

CITATION: Wellington Hathshire Mortgage Investment Corp et al v. Russell,
2026 ONSC 3084
COURT FILE NO.: CV-25-00000990-0000
DATE: 2026 06 01

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Wellington Hathshire Mortgage
Investment Corp

Madeero Lending Management Inc

Plaintiffs

- and -

Russell, Trevor

Defendant

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) Balsingh, Anita, for the Plaintiffs
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) Heersche, Joost K., for the Defendant
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) **HEARD:** May 28, 2026
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SUMAMRY JUDGMENT MOTION ENDORSEMENT

Stewart J.

Background

- [1] In January 2022, the plaintiffs, Wellington Hathshire Mortgage Investment Corp. and Madeero Lending Management Inc., gave a mortgage to the defendant, Mr. Russell. This mortgage applied across several properties. One charge for \$245,000 at 11% interest was registered on the defendant's property known municipally as 794027 3rd Line EHS, Mono, Ontario, L9W 5X8. The Mono property is the only property which is the subject of this action and this motion.
- [2] The mortgage matured on June 17, 2022. The mortgage continued after that (there is no evidence how this came to be or what the renewal agreement was). It is agreed that defendant stopped paying the mortgage in November 2024. It is agreed that the defendant paid towards the mortgage between January 2022 and November 2024, but there is no evidence of what payments were made.
- [3] There is little evidence about what happened after the mortgage payments stopped. The plaintiffs assert, without evidence, that there were demands for payment. They assert, without evidence, that a notice of sale was served. The defendant denies receiving a notice of sale.
- [4] The plaintiffs move for summary judgment, seeking judgment for the amount of the original mortgage (\$245,000), interest, leave to issue a writ of possession, and costs.
- [5] The defendant opposes the motion and brings a cross motion, seeking declarations regarding the actions of the plaintiffs.
- [6] For the reasons that follow, the motion is dismissed. The defendant's cross motion is also dismissed. No costs are awarded.

Summary Judgment Law Generally

- [7] Rule 20.04(2)(a) of the Rules of Civil Procedure provides that the court shall grant summary judgment if there is no genuine issue requiring a trial with respect to a claim or a defence¹.
- [8] There will be no genuine issue requiring a trial when the court 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 matter:
- a. Allows the court to make the necessary findings of fact;
 - b. Allows the court to apply the law to the facts; and
 - c. Is a proportionate, more expeditious and less expensive means to achieve a just result².
- [9] Summary judgment is a powerful tool. It permits a party to obtain judgment without a trial. For a party to obtain judgment (whether on a summary judgment motion or at trial), that party must prove its case. A party must prove all underlying facts for the court to find liability and damages.

¹ *Hyrniak v. Maulin*, 2014 SCC 7 at para 49 (CanLII).

² *Hyrniak*, at para. 49.

[10] The law is clear that both parties have a duty to put all available evidence before the court on a motion for summary judgment. Parties are not permitted to suggest that they will call additional evidence at trial.

[11] Stated another way, on a motion for summary judgment, the court proceeds on the basis that the parties have each advanced their best case and that the record contains all the evidence that would be led at trial³. Neither party met this important threshold on this motion.

The plaintiff's materials on the summary judgment motion are deficient.

a. Documents not properly in evidence

[12] The plaintiffs attempted to rely on documents which were not properly in evidence, because they were not appended to a sworn affidavit. These documents included:

- a. First signed mortgage commitment letter, December 8, 2021 (2 pages);
- b. Second signed mortgage commitment letter, December 8, 2021 (2pages);
- c. Various documents dated December 14, 2024 (47 pages); and
- d. Trust ledger from November, 2024 (1 page).

[13] The court cannot consider documents not properly in evidence. In addition, the failure to append these documents to an affidavit means that the court

³ 1000425140 *Ontario Inc. v. 1000176653 Ontario Inc.*, 2024 ONCA 610, at para 23; and *Carmichael v. GlaxoSmithKline Inc.*, 2020 ONCA 447 at para 141.

has no additional explanatory evidence about how these documents came to be.

b. Missing facts

[14] The plaintiff's materials are also deficient because they are missing vital information, including, but not limited to:

- a. How the charge on the Mono property related to the larger mortgage transaction.
- b. What happened in June 2022, when the mortgage was supposed to end, but, for reasons unknown to the court, the mortgage continued (although it was not automatically renewed).
- c. What happened in November 2024 when the defendant stopped payment: what demands were made? When? How?
- d. When did the plaintiffs serve the notice of sale? Where was it sent? Where is the proof that it was sent by registered mail?

[15] In oral argument, the plaintiffs argued that some of this information was not necessary because it was not "in dispute". Whether it is in dispute or not, the plaintiffs must still prove their case. There were no admissions from the defendant on these points.

