-offending party did nothing to hinder, delay or confuse the litigation;
- (d) the blameworthy party’s conduct was contemptuous, enforcing the “aggrieved party to exhaust legal proceedings to obtain that which was obviously his”;
- (e) the matter involved a scurrilous attack on the administration of justice or waste of scarce judicial resources.

[64] The conduct of the defendants does not rise to this level. The defendants by counterclaim have not had to expend significant time or costs related to the counterclaim; it is Marper’s claim that has been the focus of this proceeding and certainly of this summary judgment motion. Including Marper’s lawyers as a party to the counterclaim was ill-advised at best, but even Justice Sutherland, in dismissing the counterclaim against that party, did not order costs.

[65] Accordingly, I order that the defendants Foxpark, Carl Strand and John Strand jointly and severally pay the costs of this action to the Plaintiff on a substantial indemnity scale, fixed in the amount of \$25,509.15.

### **Order**

[66] For the foregoing reasons, this court orders:

1. This court orders that the defendants shall forthwith pay to the plaintiff the sum of \$2,361,348.51 on a joint and several basis.
2. This court orders that post-judgment interest shall accrue on the sum of \$2,361,348.51 at the rate of 12 per cent per annum compounded monthly on the first day of each month

after the date of this Judgment. Interest shall be payable to the plaintiff forthwith when accrued by all defendants, on a joint and several basis.

3. This court orders that the defendants shall pay to the plaintiff forthwith the sum of \$2,306.05 on a joint and several basis.
4. This court orders that post-judgment interest shall accrue on the sum of \$2,306.05 at the rate of 12 per cent per annum compounded monthly on the first day of each month after the date of this Judgment. Interest shall be payable to the plaintiff forthwith when accrued by all defendants, on a joint and several basis.
5. This court orders that the counterclaim of Foxpark Development Corporation, Carl Strand and John Strand is hereby dismissed against the plaintiff and the Kuipers.
6. This court orders that the plaintiff is hereby granted possession of the Property.
7. This court orders that the plaintiff is hereby granted leave to issue a writ of possession with respect to the Property.
8. This court directs the defendants to refrain from interfering with, impeding or frustrating the plaintiff's possession of the Property.
9. This court orders that the defendants shall pay to the plaintiff the costs of this action on a substantial indemnity basis in the all-inclusive sum of \$25,509.15, on a joint and several basis.

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HEALEY J.

**Released:** February 24, 2025