

**CITATION:** Byrd v. Stockey, 2026 ONSC 1410  
**COURT FILE NO.:** CV-24-33468  
**DATE:** 20260309

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Darryl Byrd )  
 ) Darryl Byrd, acting in person  
Plaintiff )  
 )  
– and – )  
 )  
Robert Stockey )  
 )  
Defendant ) Stuart D. Reddington, for the Defendant  
 )  
 )  
 )  
 )  
 ) **HEARD:** March 4, 2026

2026 ONSC 1410 (CanLII)

**ENDORSEMENT ON MOTION**

**HORVAT J.**

- [1] The defendant, Robert Stockey (“Stockey”), brings a motion seeking an order striking out the statement of claim or dismissing the action on the grounds that the action is without merit, procedurally abusive, and a pattern of frivolous and vexatious litigation. Stockey also seeks an order declaring the plaintiff, Darryl Byrd (“Byrd”), a vexatious litigant and an order for security for costs if this action proceeds.
- [2] For the reasons that follow, I grant Stockey’s motion and dismiss the action. Costs in the all-inclusive amount of \$2,500 are awarded to Stockey payable by Byrd.

**BACKGROUND**

- [3] Byrd owns a property located in Windsor, Ontario. A first mortgage in the amount of \$176,000 was registered on September 10, 2019 in favour of a third party. On September 8, 2022, Stockey advanced a second mortgage to Byrd in the amount of \$210,000. On October 1, 2022, the balance of the first mortgage was due. To protect his rights under the second mortgage, Stockey paid off the first mortgage.

- [4] On November 15, 2022, a transfer of charge was registered to Stockey for the first mortgage. On November 22, 2022, a notice of sale was issued. Byrd had not made any payments since October 2022.
- [5] On January 11, 2023, a statement of claim was issued for possession. The claim was served on Byrd on January 13, 2023. On February 17, 2023, a statement of defence was delivered.
- [6] On April 24, 2023, Byrd brought a motion for summary judgment. Byrd was represented by a lawyer at the time. A judgment for possession of the property on consent was obtained and provided for a stay of enforcement to permit Byrd to sell the property and discharge the mortgage. Costs of \$5,000 were awarded against Byrd.
- [7] On June 16, 2023, a writ of possession was issued.
- [8] Byrd brought a motion to set aside the consent judgment for possession asserting that his lawyer, who removed himself from the record the day after the consent judgment was obtained, acted without instructions when he consented to the judgment. Byrd also asserted that he was unaware of the consent judgment until July 2023.
- [9] On September 12, 2023, Macfarlane J. dismissed Byrd's motion to set aside the consent judgment.
- [10] On October 3, 2023, Miller J.A. dismissed Byrd's motion seeking a stay of execution of the writ of possession pending appeal from the decision of Macfarlane J. and awarded costs in the amount of \$2,500 to Stockey.
- [11] On May 9, 2024, Byrd commenced this action by issuing a statement of claim seeking \$2 million in damages against Stockey for negligence, reckless misrepresentations, breach of agreement, breach of fiduciary duty and unauthorized disclosure of confidential information. Byrd also seeks a certificate of pending litigation and an order declaring the notice of sale under the mortgages null and void.
- [12] On May 10, 2024, Byrd's appeal from the decision of Macfarlane J. was heard. On May 15, 2024, the Court of Appeal for Ontario dismissed the appeal and awarded costs to Stockey in the amount of \$3,000.
- [13] On October 10, 2024, Stockey delivered his statement of defence in this action. The defence relies on the consent judgment and the decisions of Miller J.A. and the Court of Appeal.
- [14] On December 16, 2024, Stockey brought this motion for summary judgment originally returnable on March 4, 2025. The motion was adjourned to a special appointment before Kalajdzic J. on August 11, 2025. That date was adjourned to March 2, 2026 to permit Byrd an opportunity to file responding motion materials and a factum.

- [15] Byrd continues to live in the property and has not made any payments towards the mortgages since October 2022.

