

CITATION: Powell v. Amur Capital Income Fund Inc. et al., 2026 ONSC 4729

COURT FILE NO.: CV-25-89933

DATE: 2026-08-14

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. Powell, Plaintiff

AND:

Amur Capital Income Fund Inc. and Eva Lake, Defendant

BEFORE: Bordin J.

COUNSEL: *Self-Represented* – plaintiff

H. Neill-Morabito – for the defendant

E. Lake - not appearing

HEARD: August 13, 2026

ENDORSEMENT

Overview

[1] This hour-long motion came before me on a short motions list yesterday with 14 motions.

[2] The plaintiff owns the property known as 1352 Highway 8, Hamilton, Ontario (the "Property"). By a mortgage registered on December 17, 2021, between the plaintiff as mortgagor and the defendant as mortgagee, the plaintiff charged the Property for a period of one year commencing on December 15, 2021, securing the principal sum of \$712,500.00 (the "Mortgage").

[3] The Mortgage was renewed twice, with a new maturity date of December 15, 2024. The Mortgage matured on that date and was not renewed or paid out, and has been outstanding for over 18 months.

[4] The defendant made a demand for payment of the Mortgage balance on January 15, 2025, and issued a notice of sale on January 30, 2025. The Mortgage was not redeemed. The defendant has not brought an action for judgment. The defendant issued a notice of sale on January 30, 2025.

[5] Pursuant to the orders of Valente J. and Krawchenko J. in the defendants' separate application pursuant to sections 50 and 52 of the *Mortgages Act* the defendant is in possession of the Property. The plaintiff's motion to set aside the orders was dismissed by Sweeny J. The plaintiff's motion for leave to appeal and to extend time to appeal the order of Krawchenko J. was dismissed by van Rensburg J. sitting as a single judge of the Court of Appeal,

[6] In her endorsement, van Rensburg J. characterized the relief sought as a motion to stay the mortgage enforcement proceedings and noted that the plaintiff sought to stay enforcement of the writs of possession and the sale of the Property. van Rensburg J. found “no possible merit” to the plaintiff’s appeal. Finally, van Rensburg J. said that the defendant is lawfully in possession of the property.

[7] The defendant is in the process of selling the Property. No agreement of purchase and sale has been signed.

[8] The plaintiff has not tendered evidence that the mortgage is invalid, or that she did not receive or benefit from the funds advanced. The mortgage is in default. The plaintiff has not provided evidence that she has the funds to repay the mortgage.

[9] The principal relief sought by the self-represented plaintiff on this motion is an amendment of her statement of claim and an interlocutory injunction staying the enforcement of the Mortgage at issue in the action. As set out in the plaintiff’s affidavit on this motion, she does not ask the court to “finally determine the full mortgage dispute” but asks the court to “preserve the property and [her] equity of redemption so that the amendment, accounting authority, and redemption issues can be determined on a proper record”.

[10] The defendant opposes the stay. The defendant does not oppose the motion to amend but notes that the proposed amended statement of claim amounts to a new claim.

Leave not granted to amend the claim

[11] The original statement of claim is completely different from the proposed amended statement of claim. In the original statement of claim, the plaintiff asserted all manner of claims against the defendant and its lawyers and made allegations including fraud, misrepresentation, harassment, violation of indigenous rights, and a breach of s. 15 of the *Charter*, satisfaction of the mortgage through the delivery of a promissory note. The defendant states that the plaintiff also delivered with the original statement of claim a notice of constitutional question, raising constitutional questions regarding the enforcement of the mortgage allegedly in violation of s. 7 of the *Charter*, the defendant’s failure to accommodate the plaintiff’s cultural and legal status as a non-status Indigenous person in violation of s. 15(1) of the *Charter* and whether the Mortgage proceedings contravene Section 35 of the *Constitution Act*, 1982, concerning Aboriginal and treaty rights of indigenous peoples. None of this is in the proposed amended statement of claim.

[12] In her submissions, the plaintiff stated that she is not proceeding with the allegations in the original statement of claim related to the *Charter* and constitutional issues, but maintains the rest of the claims as well as those in the proposed amended statement of claim.

