

COURT OF APPEAL FOR ONTARIO

CITATION: Financial Services Regulatory Authority of Ontario v. First Swiss
Mortgage Corp., 2025 ONCA 731

DATE: 20251023

DOCKET: COA-24-CV-1302 & COA-24-CV-1370

Paciocco, Zarnett and Favreau JJ.A.

BETWEEN

Chief Executive Officer of the Financial Services Regulatory Authority of Ontario

Applicant

and

First Swiss Mortgage Corp.

Respondent

Daniel Szirmak and Alana Tacy, for the appellant Olympia Trust Company

Brittany Rabinovitch and Emily Thompson, for the appellant William Loucks

Reeva M. Finkel and Steven Kelly, for the respondents Calogero Sferrazza and
Carmela Romano

Heard: October 14, 2025

On appeal from the order of Justice Peter J. Osborne of the Superior Court of
Justice, dated November 15, 2024, with reasons reported at 2024 ONSC 5866.

REASONS FOR DECISION

[1] The appellants, Olympia Trust Company (“Olympia”) and William Loucks,
appeal the motion judge’s order discharging a mortgage on a property owned by

the respondents, Calogero Sferrazza and Carmela Romano. After the conclusion of the appellants' argument, the panel dismissed the appeal with reasons to follow. These are our reasons.

[2] In 2019, the respondents borrowed \$107,990 from First Swiss Mortgage Corp. ("First Swiss"), which was secured by a one-year second mortgage on the property. Five days after the registration of the mortgage, First Swiss assigned the mortgage to Olympia, which was a bare trustee for Mr. Loucks and another individual investor who both advanced the funds for the loan. The respondents were not notified of the assignment at the time it occurred. They continued to make all payments to First Swiss.

[3] Before the mortgage matured, the respondents refinanced their property. They obtained a loan that they used to pay out the first and second mortgages. At the time of refinancing, the title insurer did a title search and became aware that Olympia held the second mortgage on the property. A principal of First Swiss advised the respondents' mortgage broker and the title insurer that First Swiss and Olympia were related, and that First Swiss would take care of the payout statements. First Swiss then provided a payout statement to the respondents, with wire instructions for the funds to go to First Swiss. On October 6, 2020, the funds necessary to discharge the respondents' second mortgage were paid to First Swiss, as directed.

[4] Despite the respondents' repayment of the loan, a discharge for the second mortgage was never registered on title to the property. In addition, First Swiss did not provide the funds it received to Olympia. Instead, First Swiss continued to send monthly payments to Olympia that it represented were in respect of the respondents' second mortgage.

[5] On March 15, 2023, First Swiss was assigned into bankruptcy. By court order, a receiver was appointed to investigate allegations of wrongdoing by First Swiss consistent with its misappropriation of funds in this case. On March 30, 2023, Olympia sent the respondents a notice of default, claiming that their mortgage had gone into default on January 3, 2023. The respondents then discovered that First Swiss did not provide their payout to Olympia and that the mortgage was not discharged.

[6] The respondents brought a motion to discharge the mortgage in the context of the receivership proceedings. The receiver did not oppose the motion, but Olympia and Mr. Loucks opposed it.

[7] The motion judge granted the motion, declaring that the mortgage had been paid out and directed the Land Registry Office to discharge the mortgage. The motion judge found that First Swiss acted as Olympia's agent when it provided the respondents with a mortgage payout summary and accepted their funds. The motion judge based this finding on the terms of two agreements between

Mr. Loucks and First Swiss, namely a Mortgage Loan Servicing Agreement and a Trust and Beneficial Ownership Agreement. Besides these agreements, the motion judge also relied on the course of dealings between the parties to find that First Swiss had authority to act as Olympia's agent for the purpose of receiving the mortgage payout and discharging the mortgage.

[8] The appellants submit that the motion judge erred in finding that First Swiss was acting as Olympia's agent. In support of this argument, the appellants rely on what they claim is the industry standard for discharging a mortgage, which they submit required the respondents to deal directly with Olympia. They say that, while First Swiss was authorized to act as Olympia's agent for the purpose of receiving and distributing the respondents' monthly payments, it was not authorized to act as Olympia's agent for the purpose of the mortgage payout and discharge.

[9] We disagree that the motion judge erred in finding that First Swiss was acting as Olympia's agent for the purpose of receiving the mortgage payout and discharging the mortgage.

