

CITATION: *Mikhailova v. Dabic*, 2025 ONSC 7201
COURT FILE NO.: 21-00667524-0000
DATE: December 10, 2025

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Larissa Mikhailova)	Scott Turton, for the Plaintiff
)	
)	
)	Plaintiff
)	
– and –)	
)	
Milenko Dabic also known as Michael Dabic)	Steven Bookman, for the Defendant
)	
)	Defendants
)	
)	
)	HEARD: August 18, 2025

2025 ONSC 7201 (CanLII)

DES ROSIERS J.

REASONS FOR JUDGMENT

- [1] Both parties are seeking a summary judgment. The plaintiff, Ms. Mikhailova, brings her motion for summary judgment pursuant to r. 20, *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for payment of a debt on a third mortgage signed on December 5, 2013, by the defendant, Mr. Dabic, to Merk Investment Ltd. and Janodee Investments Ltd. (“Merk and Janodee”). Merk and Janodee transferred the third mortgage to Ms. Mikhailova on July 17, 2024.
- [2] The third mortgage was for \$100,000. It was registered on title.
- [3] In October 2014, Ms. Mikhailova stopped receiving payments on the mortgage. In May 2016, the property was sold on a power of sale initiated by the first mortgagor. The first mortgage was paid in full; the second mortgage was partially paid and Ms. Mikhailova did not receive anything.

[4] In January 2016, Ms. Mikhailova began litigation against her mortgage broker, Skylark Holdings Limited, Stan Cash and Michael Slattery, for misrepresentations. On September 18, 2018, Justice Copeland issued a judgement for \$839,596.42. An amount of \$500,000 was recovered in partial payment of the Copeland judgement. Mr. Turton, lawyer for Ms. Mikhailova, apportioned the debt among the various mortgages and the current debt was not satisfied.

[5] Ms. Mikhailova is suing for the payment of the debt: \$100,000 with interest at 10% per year.

[6] Mr. Dabic brings his own motion for summary judgement to have the action dismissed on the following grounds:

- He is a mere trustee for Skylark Holdings Limited and Michael Slattery and is not liable for the mortgage debt.
- The matter is statute-barred, that is, that it has been brought outside of the limitation period.
- Ms. Mikhailova has no standing in this action since she had assigned the mortgage to her son in 2014, and his alleged re-assignment in 2021 to her has not been proven with the best possible evidence. The assignment raises issues as to whether the mortgage was paid to him between 2014-2021.
- In the alternative, Mr. Dabic argues that the matter raises a genuine issue for trial and cannot be handled on a summary judgement application because it raises material credibility issues.

[7] I begin with a review of the law on summary judgment.

[8] Rule 20.04(2)(a) provides: "The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence".

[9] Rule 20.04(2.1) sets out the court's powers on a motion for summary judgment as follows:

In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being

made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

[10] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66, the Supreme Court of Canada established a road map outlining how a motions judge should approach a motion for summary judgment:

[T]he judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

[11] The Supreme Court further held in *Hryniak*, at para. 49, that the test to be applied is as follows:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

See also *Moffitt v. TD Canada Trust*, 2023 ONCA 349, 483 D.L.R. (4th) 432, at para. 40.

- [12] The court should use its enhanced powers and decide a motion for summary judgment only where it leads to “a fair process and just adjudication”: *Ang v. Lin*, 2023 ONSC 4446, at para. 15, aff’d 2024 ONCA 549, citing *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44, and *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6.
- [13] In *Joshi v. Chada*, 2022 ONSC 4910, at para. 66, Glustein J. set out the relevant legal principles applicable to summary judgment as follows:
- (i) The purpose of r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 is to (a) eliminate claims that have no chance of success at trial, and (b) provide judges with fact-finding powers to be used on a summary judgment motion: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 44-45, and 66;
 - (ii) The evidence on a summary judgment motion must enable the motion judge to be confident that they can fairly resolve the dispute: *Hryniak*, at para. 57;
 - (iii) The motion judge’s enhanced powers allow the court to weigh evidence, evaluate credibility, and draw reasonable inferences from the evidence: *Mega International Commercial Bank (Canada) v. Yung*, 2018 ONCA 429, 141 O.R. (3d) 81, at para. 83;
 - (iv) The focus of a summary judgment motion is not on what kind of evidence could be adduced at trial, but rather on whether a trial is required: *Hryniak*, at para. 56;
 - (v) The court is entitled to assume that it has all the evidence that would be available at trial related to the matters at issue: *Portuguese Canadian Credit Union v. Pires*, 2011 ONSC 7448, at para. 11, aff’d 2012 ONCA 335;
 - (vi) The moving party has the onus of proving that there is no genuine issue requiring a trial. Then, the onus shifts to the responding party to provide evidence of specific facts showing that there is a genuine issue requiring a trial: *Sweda Farms Ltd. et al. v. L.H. Gray & Son Limited et al.*, 2013 ONSC 4195, at paras. 26-27, leave to appeal refused, 2014 ONSC 3016;

