

CITATION: Salman v. Home Trust Company, 2026 ONSC 3448
COURT FILE NO.: CV-25-90587
DATE: 2026-06-12

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Sharmila Diane Salman

Applicant/Moving Party

– and –

Home Trust Company

Respondent/Responding Party

I. Aniekwe, Counsel for the Applicant

A. McInnis, Counsel for the Respondent

HEARD: March 5, 2026

ENDORSEMENT

JUSTICE S. ANTONIANI

Overview

[1] This dispute arises from the sale of a residential property under Power of Sale proceedings in September 2024.

[2] The applicant was the owner of a residential property located at 112 Watercrest Drive, Stoney Creek, ON, L8E 0B3.

[3] In 2022, the applicant negotiated a loan, and a mortgage was registered against 112 Watercrest Drive. That mortgage was assigned to the respondent, Home Trust Company.

[4] The assigned mortgage was in the principal sum of \$2,640,000.00, with interest at a rate of 7.990% per annum. At the time of the power of sale proceedings, there was a second mortgage registered in favour of a third party, in the principal amount of \$450,000, as well as a writ of execution in the amount of \$409,041.85.

[5] There is no issue that the mortgage went into default on October 1, 2023, and that Home Trust Company thereafter properly issued a notice of sale on November 28, 2023, and obtained judgment for payment of \$2,813,949.70.

[6] On January 12, 2024, Home Trust Company took possession and commenced the power of sale proceedings. Home Trust completed the sale of the property on September 12, 2024.

[7] The applicant challenges the sale on several grounds, including, *inter alia*, that the respondent failed to allow the applicant to exercise her right of redemption, and that the sale was improvident.

Issues

- i. Whether the respondent breached its fiduciary obligations to the applicant/whether the sale completed on September 12, 2024 was improvident;
- ii. Whether the respondent breached the applicant's rights to redeem the mortgage in February 2024;
- iii. Whether in all the circumstances, it is equitable, fair and just that the outstanding amount owed on the mortgage is \$2.6 million (being the amount owed at the date the applicant could have sold the property in February 2024, had she not been prevented by the respondent from doing so);
- iv. Whether it is equitable, just and fair to discharge the applicant from any obligation to pay the "deficiency" occasioned by the respondent's sale amount;
- v. Whether the respondent ought to pay the applicant the sum of \$125,000, which is the difference between the total outstanding mortgage amount of \$2.6 million as of March 2024, and the offered purchase price of \$2,725,000, as special damages for the breach of the applicant's right to redeem;
- vi. Whether the applicant is entitled to general damages in the amount of \$500,000 for breach of fiduciary obligations and of the applicant's right to redeem;
- vii. Whether the applicant is entitled to be reimbursed for all costs incidental or ancillary to the respondent's breach of their fiduciary duty to the applicant/mortgagor;

Decision

[8] For the reasons that follow, I find

- i. That the respondent did not breach its fiduciary obligations to the applicant, and the September, 2024 sale was not improvident; and

- ii. That the respondent did not breach the applicant's rights to redeem the mortgage; and
- v. Given the above rulings, the remaining issues need not be addressed.

Discussion

[9] The duties of a mortgagee in possession were described in *Manufacturers Life Insurance Co. v. Granada Investments Ltd.* (2001), 150 O.A.C. 253, at para. 64:

- i. To account to the mortgagor
- ii To manage the property in a reasonable way, that is as a prudent owner would, and
- iii To act with reasonable care to get a true price, or the best price in the circumstances, once it decided to exercise its power of sale.

[10] A mortgagee exercising power of sale is under a duty to take reasonable precautions to obtain the true market value of the property as of the date of sale, and the duty is one of reasonableness, not perfection: *Centurion Farms Ltd. v. Citifinancial Canada Inc.*, 2013 ONCA 79.

[11] Finally, even if a breach were established, the onus is on the mortgagor to prove that, but for the breach, a higher price would have been obtained: *Oak Orchard Developments v. Iseman*, [1987] O.J. No. 361 (H.C.), aff'd [1989] O.J. No. 2394 (C.A.).

