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Practice in Mortgage Remedies in Ontario (Fifth Edition)

Marriott and Dunn

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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 the case law and commentary in Chapters 1 Preliminary Considerations, 6 Originating Process, Pleadings and Defences, 19 Stay of Proceedings, 36 Transfer Documentation, and 54 Court Appointments.

HIGHLIGHTS

- **FORECLOSURE — PRELIMINARY CONSIDERATIONS — CERTIFICATE OF PENDING LITIGATION** — The Superior Court of Justice has the power to discharge a validly registered CPL at the instance of a mortgagee in the process of completing a power of sale. A CPL may only be issued and registered with permission of the court where an interest in land is in question in a proceeding. The court maintains jurisdiction to ensure that the CPL's continued presence on title does not work an injustice. Section 103(6) of the CJA describes a range of specific grounds upon which a CPL may be discharged by the court, including where the party who obtained it does not have a reasonable claim to an interest in the land, or where the interest could be protected by another form of security. Section 106(6)(c) permits discharge of a CPL on "any other ground that is considered just". The court has the power to impose terms when ordering a discharge. Granting a discharge of a CPL that ranks subsequent to the interest of a mortgagee selling under power of sale under s. 103(6)(c) of the CJA is appropriate where it would give effect to the purchaser's good title as otherwise established under s. 99(1) and (1.2) of the LTA. To do so would facilitate the removal from the register of an instrument that does not affect that purchaser's title and negate any concern that a person claiming under the CPL continues to have an interest that affects the land. Discretion exists under s. 103(6)(c) of the CJA to discharge a CPL on the application of a mortgagee exercising its power of sale under a mortgage, where the mortgage ranks in priority to the interest in the land in issue in the action in which the CPL was obtained. This discretion may be exercised where the mortgagee provides evidence of compliance with the *Mortgages Act*, as stipulated in s. 99 of the LTA (i.e., where, in law, good title is being conveyed to the purchaser and it is necessary for the court to grant a discharge so that the register reflects that title): *MCAN Home Mortgage Corporation v. Broad*, 2026 ONCA 217 (Ont. C.A.).
- **FORECLOSURE — ORIGINATING PROCESS, PLEADINGS AND DEFENCES — DEFENCES** — In *1396929 Ontario Inc. v. Valladares*, 2026 ONCA 282, 2026 CarswellOnt 6179 (Ont. C.A.), the court rejected the argument of non est factum where the defendants alleged they did not speak English and therefore did not understand what they were signing. The mortgagors had signed a certificate of independent legal advice which included the lawyer's acknowledgment that he explained the terms of the mortgage and the mortgagors' obligations. Without any fresh evidence to show any wrongdoing on the part of the solicitor and with no claim commenced against the solicitor, the court found that the defendants' affidavit evidence was self-serving and did not create a triable issue. The court also found that the defendants' allegations rang hollow in light of the fact that they had executed at last six mortgages on the subject property alone. The court held "this fact alone belies the assertion that the mortgagors did not understand mortgage documentation". The mortgagors also had every opportunity, prior to entering into the mortgage and receiving the funds, to review the documentation and satisfy themselves as to its nature.

- **FORECLOSURE — STAY OF PROCEEDINGS — GENERALLY —**
In *Canadian Imperial Bank of Commerce v. Khan*, 2026 ONSC 3337, 2026 CarswellOnt 9143 (Ont. S.C.J.), the plaintiff brought a motion for summary judgment for possession of the mortgaged property and the defendant alleged the case was not appropriate for summary judgment because he could bring the mortgage into compliance and make use of section 23 of the *Mortgages Act*. The court relied on the case of *Gord Harris Construction Ltd. v. Stern*, [1992] O.J. No. 1389 to determine whether the meaning of section 23 required the full payment of the mortgage or whether it simply required the payment of arrears and noted that the case had interpreted the words in the provision to mean that the mortgagor must pay the arrears of principal, the arrears of interest, and the mortgagee's reasonable costs. The motion judge found that the defendant had not properly pursued a remedy under section 23 given the following factors: (1) he had not brought a cross motion seeking relief under section 23(1) of the *Mortgages Act*, (2) he had not paid money into court as security for costs, (3) his proposed plan was contingent on closing mortgages for two other clients and therefore speculative, (4) he had no plan to address the realty tax arrears which were also in default, and (5) the dated nature of the default and the delays in having the motion for summary judgment heard. The court therefore held that the potential recourse did not give rise to a genuine issue for trial.