

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
TORONTO-DOMINION BANK ) *Emilie Bruneau*, for the Applicant  
 )  
Applicant )  
 )  
- and - )  
 )  
SANDRA ANDRADE and all other ) Sandra Andrade in person  
Tenants/Occupants of the premises ) *Thomas McRae* for the Respondent  
municipally known as 270 SCARLETT ) Sesararine Singh  
ROAD, UNIT 1201, TORONTO, )  
ONTARIO, M6N 4X7 )  
Respondent )  
 )  
 ) **HEARD:** October 1, 2025

**PAPAGEORGIU J.**

**Overview**

[1] Toronto-Dominion Bank (“TD Bank” or “TD”) advanced \$680,000 in mortgage funds in respect of 270 Scarlett Road, Unit 1201 (“270 Scarlett”) by way of charge dated June 25, 2021. The mortgage included standard charge terms which have been filed in the record.

[2] TD Bank brought power of sale proceedings and an application for possession of 270 Scarlett and ancillary relief. The titled owner is Ms. Sandra Andrade (“Ms. Andrade”). She supported the motion. However, there is another individual, Mr. Sesararine Singh (“Mr. Singh”), who claimed he was the beneficial owner pursuant to a trust declaration between him and Ms. Andrade.

[3] Mr. Singh has raised a variety of defences and claims against TD Bank within the context of TD Bank’s Application for possession. He has never brought any Cross Application against TD Bank or initiated any separate proceedings. He has never brought any motion for an injunction to restrain TD Bank from exercising its rights under its mortgage.

[4] This matter has been ongoing for over a year.

### **Decision**

[5] For the reasons that follow, I grant TD Bank's Application.

### **Issues**

- Issue 1: Should the TD Bank Application be granted in the absence of Mr. Singh's evidence filed in respect of the mini trial because he has failed to comply with court orders related to his payment of the mortgage and ongoing expenses?
- Issue 2: If TD Bank had actual notice of Mr. Singh's claim that he is the beneficial owner of 270 Scarlett, would it prevent TD Bank from obtaining an order for possession?
- Issue 3: Do the torts as against TD Bank that have been alleged constitute a basis for preventing TD Bank from exercising its rights?
- Issue 4: Is there a triable issue in respect of Mr. Singh's claim to an equitable mortgage that is in priority to TD Bank's claim?
- Issue 5: Is there a triable issue in respect of Mr. Singh's claim that TD Bank's mortgage is subordinated to his claimed beneficial interest by virtue of equitable subordination?
- Issue 6: Has TD Bank satisfied the technical requirements to exercise a power of sale?
- Issue 7: Is TD Bank entitled to a writ of possession?

### **Background**

#### **The Dispute Between Mr. Singh and Ms. Andrade**

##### ***Mr. Singh's Position***

[6] Mr. Singh says that he and Ms. Andrade were friends, and that he advanced money to her to assist her with financing.

[7] In 2017, he first loaned Ms. Andrade \$425,000 by way of loan agreement in respect of 3903 Bloor Street owned by her to assist with renovation. They agreed that her residence at 3140 Fifth Line would be used as collateral although no mortgage would be registered. He says Ms. Andrade assured him that renovations would be completed within three years, the property would be sold, and he would be repaid.

[8] On the due date for repayment, February 3, 2020, Mr. Singh says that Ms. Andrade advised him that she could not repay the balance of both loans with interest which was \$735,196 inclusive of default penalties.

[9] Because the arrears exceeded the value of 3903 Bloor Street, he says Ms. Andrade agreed to transfer her other property, 3140 Fifth Line, to Mr. Singh. The parties attended before a lawyer, Mr. Wall, where they executed two declarations of trust on February 25, 2020: one with respect to 3140 Fifth Line and one with respect to 270 Scarlett, which Ms. Andrade was in the process of buying and could not afford to close on.

[10] Both Trust Agreements acknowledged that Mr. Singh was providing Ms. Andrade with funds to qualify for mortgage financing and that she held these properties in trust for Mr. Singh.

[11] The purchase of 270 Scarlett closed the same day, which was February 25, 2020, and Community Trust mortgage provided a mortgage that was registered on title.

[12] Mr. Singh says he gave Ms. Andrade \$303,000 which she deposited into her TD Bank accounts. He produced a copy of a TD Bank statement in Ms. Andrade's name showing the existence of \$303,000 in her two accounts (\*\*\*\*\*963 and \*\*\*\*\*737) as of June 17, 2021, to prove that he had given her this money, but he did not provide any proof of his having given her this money. Ms. Andrade ultimately provided evidence in 2025 that the bank records that Mr. Singh submitted had been doctored as they have a missing TD Bank logo, missing email address of TD Bank, the wrong bank format including transit #, account #, wrong spacing and other details. She was advised of this by an employee of the bank, who she identified as Ms. Sharma. She also submitted a detailed daily account activity report for \*\*\*\*\*963 which shows that during the entire year the highest amount she had in one of these accounts was \$12,149.61 on September 27, 2021. On June 17, 2021 there was only \$6,865. With respect to \*\*\*\*\*737, she submitted another detailed daily account activity report that the account was closed on April 6, 2020, which means it would be impossible to have the sums Mr. Singh claims in it.

