

CITATION: *CMI High-Yield v. Powell et al.*, 2026 ONSC 4283
COURT FILE NO.: CV-24-00731557-0000
DATE: 20260730

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
CMI HIGH- YIELD OPPORTUNITY	)	<i>Jordan N. Potasky, for the Plaintiff</i>
FUND CORP.	)	
	)	
Plaintiff	)	
	)	
– and –	)	
	)	<i>Antal Bakaity, for the Defendants</i>
DIANA JUDITH POWELL, KURT	)	
VERMONT and YVONNE ELLIOT	)	
	)	
Defendants	)	
	)	
	)	
	)	HEARD: July 3, 2026

REASONS FOR JUDGMENT

CALLAGHAN J.

[1] The plaintiff is the mortgage administrator for TSX Trust Company (“TSX”). TSX advanced a mortgage loan to the defendants in the amount of \$102,000.00 pursuant to the terms of a commitment letter dated June 1, 2023 (the “Commitment”), and a charge/mortgage registered as instrument number AT6416994 on the 8th day of September 2023 in favour of TSX Trust Company with respect to the property as defined in the Statement of Claim (the “Property”) in the land registry office for the land titles division of Toronto (the “Mortgage”).

[2] The Mortgage bore interest at the rate of 9.99% per annum compounded monthly and required payment of interest monthly in the amount of \$849.15 on the first day of each month, commencing October 1, 2023, and ending on September 1, 2024 at which time the full amount outstanding under the Mortgage would become due and payable.

[3] The Mortgage further provides that upon default of any obligation thereunder, TSX is entitled to possession of the Property and that the principal amount secured by the Mortgage shall, at the option of TSX, immediately become due and payable.

[4] The defendants defaulted on the Mortgage. The plaintiff seeks to enforce the Mortgage and brings this summary judgment to do so.

[5] The defendants' counsel attended the motion. He conceded that the Mortgage is in default and that his clients have been unable to refinance. There was no issue with the plaintiff advancing this claim on behalf of TSX. The defendants advanced no defence other than to request that only proper charges be awarded to the plaintiff.

[6] In my view the plaintiff is entitled to judgment and an order of possession.

[7] However, there is an issue as to the amount to which it is entitled. The plaintiff has claimed:

Balance Outstanding at Oct 31, 2024 \$102,000.00
Interest to Oct 31, 2024 \$865.44
Monthly payments owing x1 (Oct 2024) \$849.15
Default Fee for Oct 31, 2024 \$1,500.00
3 Month Penalty for Oct 31, 2024 \$2,547.45
Statement Fee for Oct 31, 2024 \$200.00
Discharge Fee for Oct 31, 2024 \$300.00
Payment Processing Fee for Oct 1, 2024 \$300.00
Insurance Cancellation Notice for Sept 23, 2024 \$300.00
MII Charge for Sept 30, 2024 \$500.00
Outlay Fee, Value Check for Jul 18, 2024 \$250.00
Demand Letter for Oct 15, 2024 \$1,500.00

[8] Many of the charges above are contrary to s. 8 of the *Interest Act*, R.S.C. 1985, c. I-15. Section 8 prohibits lenders from levying "fine[s], penalt[ies] or rate[s] of interest" on "any arrears of principal or interest" that are "secured by mortgage on real property". The provision is an exception to parties' right to contract and it prohibits charges on arrears that effectively increase the interest, regardless of how the charge is cast by the lender. In *Krayzel Corp. v. Equitable Trust Co.*, [2016 SCC 18](#), [2016] 1 S.C.R. 273, at para. 25, the Supreme Court described it as follows:

What counts is how the impugned term operates, and the consequences it produces, irrespective of the label used. If its effect is to impose a higher rate on arrears than on money not in arrears, then s. 8 is offended.

[9] The section has been the subject of much judicial comment including by the Court of Appeal: *P.A.R.C.E.L. Inc. v. Acquaviva*, [2015 ONCA 331](#), 126 O.R. (3d) 108; *Greenpath Capital Partners Inc. v. 1903130 Ontario Ltd.*, 2024 ONCA 42 (CanLII), at para. 29.

