CITATION: 1000979674 Ontario Inc. v. 13276139 Canada Inc., 2025 ONSC 6606
COURT FILE NO.: CV-25-00000172-0000
DATE: 2025/11/25

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1000979674 Ontario Inc.

AND:

13276139 Canada Inc., 2568119 Ontario Inc., Mykola Kulbaka and Valeriy Kulbaka

BEFORE: A.D. Hilliard

COUNSEL: P. Bakos – Applicant
K. Ivashyna – Respondents

HEARD: November 24, 2025

REASONS FOR JUDGMENT

THE HONOURABLE JUSTICE A.D. HILLIARD

Background

[1] The Applicant is a tenant at the property, 11 Grigg Drive, Simcoe, Ontario (the Subject Property). The Respondents are the second mortgagees of the Subject Property. The owner of the Subject Property at all materials times was Woodside Greens Business Association Inc. (Woodside).

[2] A second mortgage on the Subject Property was registered on or about August 30, 2023. The Charge in favour of the Respondents was granted by Woodside securing the sum of $3,900,000 at an interest rate of 14% with a maturity date of March 30, 2024.

That Charge was extended by agreement on or about May 5, 2024, extending the maturity date of the mortgage to October 15, 2024.

[3] In the interim, in August 2023, Woodside and the Respondents entered into a General Assignment of Rents Agreement (GARA) and a General Security Agreement (GSA). The GSA provided security over all the accounts receivable, inventory, equipment and intangibles related to the Subject Property. The GSA also provided for the Respondent upon default to become the holder of any licence held by Woodside and to act as Woodside's nominee until the mortgage is redeemed.

[4] In August 2024, Woodside entered into a lease agreement with the Applicant. The purpose of leasing the Subject Property by the Applicant was to utilize the premises for cannabis cultivation.

[5] Woodside default on its obligations under the mortgage to the Respondents on or about February 28, 2025. A notice of sale was delivered to Woodside by the Respondents pursuant to the default on or about August 29, 2025. The redemption period under the Notice of Sale expired on October 5, 2025. As of that date, the mortgage had not been redeemed by Woodside.

[6] Sometime in October 2025, the Respondents became aware that the Subject Property was occupied by a tenant pursuant to a lease agreement with Woodside. The

Respondents had not been formally notified by Woodside or the Applicant about the existence of the lease agreement prior to October 2025.

[7] The Applicant became aware that the Respondents had served a Notice of Sale on or about October 23, 2025. The Applicant then received a Notice of Attornment of Rents on or about October 28, 2025.

[8] On or about October 31, 2025, the Applicant registered a Notice of Lease on title to the Subject Property. That is around the time the Respondents state they became aware of the identity of the Applicant as the tenant in possession of the Subject Property.

[9] A copy of the Lease Agreement between the Applicant and Woodside was provided to the Respondents on or about November 3, 2025. The Lease Agreement provides for rent equal to 10% of the gross product sales payable monthly, as well as additional rent including utilities, property taxes, and insurance premiums.

[10] The Respondents visited the Subject Property on or about November 4, 2025 with the consent and in the presence of representatives of the Applicant. The purpose of the Respondents' visit was to show the Subject Property to potential purchasers.

[11] That same day, counsel for the Respondents sent an email to the Applicant's solicitor indicating that the Respondents' only goal was to sell the Subject Property as soon as possible in order to recover the funds they had loaned to Woodside. It was noted

in the email that there had been communication directly between their respective clients during the visit to the Subject Property and the Respondents had offered to provide the Applicant with security at the premises. Counsel for the Respondents then indicated that the potential buyers were requesting particulars regarding the lease agreement, which were set out in a bulleted list.

[12] Email correspondence was then exchanged between counsel regarding a second visit to the Subject Property by the Respondents that was to occur on November 14, 2025 at 3:00 p.m. However, when representatives from the Respondents arrived on November 14, 2025 at the agreed upon time, they were barred from accessing the property and the representative of the Applicant advised that he had not confirmed the visit time and instead proposed an alternate date of November 18, 2025.

[13] The Respondent alleges that on November 17, 2025 a piece of equipment was removed from the Subject Property. The Respondents' position is that all of the equipment on the Subject Property is subject to the security under the GSA.

[14] The Applicant sent the Respondents, through counsel, a trust cheque purporting to be a rent payment. There was no explanation provided as to how the amount of the rent payment was calculated. That cheque was not accepted or cashed by the Respondents.

[15] On November 20, 2025, the Respondents delivered to the Applicant a Notice of Cancellation of Attornment of Rents and a Notice of Termination of Lease Agreement to the Applicant. That same day, the Respondents took possession of the Subject Property with the assistance of Norfolk County OPP. Locks to the premises on the Subject Property were changed, key FOBs were reprogrammed to prevent the Applicant from gaining access, and the Applicant's security cameras were disabled.

[16] After being locked out of the property, the Applicant brought an urgent motion for repossession of the subject property and an interlocutory injunction against the Respondents.

Respondents' Right to Possession of the Subject Property

[17] The Applicant argues that the Respondents did not have a right to take possession of the Subject Property. I agree.

