

CITATION: Canadian Imperial Bank of Commerce v. Khan, 2026 ONSC 3337
COURT FILE NO.: CV-25-2272-0000
DATE: 2026 05 06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Canadian Imperial Bank of Commerce, Plaintiff

AND:

Erum Khan, Defendant

BEFORE: Associate Justice Glick

COUNSEL: Jocelyn Catenacci for the Plaintiff

Omer S. Chaudhry for the Defendant

HEARD: May 27, 2026

ENDORSEMENT

OVERVIEW

[1] The Plaintiff brings a motion for summary judgment and possession of the mortgaged property. This is the third time the motion is before the court. The motion was originally returnable on December 18, 2025. It was adjourned by Justice Doi to April 16, 2026 to allow the defendant to retain new counsel and deliver responding materials. On April 16, 2026 the motion was adjourned by Justice Chozik as the Defendant had provided evidence that he had obtained a second mortgage that would pay out on May 15, 2026, allowing him to cure the default. Justice Chozik adjourned the motion to May 27, 2026.

[2] On today's date the Defendant was represented by counsel. The Defendant did not file any materials. Counsel advised that he had an affidavit available which was sworn the morning of the motion. On consent I reviewed the affidavit. I also canvassed whether the Defendant was seeking another adjournment. Counsel for the Defendant stated that the Defendant was ready to proceed. As a result, the motion proceeded before me.

[3] For the reasons that follow, the Plaintiff's motion for summary judgment is granted. The Plaintiff is also granted an Order for possession of the subject property.

BACKGROUND

[4] The Defendant owns 247 Rowe Terrace, Milton, Ontario (the "subject property"). On August 30, 2021, the Defendant took out a mortgage on the property for the principal sum of \$1,100,000. The mortgage interest rate was prime minus 0.89% per annum. The mortgage was registered as a charge against the property. Monthly payments were to be in the amount of \$3,828.07. This subsequently changed to semi-monthly payments of \$1913.43.

[5] According to the Plaintiff, default in payment of monthly instalments under the Mortgage occurred on December 31, 2024. Default continues.

[6] A demand for arrears was made by letter of April 7, 2025. The Plaintiff did not receive any amount in payment.

[7] The Plaintiff in addition obtained a tax certificate for the subject property which shows that there were outstanding realty taxes in the amount of \$12,132.23 as of April 8, 2025. The Plaintiff says this constitutes an additional default under the Mortgage.

[8] The Plaintiff, as of May 27, 2026, seeks the following amounts:

Principal balance:	\$1,077,108.58
Interest to April 21, 2025:	\$52,141.88
Interest from April 22, 2025 to May 27, 2026:	\$50,212.00
Property management charges:	\$45.20
Total:	\$1,179,507.66

[9] On May 9, 2025, the Plaintiff issued and served a notice of sale under the Mortgage.

[10] The Defendant does not deny the Mortgage is in default or take issue with the amounts owed. The position of the Defendant is that summary judgment does not make sense at this time. This is

because the Defendant says he has a plan for the reinstatement of the mortgage. The Defendant says that CIBC should agree to the plan, which will bring the mortgage back into compliance by November 1, 2026.

[11] This goes to the evidence of Mr. Mansoor Ahmed Khan. Mr. Khan is a mortgage broker. Mr. Khan, in his affidavit sworn on May 27, 2026, says that he has been retained by a separate client to secure a mortgage loan in the amount of \$279,000. That loan is expected to be approved and funded by the end of June 2026. Upon the funding of that mortgage, the broker will have the liquidity he says to reinvest \$25,000 into a loan for the Defendant and Sadim Rasheed, the Defendant's spouse. This, Mr. Khan says, will enable the Defendant to pay the initial sum of \$22,353.88 required to address their mortgage arrears by July 1, 2026.

[12] Mr. Khan says he has been retained for a separate mortgage loan by another client. This loan is awaiting bank approval. It is due within the next few weeks he says. Once this transaction is complete, Mr. Khan says he will have another approximately \$100,000 to assist the Defendant. This will constitute the remainder of the scheduled payments to be made by the Defendants to the Plaintiff. Mr. Khan says the funds will be advanced to the Defendant to facilitate monthly payments of \$20,000 on August 1, 2026, September 1, 2026, October 1, 2026 and November 1, 2026.

[13] Mr. Khan says he provided a Promissory Note to the Defendant on May 20, 2026 to formalize his financial commitment to them. Under that Note he says he has agreed to provide a personal loan of \$25,000 every month for five months, totalling up to \$125,000, starting June 29, 2026.

[14] Mr. Khan was also in attendance virtually and prepared to offer oral testimony. I declined this offer, both because it was not appropriate and because I do not have Rule 20.04(2.1) or 20.04(2.2) powers.

