

CITATION: *CMHC v. Bukasa*, 2024 ONSC 5667
COURT FILE NO.: CV-24-95842
DATE: 2024/10/11

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
CANADA MORTGAGE AND HOUSING)
CORPORATION) Piraveena Ganesarasa, for the applicant
Applicant)
)
-and-)
)
CAROLINE BUKASA)
Respondent) No on appearing for the respondent
)
) **HEARD:** July 30, 2024
) (By videoconference)

2024 ONSC 5667 (CanLII)

INTERIM RULING

CORTHORN J.

Introduction

[1] In September 2008, the respondent and Carl Modeste, each purchased an interest in a property in Calgary, Alberta (“the Property”). At the time of the purchase, they obtained a mortgage from the Canadian Imperial Bank of Commerce (“the Mortgage” and “CIBC”, respectively). The Mortgage was registered on the title to the property.

[2] The Mortgage was in the principal amount of \$365,512.03. The interest on the Mortgage was 5.5 percent annually, calculated semi-annually and not in advance.

[3] As an approved lender, CIBC obtained mortgage default insurance from the applicant (“CMHC”).

[4] The Mortgage fell into default. In 2012, CIBC obtained a default judgment against the respondent and Modeste. The default judgment was obtained in the Court of Queen’s Bench of Alberta (as it was called at the time). The amount payable pursuant to the default judgment is \$113,035.13.

[5] CIBC later assigned its rights under the default judgment to CMHC. CMHC took steps to preserve its rights, as assignee of CIBC, to pursue the respondent for payment including in Ontario.

[6] CMHC was required to obtain a new judgment in Alberta, to avoid what would otherwise have been the expiration of the default judgment (at the ten-year anniversary of the date of the default judgment).¹

[7] In addition, the entitlement of CIBC or CMHC, the latter in its capacity as the assignee of the former’s rights, to obtain an order for the registration of the 2012 default judgment in Ontario, expired in 2018 (i.e., six years after the year in which the default judgment was obtained).

[8] In January 2023, in an Alberta proceeding, in which CIBC is identified as the applicant, a new judgment was granted against the respondent and Modeste (“the Judgment”). The Judgment was granted by the Court of King’s Bench of Alberta.

[9] The Judgment provides for an amendment to the title of proceeding. The title of proceeding is amended by substituting “Canada Mortgage and Housing Corporation” for “CIBC Mortgages Inc. Trading as Firstline Mortgages”.

[10] The Judgment requires the respondent and Modeste to pay the following amounts to CMHC:

The principal sum	\$	110,020.10
Post-judgment interest	\$	10,182.17
Costs	\$	540.00

[11] Last, the Judgment requires the respondent and Modeste to pay post-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1, from November 1, 2022 forward, on the principal sum of \$110,020.10.

[12] CMHC is not entitled, in 2024, to an order for the registration, in Ontario, of the initial default judgment. Section 2(1) of the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5 (“REJA”) provides as follows:

¹ *Civil Enforcement Act*, R.S.A. 2000, c. C-15, s. 27(2)(b).

Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to any court in Ontario having jurisdiction over the subject-matter of the judgment, or, despite the subject-matter, to the Superior Court of Justice at any time within six years after the date of the judgment to have the judgment registered in that court, and on any such application the court may, subject to this Act, order the judgment to be registered.

[13] CMHC brings this application, without notice to the respondent, for an order permitting CMHC to register the Judgment in this court, relief related to service of the order (if granted) on the respondent, and its costs of this application.

[14] For the reasons which follow, the application is adjourned. The application shall be brought on notice to the respondent.

Background

[15] The following is a chronology of the events, from the granting of the Mortgage to the respondent and Modeste, to and including the application before this court:

September 12, 2008 The respondent and Modeste obtain the Mortgage from CIBC.

September 12, 2008 The Mortgage is registered on the title to the Property.

July 8, 2009 CIBC commences an action against the respondent and Modeste arising from their default on the Mortgage. In the statement of claim, CIBC alleges that as of May 29, 2009, the amount owing on the Mortgage is \$378,874.94, plus interest accrued subsequent to May 29, 2009. The back page of the statement of claim identifies the defendants' address as "#102, 1929 – 25th Street S.W., Calgary, Alberta."

