CITATION: Hillmount Capital Mortgage Holdings Inc. v. Onsori-Saisan, 2024 ONSC 4481
COURT FILE NO.: CV-24-3548
DATE: 20240813

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC. Applicant	Fred Tayar and Joshua Tayar, Counsel for the Applicant
– and –	
VALIOLLAH ONSORI-SAISAN, AJGL GROUP INC., 1000597962 ONTARIO INC. and FARNAZ AFKARI Respondents	Hossein Niroomand, Counsel for the Respondent, Farnaz Afkari Sahar Cadili, Counsel for the non-party, Maxol Wealth Investments Inc.
	HEARD: July 31, 2024

REASONS FOR DECISION

CHARNEY J.:

Introduction

[1] The Applicant, Hillmount Capital Mortgage Holdings Inc. ("Hillmount"), seeks an order appointing Krieger & Company Inc. as the receiver over the property municipally known as 15 Chuck Ormsby Crescent, King City, Ontario (the "Property"). The Applicant is the first mortgagee on title to the Property and the mortgage is in default.

[2] The Respondent, Valiollah Onsori-Saisan ("Onsori"), is the registered owner of the Property and the mortgagor. He consents to the appointment of a receiver.

[3] Mr. Onsori is currently restrained by a Mareva injunction from utilizing his assets to satisfy his liabilities, including his liability to the Applicant. Interest, fees, and expenses are accruing as the realty taxes and the mortgage loans remain unpaid. The Mareva injunction was obtained by Maxol Wealth Investments Inc. ("Maxol"), which has commenced an

action (the "Maxol action") against Mr. Onsori and others: *Maxol Wealth Investments Inc. v. Arash Missaghi, et al*., 2024 ONSC 3179.

[4] Counsel for Maxol appeared at this application and advised that Maxol did not oppose the appointment of a receiver and the sale of the Property, provided that any surplus funds following the sale and payment of the secured mortgagees are preserved or paid into court and remain subject to the Mareva inunction.

[5] The application is opposed by the Respondent Farnaz Afkari ("Afkari"). Ms. Afkari alleges that she is the owner of the Property, and that the Property was transferred to Mr. Onsori through one or more fraudulent transactions perpetrated by the notorious Arash Missaghi[1], a prolific fraudster who was shot dead by another of his victims in June 2024. She seeks an adjournment of this application to allow her lawyer to properly investigate this incident and initiate legal proceedings against those responsible for the fraudulent conveyances.

[6] But for Ms. Afkari's objection, this would be a simple motion and the application to appoint a receiver would be granted. Ms. Afkari's objection complicates matters, and the real issue in this application is whether an adjournment should be granted because of her allegations and objection. For the reasons that follow, I conclude that Ms. Afkari's objection should not prevent the immediate appointment of a receiver in this case.

Facts

[7] The Respondent Mr. Onsori is the registered owner of the Property.

[8] On May 18, 2023, Mr. Onsori executed and delivered the mortgage (the "First Mortgage") registered on title to the Property in favour of the Applicant to secure a loan of $1,945,000.

[9] On June 1, 2024, the First Mortgage matured without payment. No payments have been received since maturity. That default continues. The mortgage payments previously made were for interest only. The full amount of the loan principal and accrued interest therefore remain unpaid. The amount due under the First Mortgage as of June 24, 2024 was $2,026,624.99. Interest, fees, and expenses are continuing to accrue under the First Mortgage.

[10] On June 25, 2024, the Applicant served Mr. Onsori with a demand for payment.

[11] The First Mortgage entitles the applicant to realize on its security through a Court-appointed receiver over the Property. The Mortgage provides:

> APPOINTMENT OF RECEIVER
>
> AT ANY TIME after the security hereby constituted becomes enforceable, or the monies hereby secured shall have become payable, the Chargee may

[1] Arash Missaghi is also a defendant in the Maxol action.

> from time to time appoint by writing, or apply to a court of competent jurisdiction for the appointment of, a Receiver of the Lands, with or without Bond, and may from time to time remove the Receiver and appoint another in his stead, and any such Receiver appointed hereunder shall have the following powers:
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> …
>
> (c) To sell or lease or concur in selling or leasing any or all of the Lands, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part or parts of the Charged Property; and he may make any stipulations as to title or conveyance or commencement of title or otherwise which he shall deem proper; and he may buy or rescind or vary any contracts for the sale of any part of the Charged Property and may resell the same; and he may sell any of the same on such terms as to credit or part cash and part credit or otherwise as shall appear in his sole opinion to be most advantageous and at such prices as can reasonably be obtained therefor and in the event of a sale on credit neither he nor the Chargee shall be accountable for or charged with any monies until actually received;
>
> …
>
> (g) To execute and deliver to the purchaser of any part or parts of the Charged Property, good and sufficient deeds for the same, the Receiver hereby being constituted the irrevocable attorney of the Chargor for the purpose of making such sale and executing such deed, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Chargor, and all other persons claiming the Lands or any part or parcels thereof by, from through or under the Chargor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided;

[12] On July 27, 2023, a second mortgage ("Second Mortgage") was registered on title to the Property in favour of the Respondents AJGL Group Inc. and 1000597962 Ontario Inc. (the "Second Mortgagees"), securing a loan principal of $400,000.

