

COURT OF APPEAL FOR ONTARIO

CITATION: Margel v. Dawson, 2024 ONCA 275

DATE: 20240416

DOCKET: COA-23-CV-0583

van Rensburg, Zarnett and George J.J.A.

BETWEEN

Daniel Margel, Dr. Daniel Margel Medicine Professional Corporation,
Lilia Borshiov, Regard Investments Ltd., Rojocan Inc. and Larry Koltun

Plaintiffs/Defendants by counterclaim
(Respondents)

and

Juleth Dawson

Defendant/Plaintiff by counterclaim
(Appellant)

Roderick Byrnes, as agent for the appellant¹

Doug Bourassa and Annie (Qurrat-ul-ain) Tayyab, for the respondents

Heard: April 10, 2024

On appeal from the judgment of Justice Markus Koehnen of the Superior Court of Justice, dated September 14, 2023.

REASONS FOR DECISION

[1] The appellant, Juleth Dawson, appeals the motion judge's judgment for payment and possession under a mortgage. The principal ground of appeal has to

¹ Mr. Byrnes, by order of Doherty J.A. dated July 4, 2023, was appointed as agent to make submissions in the appeal on behalf of the appellant (his spouse).

do with the calculation of interest owing. The appellant also asks, if her appeal on the interest calculation is allowed, that she be restored to possession of the mortgaged premises and given time to refinance the (corrected) amount owing under the mortgage.

[2] We see no error in the motion judge's decision not to reduce the interest rate under the mortgage from the contractual rate of 7.5% to 2%, as requested by the appellant, due to the respondents' failure to deliver a mortgage statement.

[3] The motion judge was entitled to consider the decision in *Cheung v. Moskowitz Capital Mortgage*, 2018 ONSC 1322, 87 R.P.R. (5th) 89 to be distinguishable. As explained by this court in *2257573 Ontario Inc. v. Furney*, 2022 ONCA 505, at paras. 17-18, the discretion exercised in *Cheung* to reduce interest as a consequence of a mortgagee's failure to deliver a mortgage statement is a fact driven exercise. In *Cheung*, it was predicated on the mortgagee having sought to obtain an advantage by not delivering a statement to the prejudice of the mortgagor.

[4] Here, as in *Furney*, no advantage was sought or prejudice suffered to justify the exercise of any discretion to vary the interest payable under the mortgage. The motion judge noted that, although there was no mortgage statement delivered before the mortgage matured in April 2020, a Notice of Sale was delivered in May 2020 which set out the amounts owing. Subsequently, in August 2020 a

discharge statement was provided. The motion judge also found that the absence of a mortgage statement did not hamper refinancing. Yet no payments at all were, or have been, made under the mortgage since it matured four years ago.

[5] Since there is no basis to interfere with the motion judge's judgment, there is no basis to restore the appellant to possession of the mortgaged premises or to provide additional time for repayment.

[6] The appeal is dismissed.

[7] The respondents are entitled to costs of the appeal fixed in the amount of \$25,201.26 inclusive of disbursements and applicable taxes.

"K. van Rensburg J.A."

"B. Zarnett J.A."

"J. George J.A."