

CITATION: Harmony Capital Corp. v. Syblis, 2024 ONSC 1393
COURT FILE NO.: CV-24-84398
DATE: 2024 03 11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Harmony Capital Corp., Applicant

AND:

Ann-Marie Syblis, Veronica Syblis, Tereame Amaree Syblis, Marquis da Quan Syblis, Mark James and Germaine Mathurin, Respondents

BEFORE: The Honourable Justice M. Bordin

COUNSEL: G. Corsianos, Counsel for the Applicant

No one appearing for the Respondents

HEARD: March 5, 2024

ENDORSEMENT

[1] The applicant seeks an order setting aside an alleged tenancy or varying a tenancy. The respondents, Ann-Marie Syblis, Veronica Syblis, Tereame Amaree Syblis and Marquis da Quan Syblis (collectively the “Syblis Respondents”) purchased a residential property known as 137 David Street, Hagersville, Ontario (the “Property”) on December 10, 2021 as joint tenants. That same day they mortgaged the Property. That mortgage was subsequently transferred to the applicant.

[2] The applicant’s materials were served on the respondents. The respondents did not file any responding materials. Applicant’s counsel handed to the court a document that was delivered to him a day or two before the hearing. If it is an affidavit, it does not contain admissible evidence. It contains a “Notice That Proceeding (or Motion) May be Stayed or Dismissed” addressed to Fisgard Capital Corporation, not the applicant, a blank Notice of Motion form, a second blank “Notice That Proceeding (or Motion) May be Stayed or Dismissed”, and a five-page document under name of the “Iroquois Confederacy”. The five-page document refers in part to the following:

- divine law;
- requirements for an Indictment sanctioned by an assembled Grand Jury;
- Cestui Que VI Act of 1666;
- The Great Law of Peace;
- The Two Row Wampum Treaty;
- The Covenant Chain;

- The Bills of Exchange Act;
- The Criminal Code of Canada Currency Act;
- UNCITRAL Convention on International Bills of Exchange and International Promissory Notes Uniform Commercial Code;
- Articles of Confederation – 1777, Article IV;
- Cannons of Positive Law – Canon 1698;
- Canada having joined the United States;
- The Constitution of the United States of America;
- The Magna Carta;
- United Nations Declaration on the Rights of Indigenous Peoples;
- The Constitution Act; and
- Various treaties.

- [3] None of this is responsive to the issues before me. Apropos the respondents' failure to file evidence on the application, on the last page beside a gold stamp the document states in bold: "Ignorance of the law is no excuse."
- [4] The Syblis Respondents signed several documents to obtain the mortgage including, but not limited to, acknowledgments and directions, a mortgage commitment, and statutory declaration, all of which are set out in the applicant's materials. The Syblis Respondents' signatures are consistent in those documents.
- [5] Schedule A to the mortgage commitment, under the heading "Lease" states:
- The Chargor covenants and agrees with the Chargee that the Chargor will obtain the prior written consent of the Chargee before executing any lease, offer or agreement to lease, or any tenancy agreement for the lease of the whole or any part of the charged property regardless of the length of term of any such lease, offer or agreement to lease or tenancy agreement.
- [6] The Chargee never provided its written consent to the Chargor to lease the Property or enter into a tenancy agreement.
- [7] The mortgage went into default. Demand letters were served on the Syblis Respondents in July 2023. They were served with the statement of claim on August 24, 2023 by Jennifer Waxman. Ms. Waxman served Ann-Marie Syblis ("Ann-Marie") personally.
- [8] The Syblis Respondents were then served with a notice of sale under mortgage on or about September 1, 2023. They were noted in default on October 12, 2023. Goodman J. granted default judgment on November 6, 2023 in the amount of \$725,136.77 plus interest and costs. An order for possession was also granted.

- [9] A copy of the Judgment of Goodman J. together with a notice demanding possession was sent to the Syblis Respondents by email, registered and regular mail, advising the Syblis Respondents to deliver up vacant possession of the Property to the applicant or its designated agent on or before November 28, 2023. The Syblis Respondents did not vacate the property.
- [10] An occupancy check of the Property was conducted on November 29, 2023 by Ms. Waxman. No one answered the door and Ms. Waxman left her card. She received a call from a male who was uncooperative but who asserted he was a tenant. No copy of a lease was provided.
- [11] On December 12, 2023, Sheard J. granted leave to issue a writ of possession. An eviction date was then scheduled for January 31, 2024.
- [12] On January 30, 2024, two males, who did not identify themselves, attended at the office of applicant's counsel and showed a document purporting to be a lease agreement. They did not leave a copy of the document. Prior to this time, the existence of a written lease had never been asserted by the respondents, nor had a written document purporting to be a lease been produced.
- [13] On the eviction date, the respondent, Germaine Mathurin, advised that she was the tenant at the property and produced a document she purported was a lease. She said she would not vacate the Property. She said that the respondent Mark James lived at the Property. She advised that the Syblis Respondents lived in Toronto. The applicant was able to obtain photos of the purported lease which was included in the applicant's materials. The eviction did not proceed.
- [14] The purported lease has many discrepancies, including:
- a. the signatures of Ann-Marie and Veronica Syblis in the document clearly do not match their signatures in the mortgage documentation;
 - b. it is not signed by the other Syblis Respondents who are joint tenants of the Property;
 - c. on her driver's licence and social insurance card, Ann-Marie's name is spelled with one "r". In the purported lease it is spelled with two "r"s directly above her purported signature;
 - d. it purports to be dated March 25, 2023 but says it was executed on the "thirtieth day of the month of August in the year of our most high Creator, Two Thousand Twenty One", which predates the Syblis Respondents acquisition of the Property;
 - e. it is not in the prescribed form as required by the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17.;

