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Practice in Mortgage Remedies in Ontario (Fifth Edition)

Marriott and Dunn

Release No. 7, December 2023

Marriott and Dunn: Practice in Mortgage Remedies in Ontario, 5th Edition, provides the most comprehensive step-by-step review of the procedures governing foreclosure, judicial sale, and power of sale in Ontario. Fifteen chapters provide the busy practitioner with a ready reference to every aspect of the power of sale remedy with the most comprehensive case law review of the process in Ontario. The notice of sale itself, including parties to be served and the service requirements, sale without notice, the right to redeem, injunctive relief, the marketing process, the mortgagee's duties in conducting the sale, the registration process, accounting for the sale proceedings and costs receive chapter-by-chapter coverage.

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This release features updates to Appendix WPJ Words and Phrases and Appendix WPL Legislatively Defined Terms, as well as case updates to Chapters 2 Available Remedies, 6 Originating Process, Pleadings and Defences, 7 Judgments, Taking Accounts and References, 19 Stay of Proceedings, 25 Exercising the Power of Sale, 30 Right to Redeem, 31 Restrictions on the Mortgagee's Proceedings, 42 Priorities — Generally, 44 Interest, 46 Possession, Distress and Attornment, 51 Guarantees, and 52 Receivers and Managers, and Appendix A Mortgage Statutes in Ontario and Mortgages Act.

- **Foreclosure — Available Remedies — Equitable Mortgages** — An equitable mortgage was not found where a loan was granted on vague terms that the loan would be secured, and where the lender was told that a lawyer “would take care of things” and that the lender would get their money back. A subsequent registration of the promissory note in the Land Titles Office as a Caveat did not create an interest in the land: see *Sunridge Nissan Inc. v. Colony Homes Inc.*, 2021 ABQB 928, 2021 CarswellAlta 3011 (Q.B.), additional reasons 2022 ABQB 15 (Q.B.), affirmed *Sunridge Nissan Inc v. McRuer*, 2023 ABCA 128 (C.A.).
- **Foreclosure — Available Remedies — Vexatious, Frivolous and Abusive Actions** — For a rare instance where a claim was referred to a judge by the registrar, where notice of the referral under R. 2.1.01 was not given to the parties, and where the court dismissed the action without first inviting written submissions from the plaintiff to support their Statement of Claim. The Statement of Claim advanced claims on behalf of the named plaintiff as well as a person referred to as “Grand Chief Wabiska Mukwa”. Grand Chief Wabiska Mukwa was a party known to the court for having advanced various claims all of which had been labelled as being Organized Pseudolegal Commercial Arguments and all of which had been rejected by several different judges: *Sarac v. Wilstar Management Ltd.*, 2021 ONSC 7776, 2021 CarswellOnt 17650 (S.C.J.), affirmed *Mukwa v. Farm Credit of Canada*, 2022 ONCA 320 (C.A.).
- **Foreclosure — Originating Process, Pleadings and Defences — Right to Redeem** — Where the court undertook a balancing of the mortgagor’s right to redeem with the integrity of the court approved sale process by considering whether the sale process was carried out in a procedurally fair manner, with a view to achieving the best price, and with regard to the interests of all stakeholders: *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832, 2023 CarswellOnt 1532 (S.C.J. [Commercial List]), affirmed *Rose-Isli Corp. v. Smith*, 2023 ONCA 548 (C.A.).
- **Appendix WPJ — Words and Phrases — § WPJ:260.50 Nuisance — (Yukon)** — Nuisance is the tort of interference with an individual’s rights in or arising from property. . . . *Grove v. Yukon (Ministry of the Environment)* (2022), 53 C.E.L.R. (4th) 1, 87 C.C.L.T. (4th) 33, 2022 YKCA 8, 474 D.L.R. (4th) 484, 2022 CarswellYukon 64 (Y.T. C.A.) at para. 48 Bauman C.J.Y.T., Goepel and Charlesworth J.J.A.
- **Appendix WPJ — Words and Phrases — § WPJ:338 Restrictive Covenant — (Alta.)** — Restrictive covenants are agreements which bind successors in title to the original covenantors. They run with the land and are registerable against titles under the *Land Titles Act*. There

are two types of restrictive covenants: a covenant placed on a servient tenement for the benefit of the dominant tenement and a building scheme to regulate development . . . *Langston v. Condominium Corporation No 0112806* (2022), 43 R.P.R. (6th) 213, 2022 ABCA 319, 2022 CarswellAlta 2621 (Alta. C.A.) at para. 8 Kirker J.A., Schutz J.A., Strekaf J.A.

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