

COURT OF APPEAL FOR ONTARIO

CITATION: Sapusak v. Canguard Group Limited, 2025 ONCA 470

DATE: 20250626

DOCKET: COA-24-CV-0850

Copeland, Gomery and Wilson JJ.A.

BETWEEN

Chris Jamie Sapusak

Plaintiff (Respondent)

and

Canguard Group Limited*, John Doe1
and John Doe2

Defendants (Appellant*)

Granville N. Cadogan, for the appellant

Neil Colville-Reeves, for the respondent

Heard: June 24, 2025

On appeal from the order of Regional Senior Justice Leonard Ricchetti of the Superior Court of Justice, dated July 22, 2024, with reasons reported at 2024 ONSC 4113.

REASONS FOR DECISION

[1] The appellant appeals from the motion judge's order granting partial summary judgment in favour of the respondent, declaring that a mortgage in favour of the appellant on a property located on Royal Terrace Crescent in Bolton, Ontario

(the “Caledon Property” or the “Property”) is void as a fraudulent conveyance, and ordering it struck from title.

[2] After hearing submissions for the appellant, we dismissed the appeal with reasons to follow. These are our reasons.

Factual background

[3] The respondent was the owner of the Caledon Property. In January 2018, the Property was sold under power of sale by Roy D’Mello, through his companies, who held a mortgage on the Property. Mr. D’Mello is a lawyer and defendant in several actions brought by the respondent in relation to the Caledon Property and another property in Bradford, Ontario (the Bradford property is not at issue in this appeal).

[4] Subsequent to the sale, in February 2018, the appellant registered a mortgage on the Property from the purchaser under the power of sale, Bangia Property Services Ltd. (“Bangia”). In February 2019, alleging that Bangia had failed to make any payments on the mortgage, the appellant obtained default judgment against Bangia and an order for possession of the Caledon Property.

[5] The respondent claimed that the sale of the Property under power of sale to Bangia and the appellant’s mortgage with Bangia were fraudulent conveyances.

[6] Before the summary judgment motion that is the subject of this appeal was argued, in September 2023, the sale of the Property to Bangia was set aside by

default judgment on the basis that it was a fraudulent transaction. At that time, title to the Property was restored to the respondent. The subject matter of the summary judgment under appeal was the respondent's claim that the mortgage in favour of the appellant placed on the Property after the sale to Bangia was also fraudulent.

[7] On the summary judgment motion, the respondent filed an extensive evidentiary record in support of his claim that the appellant's mortgage was a sham. By contrast, the appellant filed no responding materials on the summary judgment motion and relied only on its statement of defence. The appellant also never provided an affidavit of documents during the discovery process in the action.

The motion judge's decision

[8] The motion judge found that the appellant's mortgage was fraudulent and granted summary judgment in the respondent's favour. He made the following orders:

1. A declaration that the mortgage in favour of the appellant is void as a fraudulent conveyance; and
2. An order that the Land Registrar delete the mortgage in favour of the appellant from the title to the Property.

[9] The motion judge provided detailed reasons and supported his findings in the evidence filed by the respondent. He found that the respondent had

established numerous clear and overwhelming indicia that the appellant's mortgage was fraudulent based on recognized "badges of fraud". He noted that the appellant: had chosen not to file any material to respond to the summary judgment motion; had failed to comply with its documentary discovery obligations in not serving an affidavit of documents; and had not sought to cross-examine on any of the respondent's evidence on the motion. The motion judge found that, given the badges of fraud established on the evidence provided by the respondent, and in the absence of any response or documentation from the appellant supporting the validity of the mortgage, there was no genuine issue requiring a trial in relation to the validity of the mortgage because there was no evidence that the appellant had ever advanced any monies with respect to the mortgage.

Analysis

[10] The appellant argues that the motion judge erred in granting summary judgment because in doing so he relied on a lawyer's affidavit based on hearsay.

[11] We note that, although other parties challenged the admissibility of the lawyer's affidavit before the motion judge, the appellant did not do so.

[12] In any event, we see no error in the motion judge's decision not to exclude the lawyer's affidavit. As the motion judge noted, the lawyer's affidavit attached affidavits by the respondent previously filed in the proceeding that provided first-hand evidence. The appellant never sought to cross-examine the respondent on

his affidavits, although it had months to do so.¹ In the circumstances, the motion judge did not err in effectively allowing the respondent to refile his affidavits as an attachment to a lawyer's affidavit. Beyond this, the lawyer's affidavit provided the procedural history of the litigation and related litigation. This was not hearsay and was properly admissible through the lawyer's affidavit.

[13] Nor do we see any error in the motion judge's conclusion that the record supported summary judgment in favour of the respondent in relation to the Caledon Property. The record filed by the respondent amply supported the conclusions reached by the motion judge. In particular, the respondent's record demonstrated numerous badges of fraud in relation to the transactions at issue. As noted, the appellant did not seek to cross-examine on the respondent's evidence on the motion and filed no evidence to contradict the evidence filed by the respondent.

[14] The appellant also argues that the motion judge erred in granting partial summary judgment.

[15] We disagree. The motion judge properly considered whether partial summary judgment was appropriate, based on the principles summarized by this court in *Service Mold + Aerospace Inc. v. Khalaf*, 2019 ONCA 369, 146 O.R. (3d)

¹ On the date of the hearing of the summary judgment motion, Mr. D'Mello, a party to other aspects of the proceeding, sought an adjournment to cross-examine the respondent on his affidavits. The motion judge appropriately denied the adjournment on the basis that it was part of a continuing effort by all of the defendants to delay the proceedings.

135, at paras. 13-14. In the circumstances of this case, we see no error in his conclusion that partial summary judgment was appropriate because there was no risk of inconsistent findings, and resolving the issue of the validity of the appellant's mortgage by summary judgment would be less expensive and more efficient for the parties.

[16] The appellant further argues that the motion judge erred by returning the Property to the respondent "mortgage free". This ground apparently refers not to the appellant's mortgage, but to instruments in favour of other parties allegedly registered on title to the Caledon Property. Respectfully, the appellant misconceives the order made by the motion judge, which only concerned the mortgage in favour of the appellant.

Disposition

[17] The appeal is dismissed. The respondent is entitled to his costs of the appeal on a partial indemnity basis in the amount of \$10,797.15.

"J. Copeland J.A."
"S. Gomery J.A."
"D.A. Wilson J.A."