[13] Mr. Singh also says he paid Ms. Andrade \$3,200 in cash per month for the mortgage, but again did not provide independent corroborative evidence of this.

[14] At some point he says he realized that the interest rate on the Community Trust mortgage was too high and not sustainable. As such, he began coordinating with a mortgage broker, Tina Sayed.

[15] He obtained powers of attorney in respect of both 3140 Fifth Line and 270 Scarlett because he did not trust Ms. Andrade. The 270 Scarlett Power of Attorney gave Mr. Singh the right to negotiate and complete all matters necessary for the execution of all documents concerning the refinancing and/or sale of 270 Scarlett.

[16] Then, he says he attended at a TD Branch where he participated in the negotiation of a mortgage on 270 Scarlett with a TD representative, Faye Ahmade ("Ms. Ahmade"). In his initial

affidavit material, he merely said that he discussed with the TD representative that he was the beneficial owner and also discussed the Trust Declarations.

***Ms. Andrade's Position***

[17] Ms. Andrade is self-represented and tells a very different story. She agrees they were friends but she says that Mr. Singh and his mother are fraud artists who duped her.

[18] Mr. Singh was a neighbor of hers living in the same condo building. She told Mr. Singh that she was in financial difficulty. He presented her with a plan to refinance her properties with a promise of a future lucrative business partnership.

[19] Mr. Singh told her that she would never be able to qualify for a mortgage to close 270 Scarlett. He told her he was a successful businessman and directed a process which she followed. This involved him placing money in her account temporarily for the purpose of showing the bank that she had substantial money and which would make it easier to obtain mortgage approval. She says he was in control of this process at all times.

[20] She says that she obtained the TD mortgage and then gave Mr. Singh money to begin renovations. She trusted him and was assured that he would be able to complete renovations to the Property. He then persuaded her to advance further funds to him.

[21] Her evidence was not entirely clear but she seems to say that moneys from the TD mortgage were taken by Mr. Singh. She alleges that he has \$579,000 of her money as a result of mortgage proceeds, loans, and amounts paid on her visa. There are indeed copies of significant bank drafts made out in the hundreds of thousands of dollars from mortgagees paid to Mr. Singh's mother in the record although the context is not entirely clear.

[22] She stays that after he secured her money, he became slow to respond and was evasive. He talked about securing investors but would not share their names. He put off meetings with her. The business he discussed never came to fruition and she realized she had been duped.

[23] She provided an expert forensic report attached to her affidavit that supports her position that her signatures on the Trust Declaration and the Special Power of Attorney and one loan agreement provided by Mr. Singh are forgeries. She also provided corroborative evidence to support the fact that she actually loaned Mr. Singh \$42,000, as evidenced by text messages between them and bank drafts.

**The Default and TD's Application**

[24] After Ms. Andrade defaulted on mortgage payments, she advised TD that there was a squatter at 270 Scarlett. TD then brought an Application to set aside any alleged tenancy that existed between the alleged squatter and Ms. Andrade as well as an order for immediate possession.

[25] The parties attended at CPC court on February 28, 2025. At that time, Mr. Singh attended in person with his mother who said that she was a tenant of 270 Scarlett. There has never been a lease produced. Mr. Singh said he was in the process of commencing proceedings against Ms. Andrade who was the registered owner. TD said that it did not name Mr. Singh at the time, because it did not know he lived there or had any interest.

[26] The motion ultimately proceeded on August 14, 2025.

[27] At the August 14, 2025 hearing, Mr. Singh provided sufficient evidence to raise a triable issue as to whether TD had actual notice of his claimed beneficial interest in the Property.

[28] Mr. Singh swore that he met with a TD representative where the TD mortgage was approved. The TD representative advised him that the mortgage approval was contingent on the following:

- TD, while acknowledging that the funds for mortgage payments were at all times being provided by Mr. Singh, said that it needed the funds to come from Ms. Andrade's TD account, as she is the Chargor of the mortgage and sole title holder of the property.
- TD, while aware of the Trust Declaration and his status as the beneficial owner of 270 Scarlett, could not have the mortgage assigned to him until the mortgage was approximately 8-12 months old due to their internal controls.
- TD instructed that the funds he previously forwarded to Ms. Andrade, in the amount of over \$303,000, had to remain in her TD account, as proof that she could carry the mortgage, at least until the mortgage could be assigned to him at a later date. I note that I did not yet have Ms. Andrade's evidence in respect of these accounts.

[29] In his affidavit Mr. Singh says that he "agreed to the above conditions in order for Ms. Andrade to qualify for the charge"

[30] TD maintained that it had no knowledge of Mr. Singh's interest.

[31] As well, Mr. Singh indicated that he wanted to be able to deal with the mortgage as the rightful owner in respect of paying the mortgage and other carrying costs. He raised no other issues as against TD at that time.

[32] I directed that there be a trial of an issue before me in respect of whether or not TD Bank had actual notice of Mr. Singh's claim to a beneficial interest when it advanced mortgage funds. The parties were required to exchange affidavits of documents on this narrow issue and were permitted to conduct further examinations related to this issue. Mr. Singh wanted to examine the TD representative he had dealt with, Ms. Ahmade, and others out of court.

