

40-year-old NOSI does not go to root of title (2225064 Ontario Ltd. v. 55 Bradwick Limited)

GTA Real Estate | Litigation & Dispute Resolution | Personal Property Security Act (PPSA)

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Until recently, a Notice of Security Interest (NOSI) could be registered on title to property in Ontario to give notice of a security interest in fixtures attached to land, such as HVAC equipment. The use of NOSIs expanded to include dubious long-term contracts for equipment ranging from water softeners to smart-home thermostats, creating obstacles for homeowners seeking to sell or refinance their properties.

In response, Ontario enacted the *Homeowner's Protection Act, 2024*, which prohibits registration of a NOSI with respect to consumer goods installed in a residential home and used primarily for personal, family or household purposes. Although a supplier's underlying contractual or security rights may remain, the statute prevents consumer NOSIs from encumbering residential land titles.

Commercial NOSIs remain permissible, however, and are a potential encumbrance that may disrupt a sale if not addressed promptly.

In *2225064 Ontario Ltd. v. 55 Bradwick Limited*, 2026 ONSC 4850, the Ontario Superior Court of Justice considered whether a NOSI went to the root of title, thereby allowing the buyer to refuse to complete a transaction.

The dispute arose from the sale of a commercial property in Vaughan. The buyer agreed to purchase the property for \$9,750,000, with a \$450,000 deposit and a closing date set for October 3, 2025. The Agreement of Purchase and Sale (APS) gave the buyer until September 12, 2025, to examine title and make any valid objections.

At issue was a NOSI dating back to 1985 that remained registered on title in favour of a secured creditor over fixtures and equipment owned by a former tenant.

On September 19, 2025, the buyer's lawyer delivered a requisition requiring a discharge of the NOSI.

The seller's lawyer responded that the requisition was out of time but that they had filed an application to delete the NOSI in any event, noting that the tenant against whom it had been registered had vacated the property more than 20 years earlier.

Deleting the NOSI proved more difficult than anticipated, however, and it remained on title at closing. The buyer refused to complete the transaction, taking the position that the seller had breached the APS by being unable to convey good and marketable title.

The NOSI was eventually deleted from title in November 2025, and the seller resold the property to another party for \$250,000 more than the APS price.

Litigation ensued between the original buyer and the seller over the deposit. The main issue was the requisition deadline in the APS, which gave the buyer until September 12, 2025, to examine title and raise any valid objection to be removed, remedied or satisfied by the seller, "[s]ave as to any valid objection so made by such day and except for any objection going to the root of title". Because the requisition was made after September 12, the issue was whether it fell within either exception: "root of title" or "a matter of conveyance".

The application judge emphasized that the underlying basis for a NOSI is the *Personal Property Security Act (PPSA)*, which does not create rights in real property. A NOSI registered under the *PPSA* serves as notice that a security interest may exist in fixtures or goods that have become fixtures, but a NOSI is not itself a real

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property interest. Even where it appears on title, its purpose is merely to alert third parties that personal property attached to the land may be subject to a security interest.

This distinction was key. The application judge relied on prior authority recognizing that the *PPSA* allows fixtures to retain their character as personal property for secured transactions purposes. Accordingly, registration of a NOSI does not transform a personal property interest into a real property interest.

Even assuming a NOSI was valid, the secured party's rights were limited to fixtures subject to the security interest. The NOSI did not grant any ownership interest in the land itself or prevent the seller from transferring legal title to the property. The buyer would still obtain ownership and possession of the land.

Accordingly, in the application judge's view, a NOSI did not approach the threshold required for a root-of-title defect. The right of the secured party to remove a fixture on the property did not create a total failure of consideration such that the buyer would receive nothing at all, not even possession of the property. It did not go to the root of title.

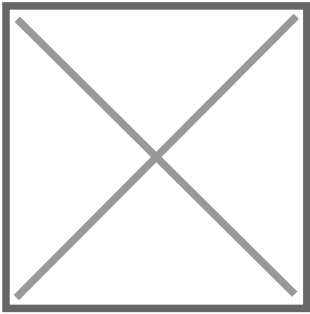
The buyer relied on the Court of Appeal for Ontario decision of *EPRF Holdings Limited v. Fergus Bloor Inc.*, 2024 ONCA 707, which involved an objection to an open permit raised within the contractual requisition period, not a defect raised after the requisition deadline. The application judge emphasized that distinction: a timely requisition need not meet the far more demanding root-of-title threshold. Unlike the open building permit in *EPRF Holdings*, which created uncertainty regarding the purchaser's lawful use and enjoyment of the property, the NOSI in question only concerned a decades-old security interest in a former tenant's fixtures, created no interest in the land, and posed no realistic risk to the buyer's possession, use, or enjoyment of the property.

As a result, the application judge court held that the buyer breached the APS by refusing to close. At 4.6% of the sale price, the deposit was nowhere near a level that could be described as commercially unreasonable or unconscionable, which would have entitled the buyer to its return. The seller was therefore entitled to retain the deposit, and the buyer's application was [dismissed](#).

Importantly, the application judge rejected the notion that every registration appearing on title necessarily affects title substantively. Some registrations may have practical implications, but the analysis depends on the rights they create. A NOSI may appear on a parcel register, but that fact alone does not make it a title defect. The focus must remain on whether it creates or impairs rights in the land. The decision also reaffirms the importance of requisition deadlines. A buyer invoking the root-of-title exception must demonstrate a genuine defect affecting ownership of the land itself, not merely a historical notice concerning personal property that may not impair the transfer of good title.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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