Court of King's Bench of Alberta

Citation: CMT CAN Holdings GP Inc v Sandhu, 2026 ABKB 556

Date: 20260805
Docket: 2603 04165
Registry: Edmonton

Between:

CMT CAN Holdings GP Inc.

Applicant/Plaintiff

- and -

Sakattar Singh Sandhu and Gurjit Kaur Sandhu

Respondents/Defendants

Reasons for Decision
of the
Honourable Applications Judge S. Wanke

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[1] As part of a residential foreclosure action, CMT CAN Holdings GP Inc (**CMT**) seeks to confirm the amount owing under its mortgage. Court confirmation of the amount is a necessary part of a redemption order, which is where the Court sets the time for borrowers to reinstate or pay out their mortgage before their property is listed for sale or otherwise realized on.

I. Calculating the Mortgage Account

[2] Of the $364,042.25 claimed by CMT in its Statement of Secured Indebtedness, I am disallowing $6,895.81, being amounts claimed for insurance, default fees and late fees, for the reasons set out below. CMT must provide a supplemental Affidavit of Default and return before me to address the amount properly owing and the appropriate consequences for the deficiencies identified in these reasons.

A. Insurance

[3] CMT claims $5,645.81 for "insurance paid". This is not, however, an amount CMT paid to place a policy on the mortgaged property when the borrower failed to provide proof of insurance. It is:

(a) $5,364.98 for a portion of CMT's 2026 commercial mortgage impairment insurance premium;

(b) $200.00 CMT administration fee; and

(c) $80.83 interest.

[4] The impairment insurance charge is disallowed for the following reasons:

(a) It is not a cost incurred for this property which means it is not a cost permitted to be passed on to the borrower under the mortgage. Mortgage impairment insurance is an ongoing commercial policy not specific to any one property. CMT's insurance chargeback right, as set out in s 3.1(g) of the mortgage, is conditional. Only upon cancellation of insurance or upon the borrowers' failure to prove satisfactory insurance may CMT "effect and maintain any insurance herein provided for" and then add that amount to the borrower's principal.

(b) There is no evidence that CMT's mortgage impairment policy constitutes insurance of the type required by the mortgage. Mortgage impairment policies, for instance, typically only cover lenders for unknown borrower insurance lapses, still requiring a lender to place a property-specific policy once they have knowledge of the lapse. Impairment policies may also provide additional coverage not required by the mortgage.

(c) CMT's cost is not established. CMT provided two invoices from different brokers for impairment insurance, both showing Caplink Financial Corporation (**Caplink**) as the insured. The Affidavit of Default, sworn April 20, 2026 by Milly Bergenstrom, states the mortgage was transferred from Caplink to CMT on June 24, 2025. Other than a bald assertion that Caplink made these payments for the benefit of CMT, there is no evidence that CMT is an insured.

(d) There is no evidence either of the invoiced amounts were paid by CMT: $20,250.00 for the annual policy (the invoice showed an outstanding balance of $31,570.00) and $3,774.00 for the quarterly policy. There is no explanation of why there appear to be two policies.

(e) The explanation of the quantum charged back on this mortgage is lacking. Milly Bergenstrom's June 18, 2026 Affidavit offers only this:

> The amount that is charged to the Defendants in this action, being $5,364.98, is an amount calculated by me and pro-rated amongst all mortgages where the morgator(s) [sic] have failed to place their own insurance on the subject property. In this particular case, I calculated the pro-rated amount to be $5,364.98 in relation to the Defendants.

Although it says "calculated" twice, Ms. Bergenstrom's statement is a conclusion, not a calculation. There is no numerator, no denominator and no timing explanation. How, for example, would CMT know in February of 2026 when it added the charge to this mortgage, the number of borrowers it would identify as sharing that annual cost?

[5] The charge seems high. Without deciding the point, I note that it is an unfair practice under s 6(2)(d) of the *Consumer Protection Act*, RSA 2000, c C-26.3 (***CPA***) to charge a price grossly in excess of the price of similar goods or services without informing a customer of the difference and reason.

B. Default and Late Fees

[6] CMT claims $500.00 as a default fee, which is allowed under the mortgage for CMT's time and work for each default action or proceeding instituted. This fee is unenforceable for at least two reasons:

(a) ***Consumer Protection Act*:** Default penalties in consumer mortgages are expressly prohibited by s 69 of the *CPA*. Other than reasonable legal fees, on default of a consumer credit agreement (including a mortgage) the only permissible charge is compensation for the reasonable cost incurred because of a dishonoured payment. CMT's default fee is not compensatory as it is not responding to any specific cost incurred. It also fails as it is triggered by the foreclosure, not by a dishonoured payment. (CMT is not a bank, but s 627.3 of the *Bank Act*, SC 1991, c 46 has a similar provision).