- (vii) Summary judgment is not appropriate if the credibility of the parties is squarely in issue and requires a trial: *Demetriou v. AIG Insurance Company of Canada*, 2019 ONCA 855, 97 C.C.L.I. (5th) 204, at para. 9;
- (viii) The more important credibility disputes are to determining key issues, the harder it will be to fairly adjudicate those issues solely on a paper record. “It is not always a simple task to assess credibility on a written record. If it cannot be done, that should be a sign that oral evidence or a trial is required”: *Cook v. Joyce*, 2017 ONCA 49, at para. 92, citing *Trotter Estate*, 2014 ONCA 841, 122 O.R. (3d) 625, at para. 55; and
- (ix) The court must take “great care” in assessing credibility and reliability on affidavit evidence, since “[e]vidence by affidavit, prepared by a party’s legal counsel, which may include voluminous exhibits, can obscure the affiant’s authentic voice”. Consequently, the motion court must “ensure that decontextualized affidavit and transcript evidence does not become the means by which substantive unfairness enters, in a way that would not likely occur in a full trial where the trial judge sees and hears it all”: *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450, 120 O.R. (3d) 438, at para. 44.
- [14] In *Metropolitan Toronto Condominium Corporation No. 1067 v. 1388020 Ontario Corp.*, 2025 ONSC 667, rev’d on other grounds, 2025 ONCA 796, Merritt J. added the following to Glustein J.’s analysis:
- [38] The court can draw an adverse inference that there is no better evidence available than that which is provided by that party: *Travelers Insurance Company of Canada v. LCL Builds Corporation*, 2018 ONSC 1805, 90 C.L.R. (4th) 217, at para. 46; *S.N.S. Industrial Products Limited v. Omron Canada Inc.*, 2018 ONCA 278, at para. 5.
- [39] The court must take a hard look at the evidence. While the onus is on the moving party to establish there is no issue requiring a trial, the responding party must “lead trump or risk losing”: *1061590 Ontario Ltd. v. Ontario Jockey Club* (1995), 21 O.R. (3d) 547 (Ont. C.A.), at pp. 18-19.

[40] The requirement to put one's best foot forward includes taking steps to compel production prior to the return of a summary judgment motion: *Castle Building Centres Group Ltd. v. The Rehill Company Limited*, 2023 ONCA 237, at para. 34, leave to appeal refused, [2023] S.C.C.A. No. 224; *Martel v. City of Ottawa and DeLoyde*, 2024 ONSC 3738 at para 47.

[15] The issues before me therefore are:

- Is Mr. Dabic's alleged trusteeship relevant to the present proceedings?
- Is the matter statute-barred?
- Does Ms. Mikhailova have standing to bring the action?
- Has Ms. Mikhailova met her burden to show that there is no genuine issue for trial?

[16] For reasons below, I find that Ms. Mikhailova has not met her burden to show that there is no genuine issue for trial because she has failed to adduce sufficient evidence to establish that she still is the holder of the mortgage in question and that the debt has not been paid. I dismiss Mr. Dubic's summary motion and find that Mr. Dubic's alleged trusteeship is irrelevant to the present proceedings and that the action is not statute-barred. Pursuant to r. 20.04(2.2), I exercise the power to order *viva voce* evidence in front of myself on the issues of the transfer and re-transfer of the mortgage between Ms. Mikhailova and her son, and the amounts still owing under the mortgage.