[16] In oral argument, the plaintiffs argued that the missing mortgage payment information was a mere accounting issue to be addressed later and that judgment should be given for the whole mortgage amount. This is incorrect. The judgment must be for the outstanding debt (plus any applicable interest).

The plaintiffs are required to prove what payments they received from the defendant on the mortgage and to prove the amount of the outstanding debt.

c. Missing law

[17] In oral argument, the plaintiff's counsel asserted that she had obtained summary judgment on similar cases with similar records with scant evidence. The court invited plaintiff's counsel to upload examples of such decisions. This was not done.

The defendant's materials on the summary judgment motion are deficient.

a. Failure to serve materials

[18] The motion for summary judgment was served via email on February 17, 2026. The defendant said he would work towards a timetable and asked to cross examine the moving party affiant. Despite this, Mr. Russell did not serve any materials prior to the April 28, 2026 motion date and did not cross examine the moving party affiant.

[19] This resulted in the court having to grant an adjournment on April 28, 2026 (see next section).

b. Missing materials

[20] Like the plaintiff's materials, the defence materials are also missing vital information. The defence materials do not fill in any of the evidentiary gaps in the plaintiff's materials. The defendant asserts, with no evidence, that this case is related to a notice of sale proceedings conducted against another property he owns in the community of Madoc, Ontario.

c. Non-existent caselaw

[21] The defendant's factum was served under the name of defence counsel. During oral argument, defence counsel stated that the factum had been prepared by his client and there was a partial retainer. The factum cited the case of *Waldick v. Penney*, 2019 ONCA 201 for the propositions that:

- a. a mortgagee exercising a power of sale must act in good faith and take all reasonable steps to obtain fair market value; and
- b. the complete absence of appraisal evidence and offer documentation is a triable issue that defeats summary judgment.

[22] The defendant could not provide the court with any case called *Waldick v. Penney*.

[23] The citation of 2019 ONCA 201 belongs to another case entirely which does not stand for the propositions set out above.

[24] During oral argument, the defendant referred the court to the Federal Court case of *Hogan v. The Queen*, 1995 CanLII 18906. This case deals with the fair market value after a mortgage sale (the first proposition). This case has nothing to do with summary judgment (the second proposition). Indeed, the term "summary judgment" does not appear in the case.

[25] The defendant and his counsel are cautioned that they must carefully review all law cited to the court and ensure that citations are accurate.

The defendant's purported cross motion is dismissed.

[26] At the first motion date (April 28, 2026), the defendant sought an adjournment to permit him to respond to the motion.

[27] The court granted the adjournment on strict terms. The defendant was to serve and file his responding materials by May 21, 2026, at 4pm.

[28] The defendant served more than his responding materials. He served a notice of cross motion seeking other declaratory relief.

[29] The defendant had no leave to file a cross motion. The cross motion took this case well beyond the scope of a short motion.

[30] At the outset of the argument, the court refused to hear the cross motion. The cross motion is dismissed without prejudice to the defendant to bring that motion properly before the court on another date.

The plaintiff's motion for summary judgment is dismissed.

[31] The plaintiff's motion for summary judgment is dismissed.

[32] This motion founders on the first prong of the *Hyrniak* test: the court cannot make the necessary findings of fact.

[33] The court cannot make the necessary findings of fact for two reasons:

- a. As noted above, much of the evidence is missing; and
- b. There is at least one material fact which is disputed (whether a notice of sale for the Mono property was served on the defendant).

[34] The plaintiffs argue that they should be permitted to file further and better materials and that this motion should continue on another date. The plaintiffs argue that they were prejudiced by my April 28, 2026, endorsement which did not permit them to file reply materials.

[35] The court rejects these arguments.

[36] At the April 28, 2026, attendance, the court observed that the plaintiff's materials were deficient⁴. The court permitted the plaintiffs to file an entirely updated motion record⁵. The plaintiffs were therefore given a second chance to file motion materials. There should have been no evidentiary issues. There should have been no requirement for reply.

[37] As noted above, the moving party has a positive duty to prove its case on a summary judgment. They are not entitled to wait until reply materials to prove the case. Further, none of the missing materials hinged on the defendant's position. The plaintiffs failed to give the court information and documents which was in their control.

Costs

[38] The court declines to award costs to the plaintiffs because the plaintiffs did not obtain summary judgment.

[39] The court declines to award costs to the defendant because:

- a. He failed to respond to the motion in the first instance, necessitating an adjournment;
- b. His materials were deficient; and
- c. His materials were misleading with respect to the non-existent case.

⁴ April 28, 2026 motion endorsement, paragraph 3(a).

⁵ April 28, 2026 motion, paragraph 4(c).

Stewart J.

Released: June 1, 2026

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