[18] The Respondents' position on their right to take possession of the Subject Property is based on a misunderstanding of the law. The argument made by the Respondents is that upon Woodside defaulting on the mortgage, the Respondents as mortgagee had the absolute right to terminate the Applicant's lease. That proposition is

directly contradicted by the decision of the Ontario Court of Appeal in *Goodyear Canada Inc. v. Burnhamthorpe Square Inc*.[1]

[19] Although the facts in *Goodyear* were the reverse of this case – the mortgagee in *Goodyear* was attempting to enforce the terms of a previously existing lease– the general principles are applicable. McKinlay, J.A. writing for the Court, specifically addresses the very argument that was made before me by the Respondents. In *Goodyear* McKinlay J.A. questions the finding of the application judge, writing:

> The application judge expressed his view that when a mortgagee goes into possession of premises subject to a lease subsequent to the mortgage, unless there is an agreement between the lessee and the mortgagee to the contrary, the original lease is terminated. He cites no authority for that proposition, and I have some difficulty with it. The only case to which we were directed where that conclusion is stated is *Page v Welford*, [1941] 4 D.L.R. 448, a decision of a single judge of the Ontario Court of Appeal on facts very different to those involved in this case. The judge in *Page v Welford* relied on the decision in *Corbett v Plowden*, *supra*, for authority that a lease given subsequent to a mortgage is terminated by notice from the mortgagee to the tenant to pay rent to him. A careful reading of *Corbett v Plowden* indicates that it does not in fact stand for such a proposition. *Corbett v Plowden* does stand for the proposition that such notice results in a new tenancy from year to year under the mortgagee. It does not deal with the question of termination of the original lease.[2]

[20] The decision of Favreau, J. (as she then was) in *Purenergy Wellness Lofts Corp. v. Home Trust Co.* succinctly sets out the general principles to be applied in cases where the mortgagee takes possession of lease premises:

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[1] [1998] O.J. No. 4426 (CA)
[2] *Ibid* at para 75.

At the hearing of the motion, counsel for the parties did not generally disagree over the applicable legal principles. There is no dispute that, where a mortgagor defaults on a mortgage and a mortgagee takes possession of a property, the mortgagee does not necessarily step into the shoes of the mortgagor. Rather, the following principles, as reviewed for example in *Guscon Enterprises Ltd. v. Andsam Masonry Co.*, [1995] O.J. No. 3326 (Gen. Div.), at paras. 6 and 7; *Domus Architects v. Bank of China (Canada)*, [1997] O.J. No. 4725 (Gen. Div.), at paras. 30 and 31; and *Goodyear Canada Inc. v. Burnhamthorpe Square Inc.*, [1998] O.J. No. 4426 (C.A.), at paras. 84 and 87, apply:

> a. A lease is not binding on a tenant or a mortgagee who takes possession of a property following default by a mortgagor unless the mortgagee consented to and was aware of the lease at the time the mortgage was placed on the property;
>
> b. In situations where the lease is not binding because the mortgagee did not agree to the tenancy at the time the mortgage was placed on the property, the tenant and the mortgagee can nevertheless create a tenancy by agreement or conduct.
>
> c. A tenancy between a commercial tenant and a mortgagee who takes possession of a property runs year to year and can be terminated on six months' notice, unless the parties agree otherwise. The terms of the tenancy, such as the rent payable, are otherwise the same as those in the original lease, unless modified by agreement.[3]

[21] There is no legal basis upon which the Respondents lawfully terminated the lease agreement. The Respondents could not point me to any authority for their argument that

[3] [2018] O.J. No. 4118 (CA) at para. 23.

the default of the mortgagor automatically terminated the lease agreement, other than the *Goodyear* case, which, as I indicated above, I do not accept stands for that proposition.

[22] There is no provision in the mortgage or in the standard charge terms that provides for an absolute right to terminate an existing tenancy upon default. The terms in the Woodside mortgage do contain a clause providing for an assignment of rentals, but that provision only allows the Respondents to collect and receive rent in the event of a default.

[23] I accept that the Respondents were not bound by the lease agreement the Applicant entered into with Woodside. However, not being bound by a lease agreement is not the same as that agreement being terminated by virtue of the Respondents taking possession of the property pursuant to the default. Furthermore, finding that the Respondents were not bound by the lease is only the first step in the inquiry.

[24] Having found that the Respondents were not bound by the existing lease, I must then go on to consider the actions taken by both parties after the Respondents exercised their rights to take possession of the Subject Property by way of Power of Sale.

[25] At no time until after the Respondents took possession of the property was there any allegation that the Applicant's lease was not in good standing. Despite the affidavit evidence filed on the motion, the Respondents acknowledged during argument that at the

time they forcibly took possession of the property, the Lease Agreement between the Applicant and Woodside was in good standing.

[26] There was no correspondence sent to the Applicant even questioning the validity of the lease. To the contrary, a Notice of Attornment of Rents was served. That act in itself, in my view, is a tactic acknowledgment of the validity of the lease.