[13] Mr. Onsori remains in default in payment of 2023 and 2024 realty taxes (which constitutes a further default under the First Mortgage) to the extent of $8,304.66 and $19,973.91, respectively.

[14] A recent valuation of the Property indicates that net proceeds of a sale of the Property may be insufficient to satisfy the two mortgages and tax arrears.

[15] On or about May 9, 2024, a Mareva injunction was registered on title to the Property. The Mareva injunction was granted in an action commenced by Maxol (the "Maxol action") in

which Mr. Onsori and others were sued for, *inter alia*, damages for conspiracy, conversion, fraudulent misrepresentation, breach of fiduciary duty, breach of trust and unjust enrichment. The Mareva injunction is registered on the title of the Property and restrains Mr. Onsori from utilizing his assets.

Claim by Farnaz Afkari

[16] In his application for the First Mortgage, Mr. Onsori represented that he owned the Property and that the Property was his primary residence. Indeed, as indicated above, Mr. Onsori is the registered owner of the Property.

[17] The parcel registry indicates that Ms. Afkari became the registered owner of the Property on June 29, 2017, but the Property was transferred in a power of sale to Mr. Onsori on January 27, 2023.

[18] Ms. Afkari identifies herself as a real estate broker with an MBA. She is a defendant in the Maxol action.

[19] On June 27, 2024, Ms. Afkari wrote to the Applicant in response to the Applicant's June 25, 2024 demand letter to Mr. Onsori. Ms. Afkari alleges that she is the owner of the Property and has occupied the Property since 2017.

[20] Ms. Afkari alleges that she moved into the Property with her husband, Bahram Hosseini, and has since separated from her husband and is in the process of obtaining a divorce. Her affidavit makes the following allegations:

a. Ms. Afkari secured a first mortgage with the CIBC in the amount of $1.3 million when the Property was purchased in June 2017.

b. She was "romantically involved" with Arash Missaghi (Missaghi), who she understood was a real estate broker.

c. On July 22, 2021, Missaghi arranged for a second mortgage of $200,000 on the Property from a private lender.

d. Around the same time, in 2021, her estranged husband stopped making support payments and she was struggling with the mortgage payments. Missaghi offered to take care of the mortgage payments for both the first and second mortgages "to alleviate my financial burden".

e. Unbeknown to Ms. Afkari, Missaghi transferred the title of the Property to his business partners. She alleges that the transactions were fraudulent. She intends to initiate legal proceedings with respect to these transactions.

[21] Ms. Afkari does not deny signing the relevant documents, but states that Missaghi "called me to his lawyer's office…on a couple of occasions to sign documents but never provided copies or explained their content. I have been duped by him, and his associates."

[22] Ms. Afkari alleges that after the transfer of title to Mr. Onsori, Missaghi secured a first mortgage with Hillmount for $1.95 million.

[23] Ms. Afkari alleges that the second mortgage of $400,000 is a fraudulent mortgage.

[24] Ms. Afkari only recently became aware that the Property was transferred without her knowledge and consent. She has requested an adjournment of this Application to enable her lawyer to investigate the alleged frauds and initiate legal actions against Onsori and Missaghi and their associates.

[25] In response to Ms. Afkari's affidavit, the Applicant references the Statement of Defence filed dated May 31, 2024, filed on behalf of Ms. Afkari in the Maxol action. In this Statement of Defence, Ms. Afkari acknowledges that she moved out of the Property in or about September 2022 and that her ownership interest in the Property had been extinguished through a power of sale exercised under a mortgage then encumbering the Property. The Statement of Defence states:

> 5. On June 29, 2017, Ms. Afkari purchased a home located at 15 Chuck Ormsby Crescent, King City, Ontario ("King City Property") from a large builder . . .
>
> 7. On September 15, 2022, Ms. Afkari purchased a luxury home located at 12 Thornback Road, Vaughan, Ontario ("Thornback Property") . . .
>
> 8. Ms. Afkari, after completing the foregoing purchase of the Thornback Property, moved into her new residence, where she now lives with her children.
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> 9. Having left the King City Property, and not willing to subsidize her ex-husband's stay at that residence, Ms. Afkari allowed the various mortgages associated with that property to fall into default. Accordingly, power of sale proceedings were initiated by the mortgagee Saarad Investments Inc., which culminated in the sale to Mr. Valiollah Onsori-Saisan on January 27, 2023. The total consideration for this sale was $3,280,000.

