

**CITATION NO.:** Trumencas Ltd. et al v. 2684544 Ontario Inc. et al., 2026 ONSC 3272

**COURT FILE NO.:** CV-25-056

**DATE:** June 3, 2026

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Trumencas Ltd., Grace Morlet and Amanda Stanley, Plaintiffs

**- and -**

2684544 Ontario Inc. and Sarmad Ganni, also known as Sammy Ganni,  
Defendants

**BEFORE:** MacNeil J.

**COUNSEL:** *Emilio Bisceglia* – Lawyer for the Plaintiffs

*Sara Jane Erskine* – Lawyer for the Defendants

**HEARD:** December 3, 2025

**REASONS FOR DECISION**

[1] The Plaintiffs made this motion for summary judgment to enforce on a mortgage.

[2] The Defendant, 2684544 Ontario Inc. (“268”), owns the properties municipally known as 339 St. Paul Avenue and 341 St. Paul Avenue (“the Properties”). The Properties were acquired by 268 as part of four abutting parcels of land for the purpose of developing a mixed-use high rise building with residential lots and a ground-floor commercial space.

[3] The Defendant, Sarmad Ganni, also known as Sammy Ganni (“Mr. Ganni”), is the sole officer of 268.

[4] In or about October 2023, Mr. Ganni was looking to take out a loan for 268, to be secured as against the Properties.

[5] Pursuant to a mortgage commitment agreement entered into between the Plaintiffs and the Defendants, it was agreed that, among other things, the Plaintiffs would advance a loan in the sum of \$350,000.00 to 268 (“the Loan”) and be granted a second mortgage by 268 against title to the Properties as security for the Loan.

[6] As agreed, the Plaintiffs advanced the Loan to 268 and the Defendants granted the Plaintiffs a Charge/Mortgage of Land which was registered on October 19, 2023, as Instrument No. BC462622, against title to the Properties (“the Second Mortgage”).

[7] Mr. Ganni agreed to act as the guarantor under the Second Mortgage.

[8] The Second Mortgage included the following terms, among others:

- (a) 268 was required to remit monthly payments in the sum of \$4,080.42 to the Plaintiffs, commencing on November 19, 2023;
- (b) the Defendants were required to pay interest at a rate of 13.99% per year;
- (c) the Second Mortgage was subject to the Standard Charge Terms 200033; and,
- (d) the Second Mortgage was set to mature on October 19, 2024.

[9] On or about October 19, 2024, 268 paid a mortgage renewal fee to renew the Second Mortgage for a further one-year term on the same terms and conditions, except that the maturity date was extended to November 19, 2025 (“the October 2024 Renewal”).

[10] It is the evidence of Mr. Ganni that, after the October 2024 Renewal, he spoke with the Plaintiffs about the Second Mortgage and its repayment, that he advised them that 268 required additional time to repay the loan, and that 268 would keep the Plaintiffs updated as to the status of the issue, including the possibility of selling the Properties to pay out the Second Mortgage. Mr. Ganni’s evidence is that, based on his discussions with the Plaintiffs, he understood that it was agreed the Plaintiffs would provide 268 with additional time to repay the Second Mortgage or, alternatively, that the Second Mortgage would be paid out upon a sale of the Properties and this would satisfy the Plaintiffs’ concerns regarding repayment.

[11] It is the Plaintiffs’ evidence that, in or about mid-December 2024, the Defendants defaulted under the terms of the first mortgage that was registered against the Properties. The Plaintiffs received a copy of a Notice of Sale delivered by the first mortgagee of the Properties. The Defendants’ default under the first mortgage constituted an act of default under the terms of the Second Mortgage. At that time, the Plaintiffs asked Mr. Ganni to advise what was happening with respect to the first mortgage, and to confirm that the Plaintiffs would be receiving the payments due to them under the Second Mortgage.

