

SUPERIOR COURT OF JUSTICE – ONTARIO

491 Steeles Avenue East, Milton ON L9T 1Y7

RE: Canadian Imperial Bank Of Commerce, Plaintiff

AND:

Girish Pillai and Sharon Pillai, Defendants

BEFORE: Justice M. Kurz

COUNSEL: Thomas Harley, for the Plaintiff

HEARD: June 9, 2026, in-person

ENDORSEMENT

[1] The Plaintiff (“CIBC”) moves without notice, following the default judgment granted by this court, to set that judgment aside while leaving the writ of seizure and sale in place. CIBC does not wish to end its claim against the Defendants in this proceeding. Rather, it effectively seeks to convert that single judgment into two separate judgments; one dealing with the secured claim against the Defendants and the other dealing with the unsecured claim against them. It does so because of its desire to be reimbursed by the Canada Mortgage and Housing Corporation (“CMHC”) for the shortfall on its recovery on the secured portion of the default judgment.

[2] For the reasons which follow, I grant the relief sought.

Brief Background

[3] The Defendants incurred two debts to CIBC. The larger debt was for a debt secured by a mortgage on a residential property in Mississauga. The smaller debt was unsecured and arose out of the Defendants’ use of a credit card. After both debts went

into default, CIBC sued the Defendants. When they failed to serve and file a statement of defence, they were noted in default.

[4] On May 7, 2025 CIBC obtained a default judgement against the Defendants (the “Judgment”). That Judgment called for the Defendants to pay CIBC \$847,043.74 plus interest at CIBC’s prime rate plus and costs of \$1,346.04, and interest on the costs of 5% per annum on the secured debts. It also required the Defendants to pay CIBC \$16,600.84 plus interest at CIBC’s prime rate on the unsecured credit card debt.

[5] Following judgment, CIBC commenced power of sale proceedings and sold the mortgaged property on November 10, 2025 for the net amount of \$572,769, leaving a deficiency of \$304,981.92 plus interest, legal fees and expenses.

[6] The subject mortgage had been insured by CMHC. CMHC policy requires the assignment of the subject judgment to it before paying out any insured mortgage shortfall. When CIBC looked to CMHC for the shortfall, it was informed that CMHC policy will not allow it to accept an assignment of the Judgment because it contains both the secured mortgage debt and the unsecured credit card debt. As CMHC Senior Officer in Home Owner Operations, Jayson March, deposed:

An assignment to CMHC of a judgment that also captures uninsured obligations would place CMHC in the position of holding and enforcing rights in respect of obligations it did not insure and for which it has not paid a claim. This is inconsistent with the scope of CMHC’s statutory mandate and with the terms of the mortgage loan insurance. The Assignment Requirement ensures that instruments CMHC takes by assignment are co-extensive with the insured loss for which CMHC has paid.

A further and related consequence of the Assignment Requirement is that CM will not pay a supplemental claim, that is, a claim in respect of any shortfall remaining after realization on the security, until the approved lender has provided, or is in a position to provide, a judgment that complies with the Assignment Requirement. In practical terms, if an approved lender holds a judgment that combines insured and uninsured amounts, CMHC will not accept that judgment on assignment

and will not release payment of the supplemental claim until a compliant judgment is tendered.

[7] Mr. March added that CMHC cannot accept the assignment of the Judgment; rather it requires one which deals exclusively with the secured Mortgage debt. CMHC is uninterested in and takes no position with regard to the unsecured debt.

Applicable Authority

[8] The Applicable authority for the relief sought is found in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “*Rules*”). Under r. 59.06:

Amending, Setting Aside or Varying Order

Amending

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding. R.R.O. 1990, Reg. 194, r. 59.06 (1).

Setting Aside or Varying

(2) A party who seeks to,

(a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;

(b) suspend the operation of an order;

(c) carry an order into operation; or

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed.

[9] As CIBC counsel points out, that subrule must be read within the context of the interpretive provisions of the *Rules*, see: subrule 1.04, which reads as follows:

Interpretation

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Proportionality

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

Matters Not Provided For

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

[10] I am unaware of any case that deals directly with the issue raised here – the conversion of one valid judgment into two. However, I note that:

- a. By having been noted in default, the Defendants are deemed to admit the truth of all allegations of fact made in the statement of claim: r. 19.02(1)(a). Here those deemed admitted allegations are the secured and unsecured debts which the Defendants owe to CIBC, as set out above.
- b. The order requested will not offer a substantive change to the terms of the existing Judgment, it simply bifurcates it into two separate ones.
- c. I am unable to see how the Defendants would be prejudiced in any way by the relief sought, as there is no substantive difference between one or two judgments which total the same amount.
- d. CIBC counsel has undertaken not to seek any additional costs in the enforcement of the non-secured judgment if the order requested is granted.

[11] Subrule 59.06(2) allows for the setting aside of a judgment while r. 59.06(1) allows for the amendment of a judgment. I find that the Judgment contains an accidental omission in that CIBC should have sought separate judgments for the secured and unsecured portions of its debt per r. 59.06(1). Further CIBC discovered after the Judgment was issued that it was in an improper form per r. 59.06(2).

[12] Here, CIBC asks for relief under both subrules; that the Judgment be set aside and that two separate judgments be substituted in its stead. While that is not expressly provided for in the *Rules*, I can refer to r. 1.04 to construe the *Rules* liberally and apply them by analogy. Here the analogy is the amendment of the Judgment by converting it

into two judgments, which together encompass only the relief granted in the original Judgment. I find that result to be fair, just and proportional in the unusual circumstances of this case. That may not be the case should such circumstances arise again, as this decision should warn lending institutions and law firms of the issues considered in this endorsement.

[13] For the reasons cited above, order to go upon the terms set out in the draft judgment filed, as follows:

1. THIS COURT ORDERS that the Default Judgment in this matter dated May 7, 2025 (the “Original Default Judgment”) is hereby set aside.
2. THIS COURT ORDERS that any steps or actions that have been taken pursuant to the Original Default Judgment by the Plaintiff or this Honourable Court are still binding and effective.
3. THIS COURT ORDERS that the Local Registrar shall issue two default judgments in the form and content attached hereto as Schedule “A” (the “Secured Judgment”) and Schedule “B” (the “Unsecured Judgment”) to replace the Original Default Judgment and they shall each be dated May 7, 2025.
4. THIS COURT ORDERS that the Writ of Seizure and Sale issued and filed in this matter as execution number 25-0002483 and directed to the Sheriff of the Regional Municipality of Peel shall be updated to note that the Original Default Judgment in this matter dated May 7, 2025 has been set aside and replaced by the Secured Judgment and the Unsecured Judgment as per the terms of this order and that the Writ continues to be filed pursuant to the Secured Judgment and is binding from its date of issuance on May 12, 2025 for the amounts in the Secured Judgment.
5. THIS COURT ORDERS that there shall be no costs of this motion.

[14] The two new judgments, cited above as Schedule A and Schedule B, which together replicate the terms of the original Judgment, shall be issued per the drafts found at Case Centre pp. A67 – A71.

Kurz J.

Released: June 22, 2026

CITATION: CIBC v. Pillai, 2026 ONSC 3639
COURT FILE NO.: CV-25-00000070-0000
DATE: 2026-06-22

ONTARIO

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BETWEEN:

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ENDORSEMENT

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Released: June 22, 2026