[26] Ms. Afkari alleges that this Statement of Defence was drafted by Missaghi and his associates and filed by their lawyer without any instructions or input from her.

[27] The Applicant also points out that on October 4, 2022, Ms. Afkari signed an Acknowledgment amending the second mortgage on the Property to $2,200,000 at 8% interest, with monthly payments of $14,666.66. This mortgage was held by Saarad Investments Inc., and it was the default on this mortgage that led to the power of sale on January 27, 2023.

[28] Ms. Afkari does not deny that she signed this Acknowledgement, she states only that it was not explained to her.

[29] Yet Ms. Afkari is a real estate broker with an MBA. The Acknowledgment is brief and straight forward and, as a real estate broker with an MBA, Ms. Afkari should have been able to understand the words "The principal amount of the mortgage is amended to $2,200,000…The monthly payments are $14,666.66 interest only, commencing on October 21, 2022."

[30] Ms. Afkari cannot avoid the signed acknowledgment by simply asserting that she signed it without reading it, or that it was not explained to her. The defence of *non est factum* is available to "someone who, as a result of misrepresentation, has signed a document mistaken as to its nature and character and who has not been careless in doing so": *Bulut v. Carter*, 2014 ONCA 424, at para. 18; *Marvco Color Research Ltd. v. Harris*, 1982 CanLII 63 (SCC), [1982] 2 SCR 774 at p. 787. A person signing a document cannot avoid their obligations simply by claiming that they were careless and did not read it.: *The Guarantee Company of North America v. Ciro Excavating & Grading Ltd.*, 2016 ONCA 125, at para. 15.

[31] Moreover, Ms. Afkari alleges that Missaghi told her that he would make the mortgage payments on her behalf. There is no evidence that any such payments were actually made, and it belies belief that Missaghi would agree to make such payments simply to "alleviate [her] financial burden".

[32] In any event, even if Ms. Afkari's evidence is believed, the mortgages on the Property totalled at least $1.5 million, and Ms. Afkari was not making mortgage payments because she believed (wrongly) that Missaghi was making the mortgage payments. The Property was then sold in a power of sale to Mr. Onsori on January 27, 2023.

Analysis

[33] Based on these disputed facts, it is not clear whether Ms. Afkari was a victim of Missaghi or an accomplice. At the end of the day, it does not matter for the purposes of the motion before me.

[34] Even assuming that the $2.2 million mortgage was a fraudulent mortgage, the Property was transferred from the mortgagee, Saarad Investments Inc., to Mr. Onsori, in a power of sale on January 27, 2023. Mr. Onsori became the registered owner of the Property on that date.

[35] The Hillmount mortgage is governed by ss. 78(4) to 78(4.2) of the *Land Titles Act*, RSO 1990, c L.5, which provides:

> **Effect of registration**
>
> (4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register.
>
> **Exception**

> (4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.
>
> **Non-fraudulent instruments**
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> (4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

[36] "Fraudulent instrument" is defined in s. 1:

> "fraudulent instrument" means an instrument,
>
> (a) under which a fraudulent person purports to receive or transfer an estate or interest in land,
>
> (b) that is given under the purported authority of a power of attorney that is forged,
>
> (c) that is a transfer of a charge where the charge is given by a fraudulent person, or
>
> (d) that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument.

[37] "Fraudulent person" is defined as well in s. 1:

> "fraudulent person" means a person who executes or purports to execute an instrument if,
>
> (a) the person forged the instrument,
>
> (b) the person is a fictitious person, or
>
> (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument.

[38] Firstly, Mr. Onsori was not a fraudulent person within the meaning of the *Land Titles Act*. He did not forge the Hillmount mortgage, nor is he a fictitious person, nor was he an imposter who knowingly and falsely held himself out to be the registered owner. He was, at the material time, the registered owner: *1168760 Ontario Inc. v. 6706037 Canada Inc.*, 2019 ONSC 4702, at paras. 31, 32, 39 and 42. "A person cannot falsely hold itself out as something that it actually is": *Froom v. Lafontaine*, 2023 ONCA 519, at para. 62.

[39] As stated by the Divisional Court in *1168760 Ontario Inc*, at para.32, referencing its earlier decision in *CIBC Mortgages Inc. v. Computershare Trust Company of Canada*, 2016 ONSC 7094:

> In accordance with the holding in that case, the 2006 amendments do not address fraud in real estate transactions in general. Rather, the provisions prevent certain kinds of fraudulent activity with respect to title, addressing the situation where someone purports to transfer an interest or estate in land that they do not legally possess – for example, by taking on a false identity or by forging a document, including a power of attorney.

[40] This passage was quoted with approval by the Court of Appeal in *Froom,* at para. 28.