[33] I also directed in the event that I found that TD did have actual notice of the claimed beneficial interest and Trust Agreement, the parties should provide submissions on the legal issue

of whether such actual knowledge disentitled TD to take possession and sell the property, particularly since Mr. Singh was not taking the position that the mortgage was obtained without his knowledge. Indeed, he said he participated in arranging it. There were no submissions on the applicable law at the August 14, 2024 hearing.

[34] As well, Mr. Singh agreed that he would start paying and keep the mortgage current until the mini trial was determined.

[35] My August 21, 2024 endorsement reads:

“On consent, beginning October 1, 2024, that Mr. Singh make ongoing payments to TD, that TD is authorized to advise Mr. Singh what the monthly payment required is, and that TD may accept that payment.” ...

[36] As well, because there is another proceeding between Ms. Andrade and Mr. Singh, I directed that they arrange a case conference with me before September 15, 2024, in respect of the proceeding between them to consider Mr. Singh’s request that a summary procedure be established to determine the issue of his beneficial claim to 270 Scarlett, as well as the validity of the written trust agreement filed before me. It seemed to me that Mr. Singh’s defence to TD’s Application was contingent to the outcome of the proceeding between him and Ms. Andrade.

[37] Mr. Singh did not seek to appeal the August 21, 2024 Order.

[38] On October 9, 2024 I held a case conference because Mr. Singh was unable to comply with the timetable due to health issues. I adjusted the timetable to permit him to file his affidavit of documents later than previously ordered. As well, he had not been making mortgage payments or paid common expenses and said this was because he did not know how to. My endorsement reads:

As well, there are apparently concerns about how Mr. Singh must pay the mortgage and common expenses.

He shall make the mortgage payments directly to counsel for TD Bank, Ms. Internicola, and the common expenses to the condominium corporation with proof of payment to counsel for TD Bank.

[39] At that time, I also provided direction on the mini trial and also wrote:

As I explained, all of this is contingent on Mr. Singh continuing to pay the mortgage.

[40] Sometime in November, TD advised that it would be prepared to allow Mr. Singh to reside in the premises, not pursue its Application at all, and permit the issues between Ms. Andrade and him to be litigated as long as he paid the mortgage and common expenses.

[41] However, Mr. Singh took the position at that time that he could not afford to pay the mortgage, without ever providing any evidence this is the case. While he made a few mortgage payments, it is undisputed that he has made no payments since December 2024.

[42] As part of the preparation for the hearing, Mr. Singh said that he obtained a letter from Mr. Victor Wall's file, the lawyer who acted jointly for him and Ms. Andrade. The letter is from Mr. Singh on May 13, 2021 to Mr. Wall and copied to Ms. Ahmade, which provided support for Mr. Singh's position.<sup>1</sup>

Faye further to our meeting between Tina, Sandra and I (Singh) January and February where we discuss both Declaration of Trust, sign on February 25, 2020 with lawyer Victor Wall where it is stated Sandra Andrade is a trustee of both properties and Sasenarine Singh is the beneficial owner of both properties. Faye, you are doing the mortgages with TD bank on both properties.

Faye here we are in May of 2021, you have advised the TD bank mortgage will close in June of 2021 on the condo unit 1201-270 Scarlett Road. The mortgage on 3140 Fifth Line West unit 17 will close in July of 2021.

Faye I need TD bank to understand the description and context of both Declaration of Trust and why both properties and money will remain in Sandra's name for the next 8 to 12 months.

Faye following our meeting few days later you and Tina had a telephone conversation with lawyer Victor Wall, Sandra and Singh was present in (Victor) office. Faye you have stated to all parties TD bank is fully aware of both Declaration of Trust and TD bank did not have any issues with the documents. Please see details of conversations below.

- a. Faye you will explain both Declaration of Trust on the condo and townhouse to TD bank as well as the money in (Sandra) bank accounts.
- b. Faye you have stated both TD Mortgage's will be done separately with different closing dates shortly apart and I should leave all of the details to you to allow you to do your job.

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<sup>1</sup> Mr. Wall had also acted for TD on the mortgages. TD objected to production of the letter on this basis as it appears the letter was in the mortgage file. I ordered that it was not privileged because if written by Mr. Singh, he could produce it himself. The fact that it was in the TD file did not make it privileged.

- c. Faye you have explain that after 8 to 12 months of mortgage payments (Sandra) and I (Singh) can visit TD bank. Sandra [Ms. Andrade] will do an assignment of both TD Bank's Mortgage's to I Singh.
- d. Sandra would need to prepare a bank draft for Singh money and should make it payable to Singh.
- e. Faye you have explain, TD bank will still need to qualify all parties when taking over the TD Bank Mortgage's. Faye you have stated you can assist me with the transition of the TD Bank mortgage's into my name.
- f. I Singh have make Faye aware Sandra put the Community Trust Company mortgage in legal's due to the 8-plus-months of mortgage arrears, and the same with RBC mortgage 8 plus months arrears.
- g. Therefore the properties and mortgages will remain under Sandra as discussed for the time period laid out. The time period was confirmed by Faye and Tina in our meetings.
- h. Faye both you and Tina asking me to payoff TD-credit card, TD-line and pay down other credit debts in order to get both TD bank mortgages approved. I Singh agree to do as ask by Faye and Tina.
- i. Faye both you and Tina ask me to provide Sandra with additional \$40,000 outside of the \$36,000 I have transfer already to help Sandra qualify for TD Bank mortgages. I Singh agree to do as ask by Faye and Tina.
- j. I do not want to incur any further legal action with Community Trust Company or have RBC mortgage go into legal as well. I Singh agree to do as ask by Faye and Tina due to the fact I just finish paying out legal fees under \$14,000.
- k. Faye and Tina please understand I already have a significant amount of money over \$100,000 in Sandra name.
- l. I am very worried given the fact that Sandra put the condo in legal's and is putting the Mississauga property in the same situation. As well the theft of both properties mortgage money for the monthly payments.
- m. However, I will place trust in you and Faye and Tina as both of you have assured me that this is the only way to payout the Community Trust Company mortgage, without going back into legal's with them. And the RBC mortgage will be paid out shortly after.
- n. Faye I am providing you with a copy of both Declaration of Trust, should be shared with TD bank. Faye should TD have any questions please have the bank reach out to the following parties (Singh, Sandra, and lawyer Victor Wall) directly. We are here to answer any questions or concerns the TD bank may have.