[12] The Plaintiffs’ evidence is that Mr. Ganni initially responded by stating he was trying to work out a solution with the first mortgagee and that the Second Mortgage monthly payments would continue to be made as required. The Plaintiffs filed a series of emails exchanged between A. Menéndez, an officer of the plaintiff corporation Trumencas Ltd., (“Mr. Menéndez”) and Mr. Ganni in this regard. In an email dated December 18, 2024, Mr. Menéndez wrote to Mr. Ganni, in part:

...

We have been served with the Notice of Sale Under Mortgage by the first mortgagee for the above Mortgage Charge. This Notice demands full payment by January 16, 2025. As it stands, our mortgage is now in breach due to your failure to comply with the first mortgagee [*sic*], and we require a resolution to this matter.

It is my understanding that George has been attempting to reach out to you over the past few weeks to arrange for our mortgage interest payments through post-dated cheques, but these efforts have not elicited any response from you. Further, he has reached out again since receiving the Notice, again without any reply.

As such, I am now reaching out directly to seek clarity on the situation and to understand why there has been a lack of communication regarding George's repeated messages. We are deeply concerned about this matter, and it requires your immediate attention.

I demand a response within the next 24 hours outlining your plan to satisfy the first mortgagee's demands and to address our own payments due by tomorrow, December 19, 2024.

...

[13] On December 18, 2024, Mr. Ganni responded to Mr. Menéndez, in part, as follows:

... Unfortunately, I don't have any significant news to share at this time. However, your payment will be advanced tomorrow as scheduled.

In my last conversation with the first mortgage, the discussion was positive. They have assured me that as long as I can provide payment before Christmas, no further action will be taken.

The past few months have been challenging due to high interest rates and a slowdown in condo sales across my other sites. Nevertheless, I am working diligently to resolve these issues and remain optimistic about a resolution soon.

Thank you for your patience and understanding during this time

[14] The Defendants made the December 19, 2024 monthly payment required under the terms of the Second Mortgage.

[15] In a further email sent during the evening of December 19, 2024, Mr. Menéndez wrote to Mr. Ganni:

Hello Sam,

I wanted to confirm that all three of us—Trumencas Ltd., Grace Morlet, and George Bargis—have received the payment as discussed.

However, I would like to revisit our agreement regarding the addressing of upcoming interest payments. As you know, we had previously agreed to either pay for the year

in advance or provide post-dated cheques. Given the current situation, I need clarity on how we will proceed with these payments.

Please address this matter forthwith, as it is crucial for us to have this resolved without delay.

Thank you for your immediate attention to this issue.

[16] Mr. Menéndez then sent follow-up emails to Mr. Ganni on December 24, December 26, and December 30, 2024, requesting a response and confirmation that the payment due to the first mortgagee would be settled before Christmas and clarification as to how interest would be paid on the Second Mortgage. No response was received from Mr. Ganni.

[17] Further emails were sent to Mr. Ganni by Mr. Menéndez, dated January 9 and January 10, 2025, wherein he references a telephone call they had approximately 10 days prior and asks for information on the arrears payment respecting the first mortgage.

[18] On January 13, 2025, Mr. Ganni responded to Mr. Menéndez by email, stating: “A deal has been reached with the current lender. I will send you an update tomorrow or Wednesday.” However, Mr. Ganni did not send an update as he said he would.

[19] On January 15 and 17, 2025, Mr. Menéndez again emailed Mr. Ganni asking for an update and confirmation of the agreement reached with the first mortgagee. In the January 17<sup>th</sup> email, Mr. Menéndez further asked Mr. Ganni to “confirm that payments due on the 19<sup>th</sup> of this month will be sent on or before its due date” and provided the e-transfer information and specific amounts to be paid to the Plaintiffs. Mr. Ganni wrote back on January 17, 2025, stating: “Yes, I confirm.” Mr. Menéndez replied to Mr. Ganni on the same date:

I assume “confirm” means the 1st mortgagee has been paid and that we will be receiving our interest payment on or before January 19th.

Please forward confirmation re the 1st mortgagee for our records.

Thank you.