[41] Hillmount was an innocent party which lent $1,945,000 to the registered owner of the property. There is no allegation that the mortgage granted to Hillmount was a "fraudulent instrument" as that term is defined by the *Land Titles Act*. The Hillmount mortgage therefore falls within ss. 78(4) and 78(4.2) of the *Land Titles Act* and creates an interest in the property in favour of Hillmount. The Hillmount mortgage does not fall within the exception in s. 78(4.1): *CIBC v. Computershare,* at paras. 44 – 47; *Froom*, at paras. 28 and 45.

[42] Hillmount is, therefore, "entitled to rely on both the mirror principle (the register is a perfect mirror of the state of title) and the curtain principle (a purchaser need not investigate the history of past dealings with the land, or search behind title)": *CIBC v. Computershare*, at para. 63.

Adjournment Request

[43] I have considered Ms. Afkari's request for an adjournment.

[44] As indicated above, a recent valuation of the Property indicates that net proceeds of a sale of the Property may be insufficient to satisfy the two mortgages and tax arrears. This renders any adjournment prejudicial to the Applicant because the interest arrears are already nearly $50,000, and are increasing by over $15,000 each month, eroding the Applicant's security.

[45] It would not be fair to the Applicant to adjourn this application in these circumstances. That would simply delay the inevitable outcome - at great expense to the Applicant - given the effect of the *Land Titles Act* set out above.

[46] Ms. Afkari may well have a valid legal action against Missaghi's estate and Mr. Onsori, but she cannot prevent Hillmount from relying on the terms of the mortgage registered on title against the Property.

Appointment of Receiver

[47] Section 101 of the *Courts of Justice Act* ("CJA") permits the appointment of a receiver appointed by an interlocutory order where it appears to be "just or convenient to do so".

[48] Section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "BIA") provides that on an application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession of the property of an insolvent person and exercise such control thereon that the court considers advisable if the court considers it "just or convenient".

[49] In *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 1996 CanLII 8258 (ON SC), Blair J. (as he then was) dealt with a situation in which the bank held security that permitted the appointment of a private receiver or an application to court to have a court appointed receiver. He summarized the legal principles involved as follows (citations omitted):

> The Court has the power to appoint a receiver or receiver and manager where it is "just or convenient" to do so: the *Courts of Justice Act*, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently… It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed.

[50] See also: *Bank of Montreal v. Carnival National Leasing Limited*, 2011 ONSC 1007, at para. 24.

[51] In *2806401 Ontario Inc. o/a Allied Track Services Inc*., 2022 ONSC 5509, Osborne J. summarized the factors considered by courts when determining whether to appoint a receiver, at paras. 13 – 15:

> Factors considered by courts when determining whether it is just or convenient to appoint a receiver include: the existence of a debt and a default, the quality of the security in issue, the fact that the creditor has a right to appoint a receiver under the loan documentation, the likelihood of maximizing the return to the parties, and the risk to the security holder, among others. [See, for example: *Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.*, 2011 ONSC 5612 (Commercial List) at para 22; *RMB Australia Holdings Limited v. Seafield Resources Ltd.,* 2014 ONSC 5205 (Commercial List) at para 28; *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007 (Commercial List) at paras 24 and 27 [*Carnival Leasing]; and Maple*

> *Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 25].
>
> Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties. [See *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd*., 2013 ONSC 6866 at para. 27].
>
> It is not necessary for a creditor whose security documentation provides for the appointment of a receiver to demonstrate that it will suffer irreparable harm if the receiver is not appointed. [See *Carnival Leasing*, supra, at paras. 24-28].

[52] I am satisfied that it is just and convenient to appoint a receiver in this case for the following reasons:

a. The First Mortgage matured and remains in default.

b. The Mareva injunction restrains the mortgagor (Onsori) from utilizing his assets.

c. He is, therefore, unable to personally satisfy the First Mortgage indebtedness without breaching the terms of the Mareva injunction.

d. The value of the Property may be insufficient to satisfy the First Mortgage, the Second Mortgage, and the realty tax arrears.

e. Interest, fees, and expenses continue to accrue.

f. A Court's receiver will conduct a sale in a transparent and court-supervised process and will ensure that the Property is marketed and sold at the highest price attainable. The Court's receiver will avoid further litigation that may otherwise arise among the stakeholders concerning the sales process.

g. The registered owner/default mortgagor consents to the appointment of a receiver.

h. Maxol, which obtained the Mareva injunction, does not oppose the appointment of a receiver.

Conclusion

[53] The Application is granted in the form of the draft Order found in the Application Record.

Justice R.E. Charney

Released: August 13, 2024

CITATION: Hillmount Capital Mortgage Holdings Inc. v. Onsori-Saisan, 2024 ONSC 4481

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