

# COURT OF APPEAL FOR ONTARIO

CITATION: Kakoutis v. Bank of Nova Scotia, 2026 ONCA 49

DATE: 20260127

DOCKET: M56609 & M56635 (COA-25-CV-0676)

Monahan J.A. (Motion Judge)

BETWEEN

Louis Kakoutis and Effie Kakoutis

Plaintiffs (Appellant/Moving Party/  
Responding Party by way of cross-motion)

and

The Bank of Nova Scotia

Respondent (Defendant/Responding Party/  
Moving Party by way of cross-motion)

Louis Kakoutis, acting in person<sup>1</sup>

Kelly Hou, for the responding party (M56609)/moving party by way of cross-motion  
(M56635)

Heard: January 22, 2026

## REASONS FOR DECISION

[1] The appellants seek a stay of an eviction order in respect of their property located at 102 Topham Crescent, Richmond Hill, Ontario L4C 9E7 (the “Property”) pending their leave to appeal application to the Supreme Court of Canada.

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<sup>1</sup> Effie Kakoutis, the other moving party/responding party by way of cross motion, did not make submissions.

[2] The respondent brings a cross-motion pursuant to rr. 37.16 and 61.16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “*Rules*”) seeking an order restraining the appellants from bringing further interlocutory motions in this proceeding without leave.

## **BACKGROUND**

[3] In order to understand the context within which these motions have been brought, it is necessary to briefly summarize the lengthy litigation history between these parties.

[4] In 2011, the appellants granted a mortgage in favour of the respondent on account of a mortgage loan and line of credit. On April 7, 2015, the respondent obtained summary judgment from the Superior Court in Toronto due to nonpayment of the mortgage loan: *Kakoutis v. The Bank of Nova Scotia*, 2015 ONSC 513. Among other things, the appellants were ordered to deliver possession of the Property to the respondent. The appellants unsuccessfully appealed that judgment to this court and their leave to appeal application to the Supreme Court of Canada was subsequently dismissed: 2015 ONCA 872, leave to appeal to the S.C.C. dismissed, [2016] S.C.C.A. No. 66.

[5] In the meantime, the appellants commenced an action in Milton advancing essentially the same arguments that had already been decided in the earlier Toronto proceeding. On April 9, 2016, the Milton action was dismissed on the basis

that it was frivolous and vexatious and constituted an abuse of process: *Kakoutis v. Bank of Nova Scotia*, 2016 ONSC 2300. An appeal from that judgment to this court was dismissed on December 5, 2016: 2016 ONCA 919.

[6] On May 20, 2025, an associate judge of the Superior Court of Justice granted leave to the respondent to issue a writ of possession with respect to the Property: 2025 ONSC 2966. The appellants' appeal from that order was quashed by this court on October 22, 2025, on the basis that this court does not have jurisdiction to hear an appeal from an associate judge, in accordance with s. 19(1)(c) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43: 2025 ONCA 715. The appellants did not request that the appeal be transferred to either the Divisional Court or the Superior Court and no such transfer order was made.

### **MOTION FOR A STAY**

[7] The appellants have filed what appears to be another application for leave to appeal the December 4, 2015 judgment of this court to the Supreme Court of Canada and seek a stay of any eviction order pending the determination of their leave application.

[8] The test for granting a stay requires the court to consider the three factors established in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, namely:

- (1) a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried;
- (2) it must be determined whether the moving party would suffer irreparable harm if the stay were refused; and
- (3) an assessment of the balance of inconvenience must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[9] All three factors weigh against the granting of the stay in these circumstances.

[10] While the preliminary assessment of the merits establishes a low bar, the appellants fail to surpass it. The appellants are, in essence, attempting to relitigate for a third time— issues that were litigated and twice decided against them by this court nearly a decade ago. Their appeal is thus entirely devoid of merit.

[11] The appellants have failed to demonstrate that they will suffer any irreparable harm if the eviction order is not stayed. The appellants have been enjoying the use of the Property for over a decade after they were ordered to vacate. The respondent states that no payments have been made on the mortgage loan since 2012 and, while Mr. Kakoutis' disputes that claim, the appellants have not advanced any evidence to the contrary. Ending this situation does not constitute irreparable harm.

[12] Mr. Kakoutis also claims that his medical and personal circumstances favour granting a stay. He has provided a letter from an insurer advising him to attend and provide medical evidence in support of a 2022 application for a Determination of Catastrophic Impairment (the “Determination”) pursuant to the Statutory Accident Benefits Schedule, O. Reg. 34/10. The accident in question occurred in 2003 and has no connection to the current proceeding. The appellant has not provided any evidence as to how the eviction would affect his ability to attend and provide medical evidence for purposes of the Determination.

[13] The balance of convenience and interests of justice favour the respondent. I note that after filing their most recent notice of appeal to this court, the appellants obtained a stay of eviction from the Superior Court of Justice so that their appeal of the May 20, 2025 order could be heard by this court on October 16, 2025. Although they agreed to be bound by the decision of this court on their appeal and the stay was granted on that basis, the appellants now seek to postpone the eviction yet again.

[14] Finally, on January 12, 2026, Pomerance J.A. granted a stay of eviction pending the return of this motion. That relief has now been spent.

[15] I therefore dismiss the appellants’ motion for a stay.

## THE RESPONDENT'S CROSS-MOTION TO PROHIBIT FURTHER MOTIONS

[16] The respondent brings a cross motion for an order pursuant to r. 37.16 of the *Rules*, which provides as follows:

On motion by any party, a judge or associate judge may by order prohibit another party from making further motions in the proceeding without leave, where the judge or associate judge on the hearing of the motion is satisfied that the other party is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the court by a multiplicity of frivolous or vexatious motions.

[17] This court has found an order under r. 37.16 warranted in some of the following circumstances:

- (a) where a litigant has repeatedly filed review or other motions in the same proceeding: see *Hoang v. Mann Engineering Ltd.*, 2015 ONCA 838; *Damallie v. Ping*, 2017 ONCA 146; and *Bajouco v. Green*, 2017 ONCA 493;
- (b) when a litigant has disregarded a previous order or brought procedural motions in the wrong court: see *Lum v. College of Physiotherapists of Ontario*, 2020 ONCA 271, at paras. 17-18; and
- (c) where there have been lengthy proceedings, including numerous and substantial unpaid costs orders against the litigant: see *Susin v. Susin*, 2018 ONCA 549, at para. 12.

[18] I accept that the appellants are in essence seeking to relitigate claims which have already been adjudicated. I also accept that they previously brought an

appeal to the wrong court. That said, the respondent did not argue either before the associate judge or before this court on appeal that the proceeding was frivolous and vexatious or an abuse of process. Further, the appellants' previous attempts to stay the eviction were successful and cannot be considered frivolous or vexatious motions.

[19] While I have dismissed the appellants' motion for a stay partly on the basis that their appeal is devoid of merit, I find that they have not brought a multiplicity of frivolous or vexatious motions to this court at this stage. I am also mindful of the fact that the appellants are self-represented. I am therefore not prepared to make an order under r. 37.16 at this time. However, my decision is without prejudice to the respondent's right to renew this motion in the event that circumstances change.

[20] The respondent's cross-motion is therefore dismissed.

[21] The respondent seeks full-indemnity costs of \$2,505.21, inclusive of both motions. The respondent was only successful in respect of the appellants' motion. Given that the appellants' motion was the primary focus of the submissions, I order the appellants to pay the respondent costs of \$1,500, all inclusive.

“P.J. Monahan J.A.”