- f. section 2 states that tenancy is for a fixed term of five years commencing April 2022 and ending on August 31, 2027, which is inconsistent with the other dates referred to above and is more than five years;
 - g. section 13 requires the tenant to provide a prepayment in the amount of \$7,000.00 for the term starting on April 1, 2023 and ending on April 31, 2027, which is inconsistent with the other dates mentioned above (also there is no April 31);
 - h. section 22 states that any notice to be sent to the landlord or the tenant or to each other shall use the address of the Property itself;
 - i. section 23 states that the Landlord does not have a manager on the premises but may be contacted for any maintenance and repair at (647) 849-0775. This is the same telephone number that is listed for the tenant on page 7 of the document; and
 - j. on page 7 the address for service for the Landlord is the address for the Property.
- [15] In addition to the prepayment required by section 13, section 3 of the purported lease states that rent is \$3,500.00 per month for the entire five-year term and section 4 requires the tenant to pay \$10,000.00 as a security deposit to be paid upon the execution of the agreement. This payment of substantial sums would have been during the time the mortgage was in default, notice of default was served and legal proceedings were underway, but no payment was made to the Chargee to attempt to bring the mortgage into good standing.
- [16] Based on the above observations, and the facts before me, I have no issue concluding that the document that purports to be a tenancy agreement was not signed by the Syblis Respondents, was in all likelihood fabricated after the applicant obtained a judgment and writ of possession, does not represent a true agreement to lease, and I so find.
- [17] Even if it was a true tenancy agreement, it was obtained in violation of the covenants of the Syblis Respondents not to enter into a lease without the written consent of the Chargee which was never provided.
- [18] If it was a true tenancy agreement, I would set aside or vary the tenancy agreement by declaring it is terminated within 30 days for the following reasons.
- [19] Section 52 of the *Mortgages Act*, R.S.O. 1990, c. M.40 provides:
- 52 (1)** The Superior Court of Justice may on application by the mortgagee vary or set aside a tenancy agreement, or any of its provisions, entered

into by the mortgagor in contemplation of or after default under the mortgage with the object of,

- (a) discouraging the mortgagee from taking possession of the residential complex on default; or
- (b) adversely affecting the value of the mortgagee's interest in the residential complex.

(2) In considering the application, the judge shall have regard to the interests of the tenant and the mortgagee.

- [20] In order to have a tenancy agreement set aside, the applicant must satisfy the following three-pronged test: (1) there must be a tenancy agreement entered into by the mortgagor; (2) the tenancy agreement must be entered into in contemplation of or after default; and (3) the tenancy agreement must have the object of either discouraging the mortgagee from taking possession or adversely affecting the value of the mortgagee's interest in the property: *Melo v. 2297248 Ontario Ltd.*, 2016 ONSC 4877, para. 7; *Mortgage Company of Canada Inc. v. Singh*, 2019 ONSC 6200, para. 28.
- [21] Section 52 of the *Mortgages Act* requires a balancing of interests, as among the mortgagee, the mortgagor, and any tenants. The court must exercise its discretion taking all the various diverging interests into account: *Mortgage Company of Canada Inc.*, para. 32.
- [22] On the facts before me, I find that the purported tenancy agreement was entered into after default. Further, given the history of the proceedings and the facts before me, I find that the purpose of presenting the purported lease agreement is to discourage the mortgagee from taking possession. I find that this is the intention of all the respondents.
- [23] Having regard to the interests of the parties, I would set aside the tenancy agreement and require delivery of possession of the premises in 30 days, in the event it is valid. A substantial amount of money is owed to the applicant who has obtained judgment. No payments have been made to the applicant. The evidence suggests that at least one of the Syblis Respondents continues to reside at the Property. The applicant is entitled to possession to recover the money it is owed.
- [24] The applicant is entitled to the following declaration and orders:
- a. that the respondents, Mark James and Germaine Mathurin, are occupants rather than tenants at the property located at 137 David Street, Hagersville, Ontario, NOA 1H0 (the "Property") and are hereby ordered to vacate the Property together with all occupants residing at the Property within 30 days of this Order;

- b. any tenancy agreement made between the respondents, Ann-Marie Syblis and Veronica Syblis and the respondents, Mark James and Germaine Mathurin is declared invalid and set aside pursuant to section 52 of the *Mortgages Act*, R.S.O. 1990, c. M.40 and delivery of possession of the premises shall be made in 30 days;
 - c. the Sheriff of Haldimand County shall execute the outstanding Writ of Possession issued on December 14, 2023 but not before 30 days from the date of this Order;
 - d. the police are requested to assist the Sheriff of Haldimand County, if necessary, when enforcing on the Writ of Possession.
- [25] The mortgage commitment and standard charge terms requires the Syblis Respondents to pay all legal fees on a “solicitor-client basis” and disbursements incurred for enforcement and recovery of possession. I have reviewed the applicant’s bill of costs. Having considered the factors in rule 57.01, and what is fair and reasonable in the circumstances, I fix legal fees and disbursements in the amount of \$13,000, inclusive of HST, payable forthwith by the Syblis Respondents to the applicant.

M. Bordin, J.

Date: March 11, 2024