[20] On January 21, 2025, Mr. Menéndez emailed Mr. Ganni stating that confirmation of payment to the first mortgagee was not received and that the payment due to the Plaintiffs on January 19<sup>th</sup> was not received. He asked for Mr. Ganni’s “reply and action to this matter to make things right”.

[21] The following day, January 22, 2025, Mr. Menéndez emailed Mr. Ganni twice, the second time stating:

Hello again Sam,

According to information just received, it appears you have not finalized things with the 1<sup>st</sup> Mortgagee and I can only assume this is correct considering where the information is coming from.

This being the case and your lack of response since your email of January 13th when you stated you had reached a deal and confirmation was to be provided in a day or two (never received) only leads me to the conclusion that you have not settled this matter and have not been truthful in your communication with me; aside from the fact that we have not been paid our interest as of January 19th as promised by you.

Not what I expected from you based on what has been said of you.

We will monitor the 1st Mortgagee's actions and proceed accordingly.

[22] It is the Plaintiffs' evidence that, in or about January 2025, Mr. Ganni stopped communicating with them and failed to respond to inquiries with respect to the status of the first mortgage and the payments due under the Second Mortgage.

[23] Despite repeated demands, the Defendants made no further payments on account of the Second Mortgage after their December 19, 2024 payment ("the Default"). As a result, on February 21, 2025, the Plaintiffs commenced the within action.

[24] On March 7th, 2025, the Plaintiffs issued a Notice of Sale with respect to the Second Mortgage, which was served on the Defendants.

[25] The Defendants delivered their Statement of Defence on or about May 13, 2025.

[26] The Plaintiffs brought this summary judgment motion on July 5, 2025. The parties filed supporting affidavits. There were no cross-examinations held on those affidavits.

[27] As of July 25, 2025, the balance due and owing under the Second Mortgage was the sum of \$422,337.01 and interest continues to accrue.

## **ISSUE**

[28] The main issue to be determined is whether summary judgment should be granted to the Plaintiffs as against the Defendants in the circumstances of this case.

## **POSITION OF THE PLAINTIFFS**

[29] The Plaintiffs submit that summary judgment should be granted as there is no genuine issue for trial in this case. The Defendants have failed to tender any legally valid or tenable defence to the action. Indeed, the Defendants have expressly admitted: (i) the Second Mortgage and the terms thereunder; (ii) that the Second Mortgage was secured against the Properties; (iii) that they defaulted under the terms of the Second Mortgage; (iv) that they owe the debt to the Plaintiffs; and (v) that \$422,377.01 is due and owing to the Plaintiffs under the Second Mortgage as of July 25, 2025.

[30] In Mr. Ganni's affidavit, he does not specify which of the Plaintiffs he allegedly spoke with to obtain their agreement to extend the time to repay the Loan or to pay out the Second Mortgage once the Properties were sold. While Mr. Ganni attests that, in the last few weeks of May 2025, he advised the Plaintiffs' agent, George, that 268 had entered into binding agreements of purchase and sale respecting the Properties, there is no evidence of George's response.

[31] The Plaintiffs contend that the evidence shows that their communications to Mr. Ganni after the default of the first mortgage was for the purpose of ensuring that said default would be rectified and that payments under the Second Mortgage would continue to be paid in a timely manner. There is nothing in those communications that contradicts or amends the terms of the original agreement between the parties.

[32] The Plaintiffs submit that the Defendants have not put forward any compelling or credible evidence to defend the claim against them which would justify dismissing the within motion. The Defendants have only made bald allegations in their defence and in their affidavit responding to this motion. In the statement of defence, the Defendants do not plead that the Plaintiffs had agreed to wait for a sale of the Properties for the Defendants to pay out the Second Mortgage.

## **POSITION OF THE DEFENDANTS**

[33] It is the position of the Defendants that this matter is not appropriate for determination by way of a motion for summary judgment as certain key facts are in dispute and so there are genuine issues requiring a trial. The Defendants assert that they have a legally valid and tenable defence to the statement of claim, being:

- (a) they understood that they had been provided more time by the Plaintiffs to pay the Second Mortgage; and
- (b) the Plaintiffs agreed to have the Second Mortgage paid out on the sale of the Properties.

