

CITATION: Stone v. Zandi Shirvani, 2026 ONSC 2483
COURT FILE NO.: CV-25-00738942-0000
DATE: 20260424

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: LESLIE STONE Plaintiff
AND:
IRAN ZANDI SHIRVANI Defendant
BEFORE: Justice Carissima Mathen
COUNSEL: *Thom Harley*, for the Plaintiff
Iran Zandi Shirvani -Self - Represented
HEARD: April 24, 2026

ENDORSEMENT ON SUMMARY JUDGMENT MOTION

OVERVIEW

[1] This is a motion for summary judgment in relation to enforcement of a mortgage and a writ of possession. It was argued before me, virtually. The Defendant, Iran Zandi Shirvani, is self-represented. Her son was present for the hearing and assisted her with translation.

[2] On June 25, 2024, the parties entered into a mortgage for a property municipally known as 55 Cooper Street, Unit 1616, Toronto, Ontario. The charge was for six (6) months, securing a principal sum of \$64,900.00. Default occurred on or about January 1, 2025. The Charge matured on January 1, 2025 and has not been renewed or extended.

[3] The Plaintiff issued a Demand Letter on February 21, 2025. The Defendant failed to cure the default, following which the Plaintiff commenced and served a Statement of Claim on March 12, 2025.

[4] The Plaintiff seeks, among other things:

- a) Payment of the amount owing in principal and interest;

- b) A Writ of Possession; and
- c) Costs.

[5] The Defendant did not file materials for the motion. There is no sworn Affidavit from her in the record. She did file a Statement of Defence. As I understand it, she does not deny the charge. She says she was pressured into entering the loan agreement by her daughter. She appears to criticize the Plaintiff for loaning her money without sufficiently checking into her ability to pay. She was never able to afford the property and is willing to have the property sold. Previously, she asked to remain in the property until it was sold, but at the hearing she did reiterate that claim. Through her son, she objected to paying the interest rate in the Charge, associated fees and, presumably, costs.

[6] 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?

[7] 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 Defendant has not challenged the core allegation that she is in default of the mortgage. Nor does she dispute that she signed the loan agreement. It appears that the Defendant was betrayed by her daughter. That, however, does not affect the Plaintiff's legal rights. The motion is granted.

[8] Undoubtedly, this is a very difficult situation for the Defendant. The Court notes the professionalism and sensitivity counsel for the Plaintiff demonstrated at the hearing.

BACKGROUND

[9] As stated above, the Charge was for six months. The Charge provides for interest at the rate of 9.990% per annum calculated monthly, not in advance. Payment was due in the sum of \$540.29 on the first day of the month

[10] The agreement contains Standard Charge Terms which include:

- a) In the event of default for at least fifteen (15) days, on at least thirty-five (35) days' notice the Chargee (Plaintiff) may lease or sell the land without entering into possession thereof.
- b) In the event of a default, at the option of the Chargee the entire principal and accrued interest shall immediately become due.
- c) "In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable

and the sum in arrears for interest ... shall bear interest at the rate provided for in the Charge.”

- d) The Defendant is liable for “for all costs, charges and expenses on a solicitor and client basis.”

[11] The Plaintiff issued a Demand Letter on February 21, 2025. The Defendant failed to cure the default, following which the Plaintiff commenced a Statement of Claim on March 12, 2025, which was served on the Defendant.

[12] As a result of the continuing default, the Plaintiff issued a Notice of Sale Under Mortgage in connection with the Charge together with a Notice of Intention to Enforce Security pursuant to Subsection 244(1) of the *Bankruptcy and Insolvency Act*. Both instruments were forwarded to the Defendant by registered mail on March 19, 2025.

[13] The Plaintiff alleges that \$79,542.09 was due owing as at March 12, 2025; and that the Defendant is liable for this amount together with interest at the rate of 9.990% per annum from March 12, 2025 to the date of judgment or payment.

[14] Stone’s Motion Record relies on an Affidavit of Maxwell Nilsen sworn June 26, 2025. Mr Nilsen is the Senior Default Recovery Officer for CMI Mortgage Investment Corp., the Plaintiff’s servicing agent.

[15] The Defendant served a Statement of Defence on April 24, 2025. In it, the Defendant admits that she obtained the charge, and the Plaintiff is entitled to be repaid, but states that she has no knowledge about many of the allegations in the claim. This is because the Defendant alleges that her daughter pressured her to purchase the property. She states that she has been trying to sell it, and has sought the Plaintiff’s cooperation to do that from the beginning.

[16] This matter was set down for summary judgment by way of endorsement on June 25, 2025. The Timetable in that endorsement included the following dates:

- a) Moving party’s Motion Record due July 11, 2025
- b) Responding party’s Motion Record due August 11, 2025
- c) Cross-examinations, if any, completed by September 14, 2025
- d) Undertakings to be answered by September 28, 2025
- e) Moving party factum due by September 30, 2025
- f) Responding party factum due October 31, 2025

[17] The court record contains no materials from the Defendant in relation to the Timetable. There is no responding motion record. There are no affidavits. No cross-examinations occurred.

It is possible that the Defendant has had difficulties uploading appropriate documents in a form that could be received by the court. I appreciate that the Defendant is self-represented. Nevertheless, everyone must comply with the Rules of Civil Procedure. In the absence of a motion record, it is difficult to consider any countervailing arguments to the Plaintiff's submissions.