[27] Service of the Notice of Attornment provides a basis for the Applicant to reasonably infer that the Respondent is acknowledging their lawful tenancy on the premises. I also return to the decision in *Goodyear* wherein McKinlay JA found that the case of *Corbett v Plowden* stands for the proposition that a mortgagee serving a notice to a tenant to pay rent directly to the mortgagee result in a new year to year tenancy being created.

[28] The Respondents conduct from service of the Notice of Attornment of Rents until the lock out also supports the inference that they were acknowledging the validity of the lease:

- arrangements were made with representatives of the Applicant to attend the premises in order to show the property to potential purchasers;

- counsel for the Respondent sent correspondence to the Applicant's solicitor indicating the Respondents were only wishing for continued cooperation from the Applicant in order to sell the Subject Property as quickly as possible; and

- particulars regarding the Lease Agreement were sought for the potential purchasers of the Subject Property, not pursuant to any challenge to the validity of the Applicant's tenancy.

[29] I agree with the Applicant's submission that the refusal to accept the rent cheque sent by the Applicant's solicitor is not determinative. The conduct of the parties as a whole needs to be assessed in determining whether a tenancy was created.

[30] I have also considered that even during argument of the motion, the Respondents position is not that the tenancy was terminated due to failure to comply with the lease agreement but rather than the lease agreement was terminated as of right due to the default of Woodside.

[31] I find that the conduct of the Respondents in their dealings with the Applicant created a tenancy by the Respondent acting as though it was stepping into the shoes of the landlord.

[32] Having found that a tenancy was created by the parties' conduct, the lease then reverts at law to a year-to-year term, requiring the Respondents to provide the Applicant

with six months notice of termination. The Respondents provided notice of termination the same day they entered the property and changed the locks. Having failed to provide sufficient notice to the Applicant, the Respondents entry onto the Subject Property was unlawful.

Interlocutory Injunction

[33] The test on an interlocutory injunction is well-established. The Applicant must demonstrate there is serious issue to be tried, that irreparable harm will result if the injunction is not granted, and that the balance of convenience favours granting the injunction.[4]

[34] I am satisfied that the Applicant has met the first stage of the test. Whether or not the Applicant's tenancy was illegally terminated by the Respondent is a serious issue to be tried. There is also the issue of the Applicant's right to continue to occupy the premises on the Subject Property pursuant to the lease agreement, which I find is also a serious issue to be tried.

[35] I am also satisfied that irreparable harm will result if the injunction is not granted. The Applicant's has invested hundreds of thousands of dollars into its cannabis operation on the Subject Property on the basis of a valid and existing lease. Although those funds could arguably be compensated by the payment of damages, the time spent

[4] *RJR MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311.

cultivating the cannabis plants is not readily quantifiable in monetary damages. I also accept that the loss of the genetics that exists only in the mother plants, also cultivated over time, cannot be compensated by monetary damages.

[36] Finally, I find that the balance of convenience favours granting the injunction. I accept the evidence of the Applicant that it has been legally operating a cannabis operation pursuant to a licence granted by Health Canada. There is no evidence that the Respondents have any lawful authority to handle cannabis, a controlled substance, let alone cultivate cannabis plants which requires authorization from Health Canada.

[37] I am not persuaded by the Respondents' argument that the Applicant reoccupying the premises jeopardizes the Respondents' ability to secure the money owing to them pursuant to the mortgage. The Respondent will still be able to continue with their Power of Sale proceedings to realize on their mortgage funds while the Applicant continues its cannabis operation. The Respondents also have the GSA securing their interest in any equipment or other chattels on the Subject Property that are covered by the terms of the GSA.

Conclusion

[38] The Respondents unlawfully entered the premises on the Subject Property on November 20, 2025. There was no legal basis for the Respondents' unilateral action of

locking out the Applicant from the premises they were lawfully in possession of pursuant to a valid lease.

[39] The Applicant has satisfied me on the evidence filed that the test on an interlocutory injunction has been met and I am satisfied that the injunction should be granted.

[40] On the issue of costs, the Applicant has been wholly successful and is presumptively entitled to its costs. I agree with the Applicant's submissions that the actions of the Respondents were high handed. Unlawful self-help should be resoundingly denounced by the Courts.

[41] I do not accept the Respondents' argument that a failure of the Applicant to attempt to negotiate a settlement of this issue should disentitle them to costs. The Applicant was unilaterally locked out of premises it was lawfully in possession of without any prior notice. Due to the nature of the cannabis operation, the issue of repossession of the premises was time sensitive and the Applicant was justified in immediately filing an Application with the Court.

[42] I accept that substantial indemnity costs are appropriate in the circumstances of this case. The quantum of costs being sought by the Applicant is proportionate to the significance of the issues and the work that needed to be completed in order for this

motion to be heard. There was a significant amount of material filed and facta were filed by both parties.

[43] Order to go in accordance with draft order filed, with costs awarded to the Applicant fixed in the amount of $16,971 inclusive of HST and disbursements.

Released: November 25, 2025

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A.D. Hilliard, J

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