[34] The Defendants submit that the main issue to be determined at trial is whether the loan agreement has been amended. Mr. Ganni's evidence is that he had conversations with the Plaintiffs and that, as a result of those conversations, he understood an oral agreement was reached to extend the time to pay back the Loan and to allow the Defendants to pay out the Second Mortgage upon the sale of the Properties. Given this amendment to the Second Mortgage, the Loan has not yet matured as the sale of the Properties has not yet occurred. Since the Plaintiffs deny that they agreed to provide the Defendants with additional time to repay the Second Mortgage or to have it paid out upon a sale of the Properties, there are credibility issues that will need to be determined at a trial. Further, there is an issue of whether the Plaintiffs agreed to forbear on enforcement of the Second Mortgage while the Defendants make efforts to sell the Properties, and this is supported by the fact that the Plaintiffs did not take steps to enforce the Notice of Sale.

[35] There is conflicting evidence on the parties' intentions and on the events and circumstances surrounding the Loan. A trial is needed in order for the court to examine the conduct of the parties and related events to be able to ascertain the parties' intentions. It is only with a trial that a fair and

just determination of the issues can occur. An assessment of the credibility of the parties, a determination of the true nature of the loan agreement between the parties, and a determination as to the intent of the parties concerning the Loan are all issues that require a trial.

## ANALYSIS

### (a) Summary judgment legal principles

[36] Pursuant to Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[37] Rule 20.04(2.1) sets out the court's powers in determining whether there is a genuine issue requiring a trial. It provides that the court shall consider the evidence submitted by the parties and, where the determination is being made by a judge, the following powers can be exercised for this purpose, unless it is in the interest of justice for such powers to be exercised only at a trial: (i) weighing the evidence, (ii) evaluating the credibility of a deponent, and (iii) drawing any reasonable inference from the evidence.

[38] In *Pastink et al. v. 1190393 Ontario Limited et al.*, 2023 ONSC 6037, at para. 6, Fowler Byrne J. identified the following summary judgment principles, which I accept and adopt for present purposes:

- a. There will not be a genuine issue requiring a trial if I am able to reach a fair and just determination on the merits of the motion. This will be the case when I can make the necessary findings of fact, apply the law to those facts, and this is a proportionate and more expeditious means to achieve a just result: *Hryniak*, at para. 49;
- b. I should first determine if there is a genuine issue requiring a trial based only on the evidence before me, without resorting to my enhanced fact-finding powers as set out in r.20.04(2.1). If, after this step, it appears that there is a genuine issue requiring a trial, I should then determine if a trial can be avoided utilizing my powers under r.20.04(2.1) and (2.2). Again, this is as long as their use is not against the interests of justice. Their use will not be contrary to the interests of justice if they lead to a fair and just result, and serve the goals of timeliness, affordability, and proportionality, in light of the litigation as a whole: *Hryniak*, at para. 66;
- c. The moving party bears the onus of showing that there is no genuine issue requiring a trial. It cannot rely on mere allegations or pleadings. When it has satisfied the court that there is no genuine issue requiring a trial, the burden shifts to the responding party to prove that their defence has a real chance of success. The responding party cannot rely on allegations or denial. They must set out, in affidavit material or other evidence, specific facts showing there is a genuine issue requiring a trial: *New Solutions Extrusion Corporation v. Gauthier*, 2010 ONSC 1037, at para.12, aff'd 2010 ONCA 348;

- d. A party must put their best foot forward on a motion for summary judgment with respect to the existence or non-existence of material issues to be tried: *Broadgrain Commodities Inc. v. Continental Casualty Company (CNA Canada)*, 2018 ONCA 438, at para. 7; *New Solutions*, at para. 12; *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200, at para. 32, affirmed 2014 ONCA 878, leave to appeal refused, 2015 CanLII 5860 (S.C.C.); and
- e. The court is entitled to assume that the record contains all the evidence which the parties will present if there was a trial: *New Solutions*, at para. 12; *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11; *Broadgrain* at para. 7.

