

COURT OF APPEAL FOR ONTARIO

CITATION: Redback Tours Inc. v. Canadian Equipment Finance & Leasing Inc.,
2026 ONCA 555
DATE: 20260730
DOCKET: COA-25-CV-1381

Trotter, Paciocco and Wilson JJ.A.

BETWEEN

Redback Tours Inc. and Paul Ferris and Angela Ferris

Applicants
(Appellants)

and

Canadian Equipment Finance & Leasing Inc.

Respondent
(Respondent)

Ian Klaiman and Raha Zolfaghari for the appellants

R. Brendan Bissell and Gabrielle Schachter, for the respondents

Heard: June 16, 2026

On appeal from the judgment of Justice Scott N. Latimer of the Superior Court of Justice dated September 18, 2025, with reasons reported at 2025 ONSC 5321.

Wilson J.A.:

A. OVERVIEW

[1] This appeal concerns the effect of default in a commercial loan agreement secured by a collateral mortgage. Upon default, the lender exercised an

acceleration clause in the agreement and demanded immediate payment of the balance of interest and principal due under it, including unaccrued, future interest. The borrower disputed its obligation to pay future interest, arguing that this was neither provided for in the contract, nor permissible under s. 17 of the *Mortgages Act*, R.S.O. 1990, c. M.40. The parties brought competing applications, which were heard together, for a determination of the amounts due under the agreement.

[2] The application judge held that future interest was properly owing under the contract and that s. 17 of the *Mortgages Act* did not apply in the circumstances. On appeal to this court, the borrower argues that the application judge erred in both of these conclusions. For the reasons that follow, I am satisfied that the contract allows for the acceleration of future interest and that s. 17 of the *Mortgages Act* does not apply in this case. I would accordingly dismiss the appeal.

B. BACKGROUND

[3] The appellant Redback Tours Inc. (“Redback”) is a business providing bus charters. Its directors, who are also appellants, are Paul and Angela Ferris. The respondent, Canadian Equipment Finance & Leasing (“CEFL”), is a company that leases, and provides loans for the purchase of, commercial equipment.

[4] On January 22, 2024, CEFL loaned Redback \$559,250 to finance the purchase of a bus. The loan was made on a five-year term with an annual interest rate of 15.25%. Paul and Angela personally guaranteed the loan which was

secured by a \$25,000 security deposit, a security interest in the bus, and a collateral mortgage on Paul and Angela's residence. In the event of a sale of the bus, Redback was obligated to notify CEFL and remit the proceeds of sale within 10 days.

[5] Redback defaulted on the loan and, on August 22, 2024, CEFL sent default notices to Redback, Paul and Angela and demanded payment of \$672,417.20 pursuant to an acceleration clause in the agreement. This was the sum of all remaining payments due under the balance of the agreement, including unaccrued, future interest. The appellants did not pay this amount.

[6] CEFL then attempted to take possession of the bus but could not locate it. When asked at his home about the bus's whereabouts, Paul said that the search for the bus would be a "wild goose chase" and that CEFL would never find it. Eventually, after a Canada-wide vehicle database search, CEFL learned that Redback had secretly sold the bus to a third party in Alberta for \$500,000 in contravention of the loan agreement.

[7] Redback initially resisted payment of the proceeds of the sale to CEFL but, after receiving pressure from the third-party purchaser, eventually did so on September 17, 2024. This payment satisfied the outstanding principal and accrued interest up to September 17, 2024. It did not, however, cover future interest.

[8] The appellants maintained that the contract did not provide for the payment of future interest and that, in any event, any obligation to pay future interest would be contrary to s. 17 of the *Mortgages Act*, which is incorporated into every mortgage agreement in Ontario. The parties brought competing applications to determine whether the appellants were obligated to pay future interest, as well as certain other fees and enforcement costs. The applications were heard together.

C. REASONS OF THE APPLICATION JUDGE

[9] The acceleration clause in the agreement provides:

11. ACCELERATION - The Lender, in its sole discretion, may, with or without legal process, demand or notice of any kind and without any liability to the Lender whatsoever, declare all or any part of Indebtedness which is not by its terms payable on demand to be immediately due and payable, upon (i) the occurrence of an Event of Default, or (ii) if the Lender in good faith believes that the ability of the Borrower to pay amounts owing, or to perform its obligations, whether owing and due under this Loan and Security Agreement, any agreement relating to the indebtedness or any other agreement now or hereafter in effect between the Borrower and the Lender is or is about to become impaired, or (iii) if the Lender in good faith believes that the Collateral is in danger of being lost, damaged or confiscated. The Lender's right to accelerate payment under this section is subject to any statutory provisions but in addition to any other right or remedy the Lender may have (including those of the Lender under the PPSA). The provisions of this Section are not intended in any way to affect any rights of the Lender with respect to any Indebtedness which may now or hereafter be payable on demand.

