

COURT OF APPEAL FOR ONTARIO

CITATION: 7084421 Canada Ltd. v. Savary, 2025 ONCA 808

DATE: 20251124

DOCKET: COA-25-CV-0276

Gillese, Pepall and Zarnett JJ.A.

BETWEEN

7084421 Canada Ltd.

Plaintiff (Respondent)

and

Cory Shane Savary

Defendant (Appellant)

Cory Shane Savary, acting in person

Gerald Anthony, acting in person for the respondent

Heard: November 20, 2025

On appeal from the judgment of Justice Mary E. Vallee of the Superior Court of Justice dated January 6, 2025, with reasons reported at 2025 ONSC 102

REASONS FOR DECISION

[1] After hearing the appellant’s oral argument we advised that the appeal was dismissed, with reasons to follow. These are those reasons.

[2] The respondent, 7084421 Canada Ltd., sued the appellant, Cory Shane Savary, for payment of the amount it alleged was due under a loan. After a five-

day trial, the trial judge ruled against the appellant on the issues that were in dispute. She accepted that the respondent had advanced the sums that it claimed. She rejected the appellant's defences including: (i) that he had not authorized registration of mortgages securing the loan, that the authorizations were forged, and that the mortgages were fraudulent; (ii) that the respondent had failed to grant partial discharges as required; (iii) that the respondent had failed to provide a statement of amounts owing required by s. 22(2) of the *Mortgages Act*, R.S.O. 1990, c. M.40; (iv) that lands secured by the mortgages were unlawfully sold; and (v) that the respondent had unlawfully sold the appellant's chattels. The trial judge granted judgment requiring the appellant to pay \$520,096.35.

[3] On appeal, the appellant asks us to revisit the trial judge's rulings. He also argues that the respondent lacked the right to proceed with an action for payment having sold some of the mortgaged properties after the action was commenced. He seeks not only a setting aside of the judgment but certain additional remedies such as restoring ownership to him of the mortgaged properties that were sold.<sup>1</sup>

[4] The key findings that underpin the trial judge's decision were factual. She accepted evidence that the required funds had been advanced, relying on the appellant's signature on statements of adjustments for various mortgage advances. She found that the mortgages and the realizations on them were not

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<sup>1</sup> Even if there were merit to the argument of improper sale this relief would be unavailable because the purchasers of the properties are not before the court.

unlawful because: (i) she rejected the appellant's evidence that his signature had been forged on documents authorizing the registration of mortgages and (ii) she rejected the appellant's contention that the respondent had acted fraudulently by registering mortgages against four properties, noting that it was not seeking additional recovery or an inflated amount because there was more than one mortgage representing a single loan. The trial judge accepted evidence that at least two discharge statements, as contemplated by the *Mortgages Act*, had been provided to the appellant. She identified the terms of the parties' arrangement that governed partial discharges and interpreted it. Although the appellant strenuously disagrees with these findings it is not the role of this court to retry the case. Further and in any event, it is not possible for the court to assess those factual findings because the appellant failed to provide the trial transcripts, as required by the rules. Finally, and again in any event, the appellant has not identified any palpable and overriding error that would justify appellate interference with these findings.

[5] The trial judge refused to give effect to the appellant's claim that his chattels had been sold. She noted that the appellant had an opportunity to remove any chattels before the properties were sold, the appellant did not make a counterclaim for the chattels, nor did he lead evidence of their value. Again, there is no basis for this court to interfere with this conclusion.

[6] The appellant's contention that the respondent could not proceed with the action for payment because, after the action was commenced, it took steps to sell mortgaged properties is legally incorrect. This argument confuses the effect of a foreclosure, which constitutes an election by the mortgagee to forego payment of the debt,<sup>2</sup> with the exercise of a power of sale, which involves no such election and preserves the mortgagee's right to claim for any deficiency still owing after accounting for the proceeds of the sale.<sup>3</sup>

[7] There is no evidence here of a foreclosure on any of the mortgaged properties. The trial judge found that on March 8, 2017, the respondent sent a Notice of Sale to the appellant. The action was commenced on June 14, 2017, after the time for payment in the notice had lapsed and therefore in compliance with s. 42(1) of the *Mortgages Act*. As noted above, the trial judge found that the mortgages were properly authorized, were not forged or fraudulent, and therefore the respondent was entitled to proceed with a sale. She also found that the respondent accounted for the proceeds of sale in the calculation of the amount owing by the appellant.

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<sup>2</sup> See e.g., *Rushton v. Industrial Development Bank*, [1973] S.C.R. 552.

<sup>3</sup> See e.g., *Central Trust Co. v. Kent et al.* (1987), 58 O.R. (2d) 690 (H.C.) at pp. 3-4; Gowling Lafleur Henderson, *Marriott and Dunn: Practice in Mortgage Remedies in Ontario*, 5th ed. (Toronto: Thomson Reuters Canada Ltd.) (loose-leaf updated November 2025, release 6), at § 38:1.

[8] The appeal is therefore dismissed, without costs, as the respondent was not represented by counsel on the appeal and did not identify any disbursements it incurred in responding to the appeal.

“E.E Gillese J.A.”

“S.E. Pepall J.A”

“B. Zarnett J.A”