[10] First, contrary to the appellants' argument, we see no legal error in the motion judge's application of the law of agency. A principal-agent relationship arises when the agent has actual or apparent authority to act on the principal's behalf: *Monachino v. Liberty Mutual Fire Insurance Company* (2000), 47 O.R. (3d) 481 (C.A.), at para. 34, leave to appeal requested but application for leave

discontinued, [2000] S.C.C.A. No. 223, at para. 33. Actual authority is a legal relationship created by an agreement between the principal and the agent: *Monachino*, at para. 34. An agency relationship may also be created by the conduct of the parties: *Monachino*, at paras. 35-36; *1196303 Inc. v. Glen Grove Suites Inc.*, 2015 ONCA 580, 337 O.A.C. 74, at para. 71. Apparent authority may be found where the conduct of the principal amounts to a representation that the agent has authority to act on the principal's behalf: *Stikeman Elliott LLP v 2083878 Alberta Ltd.*, 2019 ABCA 274, 95 Alta. L.R. (6th) 1, at paras. 43-45; *Monachino*, at paras. 35-37. The appellants argue that the motion judge did not address or apply the law of agency, specifically the requirement that the principal provide clear authority to the agent to act on its behalf. We disagree. It is evident from the motion judge's reasons that he correctly articulated and applied the law of agency to the circumstances of this case. As mentioned above, the motion judge found that First Swiss's authority to act on Olympia's behalf flowed from the terms of two agreements between First Swiss and Mr. Loucks and from the course of conduct between the parties. The motion judge therefore found that First Swiss had both actual and apparent authority to act on Olympia's behalf for the purpose of receiving payment for the mortgage discharge.

[11] Second, we see no error in the motion judge's reliance on the Mortgage Loan Servicing Agreement and the Trust and Beneficial Ownership Agreement between First Swiss and Mr. Loucks in support of his finding that First Swiss had

actual authority to act on Olympia's behalf. As a bare trustee for Mr. Loucks, Olympia had "no independent powers, discretions or responsibilities": *Trident Holdings Ltd. v. Danand Investments Ltd.* (1988), 64 O.R. (2d) 65 (C.A.), at p. 75; *Paragon Development Corporation v. Sonka Properties Inc.*, 2011 ONCA 30, 103 O.R. (3d) 481, at para. 6, leave to appeal refused, [2011] S.C.C.A. No. 103. Because Olympia had no independent power to administer the mortgage, it had no power to interfere with the agreements between Mr. Loucks and First Swiss regarding the terms on which the mortgage was to be administered. As found by the motion judge, the Mortgage Loan Servicing Agreement explicitly authorized First Swiss to "execute and deliver on [Mr. Loucks's] behalf any documents required to exercise any rights or duty which [Mr. Loucks] may have under any Loan or Deed of Trust". Similarly, the Trust and Beneficial Ownership Agreement stated that Mr. Loucks "hereby ratifies, confirms and authorizes the acquisition, preparation or execution by [First Swiss] ... of any and all documents or instruments which have heretofore or may hereafter be provided related to any of the Mortgages". On their face, these agreements explicitly authorized First Swiss, as Mr. Loucks's agent, to issue the mortgage payout statement and receive the funds required to pay out the mortgage on his behalf or on behalf of his bare trustee, Olympia.

[12] Third, we see no error in the motion judge's reliance on the course of dealings between the parties as a representation that First Swiss had authority to

act on Olympia's behalf, and that it therefore had apparent authority to act as Olympia's agent. Most notably, the respondents were never notified that the mortgage had been transferred to Olympia, and they continued to make mortgage payments to First Swiss until the mortgage payout. In addition, the motion judge relied on a previous occasion in 2014 when the respondents had obtained a loan from First Swiss that was secured by a mortgage. That mortgage had also been transferred to Olympia, but First Swiss nevertheless handled the payout and discharge. Olympia never notified the respondents that payout requests had to be made to Olympia.

[13] Finally, given that we see no error in the motion judge's finding that First Swiss was acting as Olympia's agent, the appellants' attempt to rely on industry standards is misplaced. Once it is established that First Swiss was authorized to act as Olympia's agent for the purpose of discharging the mortgage, the industry standards that would apply if First Swiss were not Olympia's agent are irrelevant.

[14] In any event, in advancing the argument regarding industry standards, the respondents rely on an expert report that was not admitted by the motion judge. The motion judge was not satisfied that the expert evidence was necessary given that it did not address factual circumstances similar to those in this case. The motion judge's decision not to admit the expert evidence was an exercise of his discretion to which we owe deference. We see no error in principle in the motion

judge's determination that the expert evidence on industry standards was not necessary.

[15] The appeal is dismissed.

[16] We award costs in the agreed amount of \$28,082.76, inclusive of disbursements and HST, to the respondents.

"David M. Paciocco J.A."

"B. Zarnett J.A."

"L. Favreau J.A."