[10] The application judge interpreted this clause as permitting a demand for future interest. He concluded that the words “all [...] Indebtedness” comfortably include the future interest that had already been calculated into the payment schedule incorporated into the agreement.

[11] The application judge also rejected the appellants’ argument that the demand for future interest contravened s. 17 of the *Mortgages Act*. He gave two reasons for this conclusion, either one of which would have been, on its own, sufficient to dispose of the argument.

[12] First, the application judge held that s. 17 did not apply to the agreement. The *Mortgages Act* only applies to “mortgages” and, in his view, this agreement – a commercial loan agreement secured by a collateral mortgage – was not a “mortgage”.

[13] Second, the application judge held that the appellants had not properly invoked s. 17. Section 17 requires the borrower to make a payment of the principal amount due under the loan with three months’ notice or three months’ interest in lieu thereof. The application judge was not convinced that the appellants’ action in remitting the proceeds of the sale of the bus properly constituted such a payment.

[14] The application judge accordingly ordered the appellants to pay CEFL the amount claimed for future interest. He also ordered the appellants to pay CEFL’s enforcement costs of \$32,701.96, which he found to be reasonable, and a

“WiseCap Broker Fee” of \$12,571.25 – a fee CEFL paid to the broker who facilitated the loan.

D. ISSUES

[15] The appellants raise three grounds of appeal. They argue that the application judge erred:

- (1) in interpreting the agreement as permitting the acceleration of future interest;
- (2) in determining that s. 17 of the *Mortgages Act* is inapplicable; and
- (3) in ordering the appellants to pay CEFL’s enforcement costs and the WiseCap Broker Fee.

I will deal with each of these issues.

1. Interpretation of the Agreement

[16] The appellants submit that the application judge failed to instruct himself on, or apply, the principles of contractual interpretation. Reading the contract as a whole, they argue that the acceleration clause should be interpreted as only allowing for the acceleration of principal, not interest.

[17] CEFL argues that the application judge correctly interpreted the contract which simply allows for the ordinary consequence of default under a commercial

loan: that all amounts that the parties agreed would be paid over the course of the loan, including interest, become immediately due and payable.

[18] I do not accept this submission. The acceleration clause, in relevant part, provides: “The Lender, in its sole discretion may [...] declare all or any part of Indebtedness which is not by its terms payable on demand to be immediately due and payable, upon [default]”. “Indebtedness” is a defined term in the contract. It is defined to mean: “any and all obligations, indebtedness and liability of the Borrower to the Lender (including interest thereon) present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, incurred under, this [agreement]”. This language is as clear as can be: “Indebtedness” includes both principal (matured or not) and interest (present or future). The acceleration clause thus plainly allows CEFL to accelerate the payment of future interest upon default. Nothing in the rest of the agreement contradicts or overrides this plain language.

2. Application of s. 17 of the *Mortgages Act*

[19] The second ground of appeal, relating to the application of s. 17 of the *Mortgages Act*, received the most attention during the hearing of the appeal. The appellants argue that the application judge erred in drawing a distinction between a collateral and conventional mortgage for the purposes of the *Mortgages Act*. They point to the definition of “mortgage” under s. 1 of the Act which is defined broadly to include “any charge on any property for securing money or money’s worth” (emphasis added). The appellants contend that s. 17 applies and allowed

them to redeem the mortgage prior to the contractual maturity date by tendering the proceeds of the sale of the bus. In effect, they say that s. 17 serves as a cap on their liability, relieving them of all obligation to pay future interest, apart from three months' interest.

[20] CEFL takes a very different view of s. 17. While it does not contest that the *Mortgages Act* applies to the collateral mortgage at issue in this case, it submits that s. 17 is only a mechanism to put a mortgage back in good standing, not an interest-capping provision on amounts payable after default. It notes that if the appellants' interpretation were adopted, it would allow a borrower, by their own act of default, to convert a closed mortgage into an open-ended one. Moreover, it would render s. 18 of the *Mortgages Act*, which gives a borrower a right to redeem a mortgage after five years upon payment of the outstanding principal with three months' interest, redundant because a borrower could redeem the mortgage in advance of the five years simply by going into default. CEFL argues, in the alternative, that the appellants did not properly invoke s. 17, because they did not pay three months' interest in addition to the principal.

