**CITATION:** Bank of Montreal v 2104984 Ontario Inc., 2026 ONSC 4205
**COURT FILE NO.:** CV-25-6207
**DATE:** 2026 08 25

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Bank of Montreal, Plaintiff

**AND:**

2104984 Ontario Inc., Haroon Qader, and Pakiza Qaderi, Defendants

**BEFORE:** Justice Ranjan K. Agarwal

**COUNSEL:** Cora Madden and Raha Zolfaghari, for the moving party Rumanek & Company Limited in its capacity as trustee in bankruptcy of Haroon Qader

Micah Remedios, for the responding party Pakiza Qaderi

Haroon Qader, acting in person[1]

Harinder Dhaliwal, for the responding party 2104984 Ontario Inc.

**HEARD:** July 20, 2026

## ENDORSEMENT

## I. INTRODUCTION

[1] In November 2025, the plaintiff Bank of Montreal obtained a without-notice CPL against the property municipally known as 350 Robert Parkinson Drive, Brampton. The property is registered in the name of the defendant Pakiza Qaderi. BMO alleges that the defendant Haroon Qader fraudulently transferred the property to Qaderi, his

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[1] The trustee submits that Qader lacks standing on this motion. See *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 71. That said, the trustee agrees that Qader's affidavit is admissible. As he's self-represented, I allowed him to make submissions at the hearing.

former spouse, to try to defeat BMO's enforcement of a personal guarantee given by Qader. Qader and Qaderi separated sometime between 2019 and 2021.

[2] Qader has since filed for bankruptcy.

[3] The trustee in bankruptcy moves to extend the CPL; Qaderi and Qader request that the CPL be discharged. The defendant 2104984 Ontario Inc. takes no position on the motion.

[4] For the reasons discussed below, the CPL order is extended on an interlocutory basis until the trial of this action. Qaderi and Qader's request to discharge the CPL is dismissed. I endorse an order that the costs of this motion shall be in the cause of the action.

## II. BACKGROUND

[5] In June 2019, BMO advanced a $175,000 loan to 2104. Qader secured the loan with a personal guarantee.

[6] In October 2025, BMO asserted that 2104 was in default of the loan and demanded repayment from 2104 and Qader. It started this action in November 2025 for breach of the loan agreement and guarantee. It also seeks a declaration that Qader's transfer of his interest in the property to Qaderi was a fraudulent conveyance.

[7] At the time of the loan, Qader and Qaderi jointly owned the property. In April 2020, around ten months after the loan was advanced, Qader transferred his 50 per cent interest in the property to Qaderi.

[8] After starting this action, BMO moved, without notice, for a CPL. Where an interest in land is in question in a proceeding, the court may issue a CPL, which may then be registered against title. See *Courts of Justice Act*, RSO 1990, c C.43, s 103. A motion for an order for CPL may be made without notice. See *Rules of Civil Procedure*, r 42.01(3).

[9] Ordinarily, a defendant seeking to discharge a CPL does so after being served with the without-notice order and the supporting motion materials. Unless discharged, the CPL remains in effect on an interlocutory basis. Here, however, Lemay J granted an interim CPL and directed BMO to bring a motion to extend the order, like an interlocutory injunction under rule 40.02(2). He scheduled the motion for hearing in December 2025. At the return of the motion, Harris J adjourned the matter, on consent, to be heard as a long motion. The hearing was ultimately scheduled for July 2026.

[10] In February 2026, Qader made an assignment in bankruptcy. As a result, proceedings against Qader are stayed. Although Qader was initially represented by the same lawyer as 2104, he's now self-represented. In September 2026, BMO is moving for an order that the trustee assign and transfer its interest in this action to BMO. See *BIA*, s 38(1).

## III. ANALYSIS AND DISPOSITION

### A. Issue #1: did BMO fail to make full and frank disclosure?

[11] Qader argues that BMO failed to disclose three material facts to Lemay J:

- in October 2025, Qader asked BMO to convert the debt into a term loan
- in May 2022, Qaderi advised BMO that she and Qader were separated, and produced a copy of their separation agreement dated March 2021
- Qaderi assumed the mortgage on the property, which had a balance of $778,198.01—BMO's affiant deposed that the mortgage was only $350,000

[12] A party seeking a without-notice interim order must make full and frank disclosure of all material facts, including any known facts that may support or explain the defendant's position. See *Shannon v Hrabovsky*, 2024 ONCA 120, 493 DLR (4th) 157 at para 30, citing *Levy v Fitzgerald*, 2012 ONSC 2105 at para 40.

[13] To begin, Harris J has already ruled on the issue of Qader's October 2025 disclosure: while "it may have been wise to include this email in the original record before Justice LeMay, because of its peripheral nature, it was not necessary to full and frank disclosure." This issue is res judicata. Issue estoppel precludes re-litigation when an issue or material fact that must be decided in the second proceeding raises the same question that was decided in the previous proceeding. See *Qin v Ontario Securities Commission*, 2021 ONCA 165, at para 17. Harris J has already made a finding of mixed

fact and law that Qader's October 2025 request was not a material fact that needed to be disclosed by BMO.

[14] In any event, I agree with Harris J. The fact that Qader tried to renegotiate the debt is seemingly relevant but it's not material to determining whether the conveyance was fraudulent. It doesn't help explain the defendants' position.

[15] The other two facts asserted by Qader aren't material. First, the separation agreement. In May 2022, Qaderi applied for a loan at BMO's Mississauga Rd. and Financial Dr. branch. As part of the loan application, she emailed the separation agreement to the banker handling her loan. The loan to 2104 was made at the 30 Famous Ave. branch and Qader later dealt with an account manager in Québec.

[16] Though BMO's evidence ("I have no knowledge of when, or if, Haroon and Pakiza separated") is contradicted by the separation agreement, I find that this evidence isn't material. Even if BMO ought to have searched its records for any contact with Qaderi, the fact of the parties' separation was before Lemay J: "I am not prepared to make an order that applies until trial as there are other interests at play here, particularly if Mr. Qader has separated from his spouse." