

COURT OF APPEAL FOR ONTARIO

CITATION: Park v. Manulife Bank of Canada, 2025 ONCA 815

DATE: 20251126

DOCKET: M56446 (COA-25-CV-1422)

Paciocco J.A. (Motion Judge)

BETWEEN

Tennyson Park

Appellant
(Moving Party)

and

Manulife Bank of Canada

Respondent
(Responding Party)

Tennyson Park, acting in person

Natalie Marconi, for the responding party

Heard: November 25, 2025

REASONS FOR DECISION

[1] On July 5, 2023, after obtaining an order for substituted service, the responding party, Manulife Bank of Canada, secured a default judgment against the moving party, Tennyson Park, for breaching her mortgage loan secured on her residential home in Toronto, Ontario. Manulife obtained a writ of possession for the

home on December 8, 2023. Notably, Ms. Park has made no attempt to set aside the default judgment or to appeal it.

[2] On November 25, 2024, a Sherriff's eviction occurred. On December 20, 2024, Ms. Park sought to challenge the order made in the default judgment by instituting a separate action in trespass against Manulife. On or about this date she also entered the home and changed the locks and has been in possession since.

[3] Manulife defended the action and brought a counterclaim seeking an order for vacant possession and associated orders enabling it to reacquire possession. It then brought a motion to strike Ms. Park's action as an abuse of process because it is a collateral attack on the default judgment. It also brought a motion for summary judgment on its counterclaim. A hearing date for the motions was set for September 14, 2025. On that date, Ms. Park sought an adjournment so that she could amend her statement of claim. Her last-minute attempt to subvert the motions by amending the claim was denied and an adjournment was granted so that Ms. Park could file responding materials on the motion. A peremptory date was set to argue them.

[4] On October 23, 2025, Manulife prevailed entirely on both motions. Ms. Park's action was struck as an abuse of process, and summary judgment was awarded to Manulife on its counterclaim. The court ordered Ms. Park to deliver

vacant possession, restrained Ms. Park from re-entering the property, ordered a sheriff to change the locks and remove any occupants, and granted Manulife a fresh writ of possession.

[5] Ms. Park has initiated an appeal of these orders. In the motion before me she is seeking a stay of the orders pending appeal. For the following reasons, I am persuaded that the request for a stay must be denied.

[6] The test for a discretionary stay under r. 63.02(1)(b) is well-established and mirrors the test for an interlocutory injunction in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Circuit World Corp. v. Lesperance* (1997), 33 O.R. (3d) 674 (C.A.), at pp. 676-77. The factors to determine whether a stay is in the interests of justice include:

- (a) Whether there is a serious issue to be tried;
- (b) Whether the moving party would suffer irreparable harm if the stay were refused; and
- (c) The balance of convenience, namely which of the parties would suffer greater harm from the granting or refusing of the stay.

[7] Ms. Park, who is not admitting to having breached the mortgage contract has, in my view, earnestly and honestly explained why she believes that her appeal raises serious issues to be tried. She submits that her forcible removal from her home is a breach of her peremptory rights as a natural person and is contrary to

the peremptory rights housed in numerous provisions of international covenants and treaties, and the constitution of Canada. She argues that eviction without enjoyment of the right of appeal is also contrary to these legal rules and principles and she claims that she has been denied procedural justice as she was not properly served before the default judgment hearing and was denied an amendment to establish why she was not in breach of the mortgage contract, contrary to the default judgment.

[8] As strongly as Ms. Park holds these views, these are not serious issues to be tried in the current appeal. As a matter of trite Canadian law, the peremptory and constitutional rights she asserts are not tenable against Manulife's claims, and she has offered no arguments that could possibly undercut the motion judge's conclusion that the action she dismissed is a collateral attack on the default judgment. It is settled law that a lawful order cannot be challenged in a separate, subsequent action, as Ms. Park is attempting to do, nor can the manner of service used to secure that lawful order. The changes she was seeking to make to her claim also constitute collateral attacks on the default judgment, and the originally assigned motion judge's discretionary decision to deny her late-breaking request to amend her claim does not raise a serious issue for appeal. In making that order the originally assigned motion judge assisted Ms. Park by permitting her time to respond to the motions, which she had failed to do. Although Ms. Park does not intend them to be, the grounds of appeal she advances are frivolous.

[9] In terms of serious harm, it has been held that where a mortgagor acknowledges breaching the contract, the contractual consequences of doing so do not constitute irreparable harm: *Starkman v. Home Trust Company*, 2015 ONCA 436, at paras. 17-18. In this case Ms. Park denies breaching the contract, but she was found to have done so when default judgment was awarded. I realize that Ms. Park is not accepting that the action that has been struck is an impermissible collateral attack on that default judgment, but the weakness of her appeal arguably supports a conclusion that the eviction is the contractual consequence of her breach and should not be characterized as irreparable harm. Even assuming her eviction qualifies as such, this is only one factor in determining whether a stay should be ordered.

[10] Finally, the balance of convenience favours Manulife. Ms. Park's continued occupation is illegal unless and until the default judgment and the remedies it provided are set aside. Meanwhile the prejudice to Manulife of staying enforcement pending appeal is manifest and significant. The prejudice is not simply the delay in enforcement of the default judgment, which was secured almost 2.5 years ago, or the considerable balance owing on the mortgage of almost \$600,000. Regardless of her motives for reentering the home, her continued occupation is putting Manulife's security at risk. Residential taxes and utility charges are approaching \$60,000 in arrears and it is probable that the residence is uninsured.

[11] I also consider the prejudice to the repute of the administration of justice if the orders are stayed. A court order for vacant possession is being breached, and Ms. Park is failing to acknowledge her own lawful eviction pending appeal. A court should not reward this by preserving that status quo.

[12] I am persuaded that it is not in the interests of justice to grant the motion, and it is dismissed. Manulife has generously undertaken not to take enforcement action until January 2026, after the holiday season ends. I am certain that this undertaking will be fulfilled.

[13] Costs are payable to Manulife on this motion in the amount of \$4,000 inclusive of applicable taxes and disbursements.

“David M. Paciocco J.A.”