

## Publisher's Note

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<b>CANADIAN COMMERCIAL REAL ESTATE MANUAL</b> <b>McDermott</b> <b>Release No. 3, September 2025</b>
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### Publisher's Special Release Note 2024

The pages in this work were reissued in February 2024 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the February 2024 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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The *Canadian Commercial Real Estate Manual* addresses the unique requirements of the commercial real estate industry. It covers the critical stages of development from acquisition through property management. The primary tabs are: Remedies (Mortgage), Financing, Taxation and Investment Analysis, Development and Conveyancing, Agreements, Precedents and Checklists.

This release features updates to the case law and commentary in Chapter 1 (The Law of Mortgages), 4 (Mortgage Remedies in Ontario), 15 (The Nature of Assessment in Ontario), 31 (Acquisitions and Dispositions), 34 (Environmental Liabilities and Due Diligence in Land Redevelopment) and 47 (An Analysis of Ground Lease Provisions).

### Highlights

**Law of Mortgages—Equitable Mortgage—Funds Advanced For Purchase of Property—Property in Debtors’ Names—Equitable Mortgage Not Created—Lack of Common Intention to Secure Property for Debt—** Where the plaintiff advanced funds for the purchase of a property in the defendants’ name, an equitable mortgage could not be created without proof of a common intention to secure the property for the debt. In this case, in her amended pleadings, the plaintiff alleged that the defendants unduly influenced her to purchase a property a property, and to put only their names on title. In return, the plaintiff alleged that the defendants would pay \$1,000 per month to her until the purchase price was repaid in full. The sum of \$265,826 was paid on closing the purchase transaction. When the payments were not made, the plaintiff commenced an action against the defendants for repayment of the debt, and her alternative claim was for an equitable mortgage on the property. She also registered a certificate of *lis pendens*. The defendants submitted that the plaintiff’s alternative claim for an equitable mortgage, being her only claim for an interest in the property, raised no genuine issue of material fact, nor did it require the determination of a question of law: *Sibbald v. Lavallee*, 2025 NSSC 49, 2025 CarswellNS 119, [2025] N.S.J. No. 65 (N.S. S.C.).

**Mortgages—Priorities—Fraudulent Mortgage—Owner’s Daughter Forging Their Signatures—Property Transferred to Daughter—Daughter Mortgaging Property—Fraud Perpetrated by “Fraudulent Person”—Mortgage Void as “Fraudulent Instrument”—Lender Having Better Opportunity to Discover Fraud—** Where the owners’ daughter forged the owners’ signatures, and fraudulently transferred title to their home, and then registered a mortgage against the home, using the funds to pay down the mortgage on the property owned by her and her husband, the owners were granted summary judgment declaring the mortgage void as a “fraudulent instrument” where the fraud was perpetrated by a

fraudulent person. In this case, the owners had lived in their home since July 2000. Their home was mortgage-free prior to December 2022. Title to their home was transferred to their daughter without the knowledge of the owners, ostensibly as a gift from the owners as parents to their daughter. The daughter subsequently acknowledged that she had forged the owners' signatures, and fraudulently transferred the title. The daughter had registered a charge against the home in favour of R Mortgage Corp. The daughter used the mortgage funds to pay down the mortgage on the property owned by her and her husband, AS. The owners sought orders declaring the charge to be fraudulent, and void as against them and discharging the charge. The owner initially named two lawyers, DT and ZH, as defendants. The action against DT was dismissed, and the daughter's husband, AS, was added as a defendant. The owners brought a motion for summary judgment against their daughter, R Mortgage Corp., and AS. The court ordered the owners' motion for partial summary judgment should proceed separately from the negligence claim against ZH. The owners' motion was granted: *Chateramdas v. Sanasie*, (2025), 66 R.P.R. (6th) 103, 2025 ONSC 560, 2025 CarswellOnt 919, [2025] O.J. No. 399 (Ont. S.C.J.).