

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Brian E. Downey and Brenda M. Downey, Applicants
And
Kimberly-Clark Inc., Respondent

HEARD: February 19, 2026

BEFORE: Fitzpatrick J.

COUNSEL: E. Zablotsky for Applicant
No one appearing for Respondent Kimberly-Clark Inc.

Endorsement on Application to Discharge a Mortgage

[1] At the return of this application on February 20, 2026, I granted the application with reasons to follow. Here are those reasons.

[2] The Applicants are the registered owners of a Northwest Ontario property municipally known as 104 Winnipeg St., Nakina, ON POT 2H0 and legally described as PCL 8358 SEC TBF; LT 96 PL M91 NAKINA; GREENSTONE (PIN: 62384-0329) (the "Property"). The Applicants purchased the Property in 1974. At that time the Applicant Brian Downey ("Mr. Downey") was employed by Kimberly-Clark of Canada Limited. This entity was a predecessor corporation to the Respondent in this matter. I will refer to these various corporate entities as the Company.

[3] At the time of purchase the Company advanced the Applicants the sum of \$10,000.00 to allow them to purchase the Property. The advance was secured by a mortgage, bearing

instrument number LT108587 registered against the title of the Property on July 5, 1974 (the “Mortgage”). The Mortgage bore interest at the rate of 1.25% per annum. The Court takes judicial notice that this rate of interest was significantly lower than market interest rates which in North America at the time were around 10%. Interest rates had spiked in the mid seventies as the result of the oil shock experienced in the Western economies in the aftermath of the OPEC oil embargo of the United States following the October War in the Middle East in 1973. The low interest rate on the Mortgage indicates this was a kind of benefit extended to Mr. Downey by his employer.

[4] Mr. Downey deposes he paid monthly all amounts due and owing under the Mortgage until it was paid in full as of May 1, 1979. Due to inadvertence no steps were taken to discharge the Mortgage from title to the Property either by the Applicants or the Respondent. This is understandable in the context of the Mortgage being advanced between employer and employee.

[5] On January 28, 2026, the Applicants effected personal service of this application on the Respondent at an address in Mississauga listed in a corporate profile report for the Respondent maintained by the Ontario Ministry of Public and Business Service Delivery. I am satisfied that any matters related to property assets owned by the Respondents have been dealt with from an office in Irving, Texas. I am also satisfied on the materials before the Court that in October 2025 the Applicants have in writing, requested the Company provide a discharge of the Mortgage that was paid off some 47 years ago. I find the Company has not provided such a discharge despite the mortgage principal and interest having been paid in full.

[6] The Applicants now wish to sell the Property. A discharge of the Mortgage is required so title can be conveyed free and clear.

[7] I find that section 4 of the *Real Property Limitations Act* R.S.O. 1990 c. L 15 (the “RPLA”) bars any claim the Company have under the Mortgage as more than ten years has passed since the mortgage was due and owing. Further I find that section 12(3) of the *Mortgages Act* R.S.O. 1990 c. M.40 applies in that for any other cause a proper discharge cannot be obtained by the Applicants. The cause in this case is that it can be inferred from the evidence before the Court that the people in charge of this particular asset of the Company have long forgotten about it as it was paid in full many years ago. As the *Mortgages Act* is remedial legislation that should be liberally interpreted (*Re Armstrong* [2024] O.J. No. 5433 at para. 8), I find that balancing the equities of mortgagor and mortgagee in this matter militates in favour of exercising my discretion in favour of granting the application. I therefore order that the mortgage be discharged from title to the Property without the necessity of any further payments being made by the Applicants to the Respondent or into court on account of the Mortgage as no monies are due and owing and any claim on the Mortgage is statute barred.

[8] Order to go as per draft filed.

The Hon. Mr. Justice F.B. Fitzpatrick

DATE: February 23, 2026

CITATION: Downey v. Kimberly-Clark Inc., 2026 ONSC 1100
COURT FILE NO.: CV-26-0014-00
DATE: 2026-02-23

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COUNSEL: E. Zablorny for Applicant
No one appearing for Respondent
Kimberly-Clark Inc.

**ENDORSEMENT ON APPLICATION TO
DISCHARGE A MORTGAGE**

Fitzpatrick J.

DATE: February 23, 2026