November 12, 2009 The respondent is personally served with a copy of the statement of claim. In his affidavit of service, the process server says that he left a copy of the statement of claim and notice to the defendants with the respondent personally at 27 Silverado Skies Bay SW, Calgary Alberta.

October 10, 2012 CIBC obtains default judgment against the respondent and Modeste. The default judgment is in the amount of \$113,035.13, including costs fixed in the amount of \$4,049.03. The amount of the judgment reflects that the Property was sold for \$275,000.

- November 6, 2012 CIBC assigns “all its right, powers, title and interest” in the default judgment to CMHC; in addition, CIBC transfers to CMHC the writ of enforcement issued pursuant to the default judgment (“the Assignment”).
- November 16, 2022 CMHC, in its capacity as the assignee of CIBC’s rights in the default judgment, commences an application for renewal of the default judgment.
- November 25, 2022 A process server serves the respondent, in Ontario, with the application record and other documents relevant to the renewal of the default judgment (“the Package”). In his November 28, 2022 affidavit of service, the process server says that he personally served the documents by “leaving the Package with [the respondent] at the address of B-236 Livery Street, Stittsville ON”.
- November 27, 2022 A process server serves the respondent, in Alberta, with the application record. In his December 6, 2022 affidavit of service, the process server says that he personally served the documents “by delivering the said copies to and leaving the same with [the respondent], at 27 SILVERADO SKIES BAY SW, CALGARY, ALBERTA.”²
- January 31, 2023 Justice Mason of the Court of King’s Bench of Alberta makes an order (a) providing for the substitution of CMHC for CIBC in the enforcement proceeding, and (b) granting a “new judgment” against the respondent and Modeste (i.e., the Judgment).
- March 8, 2023 An employee of the lawyers of record for CMHC sends a copy of the Judgment to the respondent, by registered mail at addresses in Stittsville, Ontario and Calgary, Alberta. The addresses to which a copy of the Judgment is sent are the Livery Street and Silverado Skies Bay addresses, respectively. As an exhibit to her affidavit of service, the employee includes a copy of the customer receipt for the registered mail.

² The uppercase letters appear as in the original document.

May 15, 2024 The notice of application in the matter now before the court is issued. The notice of application stipulates that the application is brought without notice to the respondent.

[16] In the default judgment and in the Judgment, both the respondent and Modeste are ordered to pay the amounts outstanding. There is no evidence before the court on this application as to the efforts made to obtain payment from Modeste or as to where he is believed to reside. Modeste's whereabouts and ability to contribute towards payment of the Judgment are, in any event, irrelevant to the outcome of the application.

The Issues

[17] On this application, the court must determine the following three issues:

1. Is CMHC entitled to proceed with the application without notice to the respondent?
2. Whether the application is determined with or without notice to the respondent, is CMHC entitled to an order providing for registration of the Judgment in this court?
3. If the answer to Issue No. 2 is "yes", is the title of proceeding to be amended such that CMHC is referred to as "Creditor" and the respondent is referred to as "Debtor"?

[18] It is imperative for the court to determine the first issue listed above before either the second or the third issue is determined.

Issue No. 1 – Is CMHC entitled to proceed with the application without notice to the respondent?

[19] For the reasons which follow, I find that CMHC is not entitled to proceed with the application without notice to the respondent; CMHC is required to give the respondent notice of the application.

[20] CMHC brings this application pursuant to s. 2 of the *REJA*. As required by s. 2(1), CMHC brings this application within six years of the date of the Judgment. CMHC has complied with the timing requirements of the governing statute.

[21] Has CMHC complied with the service requirements of the *REJA*? The service requirements are set out in s. 2(2). That subsection stipulates that, "[r]easonable notice of the application shall be given to the judgment debtor in all cases in which the judgment debtor was not personally served with process in the original action and did not appear or defend or otherwise submit to the jurisdiction of the original court, but in all other cases the order may be made without notice."

[22] In summary, s. 2(2) mandates when notice of the application is required and provides that whether notice of the application is to otherwise be given is a matter within the discretion of the court. The first step is to determine whether the circumstances in the matter before this court are such that notice of the application is mandated. If not, do the circumstances otherwise support the exercise of the court’s discretion to require that the respondent be given notice of the application?