[18] At the hearing, the Defendant referred to a 'Statement of Fact and Law', prepared by and in the name of the Defendant's other daughter (i.e., not the daughter alleged to have defrauded her) which explains the situation from the Defendant's perspective and asks for the following relief:

14. In light of my mother's age, health issues, and the circumstances surrounding her financial obligations, I respectfully request that the Court consider the following: - Although Iran has faced significant hardships, including the loss of her life savings, which she invested as a down payment and in various fees, she has agreed to allow the lender to sell the property. - Iran respectfully requests to stay in her apartment while the lenders market the unit for sale. - She agrees to cooperate with the lender's salesperson during this process.

Once the unit is sold, she kindly asks for a 30-day notice to vacate the premises. By that time, she hopes to have secured community housing or, if necessary, make other arrangements to leave, ensuring she is not left homeless.

15. It is crucial for the Court to recognize that multiple parties share responsibility in this matter, including the lenders who issued mortgages without adequate consideration of my mother's ability to repay them. The practices employed by the lenders and the influence of my mother's daughter contributed significantly to her current predicament.

[19] Counsel for the Plaintiff acknowledges that they received the above document in October 2025, i.e., by the time specified in the Timetable. The document was not prepared by someone authorized to act for the Defendant. Nor does it contain references to law. Therefore, it cannot really be termed a factum. Nevertheless, I had the document forwarded to me by email and I reviewed it at the hearing. I find that the document repeats the Statement of Defence, with some additional details. The Factum does not request specific relief against the amounts that the Plaintiff says are owing by the Defendant to them.

ANALYSIS

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

[21] I am satisfied that the Plaintiff has proved its case based upon its Statement of Claim together with the evidence from the affidavits of Maxwell Nilsen sworn June 26, 2025 and the documents attached thereto.

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

The Law

[22] 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”.

[23] 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.

[24] 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.

[25] 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.

[26] 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

[27] 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.

[28] Where a party fails to file an affidavit in response to a motion for summary judgment, the court is entitled to infer that the responding party was unable to attest to the facts required to make out its claim: *Fasken v. Time/System Int. APS* (1986), C.P.C. (2d) 1(Ont. H.C.) at paras. 2 and 6.

[29] The Defendant did not file an affidavit. She did not file a factum though I accept that she tried to. Her argument primarily is a factual one about being pressured to enter the charge by her daughter. The Defendant does not dispute that she signed the Charge and owes the money that was loaned to her.

[30] The Defendant agrees to the sale and writ of possession. It appears that she mainly objects to the interest charges.

[31] The Defendant has not articulated a reason why this matter requires a trial.

[32] 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?

[33] The Plaintiff seeks judgment on the loan and associated amounts in the amount of \$79,542.09; a Writ of Possession; and costs.

[34] Through her son, the Defendant objects to the interest rate being applied to the Charge. However, apart from the manipulation by her daughter, and general hardship, the Defendant does not have a legal basis on which the Plaintiff should be ordered to accept no interest, or interest lower than the rate the Charge provides for.

[35] The Defendant argues that she has been willing to sell the condo from the beginning. Unfortunately, it appears she was unsure about how to go about doing that and so the case dragged on, leading to additional charges.

[36] The Plaintiff seeks an Order for a Writ of Possession. Pursuant to r. 60.10, “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 *Kim (Re)*, 2022 ONSC 2731 at para 19.

[37] The Plaintiff argues, at para. 21 of their Factum:

Given the issuance and service of the Statement of Claim which seeks possession of the Charged Property and which has been served on the Defendant, coupled with the fact that the Defendant acknowledges in the Defence that she resides in the charged property while she attempts to sell the property, it appears that all parties who would otherwise require notice have, in fact, received notice of the within proceedings. As a result, the Defendant has been provided with the opportunity to respond to the relief being sought herein, which includes an order for a Writ of Possession which can be immediately sent to the Sheriff’s office to obtain a date for an eviction.

[38] At the hearing, the Defendant confirmed that she lives in the condo by herself.

[39] The Defendant has not offered any basis on which the Court can or should decline to grant the relief requested.

[40] The Plaintiff seeks costs of \$16,631.35. Under the Charge, in the event of default, the Defendant is liable to pay legal costs on a solicitor client basis. Having reviewed the work outlined

and the rates charged, I find the costs both reasonable in themselves, and within the reasonable contemplation of the Defendant. The Defendant shall pay the Plaintiff's costs.

[41] The motion is granted. The Plaintiff has offered, without prejudice, that the enforcement of the Writ shall be stayed for thirty days. This shall be reflected in the Order.

ORDER

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

- a) The Plaintiff's motion for summary judgment against the Defendant Iran Zandi Shirvani is granted:
 - i. The Defendant shall pay to the Plaintiff the amount of \$75,542.09 owing on the Charge.
 - ii. The Defendant shall pay costs of the within motion and the action fixed at \$16,631.55.
 - iii. The Plaintiff is entitled to a Writ of Possession.
- b) The Plaintiff's draft Order submitted for this motion shall issue with the addition that any eviction is stayed for 30 days.

Mathen, J.

Date: April 24, 2026