[13] The proposed amended statement of claim is found at Exhibit C to the plaintiff’s affidavit affirmed June 3, 2026. As I explained to the plaintiff, it is not in the proper format as the proposed amendments are not underlined and the former allegations which the plaintiff no longer wants to pursue are not struck out. I cannot determine on this record precisely what claims from the original claim that the plaintiff wants to pursue.

[14] The plaintiff must file a proper proposed amended statement of claim, based on the original claim with the allegations she no longer wishes to pursue struck out (by putting a line through them but leaving them in the document) and the new allegations underlined. Until this is done, leave to amend will not be granted.

[15] The plaintiff's motion for leave to amend the claim is dismissed without prejudice to the plaintiff to renew the motion with one caveat. The plaintiff can no longer seek a stay of the enforcement of the mortgage as that issue has been determined by the Court of Appeal and by my reasons that follow.

Motion for a stay

[16] The test for granting an interlocutory injunction is well known. The court must consider:

- a. Whether there is a serious question to be tried;
- b. Whether the applicant suffer irreparable harm if the injunction is not granted; and
- c. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits.

No Serious Issue to be tried

[17] As far as can be determined from the plaintiff's materials and submissions, the plaintiff's position with respect to the allegations she is advancing are as follows:

- a. She is not asking the court to consider the writ of possession issue;
- b. She wants to prevent the sale of the Property;
- c. She wants to redeem the mortgage;
- d. She wants the court to preserve her redemption rights;
- e. She cannot redeem the mortgage because the defendant has not
 - a) provided a proper redemption payout statement;
 - b) and has claimed for interest and charges to which the defendant is not entitled, including:
 - c) she wants to challenge the legal fees claimed;
 - d) she cannot assess the proper amount to be paid and cannot redeem because the plaintiff has not produced:
 - i. payment and transaction histories;
 - ii. interest and default interest calculations;

- iii. legal costs and enforcement charges;
- iv. administration and property management fees;
- v. renewal fees, discharge fees, and holdbacks;
- vi. records showing who had authority to enforce or manage the mortgage;
- vii. records relating to assignments or transfers connected to the mortgage;
- viii. records relating to insurance recoveries, reimbursements, indemnification, or credits reflecting the balance claimed; and
- ix. records sufficient to identify execution, transfer, servicing, and enforcement authority

[18] The plaintiff relies on paragraph 22 of the *Mortgages Act* and *1173928 Ontario Inc. v. 1463096 Ontario Inc.*, 2018 ONCA 669 (CanLII); 2018 ONCA 669.

[19] It is not clear that s. 22 applies to the facts before me. The Mortgage matured and was not renewed. The plaintiff cannot pay the arrears to bring the mortgage into good standing, as the entire principal has become due.

[20] The defendant provided a payout statement in March 2026. The plaintiff says it is not valid because it was an information statement and could not be used for payout purposes. The limitations resulted from the plaintiff's failure to provide a payout date. No doubt this is because she has never been able to obtain refinancing for the Property. There is certainly no cogent evidence that she has. If the plaintiff provides a specific date for a payout statement, the defendant can then provide it. Section 22 “is not to be used by a mortgagor who does not desire to bring the mortgage into good standing”; the plaintiff can request a payout statement until the right of redemption is irrevocably lost: *1173928 Ontario Inc.*, at paras. 42-43.

[21] The plaintiff also questions whether the current defendant is properly standing in the place of the original mortgagee. In her affidavit, the plaintiff also seeks records related to the instructions given to defence counsel regarding enforcement of the Mortgage. This issue has been determined as this court has granted the defendant possession of the Property. The Court of Appeal has noted that the defendant is in lawful possession of the Property.

[22] The plaintiff disputes the amounts claimed by the defendant for interest, the three-month interest penalty, renewal, administration, discharge, and registration fees, property management charges, legal costs, and “any penalty-related charges”. Virtually no details are provided to support these allegations in the plaintiff’s affidavit and the amended statement of claim.

