

COURT OF APPEAL FOR ONTARIO

CITATION: Martin v. 11037315 Canada Inc., 2025 ONCA 648

DATE: 20250918

DOCKET: COA-24-CV-0864

Sossin, Favreau and Wilson JJ.A.

BETWEEN

Kelly Martin

Applicant (Respondent/Responding Party)

and

11037315 Canada Inc., 2670082 Ontario Corp.*, and Autodome Ltd.

Respondents (Appellant/Moving Party*)

Samir Chhina, for the moving party

Dennis Van Sickle, for the responding party

Heard: August 28, 2025

REASONS FOR DECISION

[1] The moving party, 2670082 Ontario Corp. (“267”), has brought a motion to this court, on consent, to “set aside” a judgment declaring that it was not a *bona fide* purchaser without notice. The responding party, Kelly Martin, was the original owner of the property.

[2] We are not satisfied that granting the requested relief would be appropriate or in the interests of justice. The motion is therefore dismissed. What follows is our

explanation for reaching this conclusion and a direction for next steps in this matter.

Circumstances leading up to the motion

[3] This case has a complicated history, which includes a previous appeal to this court: *Martin v. 11037315 Canada Inc.*, 2022 ONCA 322, 161 O.R. (3d) 401. The factual and procedural background is fully summarized in that decision and in the decision under appeal: *Martin v. 2670082 Ontario Corp*, 2024 ONSC 3982, 61 R.P.R. (6th) 96. It is not necessary to address this background in detail for the purposes of these reasons.

[4] In brief, Ms. Martin owned a residential property, which was subject to a second mortgage held by 2148468 Ontario Ltd. (“214”). In June 2019, Ms. Martin defaulted on her mortgage payments due to fraudulent activity on her bank account. 214 assigned its mortgage to 11037315 Canada Inc. (“110”).

[5] 110 then commenced foreclosure proceedings and obtained a default judgment against Ms. Martin. 110 sold the property to 267, the moving party in these proceedings. Ms. Martin became aware of the default judgment and sale of her property after these had occurred while she still resided at the property. Ms. Martin then brought a motion to the Superior Court and obtained an order setting aside the default judgment and directing the sale of the property. This court allowed an appeal from that decision and directed that there was to be a trial of the

issue of whether 267 was a *bona fide* purchaser of the property for value without notice. The purpose of deciding this issue was to determine whether 267 could benefit from the protection of the *Land Titles Act*. In its decision, this court made several other directions, including for a reference to determine how much money was owed to Ms. Martin.

[6] The trial proceeded before Chozik J. She found that the responding party was not a *bona fide* purchaser for value without notice. In her reasons, the trial judge made significant negative credibility findings regarding the witnesses called on behalf of 110 and 267. In her decision, Chozik J. noted that the property had been sold by 267's creditors and that she was therefore not able to order that the property be sold under Ms. Martin's notice of sale. She also stated that she had been advised by the parties that \$140,000 was being held in trust and that, if she set aside the sale between 110 and 267, it was not necessary for her to make any other orders for relief. Ultimately, she made the following order:

1. THIS COURT DECLARES with respect to the purchase of the property located at 1560 Reeves Gates, Unit 22, Oakville, Ontario, the respondent, 2670082 Ontario Corp., is not a bona fide purchaser without actual notice.
2. THIS COURT ORDERS that costs of this action shall be determined after further submissions from the parties.

[7] 267 served and filed a notice of appeal.

[8] 267 then brought a motion to this court to allow the appeal on consent. The only evidence in support of the motion is an affidavit sworn by a law clerk which attaches Chozik J.'s reasons for decision, 267's notice of appeal and the consent of Ms. Martin to the proposed draft order. There is no explanation for why the order is being sought. The order originally sought by the parties was as follows:

1. THIS COURT ORDERS that the judgment of Justice Chozik, dated July 12, 2024, be set aside only with respect to the finding that the appellant, 2670082 Ontario Corp. was not a bona fide purchaser for value without notice, along with all related relief granted against the appellant, 2670082 Ontario Corp., that arise from the judgment of Justice Chozik, dated July 12, 2024.
2. THIS COURT ORDERS that the application below, bearing Court File No.: CV-20-00000650-000 be dismissed against the appellant, 2670082 Ontario Corp.

[9] The motion was scheduled to proceed before this panel in writing. After reviewing the materials, the panel required counsel for the parties to participate in an oral hearing to explain the basis on which the court would have authority to make the requested consent order.

[10] At the hearing, counsel explained that the parties had reached a settlement under which Ms. Martin is to receive payment of some moneys held in trust following the sale of her home, but that part of the agreement also required her to consent to an order setting aside Chozik J.'s finding that the transfer of the property from 110 to 267 was not a *bona fide* purchase without notice. In his submissions,

counsel for 267 candidly stated that his client's principals were concerned about the findings made against them and the impact on their reputations.

[11] The panel advised that we were not satisfied that we could allow the appeal on consent as there did not appear to be any legal or factual basis for doing so. We directed the parties to make written submissions in support of the relief they sought, which they did.

[12] In their joint written submissions, the parties have included the following new proposed draft order:

ON CONSENT of the parties, filed, and on noting that no party to this proceeding is under any legal disability, and without expressing agreement or disagreement with the decision of the judge below:

1. THIS COURT ORDERS that the judgment of Justice Chozik, dated July 12, 2024, in Court File No.: CV-20-00000650-000 be set aside.

[13] They also rely on four decisions from the Court of Appeal for British Columbia in which the court has allowed appeals on consent. They say the form of the new draft order they have submitted is consistent with that line of cases.

Analysis

[14] We are not satisfied that it would be appropriate to allow the appeal on consent or to "set aside" Chozik J.'s judgment as requested by the parties.

[15] This court cannot allow an appeal or set aside a judgment or order made below based on the parties' consent alone. To ensure its powers do not serve an improper purpose, this court must consider, in every case, whether the relief requested is appropriate in light of the law and the facts of the case.

[16] Similarly, courts of appeal from other Canadian jurisdictions have concluded that they could not allow an appeal merely because of an agreement between the parties: *Uhrík v. Terrigno*, 2024 ABCA 383, at para. 13; *C.S. v. D.S.*, 2022 NBCA 51, at para. 24; and *Garshowitz v. Canada (Attorney General)*, 2017 FCA 251, at paras. 17-19.

[17] As for the decisions from the Court of Appeal for British Columbia, they do not assist the parties. While we have doubts that this court should adopt the process followed in those cases, we need not decide that question. Indeed, as the parties concede in their submissions, the decisions they rely on make clear that an appeal will not be allowed on consent if doing so would bring the administration of justice into disrepute: *Kubota v. Kubota*, 2022 BCCA 41, at para. 5; *Malick v. McCullough*, 2023 BCCA 190, 39 B.L.R. (6th) 268, at para. 3.

[18] This case highlights the mischief that can occur if this court were simply to rubber stamp an agreement between parties to allow an appeal on consent.

[19] This court had previously directed the trial of an issue. Chozik J.'s judgment includes a declaration that is responsive to that direction. Her decision was based

on an assessment of the evidence, including findings of fact and credibility. Her ultimate judgment incorporates her findings of fact and law in the form of a declaration that 267 “is not a *bona fide* purchaser without actual notice”. The parties are asking the court to whitewash this finding of misconduct without any basis for doing so. In the absence of any legal or evidentiary error, there is no authority for this court to set aside her judgment, even on consent. Given the circumstances of this case, we are satisfied that setting aside the judgment below based on the consent of the parties alone, given the declaratory judgment and the underlying findings of misconduct, would bring the administration of justice into disrepute.

[20] It is evident that Ms. Martin is being put in an unfair position. She was successful on the trial below. The moving parties are prepared to settle the appeal on the basis that she will receive a substantial amount of money. However, the settlement includes a term over which she has no control, which is that the judgment below be vacated or set aside. If there are valid grounds of appeal, the moving party should proceed with its appeal on the merits. If the moving party wishes to abandon the appeal, that can be done and the monetary aspect of this matter can be resolved by the parties as they see fit.

[21] Unfortunately, the dismissal of the motion is obviously unsatisfactory for Ms. Martin. We order that, if the moving party wishes to pursue the appeal, the appeal is to be expedited.

Disposition

[22] The motion is dismissed.

[23] If 267 intends to proceed with its appeal, the appeal is to be expedited.

[24] The parties are to contact the court no later than one week following the release of these reasons to arrange for a case conference with Justice Favreau of this panel, at which 267 must be prepared to advise whether it intends to proceed with its appeal and, if so, deadlines will be set to expedite the appeal.

[25] Given that this motion was to proceed on consent, we order no costs.

“L. Sossin J.A.”
“L. Favreau J.A.”
“D.A. Wilson J.A.”