

CITATION: Carben Projects Inc. v. Liu, 2023 ONSC 5006
COURT FILE NO.: CV-23-00698532-0000
DATE: 20230905

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
CARBEN PROJECTS INC.) *David A. Brooker* for the Plaintiff
)
 Plaintiff)
)
 - and -)
)
CHANZHI LIU)
)
 Defendant)
)
) **HEARD:** In writing
)

PERELL, J.

REASONS FOR DECISION

[1] Carben Projects Inc moves for a default judgment against Chanzhi Liu, in the sum of \$358,841.96 for the balance due under a mortgage on a property located at 170 Bethany Leigh Drive, Toronto, Ontario.

[2] The background facts to this motion are as follows:

- a. On March 3, 2022 Mr. Liu granted a mortgage to Carben Projects on his property at 170 Bethany Leigh Drive. The principal of the mortgage loan was \$324,800.00. The interest rate was 12% *per annum* with a maturity date of February 25, 2023.
- b. Mr. Liu did not pay the balance of the mortgage on the maturity date and the mortgage was automatically renewed according to its terms.
- c. On renewal, a renewal fee of \$16,240.00 (5% of the principal) and administrative fees of \$1,800.00 became due and owing by Mr. Liu.
- d. The renewal fee and administrative fees were not paid and were added to the principal balance of the Mortgage in accordance with the terms thereof.
- e. Additionally, the interest rate on the Mortgage was increased to 15% per annum, effective as of February 25, 2023.
- f. Mr. Liu failed to make payments as due and is in default of the Mortgage since January 25, 2023.
- g. The Statement of Claim was issued on April 26, 2023, and it was served on Mr. Liu

on April 28, 2023.

h. A Notice of Sale was served on May 2, 2023.

i. Mr. Lui did not deliver a Statement of Defence, and he was noted in default on June 20, 2023.

j. The interest owing on the Mortgage as of April 25, 2023, is \$15,354.37.

k. The total amount due and owing under the Mortgage, inclusive of interest is **\$358,194.37**, broken down as follows:

i. Principal	\$324,800.00
ii. Renewal Fee	\$16,240.00
iii. Administrative Fees	\$1,800.00
iv. Interest	\$15,354.37

l. The costs to date of this proceeding are \$1,260.40.

m. When Mr. Lui was noted in default, the Registrar declined to sign a default judgment on the grounds that the renewal fee and administrative fees identified in the Statement of Claim are not amounts for which a registrar can sign default judgment.

[3] An action on a mortgage covenant may be commenced whenever a default of payment of the mortgage debt occurs. If the mortgagor does not file a defence within the prescribed time, provided evidence is submitted that notice was served on the mortgagor, the mortgagee can request default judgment against the mortgagor as a claim for a specific amount.¹

[4] The defendant was noted in default in accordance with rule 19.01(1). A defendant who is noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim.² In accordance with Rule 19.05, where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed.

[5] A plaintiff mortgagee is entitled to all costs of enforcing a mortgage from the defendant, as provided in the standard charge terms. The question of whether the costs claimed by the mortgagee are appropriate must be answered by reference to the mortgage document, which is the foundation of the mortgagee's claim.³

[6] Administrative fees will not be allowed unless they are specifically referenced in the terms of the mortgage or the standard charge terms, and reflect real costs incurred in the administration of the Mortgage.⁴

[7] The plaintiff submits that the administrative fees sought in the within action were incurred in its enforcement, were referenced in the terms of the mortgage and standard charge terms and

¹ *Rules of Civil Procedure*, RR0 1990, Reg 194, rules 18.01 and 19.01(1).

² *Ibid.* rule 19.02(1)(a)

³ Marriot and Dunn, *Practice in Mortgage Remedies in Ontario*, (5th ed.), s.10:9

⁴ See for instance [1309395 Ontario Ltd v. Pronesti Investments Inc.](#), 2013 ONSC 7567 at paras 29 and 55.

should therefore be allowed.⁵

[8] The plaintiff submits that the renewal fee charges should also be allowed. Fees incurred as a result of an automatic renewal clause and an associated increase in interest have been allowed where the mortgage documents were signed voluntarily, and the mortgagor having obtained independent legal advice.⁶

[9] A plaintiff has a right to its legal costs in an action on a mortgage.⁷

[10] In the immediate case, Carben Projects Inc. is entitled to possession of the Property, the balance due under the Mortgage in the sum of \$358,194.37, and the sum of \$1,260.40 for costs of the action.

[11] Judgment accordingly with post-judgement interest at a rate of 15 percent per annum in accordance with the terms of the mortgage.

Perell, J.

Released: September 5, 2023.

⁵ See [1746534 Ontario Inc v. Phillips](#), 2015 ONSC 2232 CanLII (SCJ), at para 48 where administrative fees were allowed.

⁶ See [Elle Mortgage Corp v. Sihota](#), 2021 ONSC 1593 CanLII (SCJ)

⁷ Marriot and Dunn, *Practice in Mortgage Remedies in Ontario*, (5th ed.), s.20:1, citing *Cottrell v. Stratton* (1872), L.R. 8 Ch. 295 (Eng. Ch. Div.)

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