[23] Many of the fees sought by the defendant are provided for by the Mortgage and the standard charge terms. The defendant has provided an explanation for the fees.

[24] The Court of Appeal in *Redback Tours Inc. v. Canadian Equipment Finance & Leasing Inc.*, 2026 ONCA 555, considered a mortgagee's entitlement to claim a three-month interest penalty. No argument was made before me regarding the actual validity of the three-month interest penalty. I simply note that this is an issue that must be determined and I cannot say at this stage that there is no merit to the plaintiff's position on this issue.

[25] There is nothing in s. 22 of the *Mortgages Act* that requires the defendant to produce the documents requested by the plaintiff as part of the payout statement.

[26] In ..., at para. 42, the court stated:

A mortgagor “is not entitled to suspend the mortgagee's rights under s-s. (3) for an indefinite period of time, simply by questioning the [mortgage statement]”: *Double D Developments Ltd. v. Green* (1979), 1979 CanLII 2065 (ON HCJ), 24 O.R. (2d) 391, [1979] O.J. No. 4197 (H.C.J.), at para. 9. Tendering or paying into court the amount of money that the mortgagor claims is owed could evince an intention to redeem the mortgage in the face of ongoing accounting disputes: *Double D Developments Ltd.*, at para. 8.

[27] The plaintiff has not paid into trust or into court the amount she acknowledges is owing on the mortgage or any amount at all. If the defendant proceeds with the sale of the property under the power of sale, the mortgagee must account for the proceeds. Any dispute as to the charges, fees, interest, penalties, etc. and the amount owing under the Mortgage can be resolved at that time and does not prevent the defendant from proceeding with enforcement of the mortgage.

[28] Assuming for the purposes of the motion that the plaintiff was proceeding with the alleged breaches of the *Charter* and the *Constitution Act*, the *Charter* and the *Constitution Act* are binding on the Crown, not on private parties.

[29] There is no serious issue to be tried as to the defendant's right to enforce the Mortgage. There is no serious issue to be tried regarding the defendant's entitlement to proceed with the sale of the Property.

[30] The plaintiff has not provided an undertaking as to damages as required by rule 40.03. Given the plaintiff has not paid out the Mortgage in over 18 months, it is doubtful that any such undertaking would have much value

The plaintiff will not suffer irreparable harm

[31] There is no evidence of irreparable harm apart from the loss of the Property. However, the loss of the Property was expressly contemplated by the terms of the Mortgage to which the plaintiff agreed. A mortgagor cannot contractually accept the consequence of default and then invoke that same consequence as irreparable harm to forestall enforcement: *Pilaszek*, at para. 38, citing *Park v. Manulife Bank of Canada*, 2025 ONCA 815, at para. 9.

[32] “Treating that consequence as irreparable harm, without more, would effectively allow a moving party to satisfy the irreparable harm element in virtually every residential mortgage enforcement proceeding. This would be inconsistent with the borrower's agreement that the lender may take enforcement steps upon default”: *Pilaszek*, at para. 39.

[33] Mortgagors must understand that when they enter into mortgages and fail to pay or comply with the terms of the mortgage, the contracted-for remedies will be enforced, except where a meritorious defence exists, statutory remedies apply, or procedural irregularities occur. Those are absent in this case.

[34] The plaintiff can still challenge the charges claimed. She will not suffer irreparable harm if the property is sold. In any event, damages would be an adequate remedy if the plaintiff is successful in her claim.

The balance of convenience favours the defendant

[35] The balance of convenience favours the defendant. The Mortgage is unpaid and has been outstanding for over 18 months. The defendant is in possession of the property and is entitled to pursue the contractual remedies granted by the Mortgage and to be paid the amounts owed.

[36] The plaintiff's motion for a stay is dismissed.

[37] If the parties cannot agree on costs of the motion, they may exchange a bill of costs and written submissions consisting of no more than two double-spaced pages, together with any legal relevant offers to settle. All submissions are to be filed with the court and uploaded to Case Centre. If no submissions are received by the court by the end of business on September 4, 2026, costs will be deemed to have been settled.

Bordin J.

Released: August 14, 2026