[23] At para. 19 of its factum, CMHC misstates the requirements of s. 2(2). In that paragraph, CMHC submits that, “[s.] 2(2) provides that the applicant may proceed without notice to the respondent so long as the respondent was served with the Statement of Claim in the original proceeding.” CMHC has overlooked the requirement for the respondent to have been “personally served with process in the original action”.

a) Do the circumstances support a finding that it is mandatory for CMHC to give the respondent reasonable notice of the application?

[24] Pursuant to s. 2(2), CMHC is required to give the respondent notice of the application if the respondent (i) “was not personally served with process in the original action” and (ii) “did not appear or defend or otherwise submit to the jurisdiction of the original court”.

i) Was the respondent personally served with the process in the original action?

[25] To answer this question, it is necessary to determine what the “original action” is in the matter before this court.

▪ ***CMHC’s position***

[26] At para. 20 of its factum, CMHC submits that it is entitled to proceed with the application without notice to the respondent because the respondent “was served the Statement of Claim which produced the 2012 Judgment” (i.e., the initial default judgment). CMHC relies on the action pursuant to which it obtained default judgment in 2012 as the “original action” for the purpose of s. 2(2).

[27] In its factum, CMHC also addresses service of the November 2022 application materials (“the Documents”) on the respondent (at para. 21). CMHC does not address service of the Documents in the context of the requirements of the *REJA*—whether it is entitled to proceed, without notice to the respondent, with the application before this court. CMHC did not consider whether the November 2022 application is the “original action” for the purpose of s. 2(2).

▪ ***The “Original Action”***

[28] The definition section of the *REJA* is of limited assistance in understanding what is meant by the “original action” in s. 2(2). The definition section of the statute (s. 1) does not include a definition of that term.

[29] Section 1(1) of the *REJA* does, however, include a definition of the term “original court”. That term is defined “in relation to a judgment, [to mean] the court by which the judgment was given.”

[30] Section 1(1) includes the following definition of “judgment”: “[A] judgment or an order of the court in any civil proceedings whereby any sum of money is payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the province or territory where it was made, become enforceable in the same manner as a judgment given by the court therein.” The phrase, “whereby any sum of money is payable” is significant for the purpose of the application before this court. The sum of money payable under the default judgment is different from the sum of money payable under the Judgment which CMHC now seeks to register with this court.

[31] The default judgment granted by Master Hanebury, Q.C., in 2012 requires the respondent and Modeste to pay CIBC the sum of \$113,035.12. Although CMHC refers to the 2012 document as a “default judgment”, the actual title of the document is “ORDER”.³ Master Hanebury’s calculation of the \$113,035.12 to be paid is set out in the text of the default judgment. That total is comprised of the following amounts:

Property taxes owing as of June 2010	\$	829.55
Balance owing on the Mortgage	\$	375,567.15
Interest from February to June 2010	\$	7,589.40
“Taxed” legal expenses	\$	<u>4,049.03</u>
Total balance	\$	388,035.13
Less sale price	\$	<u>275,000.00</u>
Deficiency amount	\$	113,035.13

[32] The default judgment includes a single operative paragraph—requiring the respondent and Modeste to pay \$113,035.13. The default judgment does not include any terms requiring the respondent and Modeste to pay post-judgment interest.

[33] Pursuant to the Assignment, the writ of execution related to the default judgment is transferred to CMHC. The default judgment is also addressed in the Assignment. Pursuant to the Assignment,

³ All uppercase letters appear as in the original document.

[CIBC] further assigns to [CMHC] all its right, powers, title and interest in the [default] judgment.

... [CIBC] hereby covenants with [CMHC] that the [default] judgment in the amount of \$113,035.13, plus costs, with interest thereon from the date of the [default] judgment is still due on the said judgment and that the same is payable to [CMHC].

[34] The Assignment does not include an explanation of the source of CIBC's right to costs (i.e., over and above the \$4,049.43 included in the sum the respondent and Modeste were ordered to pay). Nor does the Assignment include an explanation of the source of CIBC's right to post-judgment interest on the \$113,035.13. In its factum, CMHC does not address the Alberta statutes and regulations, if any, that address CIBC's right to additional costs or to post-judgment interest.

