

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Marek Binio

**AND:**

Agnieszka Kotarak

**BEFORE:** The Honourable Justice A. Kaufman

**COUNSEL:** Arkadiusz J. Empel, counsel for the Plaintiff

Mark S. Taborowski, counsel for the Defendant

**HEARD:** December 16, 2026

**ENDORSEMENT**

- [1] The plaintiff moves for leave to issue a Certificate of Pending Litigation and for a Preservation Order in relation to a property located at 528 Opeongo Road in Renfrew (the “Renfrew property”).
- [2] The plaintiff alleges that he and the defendant were in a common-law relationship and began cohabitating in 2015. He alleges that during that relationship, they acquired a property in Erin, Ontario. It was sold in 2022 for approximately \$1.7 million. The plaintiff states that he contributed \$52,000 from his personal savings toward the purchase of the Erin property, and that a friend advanced an additional \$45,000 on his behalf, which he later repaid. He further claims to have performed substantial renovations and improvements that increased the property’s value.
- [3] The plaintiff asserts that the proceeds of sale from the Erin property were used to acquire the Renfrew property, which was registered solely in the defendant’s name. He says he did not intend his financial contributions or his labour to be a gift. According to the plaintiff, the parties’ relationship ended in April 2025, at which time he was removed from the Renfrew property.
- [4] In his Statement of Claim, the plaintiff seeks relief based on the doctrines of resulting and constructive trust, including an order for tracing of his alleged contributions from the Erin property into the Renfrew property.
- [5] The defendant opposes the motion. She maintains that the Erin property was not jointly purchased, that she was its sole registered and beneficial owner, and that she alone provided the funds to acquire it. She denies that the plaintiff contributed financially to either

property. She also disputes that he performed renovations or improvements, stating that his involvement was limited to occasional grass cutting and snow shovelling. The defendant argues that the plaintiff has provided no evidence supporting his allegations that he contributed financially to the Erin property.

- [6] The defendant states that the existing mortgage on the Renfrew property is scheduled for renewal on May 15, 2026, and that the property must be refinanced. She says she has been renovating the property for the past three to four years and needs to draw on its equity to meet carrying costs, renovation costs, and to support herself and her son, a full-time university student.
- [7] The defendant further states that she has listed the property for sale on four occasions, without success. She has reduced the asking price from \$1,299,900 to \$949,900. She denies that the property is unique in any respect.
- [8] Regarding the relationship between the parties, the defendant acknowledges that they were in an intimate relationship for a period of one year. She says that after that period, they were simply housemates and maintained separate bedrooms. She also states that the plaintiff was expected to pay rent, which he did only on occasion. She relies on her tax returns, filed as an exhibit to her affidavit, as evidence of these rental payments.
- [9] The defendant also asserts that on April 1, 2024, the plaintiff was charged with harassment, uttering death threats, and assault against her. She has filed the release order dated April 2, 2024, which includes a condition prohibiting the plaintiff from contacting her.
- [10] Finally, the defendant submits that the registration of a Certificate of Pending Litigation would be prejudicial to her. She says it would jeopardize her ability to refinance or sell the property and thereby affect her capacity to fund her son's university education. She further argues that damages would be an adequate remedy if the plaintiff were ultimately successful, and that there is considerable equity in the home.

### **Analysis**

- [11] A Certificate of Pending Litigation serves to notify third parties of a claimed interest in land. Its purpose is to protect a party's asserted proprietary claim pending its determination on the merits. The certificate itself does not create any right or interest in the land (*Ambassador Electric Inc. v. Fernwood Builders (London) Ltd.*, 2014 ONSC 3738 at para. 7).
- [12] In *Perruzza v. Spatone*, 2010 ONSC 841 at para. 20, Master Glustein (as he then was) summarized the principles applicable on a motion for leave to issue a Certificate of Pending Litigation. Those principles, which guide the exercise of discretion under s. 103 of the *Courts of Justice Act*, are as follows:

1. The test on a motion for leave to issue a certificate on notice is the same as the test on a motion to discharge a certificate

(*Homebuilder Inc. v. Man-Sonic Industries Inc.*, 1987 CarswellOnt 499 (Ont. Master) at para. 1).

