

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Prabhjot Kaur, Plaintiff

AND

Prabpreet Kaur Dhaliwal and Daranbir Singh, Defendants

BEFORE: **Regional Senior Justice M.L. Edwards**

COUNSEL: M. Myers and A. Etkin, for the Plaintiff

L. Lam, for the Defendants

HEARD: November 28, 2025

REASONS

- [1] This matter initially came before me on November 25, 2025 by way of a request from the defendants for an urgent motion seeking a stay of eviction from their home. I directed that the matter be heard as an urgent matter but that it be heard on notice.
- [2] The matter came before me on November 28, 2025. Counsel for the plaintiff had uploaded responding materials opposing the stay motion. After hearing oral argument and providing time to counsel for the defendants to provide additional caselaw, I dismissed the motion with reasons to follow. These are those reasons.
- [3] On February 2, 2024 the defendant Singh advanced \$340,000 to the defendant Dhaliwal. The loan was secured by a mortgage in favour of the plaintiff. The defendant Singh guaranteed the mortgage. The mortgage was secured against two properties. The property which is the subject of the eviction notice is the defendant's residence at 10 Stewart Crescent, Thornton, Ontario (the residence). The terms of the mortgage required monthly interest payments of \$3,400. The full amount of the mortgage came due and payable on February 2, 2025. From the date when the mortgage funds were advanced to the defendants no interest payments were made.
- [4] As a result of the defendants' default with respect to the terms of payment set forth in the mortgage, a Statement of Claim was issued. The Statement of Claim was served on June 28, 2024. The affidavit of service states:
2. On June 28th, 2024 at 7:20 pm, I served **PRAHBPREET KAUR DHALI WAL** with the Statement of Claim by leaving a copy of the document in a sealed envelope with **an elderly lady who refused to**

provide her name, but identified herself as the mother of the Defendant KARANBIR SINGH and who appeared to be an adult member of the same household as the Defendant at 10 Stewart Cres Thornton, ON and bind and by mailing a copy of the document in a sealed envelope addressed to the Defendant to the same address on June 29th, 2024.

[5] The defendants maintain that they were never served personally with the Statement of Claim nor were they served personally with the Notice of Sale, the Notice to Vacate, or any other court documents in this proceeding. The defendant Dhaliwal in the affidavit that was reviewed by me as the triage judge indicated that she had no knowledge of any documents seeking to enforce the mortgage prior to November 2025. The sworn evidence of the defendant Dhaliwal in that regard is simply lacking in credibility. The mother of the defendant Dhaliwal who accepted service is approximately 70 years old.

[6] The defendant Dhaliwal's assertion that she knew nothing about the proceedings until November 2025 is contradicted by the fact that she and the defendant Singh had entered into a Forbearance and Standstill Agreement with the plaintiff on August 25, 2025 (the Forbearance Agreement). When this was brought to the attention of counsel for the plaintiff, the defendant Dhaliwal filed a supplementary affidavit affirmed on November 27, 2025, i.e., the day prior to this court hearing the motion. In her supplementary affidavit she corrected "an error in my affidavit" and stated that in fact the correct date when she first became aware of the litigation was August 25, 2025.

[7] Counsel for the defendants argues that a stay of the eviction order should be granted because the defendants were never served with the Statement of Claim. In fact, the Statement of Claim as evidenced by the affidavit of service reproduced above was served in accordance with Rule 16.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, which provides:

16.01 (1) An originating process shall be served personally as provided in rule 16.02 **or by an alternative to personal service as provided in rule 16.03.** [emphasis added]

[8] Rule 16.03 provides for a number of alternative means of service. Specifically, rule 16.03 (5) provides:

16.03 (5) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

(a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and

(b) on the same day or the following date mailing another copy of the document to the person at the place of residence, and service in this matter is effective on the fifth day out of the document is mailed.