[35] More important to the outcome of this court's determination of Issue No. 1 is the difference between the sum of money payable pursuant to the default judgment and the sum of money payable pursuant to the Judgment.

[36] Like the default judgment, the Judgment is also titled, "ORDER". The application for the new judgment was heard on January 31, 2023 by Mason, A.J.C.K.B.A. I take that series of initials to mean that the presiding judge was the Associate Chief Justice of the King's Bench of Alberta. The Judgment contains three operative paragraphs.

[37] First, the presiding judge orders that the title of proceeding be amended, with "Canada Mortgage and Housing Corporation" substituted for "CIBC Mortgages Inc., trading as FirstLine Mortgages".

[38] Second, and addressing the sum of money payable, the presiding judge includes the following term in the order:

The Applicant, CMHC, shall have new judgment against the Defendant, Caroline Bukasa ("the **Debtor**"), in the principal amount of \$110,020.10 (which amount is inclusive of solicitor client costs previously assessed) plus post-judgment interest in the amount of \$10,183.17, for the total amount of \$120,203.27, plus post-judgment interest pursuant to the *Judgment Interest Act*, RSA 200, c J-1 from November 1, 2022, on the principal amount of \$110,020.10.

[39] I pause to note the following:

- The Judgment is described by the presiding judge as a "new judgment".

- The default judgment does not include a term, similar to the term included in the Judgment, providing for post-judgment interest on the \$113,035.13.

[40] Third, the presiding judge awards CMHC its costs of the application in the amount of \$540.00.

[41] The sum payable pursuant to the Judgment is \$125,743.27 (\$120,203.27 + \$540.00). CMHC seeks to recover that sum of money by enforcement of the Judgment in Ontario.

[42] I find that, for the purpose of s. 2(2) of the *REJA*, the “original action” is the November 2022 proceeding in Alberta (i.e., the application pursuant which CIBC obtained a new judgment). In support of that application, CMHC relied on the Documents.

[43] Was the respondent personally served with the Documents?

▪ *Service of the Documents*

[44] The supporting affidavit before this court is from Amie Ward. Ms. Ward is an Ottawa-based Senior Officer, Homeowner Operations with CMHC. I have concerns about the quality of Ms. Ward’s evidence, including whether it complies with r. 39.01(5) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. I address those concerns in a later section of these reasons. For the moment, I will review Ms. Ward’s evidence regarding service of the Documents on the respondent.

[45] At para. 11 of her affidavit, Ms. Ward says that the respondent was personally served with the Documents in Stittsville, Ontario. In support of that statement, Ms. Ward relies on the affidavit of process server Marc Burdet. A copy of Mr. Burdet’s affidavit of service, in the Alberta proceeding, is Exhibit “7” to the Ward affidavit.

[46] In his affidavit of service, Mr. Burdet says that, on November 25, 2022, he “personally served” the respondent with the Documents by “leaving [them] with Bukasa at the address of B-236 Livery Street, Stittsville ON”. Mr. Burdet does not say how he ascertained that the individual with whom he left the documents was the respondent. For example, Mr. Burdet does not say that the individual with whom he left the documents identified themselves as the respondent or showed him a piece of photo identification.

[47] At para. 12 of her affidavit, Ms. Ward says that the respondent was “served” (i.e., not personally served) with the Documents in Calgary, Alberta. Ms. Ward’s evidence is that the Documents were left “with an adult family member at [the respondent’s] former address”.

[48] In support of her evidence in that regard, Ms. Ward relies on the affidavit of process server Dominic Burgos. A copy of Mr. Burgos’ affidavit of service, in the Alberta proceeding, is Exhibit “8” to the Ward affidavit.

[49] It is perplexing that, in para. 12 of her affidavit, Ms. Ward describes the respondent as being served—not personally served—with the Documents in Calgary, Alberta. In his affidavit of service, Mr. Burgos says that on November 27, 2022, he did “personally serve **CAROLINE BUKASA** with [the Documents] by delivering the said copies to and leaving the same with **CAROLINE BUKASA** the said Defendant, at 27 **SILVERADO SKIES BAY SW, CALGARY ALBERTA.**”⁴

[50] Mr. Burgos makes no mention of leaving the Documents “with an adult family member at [the respondent’s] former address”—the method of service described by Ms. Ward in her affidavit.