2. The threshold relating to the “interest in land” requirement under s. 103(6) is whether there is a triable issue as to the claimed interest. The plaintiff need not demonstrate likelihood of success (*1152939 Ontario Ltd. v. 2055835 Ontario Ltd.*, 2007 CarswellOnt 756 (S.C.J.), citing *Transmaris Farms Ltd. v. Sieber*, [1999] O.J. No. 300 (Gen. Div. [Commercial List]) at para. 62).
3. The party challenging the certificate must show that there is no triable issue as to whether the party seeking the certificate has “a reasonable claim to an interest in the land” (*G.P.I. Greenfield Pioneer Inc. v. Moore*, 2002 CanLII 6832 (ON CA) at para. 20).
4. Factors the court may consider on a motion to grant or discharge a certificate include:
  - (i) whether the plaintiff is a shell corporation;
  - (ii) whether the land is unique;
  - (iii) the parties’ intent in acquiring the property;
  - (iv) whether damages are an available alternative;
  - (v) the ease or difficulty of assessing damages;
  - (vi) whether damages would be an adequate remedy;
  - (vii) the existence of a willing purchaser; and
  - (viii) the respective harm to each party if the certificate is granted or removed, with or without security (*572383 Ontario Inc. v. Dhunna*, 1987 CarswellOnt 551 (Ont. Master) at paras. 10–18).
5. Ultimately, the decision to grant or vacate a certificate is discretionary. The court must consider all relevant circumstances and exercise its discretion in accordance with equitable principles (*931473 Ontario Ltd. v. Coldwell Banker Canada Inc.*, 1991 CarswellOnt 460 (Gen. Div.), aff’d 1977 CarswellOnt 1026 (Div. Ct.) at para. 9).

[13] Justice Emery summarized the analytical approach on a motion to discharge a Certificate of Pending Litigation in *2526716 Ontario Inc. v. 2014036 Ontario Ltd.*, 2017 ONSC 1762 at para. 48:

The practical approach on a motion to discharge a CPL is to first determine if there is a triable issue as the threshold question mandated by Clock Investments. If and when this threshold question has been answered to the satisfaction of the court, the equities on all matters between the parties may then be considered for the exercise

of the court's discretion on a principled basis as to whether a certificate should be allowed or discharged.

- [14] In *Interrent International Properties Inc. v. 1167750 Ontario Inc.*, 2013 ONSC 4746 (“*Interrent*”) at para. 15, Master MacLeod (as he then was) summarized the applicable principles as follows:

On a contested motion, the court must review all of the evidence filed by both parties and determine, on the totality of that evidence, whether there is a triable issue.

In making this assessment, the court is not required to accept the pleadings or affidavit evidence uncritically. The court may consider cross examination evidence and evaluate whether the claim has a reasonable prospect of success.

A reasonable prospect of success includes not only a likelihood of proving the underlying cause of action but also obtaining a remedy relating to an interest in land. The court must be satisfied that damages would not be an adequate remedy.

Even where the plaintiff has a potential claim to a remedy involving an interest in land, the court may nonetheless refuse a certificate if doing so would be unjust. The court must consider the equities of granting this form of interim relief. The decision is discretionary, not a mechanical application of a rigid test.

Relevant discretionary factors include the strength of the plaintiff's case, whether the land is unique, the adequacy of damages as a remedy, whether the certificate appears to be sought for an improper purpose, and the balance of convenience.

- [15] In *Sparkman v. 2574328 Ontario Ltd.*, 2021 ONSC 4843, this Court confirmed that the discretionary factors applicable to a motion to discharge a certificate also apply in cases where a plaintiff seeks to trace an equitable interest or claim a constructive trust.

- [16] Finally, in assessing whether a proprietary remedy such as specific performance or a constructive trust is appropriate, the central question is not the “uniqueness” of the property. Rather, the inquiry is whether granting title, instead of damages, “better serves justice between the parties”: *Dhatt v. Beer*, 2021 ONCA 137 at para. 42.

### **Analysis**

- [17] I am satisfied that the plaintiff has met the threshold requirement of demonstrating a triable issue with respect to a reasonable claim to an interest in the property. As the authorities make clear, this threshold requires only that there be a triable issue as to the claimed interest, not that the plaintiff demonstrate a likelihood of success. While it is true that the

