

COURT OF APPEAL FOR ONTARIO

CITATION: 2642948 Ontario Inc. v. Jonny's Antiques Ltd., 2025 ONCA 892

DATE: 20251219

DOCKET: COA-25-CV-0415 & M56322

Trotter, Copeland and Gomery J.J.A.

BETWEEN

2642948 Ontario Inc.

Plaintiff/Defendant by Counterclaim (Respondent/Moving Party)

and

Jonny's Antiques Ltd.

Defendant/Plaintiff by Counterclaim (Appellant/Responding Party)

David Johnson, acting in person, for the appellant/responding party¹

Jason Timms, for the respondent/moving party

Heard: December 12, 2025

On appeal from the order of Justice Evelyn M. ten Cate of the Superior Court of Justice, dated April 2, 2025, with reasons reported at 2025 ONSC 2059.

REASONS FOR DECISION

[1] After hearing the parties' oral submissions, we dismissed the appeal by Jonny's Antiques Ltd. ("Jonny's Antiques") and the motion to quash the appeal

¹ On October 16, 2025, Dawe J.A. granted Mr. Johnson leave to represent the corporate appellant as a non-lawyer under r. 15.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

brought by 2642948 Ontario Inc. (“264 Ontario”), for reasons to follow. These are our reasons.

Background

[2] In the underlying action, 264 Ontario alleged that Jonny’s Antiques had defaulted on its obligation to repay a mortgage loan secured by a mortgage registered against Jonny’s Antiques’ commercial property in Shakespeare, Ontario. It sought to enforce its rights under the mortgage. Jonny’s Antiques defended the action and claimed various relief, including damages, by way of counterclaim.

[3] In April 2024, after attempting repeatedly to serve notices under the *Mortgages Act*² at the property and finding it vacant, 264 Ontario entered the property and changed the locks. The principal of Jonny’s Antiques tried to re-occupy the property by breaking in. When this was unsuccessful, Jonny’s Antiques sought and obtained a certificate of pending litigation (“CPL”) on an *ex parte* basis, which was registered against the property.

[4] This appeal arises from 264 Ontario’s motion to set aside the CPL order. The motion judge found that 264 Ontario had taken vacant and peaceable possession of the property in April 2024. She set aside the CPL and declared that 264 Ontario remained in possession of the property.

² R.S.O. 1990, c. M.40.

[5] By the time the motion judge issued her decision, 264 Ontario had entered into an agreement to sell the property. Jonny’s Antiques moved for a stay pending appeal of the motion judge’s decision. The stay motion was dismissed.³ The property was sold on April 24, 2025.

Why we dismissed Jonny’s Antiques’ appeal

[6] Jonny’s Antiques advanced four grounds of appeal.

[7] First, it asserted that the motion judge failed to determine whether it was in default of its mortgage obligations. This is not so.

[8] Even though the motion judge did not explicitly state that Jonny’s Antiques was in default, this is implicit in her findings and analysis. She found that a July 14, 2023 letter from the 264 Ontario’s lawyer to Jonny’s Antiques “clearly demanded payment of the principal [owed on the mortgage] no later than October 10, 2023” and that Jonny’s Antiques failed to respond to this letter or make any payment on the principal. In determining that the CPL should be vacated, the motion judge found that the CPL prevented 264 Ontario from selling the property “to recover monies owed under the mortgage.”

[9] Second, Jonny’s Antiques argued that the motion judge made a reviewable error in finding that the property was vacant when 264 Ontario changed the locks

³ Reasons for dismissing the motion for a stay are reported at *2642948 Ontario Inc. v. Jonny’s Antiques Ltd.*, 2025 ONCA 381.

in April 2024, and hence erred in finding that it took peaceable possession of the property on that date. We disagree.

[10] The motion judge's finding that the property was vacant was amply supported by the evidence. In December 2023, 264 Ontario sent Jonny's Antiques a Notice of Sale Under Mortgage and a Notice of Intent to Enforce Security under the *Bankruptcy and Insolvency Act*⁴ via registered mail. The notices were sent to the mortgaged property's civic address, which was listed as the address for service on the mortgage on title. The registered mail was returned, unclaimed. A process server who attended at the property on several occasions in February 2024 to serve 264 Ontario's statement of claim found no one there. Finally, when a bailiff hired by 264 Ontario attended at the property on April 12, 2024, he affirmed that the property appeared vacant. He entered it and changed the locks without incident.

