

COURT OF APPEAL FOR ONTARIO

CITATION: MCAN Home Mortgage Corporation v. Broad, 2026 ONCA 217

DATE: 20260326

DOCKET: COA-25-CV-0879

Huscroft, Zarnett and Pomerance JJ.A.

BETWEEN

MCAN Home Mortgage Corporation

Applicant (Appellant)

and

Melissa Lacey Broad

Respondent

Aaron H. Boghossian, for the appellant

Melissa Lacey Broad, acting in person

Heard: March 13, 2026

On appeal from the judgment of Justice Martha Cook of the Superior Court of Justice, dated June 11, 2025, with reasons reported at 2025 ONSC 3489.

Zarnett J.A.:

[1] Where in litigation “an interest in land is in question”, s. 103 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“CJA”) permits the court to issue a certificate of pending litigation (a “CPL”) that may be registered against title. The court may discharge the CPL on a variety of specific grounds and, under s. 103(6)(c), “on any

other ground that is considered just”. This appeal concerns the scope of the discretion under this provision.

[2] The appellant, a mortgagee¹ whose loan was in default, wished to sell the mortgaged property under its private power of sale. After giving notice, it entered into an agreement of purchase and sale promising to deliver clear title to the purchaser. There was a CPL registered on title, giving notice of an action brought by the respondent against the mortgagor, her former common law spouse, claiming an interest in the mortgaged property. The appellant was not a party to that action and no claim for priority over its mortgage was made in it.

[3] The appellant sought an order discharging the CPL to allow its sale to close. The application judge held that the court had no jurisdiction to order a discharge of a CPL in such circumstances. In her view, the appellant’s remedy lay solely in s. 35 of the *Mortgages Act*, R.S.O. 1990, c. M.40, which sets out what evidence proves a mortgagee’s compliance with the prerequisites to exercise a power of sale, sufficient to give the purchaser “good title”.

[4] In my respectful view, the application judge erred. The *Mortgages Act*, in combination with the *Land Titles Act*, R.S.O. 1990, c. L.5 (“*LTA*”) to which it is subject, confirm the ability of a mortgagee who has complied with the statutory

¹The property in issue is registered under the *Land Titles Act*, R.S.O. 1990, c. L.5. Under the *LTA*, the mortgage in issue is a “Charge”, the appellant mortgagee a “Chargee”, and the mortgagor a “Chargor”. I use the terms mortgage, mortgagee and mortgagor interchangeably with the terms used in the *LTA*.

requirements for exercising a private power of sale to convey title clear of subordinately ranking interests. This is a matter of substantive law. However, a practical gap remains because the *Mortgages Act* does not mandate the actual deletion of a CPL from the parcel registry, and although provisions of the *LTA* authorize the deletion of instruments from the register to accord with the purchaser's "good title", it is not the practice of the Land Titles office to do so for a CPL without consent of the person who obtained the CPL or a court order.

[5] The scope of the discretionary jurisdiction under s. 103(6)(d) of the *CJA* is broad enough to fill this practical gap. It permits the court to direct the discharge of a CPL at the request of a mortgagee who is not a party to the lawsuit in which it was obtained, where the mortgagee has priority over the interests claimed in the lawsuit and the discharge is necessary to allow the mortgagee's otherwise proper sale to close. Such a discretion is complementary to, rather than inconsistent with, the provisions of the *Mortgages Act* and the *LTA*.

[6] Although the appellant asks us to set aside the application judge's order and confirm the existence of a discretion to discharge the CPL, it does not ask us to replace the decision below with an order discharging the CPL. The parties acknowledge that circumstances have changed since the matter was before the application judge. The appellant's prospective sale has aborted. The respondent won her lawsuit against the mortgagor, resulting in her now being the beneficial owner of the mortgaged property. There is a pending application in the Superior

Court concerning the respondent's ability to redeem the mortgage. The appellant recognizes that whether the discretion to discharge the CPL should be exercised must be considered afresh, in the Superior Court.