- plaintiff does not corroborate his allegations, he makes these allegations under oath. It is not the court's task to draw firm conclusions on the merits of the claim at this stage.
- [18] Once this threshold is met, the Court must exercise its discretion in equity, considering all relevant circumstances. Having considered the relevant factors, I conclude that a certificate should not be granted for the following reasons.
- [19] The plaintiff's remedy, if any, would be in damages. Even if he were to establish that he contributed to the properties, his remedy would be monetary. There is no reasonable prospect that he would be awarded sole ownership of the property, as the defendant has also contributed to it. At most, a successful trust claim would entitle him to have the defendant purchase his share. Failing agreement on a price, the property would be subject to partition and sale, resulting in a sale in any event. As the Supreme Court held in *Kerr v. Baranow* 2011 SCC 10 at para 52, the onus is on a plaintiff to establish that a monetary award would be insufficient in the circumstances. There is no evidence that the Renfrew property is unique or that damages would not be adequate.
- [20] Courts will not issue a Certificate of Pending Litigation where damages are sufficient. As observed in *Canadian West Trust Co. v. 1324789 Ontario Inc.*, 2019 ONSC 4789 at para. 30, a certificate is intended to protect an interest in land only where other remedies would be ineffective.
- [21] Moreover, the defendant faces significant prejudice if a certificate is registered. The mortgage is coming up for renewal, and the defendant requires refinancing—or the ability to sell the property—to meet carrying costs, her personal expenses, and her son's university expenses. A certificate would impair her ability to refinance or sell. In contrast, the evidence indicates that there is substantial equity in the property, estimated at approximately \$600,000, which would be available to satisfy a monetary award should the plaintiff succeed.
- [22] I have also considered that the plaintiff has provided no documentary evidence of his alleged financial contributions and provided no description of the alleged improvements. In addition, the defendant's evidence that she reported rental income from the plaintiff undermines his assertion that the parties jointly owned or intended to jointly own the property. I emphasize that I am not determining the merits of the action. However, in weighing the equities, it is relevant that the defendant has provided considerably more evidentiary support for her account than the plaintiff has for his. As this Court held in *Interrent*, a relevant discretionary factor is the strength of the plaintiff's case
- [23] For these reasons, I conclude that a Certificate of Pending Litigation ought not to issue.
- [24] With respect to the request for an order under Rule 45.01 of the *Rules of Civil Procedure* restraining the defendant from selling, transferring, or encumbering the Renfrew property, I also decline to make such an order.
- [25] The order sought is, in substance, an attempt to obtain security for judgment should the plaintiff ultimately succeed at trial. The appropriate procedural vehicle for such relief is a

*Mareva* injunction, the purpose of which is to restrain defendants from dissipating assets to defeat a potential judgment: *Shanghai Lianyin Investment v. Lu*, 2023 ONSC 399 at para. 9. The test for a *Mareva* injunction is stringent because such relief constitutes a significant intrusion on a defendant's property rights. The court must be satisfied that there is a genuine risk that assets will be dissipated or removed from the jurisdiction so as to place them beyond the court's reach.

[26] The Supreme Court of Canada has long cautioned against granting pre-trial relief that amounts to execution before judgment or security for judgment: *Aetna Financial Services Ltd. v. Feigelman*, 1985 CanLII 55 (SCC), [1985] 1 S.C.R. 2 at 37. Interference with a party's assets must be justified by meeting all three requirements for interlocutory injunctive relief set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311.

[27] In this case, there is no evidence that the defendant is attempting to dissipate assets or remove them from the jurisdiction. Although the property is listed for sale, the defendant's evidence indicates that she resides in Canada, her son is attending university here, and there remains substantial equity in the property. The plaintiff's concern that he may be required to pursue ordinary enforcement mechanisms following judgment does not constitute irreparable harm within the meaning of *RJR-MacDonald*. The possibility of having to enforce a judgment through the usual civil processes does not justify the extraordinary remedy of an interlocutory restraint on the defendant's property rights.

[28] Accordingly, the Court declines to grant the requested order under *Rule* 45.01.

### **Costs**

[29] As the defendant has been successful on the motion, she is presumptively entitled to her costs.

[30] Both parties have filed costs outlines reflecting comparable amounts. The defendant seeks \$7,580.04 on a partial indemnity basis. The plaintiff seeks \$8,502.12 plus disbursements of \$339.

[31] Having considered the outcome of the motion, its complexity, and the factors set out in *Rule* 57, I fix the defendant's costs at \$7,000, payable by the plaintiff.

### **Disposition**

[32] The plaintiff's motion is dismissed, with costs fixed in the amount of \$7,000 all inclusive, payable by the plaintiff to the defendant within 30 days.

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Justice A. Kaufman

**Date:** January 19, 2026