[39] As Goodman J. reiterated in *Allen v. Succession Capital*, 2011 ONSC 3300, at para. 42: “If there is a genuine issue with respect to material facts, then no matter how weak or how strong appear the claim or the defence, the case must be sent to trial. It is not for the motions judge to resolve the issue. Matters of law which have not been fully settled should not be disposed of on a motion for summary judgment. [Citations omitted.]”

**(b) *Is summary judgment allowing the Plaintiffs’ claim appropriate in the circumstances?***

[40] For the reasons that follow, I find that there is no genuine issue requiring a trial and that summary judgment should be granted to the Plaintiffs for payment by the Defendants of the debt outstanding and the related relief sought.

Admitted Facts

[41] In his responding affidavit, filed on behalf of both of the Defendants, Mr. Ganni made the following material admissions of fact:

- (a) the Plaintiffs advanced the Loan of \$350,000.00 to the Defendants;
- (b) the Second Mortgage was provided as security for the Loan;
- (c) the Second Mortgage is secured against the Properties;
- (d) the Second Mortgage required the Defendants to remit monthly payments of \$4,080.42 to the Plaintiffs, commencing on November 19, 2023;
- (e) the Second Mortgage required the Defendants to pay interest at a rate of 13.99% per year;
- (f) the Second Mortgage was subject to the Standard Charge Terms 200033;
- (g) the original maturity date under the Second Mortgage was October 19, 2024;

- (h) Mr. Ganni agreed to act as a guarantor under the Second Mortgage;
- (i) the Second Mortgage was renewed for a further 1-year term;
- (j) the Defendants defaulted under the terms and conditions of the Second Mortgage by failing to remit monthly payments which remain due and owing to the Plaintiffs; and,
- (k) as of July 25, 2025, the amount due and owing pursuant to the Second Mortgage was the sum of \$422,337.01.

### No Oral Agreement

[42] For a court to find that there is an enforceable oral agreement, the following elements must be present: (i) an offer, acceptance and consideration; (ii) certainty regarding the essential terms of the agreement; and (iii) the intention to create a legally binding agreement: *IMG Canada Limited v General Motors of Canada Limited*, 2017 ONSC 3841, at para 9, citing *Donovan Homes Ltd. v. Modern Paving Ltd.*, 2011 NLCA 39, 308 Nfld. & P.E.I.R. 180, at paras. 30, 32-33.

[43] When determining whether there was an intention to create a legally binding contract, the court must consider whether there was a “meeting of the minds” such that an agreement was formed. A meeting of the minds is established “where it is clear to the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined within a reasonable degree of certainty”: *IMG Canada Limited*, at para. 10, citing *UBS Securities Canada Inc. v. Sands Brothers Canada Ltd.*, 2008 CanLII 19507 (ONSC); [2008] O.J. No. 1676, at para. 40 (Ont. S.C.J.).

[44] In considering the evidence of a witness, a trier of fact need not believe or disbelieve the evidence in its entirety. A trier may believe none, part, or all of a witness’s evidence, and attach different weight to different parts of it: *R. v. R.(D.)*, 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291 (S.C.C.), at para. 93. Further, as was stated by O’Halloran J. in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), 1951 CarswellBC 133 (B.C.C.A.), at para. 10:

... The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...

