

COURT OF APPEAL FOR ONTARIO

CITATION: Angel Capital Finance Inc. v. Jawaid, 2024 ONCA 701

DATE: 20240919

DOCKET: COA-23-CV-1151

Lauwers, Zarnett and Pomerance JJ.A.

BETWEEN

Angel Capital Finance Inc.

Plaintiff (Respondent)

and

Muhammad Jawaid

Defendant (Appellant)

Granville Cadogan, for the appellant

Wade Morris and Efemena Oghenejakpor, for the respondent

Heard and released orally: September 17, 2024

On appeal from the judgment of Regional Senior Justice Leonard Ricchetti of the Superior Court of Justice, dated September 22, 2023.

REASONS FOR DECISION

[1] Ricchetti R.S.J. directed that this mortgage action proceed to trial before him. Contrary to the appellant's assertion, there was no doubt that the appellant knew the trial of the action would proceed. During the case management conference on August 2, 2023, the R.S.J. clearly identified the issues that would be canvassed at the trial. The appellant, who was represented at the case

management hearing, cannot now plausibly claim that he was surprised by the scope of the trial, or that he was denied procedural fairness on these issues. The R.S.J.'s decision is complete and error-free. The jurisdictional argument is new on appeal and was not raised before the R.S.J. In any event, we see no merit in it.

[2] The appeal turns on the appellant's argument that the judgment amounts to a collateral attack on an earlier decision of Fowler Byrne J. setting aside a default judgment and permitting the appellant to file a statement of defence. There is no merit to this assertion. Such an order is interlocutory because it does not determine the rights of the parties, but only the procedure by which those rights will be determined: *Roblin v. Drake*, [1938] O.R. 711 (C.A.). The reasons of Fowler Byrne J. that explained why the default judgment was set aside were not binding on the trial judge: *Simmonds v. Simmonds*, 2013 ONCA 479, 117 O.R. (3d) 479.

[3] The appellant points to these words in Fowler Byrne J.'s decision:

Given that I have set aside the Default Judgment, the Order that Angel take possession of the Property has also been set aside. The Writ of Possession, if it was obtained by Angel, was based on them giving proper Notice of Sale under the *Mortgages Act* following an alleged default. The issue of default has not yet been determined. Accordingly, Angel cannot rely on the previous Notice of Sale under the *Mortgages Act*. If Angel obtained a Writ of Possession based on the Default Judgment, it should also be set aside.

[4] As we interpret Fowler Byrne J.'s comment, the 2020 Notice of Sale ("NOS") was deficient because the default was still in issue. Once it was resolved, the NOS

was validated. In any event, the NOS was not a condition precedent to the trial before the R.S.J. or any of the orders he gave.

[5] Having set aside the default judgment and any writ of possession associated with it, Fowler Byrne J. gave 30 days for service and filing of a statement of defence. It was the action thus fully constituted that was tried by the R.S.J. He found that the alleged 2020 default happened, and thus determined the issue that Fowler Byrne J. said “had not yet been determined.” The R.S.J. noted that “Mr. Jawaid does not dispute the validity of the Mortgage or that it is in arrears.” He then determined the amounts owing on the evidence before him. The appellant points to no error of fact or law. The judgment followed appropriately and the appeal is dismissed.

[6] Per the agreement of the parties, costs are awarded in the amount of \$5,000, all-inclusive, payable by the appellant to the respondent.

“P. Lauwers J.A.”
“B. Zarnett J.A.”
“R. Pomerance J.A.”