[51] Like Mr. Burdet, Mr. Burgos does not say how he ascertained that the individual with whom he left the documents was the respondent.

[52] It is possible that the respondent travelled from Ontario to Alberta between November 25 and 27, 2022, and that the timing of her trip was such that she was personally served with the Documents in both provinces. Such a sequence of events would, however, be remarkable.

[53] For the reasons set out in the preceding paragraphs, I find that CMHC has not established, on a balance of probabilities, that the respondent “was personally served with process in the original action”. If the respondent “did not appear or defend or otherwise submit to the jurisdiction of the [Court of King’s Bench of Alberta]”, then, pursuant to s. 2(2) of the *REJA*, CMHC must give the respondent “reasonable notice” of the application before this court.

ii) Did the respondent appear, defend, or submit to the jurisdiction?

[54] There is no evidence before this court as to whether there was any communication between the respondent and CMHC’s lawyers in late 2022 and early 2023, prior to the return of the application for a new judgment. The Ward affidavit does nothing more than review service of the Documents and the Judgment granted by the presiding judge on January 31, 2023.

⁴ The uppercase letters, in bold font, appear as in the original document.

[55] In the introductory paragraph of the Judgment, reference is made to what appears to be the substantive affidavit upon which CMHC relied in support of the request for a new judgment, to a “Ministerial Order”, and to “*the* Affidavit of Service with respect to the Defendant, Caroline Bukasa, filed” (emphasis added). There is no evidence before this court explaining what is meant by a “Ministerial Order”. There is also no evidence before this court explaining why the introductory paragraph of the Judgment refers to a single affidavit of service as opposed to two affidavits of service (i.e., the affidavits of service of Messrs. Burdet and Burgos).

[56] Immediately below the introductory paragraph of the Judgment, a handwritten check mark appears beside the phrase “no one appearing for the Defendant(s)”. The introductory paragraph describes that the court heard from counsel for CMHC.

[57] Based on the Judgment, I find that the respondent did not appear, defend, or submit to the jurisdiction of the original action.

iii) Summary – CMHC must give the respondent reasonable notice

[58] It is mandatory for CMHC to give the respondent reasonable notice of the application before this court. CMHC has not established, on a balance of probabilities, that the respondent was personally served with the Documents. The respondent did not appear or defend or otherwise submit to the jurisdiction in which CMHC brought its application for a new judgment.

[59] The next step in the analysis under Issue No. 1 is to determine whether CMHC gave the respondent reasonable notice of the application before this court.

b) Did CMHC give the respondent reasonable notice of the application before this court?

[60] There is no evidence that CMHC made any effort to give the respondent notice of the application before this court.

[61] In her affidavit, Ms. Ward describes steps taken in an effort to serve the respondent with a copy of the Judgment. At para. 14 of her affidavit, Ms. Ward says that the lawyers of record for CMHC in Alberta “served the Respondent with the Renewed Judgment via registered mail to her last known addresses in Stittsville, Ontario and Calgary, Alberta.” In support of that statement, Ms. Ward relies on an affidavit of service from a Calgary-based legal assistant employed by the lawyers of record for CMHC.

[62] In her affidavit of service, the legal assistant describes sending a copy of the Judgment to the respondent, by registered mail, at the Livery Street address in Stittsville and the Silverado Skies Bay address in Calgary. In her affidavit of service, the legal assistant does not describe those addresses as “the last known addresses” for the respondent.

[63] Ms. Ward does not provide any evidence as to the basis for her knowledge or belief that the Livery Street address in Stittsville and the Silverado Skies Bay address in Calgary are the respondent's "last known addresses".

[64] Even if the court were satisfied that a copy of the Judgment was sent to the respondent's "last known addresses", providing the respondent with a copy of the Judgment does not satisfy the requirement to give her "reasonable notice" of the application now before the court.

[65] CMHC appears to request that the court consider all of the efforts made, over time, to serve the respondent with documents in the Alberta proceedings and conclude that, as a result of those efforts, the respondent was given notice of the application now before the court. At para. 27 of its factum, CMHC makes the following submission: "In addition to being served with the statement of claim in 2009, and personally served with the Application Record in 2022, the debt came to the attention of the Respondent through the CRA Set-Off Program between April 2014 and July 2019."