[45] The parties were required to put their “best foot forward” on this summary judgment motion. However, with respect to his allegation that there was an oral agreement made between the parties, there are many crucial gaps in Mr. Ganni’s evidence. His affidavit is very vague as it relates to his purported discussions with the Plaintiffs wherein they allegedly agreed to give the Defendants additional time to pay and that the Second Mortgage would be paid out upon the sale of the Properties. Mr. Ganni does not indicate when or where these discussions took place or, more importantly, with whom he had these discussions. Mr. Ganni does not indicate how much

additional time he advised the Plaintiffs would be needed to repay the Loan. He also does not provide any information that he would have shared with the Plaintiffs respecting the proposed sale of the Properties or the timing of same. There is nothing set out in Mr. Ganni's affidavit about what the Plaintiffs were purported to have said that made him "understand" that they would provide the Defendants with additional time to pay or that they had agreed that the Second Mortgage could be paid out upon a sale of the Properties.

[46] I find Mr. Ganni's allegations improbable and uncorroborated by admissible evidence. In my view, it does not make any commercial or business sense that a mortgagee would agree to forego enforcement of a mortgage in default without specific terms having been agreed to respecting the time needed to repay or a specific plan for the sale of the Properties, as Mr. Ganni would have the court believe the Plaintiffs did here. Mr. Ganni suggests that "George" was the Plaintiffs' agent who represented them. However, there was no evidence proffered indicating what authority or powers George may have had as an agent of the Plaintiffs. More importantly, there was no evidence from Mr. Ganni as to what George actually said or did that could have led Mr. Ganni to believe that the terms of the Second Mortgage were being amended orally. Accordingly, I give no weight to Mr. Ganni's beliefs and evidence in this regard. Where Mr. Ganni's affidavit evidence conflicts with Mr. Menéndez's evidence, I prefer that of Mr. Menéndez.

[47] In Mr. Ganni's supporting affidavit, sworn August 15, 2025, at paragraph 24, it states that the summary judgment motion was scheduled to be heard on September 26, 2025. (The motion was subsequently adjourned to October 10, 2025, then to November 17, 2025, and finally to December 3, 2025.) In subsequent paragraphs, Mr. Ganni attests that he believes that the Plaintiffs' claim "will be resolved because the Properties will be sold pursuant to binding agreements of purchase and sale ("APS") prior to the hearing of this motion". Still further, at paras. 27-29, he states:

27. On or about May 14, 2025, the purchaser paid certain deposits in respect of the Properties. Attached hereto and marked as Exhibit "J" are true copies of the wire payment details for the deposits under the APS with respect to the Properties.

28. Due to a change in title of the Properties, new APS are being entered into to complete the sale transactions. These new APS will be executed within the next few days and I will provide these to the Plaintiffs as soon as they are executed.

29. It is my understanding and belief that the Second Mortgage will be paid out upon closing of the APS, well in advance of the hearing date. Furthermore, I am advised by my counsel that any further litigation of the within matter will unnecessarily run up legal fees.

[48] At the hearing of the motion, however, there was no evidence filed by the Defendants to update the court on the status of the purported agreements of purchase and sale. It is also noted that the subject agreements of purchase and sale, attached to Mr. Ganni's affidavit, relate to 120 St. George Street and 353 St. Paul Avenue, which are different properties than the Properties and do not appear to be owned by 268. The named seller of the 120 St. George Street property and the

353 St. Paul Avenue property is 2607315 Ontario Inc., which is a different company than 268, the corporate defendant in the within action.

[49] Given the emails exchanged between the parties, if there had been any agreement of the nature alleged by the Defendants, I would have expected to see an email or some other reference in the Defendants' materials to such an agreement. There was none. While the Defendants and the Plaintiffs did have communications about the late and missed payments respecting the Second Mortgage, the emails filed establish that the Plaintiffs were insisting on payments being made and, indeed, wanting to change the interest payment terms so that the Defendants either paid for the year in advance or provided post-dated cheques.

[50] I accept the Plaintiffs' evidence that they never agreed to provide the Defendants with additional time to repay the Loan or to pay out the Second Mortgage from the net proceeds of the sale of the Properties. I also accept the Plaintiffs' evidence that they never agreed to waive any default under the Second Mortgage. I find that no oral agreement was ever reached or entered into between the parties to amend the terms of the Loan or the Second Mortgage, as alleged by the Defendants.

