

# COURT OF APPEAL FOR ONTARIO

CITATION: Everest Finance Corporation v. Jonker, 2023 ONCA 146

DATE: 20230301

DOCKET: C70785

Huscroft, Miller and Nordheimer JJ.A.

BETWEEN

Everest Finance Corporation

Plaintiff (Appellant)

and

Richard John Jonker and France Scimmi

Defendants (Respondents)

David G. Boghgosian and George M. Pakozdi, for the appellant

Richard John Jonker, acting in person

Heard: in writing

On appeal from the amended judgment of Justice Annette Casullo of the Superior Court of Justice, dated July 19, 2022.

## COSTS ENDORSEMENT

[1] On February 8, 2023, we released our decision in which we allowed the appeal and varied the judgment below to increase the amounts awarded. We permitted the parties to make written submissions on the costs of the appeal.

[2] The appellant asks for its costs of the appeal on a full indemnity basis, in the amount of \$15,187.15, pursuant to the terms of the mortgage. The respondents have not filed any responding submissions.

[3] We do not see any basis to deny the appellant its full indemnity costs. That is the relief that the respondents agreed to when they signed the mortgage. Contractual provisions stipulating entitlement of a mortgagee to costs of enforcement on the basis of costs actually expended will generally be enforced, absent misconduct or unfairness on the part of the party claiming costs: *MCAP Financial Corp. v. George Fernicola in Trust and Carrington Homes Ltd.*, 2010 ONSC 148, at para. 18.

[4] The respondents are ordered to pay that amount to the appellant.

“Grant Huscroft J.A.”  
“B.W. Miller J.A.”  
“I.V.B. Nordheimer J.A.”