[66] That submission may well be an accurate description of the extent to which "the debt" came to the respondent's attention. Bringing "the debt" to the respondent's attention is not, however, equivalent to or a substitute for personal service of the Documents.

c) Summary – Issue No. 1

[67] CMHC is not entitled to proceed with the application without notice to the respondent. The application is adjourned and shall be continued on notice to the respondent.

[68] Even if I erred in my analysis or in finding that it is statutorily mandatory for CMHC to give the respondent reasonable notice of the application before this court, I would, in any event, exercise the discretion granted to the court pursuant to s. 2(1) of the *REJA* and order that CMHC proceed with the application on notice to the respondent. I would do so because of my concerns about the quality of the evidence before this court. I review those concerns in the next section of these reasons.

The Supporting Materials

a) The Ward Affidavit

[69] As noted in para. 44, above, CMHC relies on an affidavit from Ms. Ward, an Ottawa-based, Senior Officer, Homeowner Operations, with CMHC. The court has several concerns with the Ward affidavit. The concerns include, but are not limited to, the following matters.

[70] First, Ms. Ward does not explain the nature of her involvement, or what role she has played to date, in CMHC's pursuit of recovery of the amount owing pursuant to the Judgment.

[71] At para. 1 of her affidavit, Ms. Ward says that in her role as Senior Officer, Homeowner Operations, she has knowledge of the matters to which she deposes in the affidavit. Ms. Ward addresses events dating back to the inception of the mortgage. It is impossible for the court to know what portion of Ms. Ward's evidence is based on (a) a review of the CIBC file, (b) a review of the CMHC file (i.e., post-assignment), and (c) personal knowledge.

[72] At para. 1 of her affidavit, Ms. Ward says that where her "knowledge is based on information or belief, [she has] so indicated and believe[s] it to be true." There is, however, not a single paragraph in her affidavit in which Ms. Ward (a) identifies that she relies on information provided to her by another, (b) identifies, by name, the source of the information, and (c) states that she believes the information received to be true.

[73] The manner in which the affidavit is drafted leaves the reader with the impression that virtually everything to which Ms. Ward deposes in the affidavit is based on personal knowledge. Unless Ms. Ward was involved with the Mortgage from its inception in 2008, she cannot possibly have personal knowledge of everything to which she deposes.

[74] If any of Ms. Ward's evidence is based on information and belief, then her affidavit fails to comply with r. 39.01(5) of the *Rules of Civil Procedure*, for affidavit evidence on an application. Rule 39.01(5) stipulates that, "An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit."

b) The Respondent's Last Known Address(es)

[75] In paras. 62-64, above, I address the lack of evidence to support a conclusion that the Livery Street address in Stittsville and the Silverado Skies Bay address in Calgary are the last known addresses for the respondent. At para. 26 of its factum, CMHC addresses service of the Documents on the respondent at those addresses and says, "The fact that the Respondent's last known addresses, in Stittsville, Ontario and Calgary, Alberta, were not the most recent address provided on a filed document should not be fatal to this application."

[76] That submission gives rise to at least one concern. If there exists a document on which an address, more recent than either the Livery Street or Silverado Skies Bay addresses, is listed for the respondent, what efforts were made by CMHC to ascertain whether the respondent resides at either of those two addresses?

[77] In any event, evidence is required to support a finding that the Livery Street and Silverado Skies Bay addresses are the last known addresses for the respondent. Ten years passed from 2012, when the statement of claim in the first proceeding identified the respondent as residing at an address on 25th Street S.W. in Calgary, to 2022, when efforts were made to serve the respondent with the Documents. There is no evidence as to how CMHC came to believe that the respondent was, as of the fall of 2022, residing at one or both of the Livery Street and Silverado Skies Bay addresses.

[78] The deficiencies in the evidence can be addressed when CMHC delivers a supplementary record, as ordered below.

[79] Before concluding this interim ruling, I address my concerns regarding the amount said to be owing by the respondent.

Conditions for Registration of a Judgment

[80] At paras. 29-35 of its factum, CMHC reviews s. 3(a)-(g) of the *REJA*—namely the conditions for registration of a judgment in this court. CMHC submits that none of the conditions listed in ss. 3(a)-(g) are present on the application before this court.