[51] The Defendants submit that they have presented evidence sufficient to establish that there is a genuine issue between the parties that requires a trial. In this regard, the Defendants rely on the decisions in *Demetriou v. AIG Insurance Company of Canada*, 2019 ONCA 855; *Shelanu Inc. v. Print Three Franchising Corp.*, 2003 CanLII 52151 (ON CA); and *Allen v. Succession Capital*, 2011 ONSC 3300. The decision in *Demetriou* was cited mainly for its holding that a judge is "required to take a hard look at the entire record on the summary judgment motion" in order to determine whether there is a genuine issue requiring a trial or whether they can decide the case on summary judgment. With respect to the other two authorities, I find that these are distinguishable on their facts.

[52] In *Shelanu Inc.*, the defendant Print Three was a franchisor of copying and print stores. Shelanu was a Print Three franchisee. Shelanu alleged that Print Three breached its obligations as a franchisor and alleged that it was entitled to be released from further performance of its obligations as a franchisee from the date it gave notice of termination of the franchise agreement. Print Three denied any breach of its obligations and counterclaimed for damages. The trial judge found in favour of Shelanu respecting both damages and fundamental breach and dismissed Print Three's counterclaim. Print Three appealed. On appeal, the Ontario Court of Appeal upheld the trial judge's finding that the parties had made an enforceable oral agreement that amended their written contract, that consideration had been given for the oral agreement, and that the exclusion clauses did not apply. The Court of Appeal also noted that Print Three had not appealed the finding that the oral agreement existed and there was no dispute as to its terms. (On appeal, the appellant had conceded the existence of the oral agreement and its terms but asked the appeal court to enforce the written agreement instead.) Ultimately, the Court of Appeal found that the oral agreement represented the intentions and legitimate expectations of the parties and should prevail. In the case before me, there was no meeting of the minds between the parties and no consideration given with respect to amending the Loan or the Second Mortgage as the Defendants contend.

[53] In addition, in *Shelanu Inc.*, the trial judge relied on the parties' subsequent course of conduct to infer that they did not intend to continue to be bound by exclusion clauses in the written agreement. At paragraph 54 of its decision, the Ontario Court of Appeal reiterated that "[w]here the parties have, by their subsequent course of conduct, amended the written agreement so that it no longer represents the intention of the parties, the court will refuse to enforce the written agreement. This is so even in the face of a clause requiring changes to the agreement to be in writing." In the case before me, the parties' conduct subsequent to the Default does not at all support the Defendants' contention that an oral agreement was reached between the parties. To the contrary, it supports that the Plaintiffs were intent on enforcing the Second Mortgage and ensuring that the Defendants continued to make their payments owing thereunder.

[54] In *Allen*, the plaintiffs made a motion for summary judgment on a loan agreement and sought an order staying the defendant's counterclaim. The motion judge denied summary judgment. He found that there was some evidence that the plaintiff conceded that the written agreement did not contain all of the terms discussed or reached by the parties and that there was some evidence that the loan agreement had been orally amended. The motion judge found that the record before him was "replete with competing affidavits and various interpretations". He held that it was best left for a trial judge to determine the true intention of the parties based on a complete record. In the case before me, the Plaintiffs have not conceded that the written agreement between the parties does not contain all of the agreed-upon terms; there is no probative evidence that the Second Mortgage was orally amended; and the Plaintiffs conducted themselves in accordance with the written terms of the Second Mortgage.

[55] Based on the issues and the evidence before the court, I find that the Plaintiffs have met their burden of putting forward facts that are sufficient to disclose a good cause of action and that they have established that there is no genuine issue requiring a trial in this case. The Defendants have not shown that their defence has a real chance of success. The evidence presented on the motion is sufficient to permit the necessary findings of fact and credibility to be made.

[56] I do not accept Mr. Ganni's evidence that he had discussions with the Plaintiffs wherein they agreed to amend the terms of the Loan or the Second Mortgage. There is no evidence establishing a meeting of the minds between the parties in this regard and no proof of consideration given. Further, I find that the conduct of the parties after the Default does not show an intention by the Plaintiffs to waive the terms of the Second Mortgage. Accordingly, the required elements for the formation of an oral contract are not present.