- o. Faye if you disagree with the facts and description of our conversation in my letter, please do not hesitate to send me a copy of my letter along with what you disagree with.
- p. The parties of this letter if you disagree with the facts and description of my statement of the conversations, please do not hesitate to send me a copy of my letter along with you disagree with.

[43] I note here that the May 13, 2021 letter from Mr. Singh to Ms. Ahmade says that it includes the Declaration of Trust.

[44] After Mr. Singh produced this letter, on December 5, 2024, TD took the position that Ms. Ahmade was not available for any kind of examination, and it stipulated that it would argue the motion as if it had actual notice of Mr. Singh's claim that he held a beneficial interest in the property. TD took the position that this obviated the need for Ms. Ahmade or any TD witness from attending for examination and that no mini trial was necessary.

[45] Mr. Singh's lawyer then asserted new defences/arguments in respect of TD's Application that had never been raised before and were not to be the subject of the mini trial.

[46] This included his position that Mr. Singh had given Ms. Andrade funds for the payment of the mortgage, that these funds were in Ms. Andrade's account, that they were impressed with a trust, and that TD improperly permitted her to withdraw these funds or did not stop her from doing so, such that it had committed a knowing assistance to a breach of trust. He also claimed that he has an equitable mortgage in priority to TD's claim and/or that TD's mortgage is subordinated to his claimed beneficial interest by virtue of the doctrine of equitable subordination.

[47] Ms. Ahmade was ultimately produced for discovery and says she never received the May 13, 2021 letter. This letter is also not in TD's files. It is also odd that Mr. Singh did not have this letter in his own files or even reference it or the substantial facts alleged therein in his original materials or that Mr. Wall did not reference this letter in his initial affidavit filed.

[48] The parties arranged a further case conference with me to address a variety of issues which was held on April 14 2025. At that time, TD advised that Mr. Singh had failed to pay the mortgage which was an order that he consented to previously.

[49] My endorsement dated April 14, 2025 reads:

There is an issue as to the payment of the mortgage and common expenses. Mr. Singh takes the position that the property is his but he refuses to pay these. He has been living rent free for almost two years. He has not proven his claim. He said he will not pay because TD has his money. This is not yet proven. If he is ultimately successful and TD owes him money, then he will have a claim to any amount that he has paid to TD which it owes him. I say as well that his opposition before me has nothing to do with his ability to pay them. His materials indicate that he is a businessman and thus far have not set out any inability to pay

the mortgage. In fact, today he admitted that he owns another unit in the building which suggests to me that he has assets.

Therefore, he will pay all back mortgage payments and bring them current as well as common expenses and then pay them on an ongoing basis.

I reiterate that this is the end of the road. The motion will proceed on June 3.

[50] Mr. Singh did not seek to appeal this Order.

[51] On April 17, 2025 TD provided Mr. Singh's counsel with an arrears statement as of April 16, 2025 that showed that the amount outstanding for the mortgage and condominium fees was \$92,253.43.

[52] On five separate occasions, TD followed up but Mr. Singh did not pay the arrears.

[53] Then Mr. Singh provided medical documentation that said that he could not proceed with the case for health reasons and the hearing had to be adjourned again because his discovery could not be completed and he could not attend any proceeding before June 10, 2025.

[54] The parties attended a case conference on July 24, 2025 at which I directed that the final discovery would take place on August 1, 2025 on consent, all rule 39 examinations would be completed by the end of September and set out additional dates for completion of steps. TD again pointed out that Mr. Singh had not paid the mortgage and at this case conference, Mr. Singh asserted that he could not afford to pay it, but again without any evidence.

[55] I wrote as follows:

My endorsement of April 2025 directed that Mr. Singh keep the mortgage current and pay all back mortgage amounts and common expenses. He has failed to do this notwithstanding ongoing requests from TD.

He cannot insist that he is the beneficial owner and refuse to make mortgage payments.

He has made the submission that he cannot afford to but there has never been any evidence of this.

He shall pay all back mortgage payments and common expenses as of September 15, 2025 and then keep those current thereafter. To be clear, TD is going to provide Mr. Singh with a mortgage statement that sets out all arrears and he shall pay these by September 15, 2025 together with all outstanding common expenses.