[7] I would therefore set aside the order of the application judge and refer the matter back to the Superior Court for further proceedings consistent with these reasons.

Background

[8] The appellant is the mortgagee under a first mortgage dated May 16, 2022, granted by Steven Nurse on residential property registered in his name under the *LTA*, municipally known as 1117 Byron Baseline Road in London, Ontario (the "Property"). The mortgage secures repayment of the sum of \$410,000 together with interest, costs and other expenses. It required periodic payments during its term and repayment of the balance on June 1, 2023.

[9] The respondent was Nurse's common law spouse at the time the Property was acquired and when the mortgage was registered. According to the respondent, she and Nurse decided to jointly purchase the Property, and she made substantial contributions to the down payment for the purchase. Despite this, the legal title to the property was registered in Nurse's name only.

[10] The respondent and Nurse separated in May 2023. Nurse stopped making mortgage payments that same month. Prior to this, the respondent had given Nurse funds to make mortgage payments.

[11] On the basis of her significant financial contributions to the purchase and renovation of the Property as well as to mortgage payments, the respondent claimed an equitable ownership interest in the Property in proceedings against Nurse that she commenced in August 2023. No claims were made against the appellant, which was not a party to those proceedings.

[12] In her proceedings against Nurse, the respondent obtained leave in August 2023 to issue and register a CPL against title to the Property

[13] Due to Nurse's default on the mortgage, the appellant served a Notice of Sale Under Mortgage dated October 13, 2023, indicating that the Property would be sold if the amounts owing were not paid by November 20, 2023. The Notice was served on Nurse as the mortgagor, and on the respondent.

[14] After receiving the Notice, the respondent attempted to negotiate with the appellant to bring the mortgage back into good standing. She was unsuccessful. The appellant pointed out that the mortgage had matured on June 1, 2023, and the full amount of principal, interest, costs and expenses, was due. The respondent sought time to finalize financing to pay out the appellant; the parties do not agree

about whether the appellant had to accept the terms on which she sought to do so.

[15] On December 12, 2023, the respondent brought a motion within her proceeding against Nurse for an interim order declaring her to be an encumbrancer of the Property under s. 2 of the *Mortgages Act*. This relief was denied.

[16] The appellant obtained default judgment against Nurse on December 29, 2023, for payment of the amount due under the mortgage and possession of the Property.

[17] The appellant entered into an agreement on October 9, 2024 to sell the property to a third party. The appellant then brought an application to discharge the CPL so it could transfer title to the third party purchaser.

The Decision Below

[18] The application judge held that the court had no power to discharge a CPL at the instance of a mortgagee in the process of completing a power of sale. In support of this point, she cited the decision of Perell J. in *Royal Canadian Mortgage Investment Corp. v. Mendes*, 2019 ONSC 6039. She interpreted that decision to mean that expunging a CPL at the behest of a mortgagee is unnecessary. Section 35 of the *Mortgages Act* enables a mortgagee to prove by means of statutory declarations that a power of sale was properly exercised. The concluding

words of s. 35 make the listed statutory declarations “sufficient to give a good title to the purchaser”.

[19] She further observed that it was unclear whether the appellant could lawfully avail itself of s. 35 of the *Mortgages Act* without first giving the respondent a meaningful opportunity to redeem the mortgage, but noted that she was not required to decide this question. She held that the appellant could pass good title to the purchaser if it satisfied the requirements of s. 35 of the *Mortgages Act*. There was neither power in the court, nor a need, for an order discharging the CPL.

[20] In fairness to the application judge, it does not appear that her attention was directed to two matters.