[57] I conclude that the Plaintiffs have proven their case, on a balance of probabilities, that the Second Mortgage is a valid and enforceable contract, that the Defendants have breached its terms, and that no oral agreement was reached between the parties amending the Loan or the Second Mortgage. I find that granting summary judgment in these circumstances is a fair and just result that serves the goals of timeliness, affordability, and proportionality in light of the litigation as a whole.

[58] The Plaintiffs are entitled to judgment as against the Defendants for payment of the sum due and owing under the Second Mortgage and for prejudgment and postjudgment interest thereon, and for possession of the Properties, all in accordance with the terms of the Second Mortgage.

(c) ***Should the Plaintiffs be granted leave to issue a writ of possession as against the Properties?***

[59] It is undisputed that the Defendants have breached the terms of the Second Mortgage, that they are in default and that they owe the outstanding debt under the Second Mortgage to the Plaintiffs. There is no evidence that the premises are a matrimonial home. Nor is there any evidence that the Properties are occupied or rented out to residents. The uncontroverted evidence of the Plaintiffs is that, as of November 12, 2025, the Properties are boarded up and empty.

[60] Rule 60.10(2) of the *Rules of Civil Procedure* provides that leave to issue a writ of possession may only be granted where the court “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”. Based on the record before me, I am satisfied that the Plaintiff has met this burden. As a result, the order granting leave to issue a writ of possession can be granted.

[61] Accordingly, the Plaintiffs are granted leave to issue a writ of possession against the Properties on which the Second Mortgage is registered.

**DISPOSITION**

[62] For the foregoing reasons, the Plaintiffs’ motion for summary judgment is granted and the following orders are made:

- (a) the Plaintiffs are granted judgment against the Defendants in the sum of \$422,337.01;
- (b) the Defendants shall pay to the Plaintiffs prejudgment interest thereon in the sum of \$32,866.82 at the per diem rate of \$151.46 from March 7, 2025 to October 10, 2025, plus interest to the date of payment at the rate of 13.99% per annum;
- (c) the Defendants shall pay to the Plaintiff postjudgment interest accrued thereon at the rate of 13.99% per annum;
- (d) the Defendants shall deliver up possession of the Properties to the Plaintiffs; and,
- (e) the Plaintiffs are granted leave to immediately issue a writ of possession against the Properties.

**COSTS**

[63] The Plaintiffs were successful on this summary judgment motion and are presumptively entitled to costs. Counsel for both parties made submissions on the issue of costs at the hearing.

[64] The Plaintiffs seek their legal costs of the within motion and action on a full indemnity basis, as between solicitor and client, in accordance with paragraph 8 of the Standard Charge Terms 200033, in the amount of \$21,568.95. Counsel for the Defendants submitted that the matter

had proceeded quite expeditiously and that the Defendants took no position as to the amount of costs being claimed by the Plaintiffs.

[65] With respect to costs, the Standard Charge Terms provide for the payment of the Plaintiffs' legal fees "as between solicitor and client". Counsel for the Plaintiffs provided a Costs Outline indicating that costs on a full indemnity basis, including HST and disbursements, amounted to \$21,568.95. I find these costs to be fair and reasonable based on the issues raised, the motion materials filed, and the time spent on this matter.

[66] I also note the Ontario Court of Appeal's holding in *Everest Finance Corporation v. Jonker*, 2023 ONCA 87, at para. 8, that a motion judge does not generally have the discretion to change the contractual terms of a mortgage that provides for full indemnity costs for steps taken to recover the amount due. There is no reason for this court to exercise any discretion to do so here.

[67] Accordingly, I award costs to the Plaintiffs fixed in the amount of \$21,568.95, payable by the Defendants within 30 days.

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**MacNEIL J.**

**Released:** June 3, 2026