LAW AND ANALYSIS

[15] Rule 20.04(2)(a) of the *Rules of Civil Procedure* provides that “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.”

[16] Charney J. recently provided a summary of the law on Rule 20 motions in *Home Trust Company v. Maloney*, 2025 ONSC 5016 at paragraphs 20-29 of that decision.

[20] Rule 20.04(2.1) sets out the court’s powers on a motion for summary judgment:

In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

[21] These powers were extensively reviewed by the Supreme Court of Canada in *Hryniak v. Mauldin*, **2014 SCC 7**, where it laid out a two-part roadmap for summary judgment motions, at para. 66:

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, 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.

[22] Even with these extended powers, a motion for summary judgment is appropriate only if the material provided on the motion “gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute” (*Hryniak*, at para. **50**).

[23] In *Hryniak*, the Supreme Court held (at para. 49) that there will be no genuine issue for trial when the summary judgment 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.”

[24] To defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party may not rest on mere allegations or denials of the party’s pleadings, but must set out—in affidavit material or other evidence—specific facts establishing a genuine issue requiring a trial. The parties may not rely on the prospect that additional evidence may be tendered at trial: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, **2014 ONSC 1200** (Ont. S.C.J.), at para. **26**, aff’d **2014 ONCA 878** (Ont. C.A.), leave to appeal to SCC refused, [2015] S.C.C.A. No. 97 (S.C.C.)

[25] It is well settled that “both parties on a summary judgment motion have an obligation to put their best foot forward” (see *Mazza v. Ornge Corporate Services Inc.*, **2016 ONCA 753**, at para. **9**). Given the onus placed on the moving party to provide supporting affidavit or other evidence under Rule 20.01, “it is not just the responding party who has an obligation to ‘lead trump or risk losing’” (see *Ipex Inc. v. Lubrizol Advanced Materials Canada*, **2015 ONSC 6580**, at para. **28**).

[26] A plaintiff or defendant bringing a motion for summary judgment has the initial onus of proving that there is no genuine issue for trial and must file some affidavit evidence to support that position. See for example, *Sanzone v. Schechter*, **2016 ONCA 566**, at paras. **30-32**, confirming the initial evidentiary obligation borne by the moving party (in that case the defendant) on a summary judgment motion.

[27] If the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party’s evidence or risk a summary judgment.

[28] As held by Perell J. in *Levac v. James*, **2016 ONSC 7727**, at para. **132**:

Hryniak v. Mauldin does not alter the principle that the court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial. The court is entitled to assume that the parties have advanced their best case and that the record contains all the evidence that the parties will present at trial...

[29] While Rule 20.04 provides the court hearing a summary judgment motion with “enhanced forensic tools” to deal with conflicting evidence on factual matters, the court should employ these tools and decide a motion for summary judgment only where it leads to “a fair process and just adjudication”: *Mason v. Perras Mongenais*, **2018 ONCA 978**, at para. **44**; *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, **2017 ONSC 832**, at paras. **3-6** (and cases cited therein).

[17] Where an Associate Justice is hearing a motion for summary judgment, the enhanced powers in Rule 20.04(2.1) are not available. An Associate Justice must make a decision as to whether there is a genuine issue requiring a trial on the basis of the evidentiary record before the court.

There is No Genuine Issue Requiring a Trial

[18] Having regard to the evidence on the motion, including Mr. Khan's affidavit, I find that this is an appropriate case for summary judgment. There is no genuine issue requiring a trial.

[19] There is no dispute as between the parties that the mortgage is in default and has been since December 31, 2024. There is also no disagreement as between the parties as to the amount owed. The Plaintiff has provided support for the property management charge and is not seeking any other fees. All of these facts lead to the conclusion that summary judgment is warranted in this case.

[20] The Defendant says that this is not an appropriate case for summary judgment because they can bring the mortgage into compliance and make use of Section 23 of the *Mortgages Act*. Section 23 of the *Mortgages Act* states:

Relief after action commenced

23 (1) Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, in an action for enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee, the mortgagor, upon payment into court of the sum of \$100 to the credit of the action as security for costs, may apply to the court and, conditional upon performance of such covenant or upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the court,

- (a) shall dismiss the action if judgment has not been recovered; or
- (b) may stay proceedings in the action, if judgment has been recovered and if no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place. R.S.O. 1990, c. M.40, s. 23 (1).

Idem

(2) Despite clause (1) (b), where judgment has been recovered and recovery of possession of the land has taken place, the court may stay proceedings in the action upon the application of a person added as a party on a reference, made under subsection (1) within ten days after service of notice of the judgment has been made upon the person. R.S.O. 1990, c. M.40, s. 23 (2); 2020, c. 11, Sched. 5, s. 18 (1).