[11] Jonny's Antiques also argued that the motion judge mischaracterized the contents of an email sent by its lawyer in February 2024. Assuming that she did so, we do not find that this is a palpable and overriding error. The email was in no way central to the motion judge's determination that 264 Ontario was in peaceable possession of the property in April 2024.

⁴ R.S.C. 1985, c. B-3.

[12] Third, Jonny's Antiques argued that the motion judge erred in granting 264 Ontario a declaration that it was lawfully in possession of the property, because no such relief was claimed in its statement of claim. This argument has no merit. 264 Ontario had no basis to seek a declaration that it was lawfully in possession of the property when it issued its statement of claim, because it had not yet taken steps to enter and occupy the property. The situation had changed by the time 264 Ontario brought its motion to vacate the CPL. This is reflected in its notice of motion, where it explicitly sought the declaratory relief granted by the motion judge.

[13] Finally, Jonny's Antiques contended that the motion judge's decision was procedurally unfair, because she allowed 264 Ontario to enforce its rights under the mortgage without a trial.

[14] We find no reviewable error in the motion judge's analysis. She correctly rejected Jonny's Antiques' assertion that the *Mortgages Act* prohibits a mortgagee from taking possession of a property without first obtaining a writ of possession. The standard mortgage terms in this case entitled 264 Ontario, in the event of default, to resort to various self-help remedies, notably entering and taking possession of the mortgaged property and selling it to recover the debt owed. The exercise of these remedies was subject to the motion judge's determination that

264 Ontario had acquired peaceable possession of the property based on the criteria set out by this court in *Hume v. 11534599 Canada Corp.*⁵

[15] In the circumstances of this case, a trial was not required to decide whether 264 Ontario could enforce its rights under the mortgage agreement. Applying the factors set out in *Hume*, the motion judge concluded that 264 Ontario took vacant and peaceable possession of the property when it changed the locks on April 12, 2024. This is a fact-specific determination to which this court must defer absent any palpable or overriding error. No such error has been identified.

Why we dismissed 264 Ontario's motion to quash

[16] 264 Ontario brought a motion to quash the appeal on the basis that the appeal was clearly without merit and constituted an abuse of the legal process.⁶ Its notice of motion was filed only after the appeal was perfected and both parties had filed factums. The motion hearing was set for the same date as the appeal hearing.

[17] We note that counsel who appeared for 264 Ontario at the appeal hearing was not counsel of record when the motion was filed.

[18] Although we dismissed the appeal, it was not manifestly devoid of any merit nor was it abusive. Jonny's Antiques was entitled to seek this court's review of the

⁵ 2022 ONCA 575, 163 O.R. (3d) 334.

⁶ Even though the property has been sold and this court could accordingly not order the reinstatement of the CPL or order that Jonny's Antiques regain possession of the property, 264 Ontario did not seek the dismissal of the appeal for mootness. Nor had either party prepared submissions on this issue.

motion judge's decision. Dismissing an appeal as completely devoid of merit is exceptional. As a rule, if a litigant has a right of appeal, and they comply with the procedural requirements to file and perfect it, they are entitled to argue the appeal, even if the grounds of appeal are weak or marginal.

[19] There was furthermore little or no value in arguing 264 Ontario's motion to quash on the same day as the merits hearing. It is sometimes appropriate to file a motion to quash to be argued alongside an appeal. For example, if it appears that the court does not have jurisdiction to hear an appeal, a respondent's motion to quash on this basis may be made returnable on the same day as the merits appeal. But a motion to quash based on an appeal's putative lack of merit, filed after an appeal has been perfected, generally serves no purpose except to increase the costs of the proceeding for all parties.

Disposition

[20] The appeal and the motion to quash are dismissed. Given the parties' divided success, no costs are awarded.

"Gary Trotter J.A."
"J. Copeland J.A."
"S. Gomery J.A."