Background Facts

[12] The relevant facts are reproduced below, chronologically:

- a. The default occurred on October 1, 2023.
- b. The respondent issued a notice of sale on November 28, 2023.
- c. The applicant turned over possession of the property to the respondent on January 12, 2024.
- d. On February 1, 2024, the respondent obtained an appraisal of the property indicating it had a value of \$2.65 million.
- e. On February 24, 2024, after the respondent was already in possession, the applicant received a direct offer to purchase the property for \$2.75 million – an amount which was almost enough to cover the amount owing to the respondent, with a relatively modest shortfall.

- f. However, at that time, there were three additional debts registered against the property: a second mortgage in the amount of \$450,000, and a writ of execution in the amount of \$409,041.85, with interest at 12% per annum.
- g. On about March 6, 2024, the respondent replied to the applicant, declining to consent to allow her to complete the sale herself – indicating that the applicant no longer had a lawful right to sell the property, but advised that she should direct her buyers to make their offer pursuant to the respondent's listing, which was soon to be published.
- h. On March 8, 2024, the respondent listed the property for \$2.8 million after having it appraised. The property was listed on MLS and through real estate boards across southern Ontario.
- i. Also in March, 2024, the respondent received another offer for \$2 million, which it declined as too low when compared to its appraisal.
- j. On March 25, and April 1, 2024, the respondent received email communications from its agent, reporting significant activity at the property, but no offers. The agent recommended a reduction in price.
- k. On April 1, 2024, the respondent received a further offer for \$2.289 million, which it signed back as being considerably below the appraised price.
- l. On April 11, the listing priced was reduced to \$2.725 million.
- m. On April 15, 2024, the respondent obtained default judgment in the amount of \$2,813.949.70.
- n. In the end of May, 2024, a new appraisal was obtained which valued the property at \$2.5 million. The property was re-listed at \$2.66 million. The respondent subsequently received further communications from its agent, indicating that the property continued to generate activity but no offers.
- o. On June 12, 2024, the property was re-listed at \$2.495 million. The agent reported open houses and activity thereafter.
- p. On July 2, 2024 an offer was received at \$1.8 million, and another on July 4th for \$2.2 million. Both offers were signed back at \$2.4 million.
- q. After negotiation, one agreement was completed at a selling price of \$2.350 million. The would-be purchaser was not able to meet the financing condition and the deal was voided.

- r. On August 6, 2024, another offer was accepted at \$2.350 million, but financing conditions were not met.
- s. Finally, two offers were received in late August 2024: One for \$1.945 Million, inclusive of GST, conditional on financing, with a proposed closing October 2, 2025. A second offer was for \$1.9 million, cash, with a proposed closing on September 16, 2024. The respondent accepted the latter offer, both because the closing was earlier, and because the sale was for cash with no financing condition.
- t. The final purchaser was a real estate agent who had previously shown the property to clients. The purchase was arm's length to the respondent.
- u. After the applicant was notified of the sale, she requested an opportunity to have another appraisal of the property. For various reasons, that did not occur.
- v. On September 12, 2024, the \$1.9 million sale closed, four days ahead of schedule, and the respondent sent the applicant an accounting for the deficit.

[13] The respondent had a duty to take reasonable precautions to obtain true value, but perfection is not required. The facts must be looked at broadly, and the mortgagee was entitled to accept the best price available in an adverse market. There is no breach unless the mortgagee is “plainly on the wrong side of the line”: *Manufacturers Life Insurance*, at para. 67, citing *Oak Orchard*.

[14] In considering the record, as summarized by the above noted chronology, I agree that the respondent was comfortably on the right side of the line. The respondent has provided ample supporting evidence of having obtained appraisals, retained a qualified and active agent, and engaged in broad marketing of the property, which included multiple open houses, entertaining of offers, and refusals to sell when the price appeared too low.

[15] The respondent has provided copies of the multiple offers it received, and of the ones it accepted but which failed to close. It has provided copies of the communications from its agent, describing the considerable activity the property attracted, and the various recommendations regarding price reductions. The respondent's evidence demonstrates that, throughout the entire time that the property was for sale, the respondent was actively working to obtain the best price.

[16] The respondent's decision to accept the modestly lower price as between the final two offers it received was a reasonable one. The offer, at a \$45,000 lower purchase price, involved an earlier closing date, and was not conditional on financing. Two prior offers had been accepted subject to financing, and they had failed.

[17] Each of the applicant and the respondent had the property appraised over the period of attempted sale. The respondent's second appraisal showed a reduced value over a period of months. It appears that the market saw a sharp downturn during 2024.