If he fails to do this, then the parties shall advise me, and I will arrange for the parties to make submissions on the appropriate outcome. If that is required, then the parties will

provide written submissions by September 22, 2025 and then I will hear from them orally on October 1, 2025 at 10:00 am.

Assuming Mr. Singh pays the arrears, the case conference in October will address the issues that will be in play at the December hearing as well as the witnesses.

[56] Mr. Singh did not seek to appeal this order.

[57] Mr. Singh also did not make any payments.

[58] The parties appeared before me on October 1, 2025 to argue what the appropriate outcome should be.

[59] TD argued that it should be granted an order for possession on the basis of its initial Application. Further, because of Mr. Singh's breach of the court orders requiring him to pay the mortgage, this court should exercise its discretion pursuant to r. 60.12 to preclude him from relying on any evidence which pertains to his alleged beneficial interest in 270 Scarlett Road or the trust agreement.

[60] Mr. Singh argued that the matter should be adjourned yet again for his health reasons.

[61] I note that he had counsel present who made submissions and that this is the same counsel he has had for over a year. As well, Mr. Singh himself was present at the hearing and stopped the hearing several times so that he could speak to his lawyer and give him instructions.

**Issue 1: Should the TD Bank Application be granted in the absence of Mr. Singh's evidence filed in respect of the mini trial because he has failed to comply with court orders related to his payment of the mortgage and ongoing expenses?**

[62] Rule 60.12 provides that where a party fails to comply with an interlocutory order, the court may in addition to any other sanction, stay the party's proceeding, dismiss the party's proceeding, or strike out a parties' defence or make such other order as is just.

[63] Court orders are meant to be obeyed. In this case, it was Mr. Singh who initially agreed to continue to pay the mortgage indicating that as the beneficial owner, he wanted to be able to deal with it. He has failed to do so for almost ten months now.

[64] In considering the relief to be granted under r. 60.12 the court should consider whether the breaches are "intentional, contumelious or without reasonable excuse or otherwise constitute an abuse of the court's process.": *Provato v. Purgantin*, 2003 CarswellOnt 2255 at para 22.

[65] Courts have exercised their discretion to strike a defence: *Cheng v. Li* (2005), 138 A.C.W.S. (3d) 443 *Kohlsmith v. Sterline Mutuals Inc.*, 2014 ONSC 4696 at paras 49, 51 and 56; *Madonia v. Mulder* (2002), 111 A.C.W.S. (3d) 911 at paras 7-8. A finding of prejudice need not be made: *Vacca v. Banks*, 2005 CanLII 1054 (Ont.Div.Ct.) at p. 5.

[66] In this case, part of the basis for holding the mini trial was to address Mr. Singh's claim to a beneficial interest because he said he wanted to be able to deal with the mortgage. He consented to paying the mortgage in the meantime and there were a number of follow up orders.

[67] He initially said he could pay it but then began baldly asserting he could not and has never provided any evidence to support that claim.

[68] Rather, what he has done is raise shifting and new arguments at each turn.

[69] His initial position argued at the August 14, 2024 hearing was that he was the beneficial owner and that TD's application must fail because it had not served him with a Notice of Sale. After I scheduled the mini trial, TD served him with a Notice of Sale which eliminated that argument.

[70] Then, in the context of the mini trial which was to deal solely with the issue of whether he had a beneficial interest, he raised new arguments about TD allegedly providing knowing assistance to a breach of trust that he had an equitable mortgage and/or that TD's mortgage is subordinated to his claimed beneficial interest by the doctrine of equitable subordination.

[71] Today, he raised yet again new arguments never raised including that TD acted in bad faith and/or conducted itself fraudulently. He also produced on September 30, 2025, just prior to this hearing, purported text messages between Ms. Andrade and him as well as call logs purporting to show conversations with Ms. Ahmade, never produced before.

[72] As noted, he has not brought a cross application or a motion for an injunction to restrain TD from proceeding with its application. He has never brought any proceeding against TD at all.

[73] He has not pursued his proceeding with Ms. Andrade which I had offered to address at a case conference. He never scheduled that case conference.

[74] I am satisfied that TD should be permitted to proceed with its application for possession without reference to the evidence that he has filed in respect of the mini trial.

[75] While Mr. Singh has provided evidence of his health issues, this is not relevant to his failure to pay the mortgage. There is no evidence connecting his current health issues to his failure to pay the mortgage.

[76] He raises the argument that some of the orders requiring him to pay the mortgage were made at case conferences, and that he did not receive notice that orders would be sought in that regard.

[77] The fact is that the first order was made on consent at the first hearing on August 14, 2024. All other orders were ancillary to this one which remained in force. I reject his argument in this regard.

[78] I have addressed below all of the arguments that Mr. Singh has raised throughout this proceeding in any event.

[79] None of these arguments should preclude TD Bank from exercising its rights under the mortgage.

**Issue 2: If TD Bank had actual notice of Mr. Singh's claim that he is the beneficial owner of 270 Scarlett, would it prevent TD Bank from obtaining an order for possession?**

[80] Even if Mr. Singh could establish that he was the beneficial owner, it would still not preclude TD from proceeding with its application because Mr. Singh, as the beneficial owner, would be required to pay the mortgage which he has failed to do.