Subsequent default

(3) Where proceedings have been stayed under clause (1) (b) or under subsection (2) and default again occurs under the mortgage, the court upon application may remove the stay. R.S.O. 1990, c. M.40, s. 23 (3).

[21] There was some disagreement as between counsel as to the meaning of section 23. The Plaintiff argued it required the full payment of the mortgage whereas the Defendant argued it simply required the payment of arrears. I agree with the Defendant that the section allows for the payment of arrears. McDermid J. came to the same conclusion in *Gord Harris Construction Ltd. v. Stern*, [1992] O.J. No. 1389 at paragraphs 5-6 where he stated:

5 In my opinion, s. 23(1) applies to the situation where, during the term of a mortgage, the mortgagor goes into default, usually because of the failure to pay a monthly instalment, as a result of which the usual acceleration clause causes the entire balance to become due and payable. The goal of the section is to permit the mortgagor, after the mortgagee has commenced an action, to place the mortgage back in good standing so as to preserve the mortgagor's equity in the property, even though the mortgagee may have obtained judgment, provided that "no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place."

6 Utilizing s. 23(1), the mortgagor may pay \$100 into court as security for costs and apply for a stay of proceedings, which the court may grant upon the mortgagor placing the mortgage back into good standing and paying the mortgagee's costs of the action. I interpret the words "... upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, ..." to mean that the mortgagor must pay the arrears of principal, (other than the amount due by reason of the acceleration clause), the arrears of interest and the mortgagee's reasonable costs.

[22] In *Stewart v. Wilbus Holdings Ltd.*, [2006] O.J. No. 2619, Justice Shaw considered whether money needed to be paid before making application to the Court for a stay. Justice Shaw found that it did not. At paragraph 11 of that decision, Justice Shaw stated:

11 It appears to me, however, that payment of the money due is not a condition precedent. At p. 19-5 of *Marriott and Dunn*, the authors state that a mortgagor may apply under s. 23 for relief without being obliged to tender the arrears as a condition precedent to the right to make an application. The authors refer to *Bayview at 407 Ltd. v. Mark Park Construction Ltd.* (1978), 20 O.R. (2d) 155 (H.C.). My reading of the decision of Anderson J. in that case confirms that proposition. The court has the discretion to set the conditions and terms of the order with respect to the mortgagor's obligations to perform the covenants of the mortgage and payment of the arrears. In *Royal Bank of Canada v. Range Realty Inc.*, [1991] O.J. No. 724 (Gen. Div.), Austin J. held that upon payment into court of the sum of \$100.00 by the mortgagors, and upon payment of the arrears of interest, the action was to be stayed in accordance with the provisions of what is now s. 23 of the *Mortgages Act*. That decision was confirmed by the Ontario Court of Appeal at [1993] O.J. No. 3704.

[23] All of that being said, I find that the Defendant has not properly pursued a remedy under section 23 of the *Mortgages Act*. The Defendant has not brought a cross motion seeking relief under section 23(1) of the *Mortgages Act*, nor have they paid money into court as security for costs. The plan proposed by the Defendant, as set out in the affidavit of Mr. Khan, is contingent on Mr. Khan closing mortgages for two other clients and therefore speculative. Only if those mortgages go through will Mr. Khan potentially have the funds to provide to the Defendant by which the Defendant proposes to cure the default. At best, the arrears will only be paid on November 1, 2026. There is also no plan to address the realty tax arrears which are also a default event under the mortgage.

[24] I also note that the mortgage has been in default since December 31, 2024. The summary judgment motion has already been adjourned twice. On the last occasion it was adjourned because the Defendant said he had another mortgage which would pay out on May 15, 2026 and would let him cure the default. That mortgage appears not to have worked out, which reinforces the fact that the current proposal is also speculative. Finally, I note that when asked whether they wanted an adjournment, the Defendant stated they were prepared to now proceed.

[25] Having regard to the above, I find that the potential recourse to section 23 does not give rise to a genuine issue for trial.

ORDER

[26] The Plaintiff's motion for summary judgment is granted in the amount of \$1,179,507.66. An Order is also made granting the Plaintiff possession of the subject property.

[27] I have considered whether it is appropriate to make an Order staying the enforcement of summary judgment pursuant to Rule 20.08. Given the issues identified above, including the speculative nature of the proposal and the history of adjournments to date, I decline to make that Order.

[28] I encourage the parties to settle the costs of this motion. If they cannot do so, costs submissions can be made in writing through the administration office. Submissions are to be limited to three pages. The Plaintiff is to serve their submissions within seven days of this decision. The Defendant is to serve their submissions seven days later. There will be no reply.

Associate Justice Glick

Date: June 5, 2026

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Canadian Imperial Bank of Commerce, Plaintiff

AND:

Erum Khan, Defendant

ENDORSEMENT

Glick AJ.

Released: June 5, 2026