[18] Throughout the listing period, the respondent continued to expose the property on a more than adequate basis. The applicant has failed to show that there was a breach of the respondent's duty to obtain true value.

Right to Redeem

[19] The applicant also argues that when she sent the respondent the March 2024 offer for \$2.75 million that she had received and asked to be permitted to close the sale directly, that was equivalent to an attempt to exercise her right of redemption. This argument fails. The applicant did not ever tender the amount owing to the respondent.

[20] The full amount must be tendered in order to redeem: *Attalla v. Moody*, 2017 ONSC 1971, at para. 50; *The Township of Scarborough v. Greater Toronto Investment Corporation*, [1956] O.R. 823-836 (C.A.).

[21] The applicant asked to be permitted to proceed with the offer she had received. That offer was conditional on financing and on inspection – both for 10 days after an accepted offer. This request does not constitute a tender. The respondent was under no obligation to allow the applicant to attempt to close the conditional sale pursuant to the offer in her name after they were already in possession of the property.

[22] The respondent properly indicates that they would have been in a better position in any event to close on that offer, if it had been directed to them. Further, there is no evidence that the applicant was in a position to complete that transaction herself, given the other charges against the property.

[23] The respondent replied to the applicant, asking that the would-be purchaser be directed to make their offer directly to the respondent. This was a reasonable proposition. Had the third party made its offer directly to the respondent, there would have been no delay of the terms and closing proposed, as the respondent's listing was up within a couple of days of the applicant's communication.

[24] The third party did not re-submit its offer. There is no evidence as to what occurred and why the offer was not submitted directly to the respondent. In this regard, the applicant also argues that it was not her obligation to pursue that initial would-be purchaser, or to encourage them to make an offer to the respondent. She argues instead that the respondent had a positive obligation to pursue that purchaser.

[25] As indicated, there is no evidence before me as to what happened to that would-be purchaser and whether the applicant, who is herself a real estate broker, encouraged them to redirect their offer to the respondent. It would be remarkable to learn that the applicant had not in fact at least advised the would-be buyers of how they could proceed, given that they'd made the offer to her as the seller and with her son as selling agent.

[26] I reject this argument by the applicant. Later, the applicant argues that she would herself have been in a position to find a buyer at a higher price than the final sale price, if only the respondent had given her the opportunity to have a further appraisal of the property in September 2024. Surely the same logic would have applied to the purchaser she already had in hand, if they were seriously interested.

The request for an appraisal

[27] The applicant submits that she was not given an opportunity to obtain a further appraisal of the property in September 2024, which she requested days before the final closing, and long after the respondent was already contractually bound to complete the September 12, 2024, sale.

[28] The applicant suggests that if she'd had an opportunity to have an appraisal, she could have potentially persuaded another buyer to make a better offer to the respondent. The applicant was always free, as the homeowner (and I note again that she was also a broker herself), to find a buyer for the property, and direct them to the respondent. She had no obligation to do so, but, if she wanted to do it, and felt that she had the capacity to do it, there was nothing to prevent her from attempting it. This would have had to occur before the respondent was committed to a sale. Her request was simply too late.

[29] The many documents and communications in each party's materials amply demonstrate that market decline, and not breach of duty, was the cause of the significant variation between the higher early appraisals /the February 2024 offer, and the final sale price.

[30] Given these reasons, the additional relief sought by the applicant need not be addressed.

[31] The application is dismissed in its entirety.

Costs

[32] I would urge the parties to agree on costs. If the parties are unable to come to an agreement, then costs submissions may be made as follows:

- a. Within 15 calendar days of the distribution of these reasons to counsel, the respondent shall serve and file its bill of costs, along with any written costs submissions, not exceeding three pages, double-spaced;
- b. Within 25 calendar days of the distribution of these reasons, the applicant shall serve and file any responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs;
- c. The respondent's reply submissions, if any, are to be served and filed within 30 calendar days of the distribution of these reasons, and are not to exceed two pages;

- d. If no submissions are received from either party within the timeline allocated, that party shall be deemed to have no submissions; and

[33] If no submissions are received from either party, the parties will be deemed to have resolved the issue of the costs, and costs will not be determined by me.

S. Antoniani J.

Released: June 12, 2026

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