[81] Section 1 of the *Mortgages Act* R.S.O. 1990, c. M.40 (the "*Mortgages Act*") provides as follows:

"mortgage" includes any charge on any property for securing money or money's worth; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person deriving title under the original mortgagor or entitled mortgaged property; and "mortgagee" includes any person deriving title under the original mortgagee.

[82] Even if Mr. Singh ultimately proves that Ms. Andrade holds the property in trust for him, and that the Declarations of Trust are not forgeries as she alleges, he would have to service the mortgage because his title would be derived from Ms. Andrade who took out the mortgage. I add

that Mr. Singh says that he negotiated the TD mortgage which funds went into the Property; Mr. Singh was aware at all times that TD would obtain a mortgage on the property.

[83] The Charge of the Property also incorporates Standard Charge Terms No. 201814 which sets out the rights and obligations of any mortgagor. Pursuant to section 5.01 of the Standard Charge Terms, TD has broad discretion and can take possession of the Property upon default, as well as sell the Property upon written notice as provided by the *Mortgages Act*.

[84] Pursuant to section 20 of the *Mortgages Act*, TD is entitled to recover personal judgment against the "original mortgagor" (i.e., Ms. Andrade) or any "grantee" to whom the equity of redemption has been conveyed or transferred (i.e., Mr. Singh). In other words, pursuant to the Charge, Mr. Singh owes to TD the same obligations as Ms. Andrade does. TD is entitled to enforce its mortgage against Mr. Singh.

[85] A mortgagor's right to possession is conditional on the mortgage being in good standing. If the mortgagor commits any act of default, the mortgagee, in accordance with section 32 of the *Mortgages Act*, can proceed with a notice exercising the power of sale following fifteen days default thereunder. Even if Mr. Singh is the beneficial owner and TD had knowledge of that fact (which it denies), it would only impact notice TD should have given him in the enforcement proceedings. Such a Notice of Sale was appropriately delivered by TD to Mr. Singh on August 16, 2024.

[86] Furthermore, it is well established that in the absence of exceptional circumstances such as fraud or bad faith or both, in general, a court does not have jurisdiction to restrain a mortgagee from enforcing its rights absent payment of a mortgage into court: *Sanders (Litigation guardian of) v. Jain*, [2023] O.J. No. 162. Notably, *Sanders (Litigation guardian of) v. Jain* was a case where a mortgagor had brought a motion for an injunction which Mr. Singh has not done here. That case involved unconscionable conduct by a mortgagee who allegedly induced a mortgagor into the mortgage by fraud where the mortgagor was effectively taken advantage of because of a deteriorating mental state. The court applied the three-part test for an injunction and found a prima facie case of fraud citing Ms. Sanders' lack of capacity, evidenced by medical opinions diagnosing her with Alzheimer's disease and diminished judgment.

[87] These are not the facts here. Indeed, I referred the parties to this very case in January 2025 when I asked a series of questions and Mr. Singh has not brought any motion for an interlocutory injunction even being aware of this case. Had he done so, he would have had to satisfy the test on irreparable harm and the balance of convenience. (This is also another example of Mr. Singh's shifting arguments. Since I referred the parties to this case, he has alleged bad faith and fraud.)

[88] There is no suggestion of mental incapacity, no suggestion of coercion into the mortgage, no suggestion that Mr. Singh did not understand that a mortgage was being entered into, and no evidence of irreparable harm. Finally, in *Sanders (Litigation guardian of) v. Jain*, the court emphasized that the balance of convenience will generally favour the mortgagee where the mortgagor acknowledges the debt and arrears, acknowledges the validity and makes no payments

for extended time. Here, there has been no suggestion that the money was not advanced or that the amount stated to be outstanding is incorrect. See also *Jegasundaram v. Vadivale*, 2021 ONSC 4505.

[89] While I did have some concern about TD's initial failure to produce Ms. Ahmade for discovery, and expressed as much in an endorsement, they ultimately did produce her. This initial failure to produce her does not rise to the level of bad faith or constitute the kind of exceptional circumstance that should preclude a mortgagee from exercising its rights for many reasons including the fact that this has nothing to do with the actual granting of the mortgage and at most is litigation conduct. It appears to me, with the benefit of hindsight, that TD's position was that even if it had actual notice, it did not change anything and so, as it submitted, there was no need for the mini trial or Ms. Ahmade's evidence if it simply stipulated to that fact. This was simply its realization that the legal issue favoured it without the mini trial.

[90] This case is like *Bank of Montreal v. Silvera*, 2009 CanLII 3780. In that decision, the legal and beneficial owner of a property defaulted on their mortgage payments and subsequently transferred the property to a third party, who became the registered owner on title. Despite this transfer, the original owner retained beneficial ownership of the property. The court held that the mortgagee was entitled to immediate vacant possession of the property and granted a writ of possession. Similarly, even if Mr. Singh is found to be the beneficial owner of the Property, he remains obligated to make mortgage payments. If he defaults on this obligation, TD Bank may seek a court order for immediate vacant possession of the Property.

[91] All of Mr. Singh's claims against TD are contingent on the outcome of his claims against Ms. Andrade which are complicated and far from being resolvable. In the meantime, Mr. Singh and/or his mother expect to be able to continue to reside in the property without paying the mortgage or any of the carrying costs. He also owns another unit in the building as set out above.