[10] Section 8 of the *Interest Act* is Parliament's attempt to ensure landowners are treated fairly by mortgagees. As noted in *P.A.R.C.E.L.* one legislative purpose is to protect borrowers from charges that would make it impossible for landowners to redeem, or to protect their equity: see also *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18 (CanLII), [2016] 1 SCR 273, at para. 21.

[11] The case law makes it clear that in the absence of evidence that the charges in question reflect real costs legitimately incurred by the respondents for the recovery of the debt, in the form of actual administrative costs or otherwise, or reasonable pre-estimates of such costs, that these charges are prohibited by the *Interest Act*. It defeats Parliament's purpose in enacting the legislation for lenders to demand those payments without justification. It also makes settling mortgage default cases more difficult when unwarranted charges are added to the discharge statement.

[12] In this case, there is no evidence proffered that many of the charges are either actual or reasonable pre-estimates of administrative costs. When questioned about these fees, counsel for the plaintiff readily agreed to remove the disputed charges. In my view this was a proper concession. These types of charges have been found repeatedly to be improper by courts where there was no justification proffered. I note that this plaintiff has previously made the same concessions in the past in respect of similar charges in respect of a mortgage default: *CMI High Yield Opportunity Fund v. Todorov*, 2023 ONSC 5697 (CanLII), at para. 38. I also note that it is a common occurrence seen too often by the court.

[13] The proper charges with interest amount to \$103,714.59 which was not objected to by the defendants. The plaintiff is entitled to an award in this amount. In addition, the plaintiff is entitled to prejudgment interest at the contractual rate of interest. The accrued interest on this amount at 9.99% to July 3, 2026 is \$17,429.20.

[14] The plaintiff seeks substantial indemnity costs pursuant to the terms of the mortgage. Even where costs are provided for in a contract, the awarding of costs are still in the discretion of the court. In *Bossé v. Mastercraft Group Inc.*, [1995] O.J. No. 884, [1995 CanLII 931 \(C.A.\)](#), leave to appeal ref'd 24702 (21 September 1995), the Court of Appeal said at para. 15:

The costs of and incidental to a proceeding or a step in a proceeding are, subject to the provisions of a statute or the rules of court, in the discretion of the court and the court may determine by whom and to what extent the costs shall be paid: [Courts of Justice Act](#), R.S.O. 1990 c.C-43, s.131(1); rule 57.01 of the Rules of Civil Procedure. As a general proposition, where there is a contractual right to costs the court will exercise its discretion so as to reflect that right. However, the agreement of the parties cannot exclude the court's discretion; it is open to the court to exercise its discretion contrary to the agreement. The court may refuse to enforce the contractual right where there is good reason for so doing - where, for instance, the successful mortgagee has engaged in inequitable conduct or where the case presents special circumstances which renders the imposition of solicitor and client costs unfair or unduly onerous in the particular circumstances

[15] The above principle was recently re-affirmed in *7550111 Canada Inc. v. Charles*, 2020 ONCA 505 and *Burr v. Tecumseh Products of Canada Limited*, 2023 ONCA 135.

[16] In my view, advancing these disputed charges without any factual foundation is the type of conduct that ought to be discouraged. Not only are such charges contrary to Parliament's intent but they hinder the resolution of litigation where mortgagors rightly insist on the amounts being claimed by mortgagees be justified and not otherwise prohibited. In the circumstances, I decline

to grant an order of costs. In doing so, I appreciate that the plaintiff's cost claim is not significant relative to the debt owed but it is hoped that this has some impact in ensuring unwarranted charges are not advanced in the future.

[17] The plaintiff is entitled to a judgment of \$103,714.59 plus interest to July 3, 2026 of \$17,429.20 plus interest post that date of 9.99% per annum. The plaintiff is also entitled to a writ of possession. The draft order will issue.

Callaghan J.

Released: July 30, 2026