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Interest Act Protection Applied to Promissory Note

The Ontario Court of Appeal ruled in P.A.R.C.E.L. Inc. v. Acquaviva, 2015 ONCA 331 that section 8 of the Interest Act may apply to a promissory note even where it is not directly secured by a mortgage.

The Ontario Court of Appeal ruled in *P.A.R.C.E.L. Inc. v. Acquaviva*, 2015 ONCA 331 that section 8 of the *Interest Act* may apply to a promissory note even where it is not directly secured by a mortgage.

The Court applied the recognized principle that section 8 of the *Interest Act* will prohibit a fine, penalty or interest rate that escalates after default, if the arrears are secured by a mortgage on real property.

In this case, the Court extended the *Interest Act* protection to a debt owed under a promissory note even where the note was not itself secured by a mortgage. The Court found that one debt was secured by both a promissory note and a mortgage, although the debt instruments contained different post-default interest rates. The promissory note post-default interest rate escalated, whereas the mortgage interest rate remained the same before and after arrears.

P.A.R.C.E.L. clarifies that, when a loan features two or more debt instruments with inconsistent interest rates the first step is to determine which instrument governs the repayment terms. If a mortgage governs the loan, the *Interest Act* protections will apply, even if the impugned escalating interest rate is not found in the mortgage documentation.

In *P.A.R.C.E.L.*, the Court found a single loan secured by both a promissory note and a mortgage on real property. Section 8 of the *Interest Act* was invoked to prohibit the escalating rate in the promissory note.

The Court distinguished the result in this case from an earlier one which similarly dealt with two debt instruments. In the earlier case the Court had ruled that the promissory note was the sole instrument governing the repayment terms of the debt, it did not provide for any post-default interest rate and that the payment terms under a collateral mortgage, which involved different parties, did not apply to the loan. As a result, the lender was not in a position to recover from the debtor the post-arrears interest rate provided for in the collateral mortgage.

Of importance however, section 8 of the *Interest Act* has no impact on the debtor's contractual obligation to repay the underlying debt and the stated accumulation of interest pre and post arrears.

*Research contributed by Niloufar Nezhat, 2015 summer student