

# Mortgages, Powers of Sale and Certificates of Pending Litigation

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

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A Certificate of Pending Litigation (CPL) is a common remedy used by a party claiming an interest in real property. Once registered on title, a CPL puts prospective purchasers and other parties dealing with the property on notice that an interest in the property is being claimed adverse to the registered owner.

But what happens when a mortgagee has already commenced power of sale proceedings and agreed to sell the property? Can a CPL registered by another party that ranks behind the mortgage prevent the sale from closing?

The Ontario Court of Appeal considered this issue in *MCAN Home Mortgage Corporation v. Broad*. [1]

## The Background

MCAN held a mortgage over a residential property. After the borrower defaulted, MCAN exercised its power of sale and entered into an agreement to sell the property.

Before the sale closed, the borrower's former common-law spouse commenced an action claiming an ownership interest in the property and obtained and registered a CPL.

MCAN was not a party to that litigation, and there was no dispute that MCAN's mortgage ranked ahead of the interest claimed by the former spouse. Nevertheless, the purchaser wanted the CPL removed from title before closing.

MCAN therefore applied to have the CPL discharged.

## The Court's Analysis

The Court of Appeal confirmed that a properly conducted power of sale can transfer good title notwithstanding the existence of a CPL. The difficulty, however, was practical: the continued registration of the CPL created an obstacle to closing because it could not simply be removed from title without the consent of the party that registered it or a court order.

The Court of Appeal found that section 103(6)(c) of the *Courts of Justice Act* [2] provided the necessary jurisdiction. That provision gives the court discretion to order the discharge of a CPL "on any other ground that is considered just."

In the circumstances of this case, the Court held that where the mortgagee's interest ranks ahead of the CPL, and the mortgagee has otherwise complied with the requirements governing the exercise of its power of sale, the court has jurisdiction to discharge the CPL where it considers that course "just".

The Court concluded it was just to discharge the CPL in this case so the power of sale transaction could proceed.

Importantly, the decision does not establish that a CPL will automatically be discharged whenever a senior mortgagee seeks to sell a property. The court retains discretion and will consider the particular circumstances before it. That discretion can also be exercised subject to appropriate conditions. For example, the court may require surplus sale proceeds to be paid into court or make the discharge of the CPL effective only upon registration of the transfer.

## Practical Implications

**For mortgage lenders**, the decision provides an important procedural tool where a CPL registered by a later-ranking claimant threatens to interfere with an otherwise valid power of sale. Rather than allowing the CPL to derail the transaction, the mortgagee may be able to seek an order discharging it.

**For purchasers**, the decision provides greater certainty where a CPL has been registered after a mortgage that has priority over the claimed interest. The existence of the CPL does not necessarily mean the purchaser must abandon the transaction or wait for the underlying litigation to be resolved.

**For parties claiming an interest in land**, however, the decision is also a reminder that a CPL does not necessarily give the claimant priority over an existing senior mortgage. While a CPL remains an important remedy for protecting an interest in land pending litigation, it cannot necessarily be used to prevent a senior mortgagee from exercising rights that take priority over the claimed interest.

Ultimately, *MCAN* confirms that Ontario courts have the flexibility to address the practical consequences of a CPL where it conflicts with the exercise of a senior mortgagee's rights. Where the mortgagee's priority is clear and the power of sale has otherwise been properly conducted, the court may intervene to ensure the registration of the CPL does not unnecessarily prevent a legitimate sale transaction from proceeding. A PDF version is available for download [here](#).

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[1] *MCAN Home Mortgage Corporation v. Broad*, 2026 ONCA 217.

[2] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 103(6)(3).

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## Author



**Daniel Kuhnreich**

Associate

416.865.6649

[dkuhnreich@grllp.com](mailto:dkuhnreich@grllp.com)



**Bay Adelaide Centre — East Tower**  
22 Adelaide Street West, Suite 3600  
Toronto, ON M5H 4E3

Phone: 416.865.6600  
Fax: 416.865.6636  
[contactGR@grllp.com](mailto:contactGR@grllp.com)