To the extent the Respondents have paid any fees prohibited by s 69, the Respondents are entitled to a refund or a credit against the outstanding balance (s 96, *CPA*).

(b) ***Interest Act*:** Fines or penalties that have the effect of increasing the charge on mortgage arrears beyond the rate of interest on principal not in arrears are prohibited by s 8 of the *Interest Act*, RSC, 1985, c I-15. Late payment and default fees constitute such prohibited fines or penalties (*P.A.R.C.E.L Inc v Acquaviva*, 2015 ONCA 331 at para 93).

To the extent the Respondents have paid any such prohibited fines or penalties, those amounts may be credited against any amount properly owing under the mortgage (s 9, *Interest Act*).

[7] CMT claims $750.00 for late charges ($150.00 x 5). The mortgage allows a $150.00 fee for each late payment or returned payment for non-sufficient funds (NSF charges). The Affidavit of Default calls these late charges, not dishonoured payment chargebacks. The late fees are

disallowed for the same reasons as for the default fee. If they were NSF charges, I would need to see evidence that the charges are compensatory before proceeding to a determination of whether they are reasonable.

[8] In its mortgage renewal agreements, including the 2025 renewal, CMT expressly advises that these additional fees will be charged: $200.00 for insurance placement, $500.00 for foreclosure administration and $150.00 for late payment charges. What is particularly concerning is that CMT presents these fees in a way that makes them sound enforceable. The renewal agreement introduces these fees with a statement that they are charged pursuant to s 69 of the *Fair Trading Act* and then lists these impermissible fees after the expressly statutorily permitted charges. This creates a false impression that these charges are permitted by the *CPA* (which is what the *Fair Trading Act* has been called since 2017).

II. Practice and Procedure

[9] Foreclosures must be carried out in accordance with the "existing practice and procedure of the court," s 39(1), *Law of Property Act*, RSA 2000 c L-7.

[10] This Court's established practices and procedures allow foreclosures to largely be adjudicated in morning chambers on a summary basis. For that adjudication to be fair and efficient, lenders must be diligent in the materials they provide to the court and in representations made to the court on their behalf.

[11] There are two ways in which this application fell short of the established practice and procedure of the court:

(a) Inaccurate Statement of Secured Indebtedness; and

(b) Insufficiently Particularized and Supported Affidavit of Default.

1. Statement of Secured Indebtedness

[12] CMT's Statement of Secured Indebtedness was materially inaccurate as it included:

(a) An insurance amount that was not actually an insurance premium paid by CMT with respect to the mortgaged property;

(b) An internal administration fee in the claim for "insurance paid"; and

(c) Unenforceable late fees and default charges.

[13] The Court has prepared a template form of Statement of Secured Indebtedness to be completed by lenders as part of an application for a redemption order. It requires the lender to identify and break out all amounts it claims, including any amount included in principal other than the amount lent and interest at the date of the Affidavit of Default and ongoing per diem interest.

[14] Principal is the actual value received by a borrower, being money advanced to or to the order of the borrower along with certain permitted third-party expenses actually incurred by the lender for placing the mortgage (including registry costs, appraisals provided to the borrower, and tax account maintenance fees and default insurance for high-ratio mortgages) (s 59(3), *CPA* and ss 1 "principal" and 47 and 48, *Financial Consumer Protection Framework Regulations*, SOR/2021-181 (***FCPFR***)).

[15] Principal never includes interest, administrative fees, legal fees for placing or enforcing the mortgage, and fees or expenses on renewal, or mandatory insurance premiums (other than the permitted high-ratio mortgage default insurance) (s 59(4), *CPA* and s 48, *FCPFR*).

[16] The template Statement of Secured Indebtedness specifically asks the lender to identify any other amounts **paid** under the mortgage: taxes, property maintenance, occupancy inspections, insurance, NSF Fees, prior mortgage arrears, condominium fees, homeowners association fees and any other amounts paid under the mortgage. These amounts must be amounts the lender has actually paid to a third party.

[17] Burying administration fees in principal or other categories is misleading.

[18] Claiming an amount as an amount paid under the mortgage when it is an allocation of an operating cost is misleading.

[19] Claiming late fees and default fees allowed under the mortgage but routinely rejected by this Court as unenforceable, including for the reasons set out above, slows down morning chambers and can lead to errors in favour of a lender.

B. Affidavit of Default

[20] The Affidavit of Default provided in support of this application was deficient in that:

(a) It provided only an internally generated invoice for the insurance amount;

(b) It did not provide sufficient particulars.