Mr. Dabic's trusteeship

[17] Mr. Dabic alleges that he acted as mere trustee for Skylark Holdings Limited, Stan Cash and Michael Slattery in this matter. His position is that he was on title as a "prête-nom" and should not be held liable for any shortfall on the mortgage.

[18] Mr. Dabic also alleges that Ms. Mikhailova knew that he was a mere trustee and never sought payments directly from him until she brought the current proceedings.

[19] Mr. Dabic was the titled owner of the property and the Chargor. If he acted on behalf of other persons, he may add them as third parties in this litigation. Ms. Mikhailova can only proceed on the covenant in the mortgage document signed by Mr. Dabic.

[20] Mr. Dabic's trusteeship is a matter between him and his principals, it is not relevant to the present matter. He has added his alleged principals as third parties to this litigation, and the issue of his being compensated will be resolved in the context of his third-party action.

Is the matter statute barred?

[21] Mr. Dabic argues that the mortgage has been extinguished by the power of sale on May 20, 2016. In his view, the mortgage no longer exists since that day. He argues that the applicable limitation period is 2 years pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B.

[22] Ms. Mikhailova relies on the 10 years limitation period in the *Real Property Limitations Act*, R.S.O. 1990, c. L.15 ("*RPLA*").

[23] In *The Equitable Trust Company v. Marsig*, 2012 ONCA 235, 109 O.R. (3d) 561, at paras. 27, 30, the Court of Appeal for Ontario ruled that limitation periods affecting land are governed by the *RPLA*. Claims arising out of a mortgage are subject to the *RPLA*.

[24] The debt arose out of a mortgage. It is subject to the ten-year limitation period prescribed by the *RPLA*. This is even the case when the mortgagor is no longer in possession of the property sold pursuant to a power of sale of a higher ranked mortgage, and the mortgagee sues for the balance of the debt, as is the case here: *1250140 Ontario Inc. v. Bader*, 2022 ONCA 197, at paras. 15-16.

[25] The Statement of Claim was issued on August 23, 2021, within 10 years of the November 2014 default.

[26] The claim is not statute-barred.

Is Ms. Mikhailova the proper plaintiff?

[27] On December 3, 2014, Ms. Mikhailova assigned the mortgage to her son Alexandre. Alexandre initiated proceedings against the defendant in 2016, which were discontinued.

[28] As part of her affidavit evidence, Ms. Mikhailova included a note allegedly signed by her son, Alexandre, re-assigning the mortgage back to her in 2021, prior to the issuance of the Statement of Claim in the present action.

- [29] Mr. Dabic takes issue with the note. He disputes its reliability and truthfulness for several reasons. First and foremost, he debates why Ms. Mikhailova has not provided the court with an affidavit from her son to support her allegations that he re-assigned the mortgage to her. Further, in her cross-examination, Ms. Mikhailova suggests that she never assigned the mortgage to her son in 2014. Mr. Dabic also raises the issue as to whether the son might have received payments prior to his reassigning the mortgage to his mother.
- [30] I find that the issues of the establishment of the assignment and reassignment of the mortgage require further evidence. I also find I need to assess whether the plaintiff's son, Alexandre, received any payment prior to the reassignment.
- [31] Therefore, there are several factual questions that I cannot resolve on the basis of the evidence before me. Pursuant to r. 20.04(2.2), I direct that the parties appear before me to adduce *viva voce* evidence of the plaintiff and her son, Alexandre.
- [32] If the plaintiff intends to pursue the matter further, her counsel must, prior to January 30, 2026, 4:00 p.m., arrange with Mr. Dabic to obtain a date for a case conference in front of the undersigned by communicating with my assistant, Mary Sibenik, at mary.sibenik@ontario.ca to determine the next steps.

Des Rosiers J.

Released: December 23, 2025

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DATE: 20251210

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Larissa Mikhailova

Applicants

– and –

Milenko Dabic also known as Michael Dabic

Respondent

REASONS FOR JUDGMENT

Des Rosiers J.

Released: December 23, 2025