[21] First, there was a further decision in the *Royal Canadian Mortgage* matter. In the decision the application judge cited, Perell J. referred to s. 35 of the *Mortgages Act* as the basis on which a mortgagee should respond to its proposed purchaser’s requisition for the discharge of a CPL, but did not absolutely refuse to grant a discharge. Instead, he considered the request for a discharge to be premature. The mortgagee’s application was adjourned, to be addressed once the mortgagee had extinguished the mortgagor’s title by complying with s. 35: at paras. 39-43. The adjourned application came back before Myers J. He noted the practical problem for a mortgagee selling to a purchaser who wanted the CPL cleared off title, despite his agreement with Perell J. that s. 35 provides for the

conveyance of good title. He granted an order discharging the CPL: *Royal Canadian Mortgage Investment Corporation v. Myles Mendes et al.* (December 11, 2019), Toronto, CV-19-00675619-0000 (Ont. Sup. Ct.).

[22] Second, s. 35 of the *Mortgages Act* is subject to the *LTA*, which has more specific provisions concerning the conveyance of good title by a mortgagee selling under power of sale, and for the removal of instruments from the register when such a sale takes place. Additionally, the Land Titles Office has specific requirements regarding removing a CPL from title.

The Statutory Provisions

1. CPLs under the *Courts of Justice Act*

[23] The purpose of a CPL is to give notice that an interest in land is in question in litigation. It serves to prevent the claimed interest from being defeated by a transfer or other dealing with the land in favour of a person who otherwise could assert they acquired the land without notice of that claimed interest: *G.P.I. Greenfield Pioneer Inc. v. Moore* (2002), 58 O.R. (3d) 87 (C.A.), at para. 15; *Brock v. Crawford* (1908), 11 O.W.R. 143 at p. 146 (H.C.) Sections 103 (1) and (2) of the *CJA* provide, in relevant part:

(1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2).

(2) Where a certificate of pending litigation is issued under subsection (1) it may be registered whether the land is registered under the *Land Titles Act* or the *Registry Act*.

[24] Section 103(6) of the *CJA* gives the court a discretion to discharge a CPL, with or without terms, in various circumstances, including where the party who obtained the CPL does not have a reasonable claim to the interest in land claimed, where they could be protected by another form of security, or “on any other ground that is considered just”. Section 103(7) stipulates that the effect of a discharge is to free up the land to be dealt with as though the CPL had not been registered.

2. Part III of the *Mortgages Act* and the *LTA*

[25] Part III of the *Mortgages Act* governs the exercise of a power of sale. Section 31(1) provides that a mortgagee, before exercising a power of sale of land registered under the *LTA*, must first give a prescribed notice to those whose interests will be cut out by a sale. For example, the notice must be given to, among others, those shown by the “parcel register...to have an interest in the mortgaged property”, execution creditors, statutory lien holders, and persons with interests of which the mortgagee has actual written notice. Notice is not required for persons having an interest “prior to that of the mortgagee” or persons “subject to whose rights the mortgagee proposes to sell”. Section 32 provides that the notice may

only be given after default has continued for at least fifteen days, and a sale may not be made until at least thirty-five days after the notice. Section 33 and 34 provide for the manner in which the notice is to be given and when it is considered effective.

[26] Section 35 of the *Mortgages Act* describes the evidence of statutory compliance that is sufficient to give good title to a person purchasing from a mortgagee who is exercising its power of sale. It states:

Subject to the *Land Titles Act* and except where an order is made under section 39, a document that contains all of the following is conclusive evidence of compliance with this Part and, where applicable, with Part II, and is sufficient to give a good title to the purchaser:

1. A statutory declaration by the mortgagee or the mortgagee's solicitor or agent as to default.
2. A statutory declaration proving service, including production of the original or a notarial copy of the post office receipt of registration, if any.
3. A statutory declaration by the mortgagee or the mortgagee's solicitor that the sale complies with this Part and, where applicable, with Part II.²

[27] The *LTA* contains specific provisions concerning a mortgagee selling land registered under the *LTA* under power of sale. Section 35 of the *Mortgages Act* is, as it states, subject to the Land Titles Act. Section 99 of the *LTA* provides:

² Section 39 of the *Mortgages Act* gives the court the power, in some circumstances to dispense with notice of a sale. Part II of the *Mortgages Act* is applicable where the mortgage document does not provide for a power of sale.