- ***The respondent was not “duly served” (s. 3(c))***

[81] For the reasons explained in the preceding section of these reasons, this court is not satisfied, on a balance of probabilities, that the respondent was personally served with the Documents. CMHC has not provided the court with any case authority to support a conclusion that anything other than personal service of the process in the original action will suffice for the purpose of s. 2(2).

[82] The requirement for personal service stems from s. 2(2) of the *REJA* and not from an Alberta statute or regulation. I find that the condition related to service of the Documents (s. 3(c)) is not met.

- ***The respondent would have a good defence (s. 3(g))***

[83] Pursuant to s. 3(g), CMHC must satisfy the court that “the judgment debtor would [not] have a good defence if an action were brought on the original judgment”. I am concerned about the calculation of the \$120,203.27, which the Judgment requires the respondent to pay.

[84] The supporting calculation is found in a statement of account, dated October 2022. That document is part of the record on CMHC’s application for a new judgment. CMHC relied on the following calculation:

The 2012 default judgment	\$	113,035.13
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Costs	\$	4,049.03
Less payments received	\$	<u>7,064.06</u>
Judgment balance	\$	110,020.10
“Total judgment interest”	\$	<u>10,183.17</u>
“Total judgment + interest”	\$	120,203.27

[85] It is possible that the calculation upon which CMHC relied in November 2022 is incorrect. The costs of \$4,049.03, awarded to CIBC in 2012, are included in the \$113,035.13 (see paras. 15, 31, and 34, above); yet CMHC adds that amount to the \$113,035.13.

[86] The statement of account upon which CMHC relied in support of the application for a new judgment includes a detailed calculation of the “Total judgment interest” of \$10,183.17. The ‘judgment interest’ is (a) calculated for the period from October 2012 to October 2022, and (b) based on rates which vary from as low as 0.2 percent per year to as high as 2.8 percent per year. Although the arithmetic calculation of ‘judgment interest’ is included in the statement of account, that document does not include any information as to the basis for entitlement to post-judgment interest on the \$110,020.10 (i.e., given that the default judgment does not address entitlement to post-judgment interest).

[87] As to the “payments received”, the evidence before this court is that between the date of the default judgment and the end of the 2019 calendar year, the respondent made irregular payments towards the default judgment. The payments were each in small amounts and totalled \$623.44. In addition, from 2014 to 2019, CMHC recovered \$6,440.62 from the respondent through the Refund Set-Off Program implemented by the Canada Revenue Agency.

[88] CMHC will want to consider what additional evidence, if any, it will rely on regarding the amount found to be owing by the respondent.

Disposition

[89] The application is adjourned and shall be continued on notice to the respondent. The applicant shall,

- a) serve and file a supplementary application record, supplementary factum, and supplementary compendium;
- b) on the return of the application, be entitled to rely solely on the supplementary application record, supplementary factum, and supplementary compendium; and
- c) include in the supplementary application record a copy of these reasons (as a discrete document, tabbed separately from the supporting affidavit(s)).

[90] The documents described in para. 89(a), above, shall be served personally on the respondent, unless CMHC obtains an order permitting substituted service.

[91] The term set out in para. 89(b), above, is intended to serve a practical purpose—limiting the documents to which the parties and the court are required, on the return of the application, to refer. Reliance on a single (albeit supplementary) application record and factum allows for ease of reference and efficiency on the return of the application.

[92] I am not seized of the application. The application, and any motions for interim relief (i.e., an order for substituted service), shall proceed before any judge of this court.

[93] The costs of the appearance before the court on July 30, 2024, and for the preparation of the materials upon which CMHC relied for that appearance, are reserved to the judge hearing the application.

Madam Justice Sylvia Corthorn

Released: October 11, 2024

CITATION: *CMHC v. Bukasa*, 2024 ONSC 5667
COURT FILE NO.: CV-24-95842
DATE: 2024/10/11

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CANADA MORTGAGE AND HOUSING
CORPORATION

Applicant

-and-

CAROLINE BUKASA

Respondent

INTERIM RULING

Madam Justice Sylvia Corthorn

Released: October 11, 2024