- [9] The Statement of Claim in this case was served in accordance with the *Rules of Civil Procedure*. The Statement of Claim was served on the mother of the defendant Dhaliwal who is an adult. The Statement of Claim was then mailed in a sealed envelop to the property address. For whatever reason the defendants chose to take no action to defend the claim.
- [10] When pressed in argument, I asked counsel for the defendants what possible defence the defendants might have to the plaintiff's claim. Counsel for the defendants was entirely candid that the mortgage was in default and interest payments, with the exception of the monies paid pursuant to the Forbearance Agreement, remained outstanding. No possible defence was asserted in argument before this court.
- [11] Plaintiff's counsel argues that the rules of natural justice have been infringed as a result of her client's not having been served with the Statement of Claim. I disagree. The defendants were properly served and they have asserted no defence on the merits.
- [12] The defendants seek a stay of the eviction order. The test on a stay motion is well known and set forth in *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. The test requires the court to consider three factors as follows:
- a) whether there is a serious issue to be tried,
 - b) whether the moving party will suffer irreparable harm, and
 - c) an assessment of the balance of convenience between the parties.
- [13] The application of the test in *RJR - MacDonald* was recently reviewed by the Supreme Court of Canada in *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, where at para 25 the Supreme Court makes clear that the test when granting an injunction is the determination of what is just and equitable in the circumstances of the case.
- [14] As it relates to the first issue , whether there is a serious issue to be tried, there is no evidence of any defence to the defendants' default as it relates to the nonpayment of the interest outstanding on the principal amount of the mortgage which came due in February 2025. The only apparent reason why the defendants have defaulted on their obligations to the plaintiff relates to the difficult economic times that they find themselves in. While these economic difficulties are clearly very troubling to the defendants, they do not provide a legal excuse that would allow for this court to exercise its discretion to grant a stay of the eviction.
- [15] As it relates to the issue of irreparable harm, the Court of Appeal in two recent decisions *National Bank of Canada v. Guibord*, 2021 ONCA 864, and *KLN Holdings Inc. v. Grant*, 2023 ONCA 193 has made it clear that while a forcible eviction from one's matrimonial home may cause harm it is not irreparable as the party being evicted can still be compensated by the mortgagee in damages. In this case if the defendants were ultimately to succeed in the defence of the plaintiff's claim and thus suffered losses as a result of the eviction, the plaintiff would be responsible to the defendants for any damages caused as a result of the enforcement of the default judgement.

- [16] As for the balance of convenience, while the difficult economic times now being experienced by the defendants are truly regrettable the fact remains that the security given by the defendants remains valid security for which the defendants are in default and the plaintiff should not have their ability to enforce against that security interfered with, absent some compelling reason. The economic circumstances of the defendants are not a compelling reason in the absence of some demonstrable defence on the merits to the claim.
- [17] For the reasons set forth above, the defendants' motion seeking a stay of the eviction notice is dismissed.
- [18] The terms of the mortgage entitle the plaintiff to full indemnity costs. While I in no way criticize counsel for the plaintiff for having two well respected and experienced counsel on this matter the court in the exercise of its discretion as it relates to costs is fixing costs in favour of the plaintiff in the amount of \$8,500 all-inclusive which costs are payable within 30 days.
- [19] Before I leave these reasons, the court should observe that as one of the judges responsible for triaging urgent civil motions in Central East Region, I have noticed a significant increase in requests for urgent motions where mortgages have gone into default; default judgments have been obtained; writs of possession have been obtained; and last but not least eviction notices have been issued.
- [20] A trend has developed that I have observed of defendants waiting until the last possible second to seek emergency urgent relief from the court when eviction is imminent. An eviction from one's family home is a remedy of last resort, but it is a remedy available in situations where a debt remains unpaid. Often the debt has been unpaid for months even years. At the very least when a defendant seeks the stay of an eviction order that party should seriously consider at least some attempt to pay what is owing on the unpaid debt.
- [21] Failure to pay something on a long overdue debt reflects a debtor who some might argue is "gaming the system" - wait until the last minute and expect the court to grant a stay. It is regrettable that in the difficult economic times we find ourselves that people are displaced from their homes. This however only happens after the person who has incurred the debt has done nothing to remedy the situation. A defendant who is seeking an equitable order in the form of a stay needs to come before the court with clean hands. Clean hands requires full, fair and frank disclosure. Clean hands might also be seen as someone who is willing to, at the very least, make some payments on the outstanding debt while the litigation process unfolds. None of this happened in this case

EDWARDS, RSJ.

Date: December 4, 2025