(1) Subject to the *Mortgages Act* the registered owner of a registered charge that contains a power of sale, upon registering the evidence specified by the Director of Titles, may sell and transfer the interest in the land or any part thereof that is the subject of the charge in accordance with the terms of the power in the same manner as if the registered owner of the registered charge were the registered owner of the land to the extent of such interest therein.

(1.1) The evidence specified by the Director of Titles under subsection (1) is conclusive evidence of compliance with Part III of the *Mortgages Act* and, where applicable, with Part II of that Act and, upon registration of a transfer under that subsection, is sufficient to give a good title to the purchaser.

(2) Upon the registration of a transfer under subsection (1) and upon satisfactory evidence being produced, the land registrar may delete from the register the entry of an instrument or writ appearing to rank subsequent to the charge under which the land is sold, and thereupon the interest of every person claiming under such subsequent instrument or writ ceases to affect the land.

[19] Although the *LTA* provides that the land registrar may delete “an instrument or writ” appearing to rank subsequent to the mortgage, we are advised by counsel for the appellant that the practice is not to do so if the registered instrument is a CPL, without consent of the person who obtained it or a court order. He points to the Electronic Registration Procedures Guide issued by the Ministry of Government and Consumer Services, which provides: “A certificate of pending litigation may not be deleted unless a court order authorizing the deletion, or the consent of the person who registered the certificate (Plaintiff(s)), has been obtained”: Ministry of Government and Consumer Services, *Electronic Registration Procedures Guide*, Version 12 (Toronto: Queen’s Printer for Ontario, 2017), at p. 72.

Discussion

[28] In my view, the application judge erred in holding that “[t]here is no power in the court to discharge a validly registered CPL at the instance of a mortgagee in the process of completing a mortgage power of sale proceeding”. I reach that conclusion for a number of reasons.

[29] A CPL may only be issued and registered with permission of the court where an interest in land is in question in an action. The court maintains jurisdiction to ensure that the CPL’s continued presence on title does not work an injustice. Section 103(6) of the *CJA* describes a range of specific grounds on which a CPL may be discharged by the court, including where the party who obtained it does not have a reasonable claim to the interest in the land claimed, or where their interests could be protected by another form of security. Section 106(6)(c) permits discharge of a CPL on “any other ground that is considered just”. The court has the power to impose terms when ordering the discharge of a CPL.

[30] Nothing in the wording of s. 103(6)(c) of the *CJA*, read in light of its context and purpose, precludes it being invoked by a mortgagee who is not a party to the lawsuit in which the CPL was obtained, but is nonetheless affected by it. A mortgagee whose mortgage ranks prior to the interest in land that is in question in the action, and against whom no claim for priority is made, is affected by a CPL if it prevents the mortgagee from completing a sale it would otherwise be entitled to make. Where no reasonable claim about the mortgagee’s interest in land is being

made, this effect of a CPL goes beyond its purpose. In such circumstances, the mortgagee has the right to request that the court exercise its discretion to discharge the CPL on the basis that it would be just to do so.

[31] The existence of a power under s. 103(6)(c) of the *CJA* to discharge a CPL at the request of a mortgagee, where it is just to do so, is consistent with the relevant provisions of the *Mortgages Act* and the *LTA*.

[32] Section 35 of the *Mortgages Act* specifies the documentation that evidences compliance by a mortgagee with the relevant parts of the Act concerning the exercise of a power of sale and that is thus “sufficient to give a good title to the purchaser”. Nothing in that section conflicts with the court’s jurisdiction under s. 103(6)(c) to discharge the CPL at the request of a mortgagee where it is necessary to give practical effect to the purchaser’s “good title”.

[33] As the *LTA* makes clear, there can be a difference between what, in law, constitutes the transfer of good title, and what must be done to ensure that the parcel register reflects that good title, unaffected by the presence on the register of any other instruments that may suggest the existence of an adverse claim.

