

COURT OF APPEAL FOR ONTARIO

CITATION: Byrd v. Stockey, 2024 ONCA 396

DATE: 20240515

DOCKET: M54670 & COA-23-CV-0974

van Rensburg, Sossin and Dawe JJ.A.

BETWEEN

Darryl Byrd

Defendant  
(Moving Party/Appellant)

and

Robert Stockey

Plaintiff  
(Responding Party/Respondent)

Darryl Byrd, acting in person

Stuart Reddington, for the responding party/respondent

Heard: May 10, 2024

On appeal from the order of Justice J. Ross MacFarlane of the Superior Court of Justice dated April 24, 2024.

REASONS FOR DECISION

[1] The appellant mortgagor brought a motion to review the order of a single judge of this court denying a stay of the order of MacFarlane J. dated September 12, 2023 in mortgage enforcement proceedings. The review motion was returnable before us together with the appeal. At the conclusion of the hearing,

we dismissed the motion and appeal with reasons to follow. These are our reasons.

[2] The respondent mortgagee obtained judgment on default of the subject mortgage, including an order granting possession of the property. The judgment, dated April 24, 2023, which was made on consent, provided for a stay of enforcement until May 5, 2023, and potentially for a further period of time to permit the appellant to sell the property and to discharge the mortgage by May 15, 2023.

[3] The appellant subsequently brought a motion under r. 37.14 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, in which he asserted that his counsel, who took himself off the record the day after the judgment was issued, had acted without instructions when he consented to judgment. The appellant asserted that he was unaware that the judgment existed until late July 2023. In his motion, he sought an order setting aside the judgment and writ of possession, and directing that the matter proceed to trial.

[4] The r. 37.14 motion was adjourned so that the appellant could file evidence and in the interim execution of the April 24 judgment was stayed. The r. 37.14 motion was heard by MacFarlane J. on September 12, 2023. He dismissed the motion after noting that the appellant's evidence was contradictory on the issue of the appellant's instructions to his counsel. He concluded that the court did not have jurisdiction to grant the relief sought and he refused a further stay of the judgment.

[5] The appellant appealed the order of September 12, 2023, and he brought an urgent motion to a single judge of this court seeking a stay of the order pending appeal. The motion judge dismissed the stay motion by order dated October 3, 2023.

[6] The appellant brought a review motion under s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 seeking to overturn the denial of a stay pending appeal. That motion was before us together with the appeal proper.

[7] After reviewing the materials filed on the review motion and the appeal, we dismissed both the motion (which was moot) and the appeal.

[8] As the motion judge in this court observed, the order under appeal was properly granted because r. 37.14 (which provides relief to a party who did not receive notice of a hearing or failed to attend a hearing because of accident, mistake or insufficient notice), did not apply when the appellant had been represented at the hearing in the court below. Nor is there any basis to permit the appellant to reopen the mortgage enforcement proceedings, which appears to be the real objective of his appeal. The mortgage has been in default since November 2022, and the appellant was unable to arrange refinancing or to sell the property when he was afforded additional time to do so.

[9] For these reasons the motion and the appeal were dismissed, with costs to the respondent in the all-inclusive sum of \$3,000.

“K. van Rensburg J.A.”  
“L. Sossin J.A.”  
“J. Dawe J.A.”