[92] As well, he provides no evidence as to why he cannot keep the mortgage current. In one of his affidavits, he says that he is a private lender and home renovator and contractor.

**Issue 3: Do the torts as against TD Bank that have been raised constitute a basis for preventing TD Bank from exercising its rights?**

[93] Mr. Singh's claim that TD participated in a knowing assistance to breach of trust is based upon his assertion that he gave Ms. Andrade certain funds and that TD was aware of this. As noted, he has produced Declarations of Trust that are signed by Ms. Andrade and which state that Ms. Andrade assumed the responsibility to use the monies placed in her account to pay the mortgage and common fees and other expenses and that she was not to use any of his money for her personal use. He relies on *Carriere Industrial Supply Limited v. Toronto-Dominion Bank*, 2015 ONCA 852 at para 33.

[94] He relies on the May 12, 2021 letter written by him and copied to Ms. Ahmade, which references some of this money and which also attached the Declarations of Trust. I note again that

it is curious that neither Mr. Singh or Mr. Wall mentioned the May 12, 2021 letter in their initial affidavits and this theory was not the basis for Mr. Singh's opposition to TD's application initially. Mr. Wall did not even mention Ms. Ahmadi in his first affidavit. In fact, there was not even a complaint raised against TD in these initial affidavits apart from the fact that it knew about the trust between Ms. Andrade and Mr. Singh. He actually alleged that he relied on a mortgage broker's advice not the advice of anyone from TD.

[95] As noted, Ms. Andrade says that the Declarations of Trust are forgeries and has now provided evidence that shows that the TD accounts that he referenced never had this money in it and TD denies that it received this letter.

[96] If Mr. Singh is successful against Ms. Andrade and demonstrates that she improperly withdrew funds that were impressed with a trust and that were to be used to pay the mortgage and if he establishes that TD wrongfully participated in this, then he will have a claim for damages against TD. But has to bring a proceeding first and prove his case.

[97] He provided no caselaw that showed that the existence of a potential tort against a bank, not yet proven, and where a proceeding has not even been commenced, is the basis to prevent a mortgagee from exercising its rights under a mortgage.

**Issue 4: Is there a triable issue in respect of Mr. Singh's claim to an equitable mortgage that is in priority to TD Bank's claim?**

[98] With respect to his claims that he has an equitable mortgage in priority to TD's mortgage, he has not raised a triable issue.

[99] As set out in *Elias Markets Ltd.Re (2006)*, 274 D.L.R. (4<sup>th</sup>) 166 (ONCA), an equitable mortgage may exist where there is a common intention of a mortgagor and mortgagee to secure property for either a past debt or future advances, where that common intention may not be strictly enforceable at common law. It is essentially founded on valuable consideration that shows the intention of the parties to create a security.

[100] Mr. Singh provided no evidence that there was any intention to create a mortgage in his favour, only argument. Further, Ms. Andrade implicitly denies any such common intention with respect to 270 Scarlett since she says he has defrauded her.

[101] In fact, the evidence regarding any such common intention is to the contrary as Mr. Singh permitted TD to register a mortgage. He did not assert any right to any mortgage at that time in the May 12, 2021 letter. He was happy to receive the TD financing and implicitly accepted the priority of its mortgage as a result even if he could establish any right to an equitable mortgage.

[102] In any event, even if he could establish this priority, the TD mortgage would still be in default and TD Bank would still be entitled to enforce its rights as a second mortgagee.

**Issue 5: Is there a triable issue in respect of Mr. Singh's claim that TD Bank's mortgage is subordinated to his claimed beneficial interest by virtue of equitable subordination?**

[103] Mr. Singh failed to establish a triable issue in this regard.

[104] Mr. Singh has cited only two cases which discuss the concept, both of which occurred in the bankruptcy context and which are not analogous: *Harbert Distressed Investment Fund, L.P. v. General Chemical Canada Ltd.*, 22 CBR (5th) 298 (ONSC) at 1191-92. *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at 11. In these cases, the doctrine was discussed to apply as between competing creditors, not as between the debtor and the creditor.

[105] It is not clear that this doctrine exists in Canada outside of the *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3.

[106] In any event, he provided little argument or analysis on the issue.

**Issue 6: Has TD Bank satisfied the technical requirements to exercise a power of sale?**

[107] A mortgagee exercising a power of sale must comply strictly with the statutory requirements: *1173928 Ontario Inc. v. 1463096 Ontario*, 2018 ONCA 669 at para 63. However, as explained by the court, this is “not a formalistic requirement but a substantive one; a notice of sale should not be held inoperative because of minor irregularities, so long as it meets the purpose for which it is required.”: para 63.

[108] If TD was aware that Mr. Singh had a beneficial interest, it was required to serve Mr. Singh with the Notice of Power of Sale pursuant to s. 31 of the *Mortgages Act*.

[109] TD delivered two Notices of Power of Sale with the Notice dated August 14, 2024, being specifically addressed to him and delivered by registered mail. Although Mr. Singh denies receiving it, there are registered mail receipts and he has participated throughout in this proceeding. Pursuant to ss 33 and 34 of the *Mortgages Act*, the lender is not required to provide proof of delivery, but that it was sent by registered mail which TD has done.