[34] Sections 99(1) and (1.1) of the *LTA* allow the Director of Titles to specify the evidence necessary to show compliance with the *Mortgages Act*, contemplate the registration of such evidence, and stipulate that such evidence and the registration of a transfer by the mortgagee to the purchaser is “sufficient to give good title to

the purchaser”. But s. 99(2) goes on to provide that upon the transfer being registered and satisfactory evidence being produced the land registrar may “delete from the register the entry of an instrument or writ appearing to rank subsequent to the charge under which the land is sold, and thereupon the interest of every person claiming under such subsequent instrument or writ ceases to affect the land.”

[35] In other words, notwithstanding that in law the purchaser receives “good title”, the state of the register is still critical. The parcel register in the Land Titles system is a “perfect mirror of the state of title”: *Lawrence v. Wright*, 2007 ONCA 74, 84 O.R. (3d) 94, at para. 30. This “mirror principle” is central to the land titles system, which guarantees the indefeasibility of title. The land registrar’s power to delete subsequent instruments under s. 99(2) of the *LTA*, regardless of the fact that compliance with Part II of the *Mortgages Act* grants good title, is a reflection of the importance of the register. Where an instrument ranks subsequent to the mortgage under which the property is being sold, it may be discharged so that the interest of any person claiming under such instrument ceases to affect the land.

[36] Section 99(2) applies to a CPL where the litigation in question relates to an interest in land that ranks subsequent to the mortgage under which a sale is being made. However, as the case was put to us, the land registrar will not exercise the power to delete such a CPL from the register without consent of the person who obtained it, or a court order: *Electronic Registration Procedures Guide*, p. 72.

[37] Granting a discharge of a CPL that ranks subsequent to the interest of a mortgagee selling under power of sale under s. 103(6)(c) of the *CJA* is appropriate where it would give effect to the purchaser's good title as otherwise established under s. 99(1) and (1.2) of the *LTA*. To do so would facilitate the removal from the register of an instrument that does not affect that purchaser's title and negate any concern that a person claiming under the CPL continues to have an interest that affects the land.

Conclusion

[38] A discretion exists under s. 103(6)(c) of the *CJA* to discharge a CPL on the application of a mortgagee exercising its power of sale under a mortgage, where the mortgage ranks in priority to the interest in the land in issue in the action in which the CPL was obtained. This discretion may be exercised where the mortgagee provides evidence of compliance with the *Mortgages Act*, as stipulated in s. 99 of the *LTA*, that is, where, in law, good title is being conveyed to the purchaser, and it is necessary for the court to grant a discharge so that the register reflects that title.

[39] The court may always consider appropriate terms, such as making it clear that the discharge takes effect only on registration of the transfer to the purchaser referred to in s. 99(1.1) of the *LTA*, and requiring payment into court of any surplus realized on the sale. Whether the discretion should be exercised, and any terms that may be appropriate to impose, will depend on the facts of each case.

[40] Since the application judge was of the view that there was no jurisdiction to grant a discharge, she did not reach the question of how the discretion should be exercised. As set out above, the circumstances have changed since the matter was before the application judge.

[41] I would allow the appeal and set aside the order of the application judge. In its stead I would return the matter to the Superior Court so that, at the appropriate time and if necessary, the court may consider whether grounds exist to grant a discharge of the CPL.

[42] The appellant has been successful on the appeal on the limited basis on which it was framed. It does not seek costs of the appeal, or of the application before the application judge. Accordingly, no costs are awarded to the appellant.

[43] The application judge awarded some costs of the application to the respondent. Although I have found that the application judge proceeded on an incorrect premise, the appellant has not shown that it would have succeeded if the application judge had properly understood the scope of her discretion. Accordingly, I would leave in place the costs disposition in favour of the respondent made by the application judge. The costs of any further proceedings in the Superior Court regarding the CPL are in the discretion of the judge disposing of those proceedings.

Released: March 26, 2026 “G.H.”

“B. Zarnett J.A.”

“I agree. Grant Huscroft J.A.”

“I agree. R. Pomerance J.A.”