[21] The original evidence relied on by CMT in morning chambers did not disclose that the insurance amount was an allocation of CMT's global policy premium. Only on request of the underlying invoice, did I receive a subsequent affidavit by desk application that showed that the amount was for a portion of CMT's commercial impairment policy. That is precisely the kind of information that should have been disclosed in the original Affidavit of Default.

[22] I fully accept counsel's explanation that, at the morning chambers application, they were under the impression that the insurance charge was a true charge-back of a lender-placed policy. It is, however, the lender that is ultimately responsible for the contents of its affidavit.

[23] Affidavits of Default must include appropriate evidence that any amounts claimed as paid under the mortgage have been, in fact, paid to a third party.

[24] An account ledger should also be included, with sufficient detail to show the payment history of the borrower and how the principal amount claimed has been calculated. In cases like this, where the mortgage purports to allow unenforceable charges, that ledger should go back at least two years from the date of the Statement of Claim. Here, there was no ledger at all.

[25] When the Court's review of an Affidavit of Default reveals, as it did here, that necessary supporting evidence or particulars have not been provided, but the lender nevertheless continues to press for the order sought, real problems arise:

(a) It undermines the Court's ability to rely on oral submissions setting out facts and the summary provided in the Statement of Secured Indebtedness, which is necessary to the efficient functioning of morning chambers; and

(b) Court-ordered adjournments to allow for a proper record may cause unnecessary delay and further legal costs that may be borne by the borrower. That creates

> practical pressure to grant orders without proper evidentiary support, and with it, a real risk that orders will be granted or mortgage accounts confirmed on amounts that cannot be properly supported.

[26] The evidentiary onus in a redemption application is on the lender. That is not unreasonable: lenders hold the records and should understand foreclosures. A properly supported and particularized Affidavit of Default should be provided in the first instance. Compliance with that expectation is essential to a fair and efficient judicial foreclosure process.

III. Consequences

[27] The Court continues to see inaccurate Statements of Secured Indebtedness and deficient Affidavits of Default in morning chambers, particularly from high-cost lenders. This threatens the fair and efficient summary process on which foreclosure chambers depends.

[28] It does little to discourage these problems if the only consequence for deficient materials is the disallowance of amounts that are already unenforceable at law. Doubly so when any legal cost incurred to correct the materials ends up being borne by the borrower.

[29] Given that these deficiencies undermine both specific applications and the judicial foreclosure process generally, meaningful consequences are required. Those consequences can include costs consequences, set-off, and statutory penalties.

[30] CMT has a contractual clause entitling it to solicitor-client indemnity costs in this proceeding. Those clauses are enforceable and honoured by this Court unless there has been misconduct or inequitable conduct in the proceeding: ***CIBC Mortgages Inc (Firstline Mortgages) v Tuchsen***, 2015 ABQB 241 at para 25. As set out in the *CPA*, legal costs for enforcing consumer mortgages must also be reasonable (s 69, *CPA*).

[31] The *CPA* provides for statutory damages for breaches of Part 9 of the *CPA*, which includes breaches of s 69. Those damages are the lesser of $500 or 5% of the maximum outstanding balance under the credit agreement. Exemplary damages are also available: s 99, *CPA*.

[32] I direct CMT to provide a supplemental Affidavit of Default that includes a ledger for the two years prior to the statement of claim, removes all unenforceable charges and fees, including interests charged on those amounts. CMT must then set its application for a redemption order back down before me, on notice to the Respondents. That notice must include a copy of this decision.

[33] At that application, CMT should address its position on costs and the remedies set out in the *CPA*, given my concerns that:

(a) CMT's materials submitted for the June 11, 2026, application were deficient, necessitating further proceedings and falling short of established Court practice and procedure;

(b) The Statement of Secured Indebtedness submitted was misleading;

(c) CMT's claims for late fees, default fees, admin fees and impairment insurance breached the *CPA* and *Interest Act*;

(d) CMT's conduct cumulatively constitutes misconduct in these foreclosure proceedings.

IV. Addendum

[34] Written reasons are an important way for the Court to communicate its expectations. Systemic errors in lender foreclosure materials, whether intentional or inadvertent, undermine the efficient and fair adjudication of morning chambers applications. Such conduct will jeopardize a lender’s claim to costs and may attract further consequences where warranted.

Heard on the 11th day of June, 2026 with additional materials submitted by desk application on the 18th day of July, 2026.

Dated at the City of Edmonton, Alberta this 5th day of August, 2026.

S. Wanke
A.J.C.K.B.A.

Appearances:

Kevin Chapotelle
Bryan & Company LLP
for the Plaintiff, CMT CAN Holdings GP Inc

Respondents, no appearance