

Mortgagee can discharge certificate of pending litigation to enable power of sale (MCAN Home Mortgage Corporation v. Broad)

Commercial Real Estate | Litigation & Dispute Resolution | Mortgage | Power of Sale

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Where litigation concerns an interest in land, a party may seek to register a certificate of pending litigation ("CPL") on title to the property at issue under [section 103 of the *Courts of Justice Act*](#) (the "CJA"). A CPL provides notice to potential buyers or other parties of the litigant's claim and may interfere with efforts to sell the property during the course of litigation, including under a power of sale. However, the court may discharge a CPL on a variety of specific grounds, including any grounds that are "considered just".

The Court of Appeal for Ontario's decision in *MCAN Home Mortgage Corporation v. Broad*, [2026 ONCA 217 \(CanLII\)](#) addressed whether a mortgagee could discharge a CPL during ongoing litigation commenced by an unregistered owner for a claim to an interest in the mortgaged property.

In 2022, the appellant mortgagee loaned \$410,000 to a borrower who provided security in the form of a first mortgage registered on a residential property in London, Ontario. The mortgage was due on June 1, 2023.

The respondent to the appeal was the borrower's common law spouse at the time the property was acquired and when the mortgage was registered. According to the respondent, she and her spouse decided to jointly purchase the property and she made substantial contributions to the down payment for the purchase. However, title to the property was registered only in her spouse's name.

The respondent separated from her spouse in May 2023, and her spouse stopped making mortgage payments. Prior to this, the respondent had given her spouse funds to make mortgage payments.

The respondent commenced litigation against her former spouse for an equitable interest in the property on the basis of her significant financial contributions to the purchase and renovations, as well as to mortgage payments. The respondent obtained leave to register a CPL against title to the property in August 2023.

No claims were made against the appellant lender nor was the lender named as a party in the respondent's proceedings.

In October 2023, after the default on the mortgage, the lender served a Notice of Sale Under Mortgage on the respondent and her spouse. The respondent unsuccessfully attempted to negotiate with the lender to bring the mortgage back into good standing.

The lender obtained default judgment against the respondent's spouse for payment of the amount due under the mortgage and for possession of the property.

In October 2024, the lender entered into an agreement to sell the property to a third party. It then brought an application to discharge the CPL so title could be transferred to the third party purchaser.

The application judge dismissed the application based on the conclusion that a court had no power to discharge a CPL at the instance of a mortgagee in the process of completing a power of sale.

The Court of Appeal for Ontario disagreed, noting that [section 103\(6\)\(c\)](#) of the *CJA* provides that a CPL may be discharged on “any other ground that is considered just”. Nothing in the wording of [section 103\(6\)\(c\)](#) of the *CJA* precluded a mortgagee from seeking to discharge a CPL where they were not a party to the lawsuit in which the CPL was obtained, but were 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. In the case at hand, the respondent was not challenging the validity of the mortgagee's interest in the property. The Court of Appeal concluded that where no reasonable claim about the mortgagee's interest in land is being made, a mortgagee has the right to request that the court exercise its discretion to discharge a CPL on the basis that it would be just to do so.

Further, the existence of a power under [section 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 *Land Titles Act* (the “*LTA*”).

[Section 35](#) of the *Mortgages Act* specifies the documentation that evidences compliance by a mortgagee during the exercise of a power of sale and that is “sufficient to give a good title to the purchaser”. The Court of Appeal noted that this statute did not conflict with the court's jurisdiction under [section 103\(6\)\(c\)](#) of the *CJA* to discharge the CPL at the request of a mortgagee where it is necessary to give practical effect to the purchaser's “good title”.

Under the *LTA*, there can be a difference between what constitutes the transfer of good title and what must be done to ensure that the parcel register reflects that good title. As the Court of Appeal discussed in *Lawrence v. Wright*, 2007 ONCA 74, at paragraph 30, the parcel register in the Land Titles system is intended to be a “perfect mirror of the state of title”.

Under [section 99\(2\)](#) of the *LTA*, 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.”

The Court of Appeal concluded that granting a discharge of a CPL that ranks subsequent to the interest of a mortgagee selling under power of sale under [section 103\(6\)\(c\)](#) of the *CJA* is appropriate where it would give effect to the purchaser's good title. This 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.

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 [section 99\(1.1\)](#) of the *LTA*, and requiring payment into court of any surplus realized on the sale. Whether the discretion to discharge the CPL should be exercised, and any terms that may be appropriate to impose, will depend on the facts of each case.

As a result, the appeal was [allowed](#) but the matter was returned to the Superior Court to determine whether there were appropriate grounds to discharge the CPL.

The decision provides some helpful guidance to mortgagees seeking to sell a property under a power of sale in the face of a claim by a party who has registered a CPL. The Court of Appeal commented that there was a practical gap in the legislation because the *Mortgages Act* does not mandate the actual deletion of a CPL from the parcel registry and it was not the practice of the Land Titles office to do so without consent of the person who obtained the CPL or a court order. The scope of the discretionary jurisdiction under [section 103\(6\)\(c\)](#) of the *CJA* ought to be broad enough to fill this gap. In most cases, the key issue will be whether the mortgagee's interest has priority over a competing claim by a litigant to an interest in the land. A PDF version is available for download [here](#).

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