

DATE: 20260605

SUPERIOR COURT OF JUSTICE

HEARD: In Writing

REASONS FOR JUDGEMENT

MATHEN J.

OVERVIEW

[5] BMO's requisition for default judgment was rejected by the Registrar on the basis that interest was being calculated on a compound basis.

[6] BMO seeks to have its default judgment granted.

[7] For the reasons that follow I am granting the judgment as sought in the amount of \$444,355.04, as well as a writ of possession, and costs.

THE ISSUES

[8] The main issues are:

- a. Do the materials provide a basis for a finding of liability?
- b. If so, what are the damages to which the plaintiff is entitled?

FACTS

[9] I rely on the following facts deposed to by Jocelyne Sauve, Manager, National Special Handling Collections Office for the plaintiff, in her affidavit sworn November 4, 2025 and supported by the documents attached thereto.

[10] On September 10, 2024, the defendant charged the Property in favour of BMO, for a term of three years, securing the principal amount of \$415,000 and interest at the annual rate of 4.82%, calculated semi-annually, computed from the interest adjustment date (the “Mortgage”). The Mortgage incorporated Standard Charge Terms filed as 201506.

[11] Default occurred under the Mortgage on or about December 1, 2024. Pursuant to the terms of the Mortgage, the full outstanding balance, plus accrued interest, is due upon default.

[12] A Notice of Sale under the Mortgage was issued on May 7, 2025.

[13] A Statement of Claim was issued on April 29, 2025, and was served upon the defendant by alternate to personal service on April 30, 2025. The defendant has not defended the action.

[14] As of March 10, 2025, the outstanding balance owing on the Mortgage, for principal and interest, was \$421,449.58.

[15] The Standard Charge Terms provide that the defendant is liable for costs on a substantial indemnity basis.

[16] On September 5, 2025, BMO, through its lawyers, submitted a Requisition for Default Judgment through Civil Submissions Online. As stated above, BMO’s lawyers received a reply email indicating that default judgment could not be signed because, generally, the mortgage claimed compound interest.

ANALYSIS

[17] My findings of fact are contained in the following analysis.

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

Consequences of being noted in default

[18] 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.

[19] 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.

The test on a motion for default judgment

[20] The test on a motion for default judgement is:

- 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?

Elekta Ltd. v. Rodkin, 2012 ONSC 2062 at para. 14.

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

- a. The plaintiff granted a change on the Property for a term of five years. The defendant secured the sum of \$415,000.000. Interest on that sum was at the rate of 4.82 per cent per year (SOC para. 4).
- b. The mortgage provides that interest shall be calculated semi-annually, computed from the interest adjustment date and shall be paid in monthly blended installments of \$2,371.31 to and including October 1, 2029 (SOC para. 5).
- c. In the event of default, the mortgagee is entitled to (a) possession of the property, the principal amount then outstanding together with all accrued interest, and all costs and expenses on a lawyer and client basis expended to collect any monies owing (SOC para. 6).
- d. As of March 10, 2025 there is now due \$422,484.91 (SOC para. 8).

- e. The Defendant is liable to pay the amount due (SOC para. 9).
- f. The Property is described in paragraphs 10 and 11 of the SOC.

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

[22] The plaintiff is entitled to be compensated for the loss of bargain which means he is entitled to be placed in the same position he would have been in if the breaches had not occurred, or in other words as though the contract had been performed without any breaches.

[23] The plaintiff has claimed damages based on the defendant's default in paying the mortgage, the accrued interest, and legal costs.

[24] I find that the plaintiff has established on a balance of probabilities all of the amounts that it claims.

Interest

[25] The plaintiff claims prejudgment interest at the contractual rate of 4.82% compounded semi-annually. Generally, courts should give effect to interest rates contained in an agreement unless the terms are vague, unclear or infringe a statutory provision such as the *Interest Act*, R.S.C., 1985, c. 1-15: *Capital One Bank v. Matovska*; *Capital One Bank v. Blackwell*; *Capital One Bank v. Semple*, 2007 CanLII 37015, at para. 13 and *Gyimah v. Bank of Nova Scotia*, 2013 ONCA 252, at para. 10. Absent exceptional circumstances, it is appropriate and fair to use a contractual interest rate to which the parties have agreed: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, at paras.49-50, *Professional Court Reporters Inc. v. Pistachio Financier Corp.*, 2022 ONCA 669.

[26] The court may decline to award a surprisingly onerous contractual interest rate that a reasonable person would not expect and that has not been brought to the defendant's attention: *Forest Hill Homes (Cornell Rouge) Ltd. v. Ou*, 2019 ONSC at paras. 20-21.

[27] I do not find the contractual interest rate on the mortgage to be onerous.

[28] I agree with the plaintiff that the fact that the mortgage provides for compound interest is not a bar to default judgment. The Supreme Court of Canada has described compound interest "commonplace", including for mortgages; and found that, consequently, "the common law now incorporates the economic reality of compound interest": *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43 at para. 44.

[29] Litigants should be able to realize on interest rates to which the parties agreed, including in the context of default judgment.

[30] Consequently, I order that interest on the sum owing be at the rate provided for in the charge.

Writ of Possession

[31] 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 *Kim (Re)*, 2022 ONSC 2731 at para 19.

[32] There is no evidence that anyone other than the defendant is in actual possession of the Property. The defendant was served with Notice of the Action on April 30, 2025. The defendant did not respond to the Action and was noted in default.

[33] Consequently, I find that the plaintiff is entitled to a writ of possession.

Costs

[34] The plaintiff requests costs on a substantial indemnity basis in the amount of \$3,435.25, inclusive of disbursements. The charge provides that the plaintiff is entitled to recoup legal fees expended to collect monies owing by the defendant.

[35] Contractual provisions for costs are binding if fair and reasonable, subject to the court’s discretion under section 131 of the *Courts of Justice Act: Condoman Developments v. Cannect International Mortgage*, 2025 ONSC 2318 at para. 6.

[36] I find the costs claimed to be fair and reasonable.

ORDER

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

a. The plaintiff’s motion for default judgment is granted. For clarity:

1. The defendant shall pay to the plaintiff the amount of \$444,355.04 being the sum of \$422,484.91 plus interest at the rate of 4.82 per cent per year, from March 10, 2025 to April 6, 2026, in the amount of \$21,870.13.
2. The plaintiff is granted possession of the mortgaged premises as set out in the draft judgment.
3. The defendant shall pay costs to the plaintiff fixed at \$3,435.25.
4. This order bears interest at the rate of 4.82 per cent per year on the sum of \$444.355.04 commencing on April 6, 2026.

5. Costs payable under this order bear interest at the rate of 4% per annum commencing on the date of this judgment.

b. The plaintiff's draft judgment is hereby endorsed.

Mathen J.

Released: June 5, 2026

CITATION: Bank of Montreal v. Mir, 2026 ONSC 3351
COURT FILE NO.: CV-25-00742060-000
DATE: 20260605

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Bank of Montreal

Plaintiff

– and –

Afroza Mary Mir

Defendant

REASONS FOR JUDGMENT

Mathen J.

Released: June 5, 2026