[21] I agree with the appellants that the *Mortgages Act* applies to both collateral and conventional mortgages. The definition of "mortgage" under the Act is broad, and the object of the Act – being, in part, to provide "a measure of protection to mortgagors" and to "mitigate the harshness of the common law in its treatment of mortgagors" – is equally served by its application to both conventional and

collateral mortgages: *1173928 Ontario Inc. v. 1463096 Ontario Inc.*, 2018 ONCA 699, 142 O.R. (3d) 1, at para. 36. I would nonetheless reject this ground of appeal. As I will explain, s. 17 of the *Mortgages Act* only applies upon post-maturity default in the payment of principal. It does not apply in a case such as this one, involving defaults occurring during the term of a mortgage.

[22] Section 17 of the *Mortgages Act* provides:

17 (1) Despite any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months interest on the principal money so in arrear, pay the same, or the mortgagor or person entitled to make such payment may give the mortgagee at least three months notice, in writing, of the intention to make such payment at a time named in the notice, and in the event of making such payment on the day so named is entitled to make the same without any further payment of interest except to the date of payment.

[23] This provision was enacted in 1903: *An Act respecting Mortgages of Real Estates, 1903* (U.K.), 3 Edw. VII, c. 11, art. 1. It has not undergone any meaningful revision since that date. Like many enactments from this time period, s. 17 is not a model of clarity. It is understandable then that the parties have taken wildly divergent interpretations of the provision. A review of the caselaw in the courts below quickly reveals similar discord. Notwithstanding the confusion, two aspects of the text are relatively clear and worth highlighting.

[24] First, the provision refers to “default [...] in the payment of any principal money secured by a mortgage” (emphasis added). It is thus not just any default

that will trigger s. 17 – a default purely in the payment of interest, for instance, is insufficient. This limitation in the language of s. 17 may be contrasted with that of other provisions of the Act which refer to “default [...] in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage”: see ss. 22-23.

[25] Second, on fulfillment of the requirements of the provision – namely, payment of the outstanding principal plus three months’ notice or three months’ interest in lieu thereof – the borrower is relieved of all obligation to make “any further payment of interest except to the date of payment [of the outstanding principal]”. Section 17 thus allows for redemption of the mortgage; it is not, as CEFL contends, just a mechanism to bring a mortgage back into good standing. Again, it is useful to contrast the language under s. 17 with that of s. 22 – a provision that is directed at allowing a borrower to put a mortgage back in good standing. Section 22 provides that, upon compliance with its requirements, “the mortgagor is relieved from the consequences of [...] default”.

[26] This does not, however, resolve the interpretive issue in this case. Although I would reject CEFL’s interpretation, it does not automatically follow that the appellants’ interpretation must be accepted. Although s. 17 allows for redemption of a mortgage, the question remains, does it do so here? To answer this question, one must have regard to the broader context of the provision.

[27] Section 17 of the *Mortgages Act* is an outgrowth of the common law. Any sophisticated understanding of the provision must thus begin there. At common law, the ability of a borrower to redeem a mortgage was highly circumscribed and the terms of mortgage agreements were strictly and literally interpreted. As a general rule, unless otherwise agreed to between the parties, a borrower had no right to redeem prior to the date fixed for the payment of principal in the contract, unless the lender had demanded payment of the mortgage debt, or taken steps to compel payment of it: *Brown v. Cole* (1845), 60 E.R. 424 (Ch.); *Bovill v. Endle*, [1896] 1 Ch. 648; Walter M. Traub, *Falconbridge on Mortgages*, 5th ed. (Thomson Reuters Canada, 2019), at § 29:2. Moreover, if the borrower missed the deadline to redeem at maturity, regardless of the length of delay, this right would be forfeited and the borrower would lose the mortgaged property forever: Traub, at § 2:2; Joseph E. Roach, *The Canadian Law of Mortgages*, 3rd ed. (LexisNexis Canada, 2018), at p. 266. This was highly unfair to borrowers. As put by Viscount Haldane L.C. in *Kreglinger v. New Patagonia Meat and Cold Storage Co. Ltd.*, [1914] AC 25 (U.K. H.L.), at p. 35: “The case of the common law mortgage of land was indeed a gross one.”

[28] Eventually, the Courts of Equity intervened in this state of affairs by stipulating that a lender may only use their legal title as a mere security and that, once a right to redeem has arisen, nothing can fetter or clog that right to prevent the borrower from redeeming the mortgage on payment of what is due: *Kreglinger*.

This did not, strictly speaking, grant the borrower a right to redeem, but merely saved the borrower from compliance with the strict terms of the agreement, granting relief from what would otherwise constitute forfeiture of a right of redemption.

