

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** Jerry Steven Oltean, Plaintiff  
v.  
Deborah Mitchell and Troy Anthony Greg, Defendants

**HEARD:** April 30, 2026 by Zoom

**BEFORE:** Fitzpatrick J.

**COUNSEL:** *D. Coscarella*, for the Plaintiff (responding party)  
Deborah Mitchell, Self Represented (moving party)  
No one appearing for Troy Gregg

**Endorsement on Motion**

[1] This motion is brought in a mortgage enforcement action. Deborah Mitchell moves to set aside a noting in default and for an extension of time to file a statement of defence.

[2] This action was commenced by way of Statement of Claim issued on January 16, 2026. The claim sought enforcement of a mortgage registered in the Land Titles Division of Rainy River (No. 48). The claim alleges that a mortgage registered against lands owned by Ms. Mitchell and Mr. Gregg matured on October 6, 2025. The principal amount of the mortgage then due was \$230,000.00. The claim also included amounts for alleged missed payments, a renewal fee and NSF fees, for a total amount due of \$252,180.00.

[3] The claim was properly served on Ms. Mitchell February 10, 2026 and on Mr. Gregg on February 21, 2026. The defendants had until March 13, 2026 to file a statement of defence at the

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latest absent the service of a notice of intent to defend. Ms. Mitchell attempted to file a defence within the twenty days following service of the claim. Her defence was rejected by the court office as it had formatting errors. A copy of what Ms. Mitchell attempted to file at first instance was placed before the Court during the course of the argument of the motion. It was not previously part of Ms. Mitchell's motion materials.

[4] Ms. Mitchell alerted counsel for the plaintiff on March 12, 2026 that she had submitted a defence but it was rejected. Counsel proceeded to note both Ms. Mitchell and Mr. Gregg in default on March 16, 2026.

[5] In *Franchetti v. Huggins*, 2022 ONCA 111 the Ontario Court of Appeal outlined at paragraph 9 of the decision the factors relevant in setting aside a noting of default. The factors are;

- 1) Parties' behaviour
- 2) The length and reasons for the defendant's delay
- 3) The complexity and value of the claim
- 4) Whether setting aside would prejudice a party relying on it
- 5) The balance of prejudice as between the parties and
- 6) Whether the defendant has an arguable defence on the merits.

[6] The factors are not exhaustive nor are they to be applied as rigid rules.

[7] In this case, Mr. Gregg has done nothing to defend the claim. The noting in default against him was not argued before the Court. The actions of plaintiff in respect of Mr. Gregg were not challenged.

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[8] My decision focuses on the actions of Ms. Mitchell. Ms. Mitchell has acted appropriately at least as far as timing to move to set aside the default. There was no delay by Ms. Mitchell moving to set aside the noting in default. However, for what ever reason the plaintiff was not provided with a copy of the proposed statement of defence prior to them acting to note both defendants in default. It was not appropriate for Ms. Mitchell not to show plaintiff's counsel her proposed defence at the time she reached out to counsel on March 12, 2026. This failure militates against granting relief to Ms. Mitchell. Her actions left the plaintiff in the dark and gave them no basis to proceed other than to note Ms. Mitchell and Mr. Gregg in default. In this regard, in my view, the plaintiff has also acted appropriately as they had a right to move to note parties in default if they were not provided with the basis for which a defendant or defendants proposed to oppose the claim within the time permitted for filing a defence absent the service of a notice of intent to defend.

[9] The claim is not complex as it involves a straightforward mortgage debt. It is for a substantial amount.

[10] At this point I will discuss the merits of the defence as disclosed in the document that Ms. Mitchell attempted to file. For ease of reference, I call it a "defence". In my view, the material that Ms. Mitchell attempted to file with the court was not in the proper format. The court staff had a proper basis to reject filing it. More significantly, the document did not disclose an arguable defence. What the document at issue did was outline several offers made by Ms. Mitchell to refinance the property for amounts that were less, and markedly so, than the outstanding mortgage debt set out in the Statement of Claim. What Ms. Mitchell attempted to file did not contain words that set out a defence to the claim. The "defence" Ms. Mitchell attempted to file did not disclose

any basis which put the plaintiff under any legal obligation to accept less than the amount due and owing under the mortgage at issue.

[11] The fact that the “defence” indicates Ms. Mitchell could not obtain alternative financing sufficient to pay out the debt as claimed, as evidenced by her offers below the value of the mortgage debt, leads me to draw an inference that the property value at issue will not support the debt level now reached by the mortgage that is now in default. This is also significant as it goes to the merits of the “defence”. What Ms. Mitchell wants is a negotiated settlement for less than the debt she undertook. This may be an appropriate “wish”, but it does not translate into a basis to exercise a discretion in favour of Ms. Mitchell at this point in the litigation.

[12] I appreciate the Court of Appeal in *Franchetti* has indicated that if setting aside a default is sought promptly it will be a rare case where a court requires a defendant to show an arguable defence on the merits. In my view this is one such rare case. I say so because to allow the default to be set aside and a “defence” that is completely without merit to be filed will inevitably lead to nothing more than increased costs for both parties and delay in the litigation process with no valid purpose other than to delay the inevitable. As the *Rules of Civil Procedure* are designed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits, setting aside the default in this matter would not achieve any of those goals.

[13] In my view, the plaintiff would be prejudiced if the noting in default was set aside. The plaintiff has already extended the mortgage once for a period of one year. The defendants allegedly missed several mortgage payments during that extension period. The balance of prejudice as between the parties favours not setting aside the default. Ms. Mitchell is in no worse position than the day she was served. She had no defence then. She has no defence now. To allow her to

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“reformat” something that is meritless and to refile it would be prejudicially tipping the scales in her favour with no benefit or basis other than to inevitably add one more motion for summary judgment to the court schedule in this region and unnecessarily increase costs to both parties for this litigation.

[14] For these reasons I decline to exercise my discretion to set aside the noting of default and allow a filing of the “defence”. The motion to set aside the noting in default is dismissed. The plaintiff can proceed to have the registrar sign judgment against both defendants. Costs of the motion fixed in the amount of \$500.00 payable by the defendants jointly and severally to the plaintiff.

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The Hon. Mr. Justice F.B. Fitzpatrick

**DATE:** May 4, 2026

**CITATION:** Oltean v. Mitchell et al, 2026 ONSC 2651  
**COURT FILE NO.:** CV-26-00005-00  
**DATE:** 2026-05-04

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**HEARD:** April 30, 2026

**COUNSEL:** *D. Coscarella*, for the Plaintiff  
Deborah Mitchell, Self Represented  
(moving party), for the Respondent  
No one appearing for Troy Gregg

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**ENDORSEMENT ON MOTION**

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Fitzpatrick J.

**DATE:** May 4, 2026