## ANALYSIS

- [16] In my view, after reviewing the motion record, the responding motion record, and the statement of claim, this motion succeeds under r. 21.01(3)(d) for the reasons that follow.
- [17] The subject matter of this proceeding, including the facts and issues pleaded in the statement of claim, have already been adjudicated in the previous claim for possession, the consent judgment, the motion before Macfarlane J. and the subsequent appeal. In these circumstances, the statement of claim is frivolous, vexatious and discloses no reasonable cause of action.
- [18] In dismissing Byrd's motion seeking a stay of execution of the writ of possession pending appeal, Miller J.A. stated in part:

Although Mr. Byrd has not appealed the April 4, 2023 consent order, which is the operative order, the current motion seems to presuppose that that is what he is appealing. What Mr. Byrd wants, ultimately, is a trial where he can adduce evidence that will show that he is not, in fact, in default of the mortgage. It is not at all clear to me what that evidence could be.

[...]

There are no serious issues to be tried. Mr. Byrd asserts that the mortgage is not in default, notwithstanding the evidence adduced by the responding party that he stopped making payments in October 2022, that the mortgage became due and payable in October 2022, and that the mortgagee refused to renew the mortgage. Mr. Byrd has adduced no evidence in this motion that can support his theory that the mortgage is not in default, and merely asserts that that evidence will be elicited from others on cross-examination at trial. That is not sufficient to raise a serious triable issue. [Emphasis added.]

- [19] This is the same situation that I have before me. While Byrd pleads in the prayer for relief of his statement of claim that he is seeking damages for negligence, reckless misrepresentations, breach of agreement, breach of fiduciary duty and unauthorized disclosure of confidential information, a review of the facts pleaded reveals that his action ultimately seeks a determination of whether he was in fact in default prior to the consent judgment being obtained. The statement of claim does not disclose the requisite elements of any of the causes of action identified in the prayer for relief, or any material facts to support such causes of action.

- [20] In dismissing Byrd's appeal from the order of Macfarlane J., the Court of Appeal stated at para. 8 of its reasons:

As the motion judge in this court observed, the order under appeal was properly granted because r. 37.14 (which provides relief to a party who did not receive notice overheard or failed to attend a hearing because of accident, mistake or insufficient notice), did not apply when the appellant had been represented at the hearing in the court below. Nor is there any basis to permit the appellant to reopen the mortgage enforcement proceedings, which appears to be the real objective of his appeal. The mortgage has been in default since November 2022, and the appellant was unable to arrange refinancing or to sell the property when he was afforded additional time to do so. [Emphasis added.]

- [21] The facts and issues identified in Byrd's statement of claim have already been adjudicated in the previous claim and the subsequent appeal. Byrd alleged before the Court of Appeal and before Miller J.A. that he was not in default. There, as before this court, there is no evidence to support the proposition that the mortgages were up to date.
- [22] It appears that Byrd wishes to relitigate the issues that were dealt with and resolved by way of consent judgment. Byrd was represented by a lawyer at the time of the consent. He exhausted his appeal rights and that proceeding is at an end. I conclude that this action is frivolous, lacks a legal basis, and lacks legal merit. In addition, the statement of claim discloses no reasonable cause of action and raises no triable issues. Further, in my view, it would be an abuse of process to permit Byrd to relitigate issues already determined and have another kick at the can so to speak. The issues, the facts, and the parties in this action are the same as those in the mortgage default proceeding and on appeal, where they were resolved by a final adjudication.
- [23] Byrd advised that he has commenced separate proceedings against his lawyer at the time of the consent judgment. Those proceedings are ongoing and are Byrd's recourse for his assertion that he did not consent to the consent judgment and that his lawyer consented on his behalf without his instructions. Not this action.
- [24] Further, in my view, there is no genuine issue for trial under r. 20.04(2) and this action may also be dismissed on that ground. Alternatively, the statement of claim may be struck under r. 25.11 as an abuse of process given that the core issue, being the setting aside of the consent judgment, has already been adjudicated in the prior proceedings.
- [25] Given that I have found that Byrd's action shall be dismissed, it is not necessary for me to consider the issue of security for costs.
- [26] Finally, I am not prepared to declare Byrd as a vexatious litigant given that the procedures under r. 2.2 have not been followed. Even if the proper procedures had been followed, I would decline to make such an order based on the evidentiary record that is currently before me.

[27] Costs in the amount of \$2,500 shall be payable by Byrd to Stockey within 30 days of today's date. In my view, this is a fair, reasonable and proportionate award of costs under r. 57.01.

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Jacqueline A. Horvat  
Justice

**Released:** March 9, 2026

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**SUPERIOR COURT OF JUSTICE**

Darryl Byrd

Plaintiff

– and –

Robert Stockey

Defendant

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**ENDORSEMENT ON MOTION**

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HORVAT J.

**Released:** March 9, 2026