[29] Equity did not, however, solely favour the borrower. Relief from compliance with the strict terms of the agreement came with a corresponding obligation. If the borrower did not comply with the terms of the agreement and redeem on the maturity date, they would be obligated to provide either six months' notice of their intention to pay the outstanding debt (during which interest would continue to be owed) or six months' interest in lieu of notice: *Smith v. Smith*, [1891] 3 Ch. 550; *Archbold v. Building & Loan Ass'n*, (1888), 15 O.R. 237 (H.C.), rev'd on other grounds, 16 O.A.R. 1 (C.A.); Traub, at § 29:5. This obligation was founded on the maxim "he who seeks equity must do equity". Once the maturity date in the agreement had passed, the lender was left with no idea as to when the borrower might return the principal to them. Six months was seen as a reasonable period of notice, during which the lender could find a new vehicle for the investment of their money.

[30] Section 17 of the *Mortgages Act* codifies this equitable rule, while reducing the obligation to three months' notice or three months' interest in lieu thereof: *Re Belyon Properties Ltd. v. Kelcey*, [1968] 2 O.R. 257 (C.A.), at p. 264, *per* Laskin J.A. (dissenting in part, but not on this point); Traub, at § 29:5; Roach, at

pp. 276-277. As with the equitable rule, the right of redemption provided for in s. 17 only arises after the contractual maturity date: *Re Belyon*, at p. 264. This is why s. 17 refers solely to “default [...] in the payment of any principal money secured by a mortgage” (emphasis added). It is only default in the payment of the principal due at maturity that triggers the provision.

[31] Although a right of redemption prior to maturity has been provided for pursuant to statute, this right is set out under a separate section of the *Mortgages Act* (s. 18) which provides:

18 (1) Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under the terms of the mortgage, payable until a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months further interest in lieu of notice, no further interest is chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage.

[32] Consideration of s. 18 confirms that s. 17 can only apply to a default in the payment of principal, occurring upon the expiry of the contractual maturity date. If it were otherwise, s. 17 would render the five-year timeline set out under s. 18 meaningless. A borrower could abridge that timeline simply by going into default. Moreover, as s. 18 requires payment of three months’ interest in advance and does not give the option of providing three months’ notice, if s. 17 applied pre-maturity,

a borrower who wished to provide notice rather than interest would be well-advised to simply default on their loan. This cannot have been the intent of the legislature.

[33] As with any statutory provision, s. 17 must be placed in its broader context. Here, that context includes both the common law and the *Mortgages Act* as a whole. Other provisions under the Act provide a right of early redemption (s. 18) and rights to put a mortgage back in good standing, even after the triggering of an acceleration clause (ss. 22-23). Section 17 must not be conflated with these other rights, nor undermine them. Having regard to the broader context, it is clear that s. 17 only allows for redemption after a default in the payment of principal due on maturity. It does not apply in this case, involving missed payments and other acts of default during the lifetime of the loan.

[34] I emphasize, however, that this decision is limited solely to the application of s. 17 of the *Mortgages Act*. The appellants did not argue that any other common law or equitable right, or any other statutory provision, applies in this circumstance to reduce their obligation to pay future interest. I express no opinion on these matters.

3. Enforcement Costs and the WiseCap Broker Fee

[35] On their third ground of appeal, the appellants argue that the application judge erred in ordering them to pay CEFL's enforcement costs and the WiseCap Broker Fee. While they admit that the agreement provides for the payment of

CEFL's reasonable enforcement costs, they contend that the trial judge erred in finding that the costs claimed, of \$32,701.96, were reasonable. In relation to the WiseCap Broker Fee, the appellants submit that there was no basis in the parties' agreement for this fee and that the application judge did not explain why it was included in his order.

[36] CEFL submits that the application judge's conclusions on this ground are, in effect, assessments as to damages that are entitled to deference. It argues that the appellants have not pointed to anything that would justify interfering with them.

[37] This ground of appeal, which was not raised in oral submissions, may be dealt with briefly. The application judge's finding that CEFL's enforcement costs were reasonable is owed deference. I see no basis to disturb it, particularly in light of the "wild goose chase" CEFL was sent on by the appellants in seeking to enforce the agreement.

[38] In respect of the WiseCap Broker Fee, it suffices to note that, under section 12(g) of the agreement, CEFL was entitled to recover "all costs, charges and expenses reasonably incurred [...] whether directly or for services rendered [...] in operating the Borrower's accounts [and] in preparing, administering or enforcing [the agreement]". In my view, the WiseCap Broker Fee falls within the ambit of this provision and there was thus a legal basis for the application judge's order.

E. DISPOSITION

[39] For these reasons, I would dismiss the appeal. I would order costs to the respondent in the amount of \$25,000, all inclusive.

Released: July 30, 2026 "G.T.T."

"D.A. Wilson J.A."

"I agree. Gary Trotter J.A."

"I agree. David M. Paciocco J.A."