[110] In any event, Mr. Singh has actually received the Notices of Power of Sale since he has participated in these proceedings and the Notices of Power of Sale have been part of the record.

[111] Therefore, I am satisfied that he has received adequate notice of the Power of Sale and that the time limits set out in s. 26 of the *Mortgages Act* have been exceeded.

[112] Additionally, r. 64.04 provides that “[i]n an action for sale of a mortgaged property, all persons interested in the equity of redemption, other than subsequent encumbrancers, shall be named as defendants in the statement of claim.”

[113] TD says that r. 64.04 relates to judicial sales and not power of sale proceedings which can proceed by way of application.

[114] To the extent there is an argument that TD has not strictly complied with r. 64.04 because TD did not formally bring this Application against Mr. Singh, but against Ms. Andrade and all occupants of 270 Scarlett, I note that in Mr. Singh's written factum dated August 8, 2024, he requested an Order that Mr. Singh be added as a party to this proceeding.

[115] Defeating TD's application in circumstances where Mr. Singh was aware of this proceeding, participated, and requested being joined as a party, would be highly formalistic and not in accordance with the underlying objects of the *Mortgages Act* or *1173928 Ontario Inc.* This is particularly so since the point of such notice is to allow the party with interest in the equity of redemption to avail itself of remedies including satisfying the mortgage. Mr. Singh has no intention to either pay the mortgage out or even keep it current.

[116] This is not similar to *Bank of Montreal v. Silvera*, 2009 ONCA 405 because in that case, the mortgagee had failed to sue or provide notice to the legal title holder who had not participated at all and had also provided a copy of the standard charge terms. All parties have participated here.

[117] I am satisfied in all the circumstances that even though Mr. Singh was not formally a Respondent at the time this Application was issued, he was aware of it as well as both Notice of Power of Sale such that there has been substantive compliance with the provisions of the *Mortgages Act* and the *Rules of Civil Procedure*.

#### **Issue 7: Is TD Bank entitled to a writ of possession?**

[118] Pursuant to r. 60.10, the court may grant a writ of possession at any time including at the time of the order for possession.

[119] The court must be satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order is being made to enable them to apply to the court for relief. *Hewitson v. Inira Properties Inc. et al*, 2024 ONSC 2764.

[120] Here the TD Bank provided extensive evidence of its occupancy searches and attempts to provide notice to the occupants of 270 Scarlett. Mr. Singh and his mother, the only two residents of which this court is aware, have each attended in court.

[121] Therefore, all occupants have been advised and TD Bank has not heard from anyone else.

[122] Therefore, I grant the writ of possession.

#### **Conclusion**

[123] I reject the argument that Mr. Singh's health means that TD Bank has to indefinitely wait for payment. He has periodically raised health concerns haphazardly.

[124] There is a note from Dr. Chan, his family physician, dated May 26, 2025 indicating that he has uncontrolled hypertension due to stress and could not participate in court proceedings. There

is a note from Dr. Chan that says he attended at Humber River Hospital Emergency on August 14, 18, and 19 for hypertension, chest pain, headache and palpitations. He was given medication to control his blood pressure and referred to a cardiologist. He was seen again and on August 12, 2025, and his blood pressure medication was increased. Dr. Chan reviewed his medical history and referenced a visit on February 15, 2025 where he told Dr. Chan about this proceeding and the stress it causes him. Dr. Chan indicated it was reasonable to postpone the proceedings for one to two months. This is the full extent of the medical notes. He has not produced any note from the cardiologist to whom he was referred. And I note that the October 1 hearing was about two months after Dr. Chan's note.

[125] This is the sum total of the medical evidence he has provided and again, he has not sought any injunction on the basis of his health issue he could have done over the last year.

[126] If what Mr. Singh says about his dealings with Ms. Andrade are true, I have great empathy for him. I also have empathy for him as a result of his health issues.

[127] However, he cannot expect that he should be able to continue to live in the property without paying the mortgage or expenses, while he litigates his claim against Ms. Andrade, upon which any claims he now asserts against TD are contingent, without any diligence.

[128] I order as follows:

- a. TD has a right to possession of 270 Scarlett.
- b. Mr. Singh must vacate 270 Scarlett within 30 days. I am giving him this time because of his health issues.
- c. I grant a writ of possession but stay it for 30 days.
- d. When TD exercises its power of sale, it shall advise Mr. Singh and he may bring a motion for the payment into court of the amounts that he claims were improperly taken by Ms. Andrade.

[129] The parties may make cost submissions as follows: Mr. Singh within 10 days and TD within 10 days thereafter.

[130] I again direct that Mr. Singh and Ms. Andrade arrange a case conference for the purpose of timetabling their proceeding.

Papageorgiou J.

**Released:** October 31, 2025

**CITATION:** The Toronto-Dominion Bank v. Andrade et al., 2025 ONSC 6140  
**COURT FILE NO.:** CV-24-714240  
**DATE:** 20251031

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

TORONTO-DOMINION BANK

Applicant

– and –

SANDRA ANDRADE and all other Tenants/Occupants  
of the premises municipally known as 270 SCARLETT  
ROAD, UNIT 1201, TORONTO, ONTARIO, M6N 4X7

Respondent

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**REASONS FOR JUDGMENT**

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Papageorgiou J.

**Released:** October 31, 2025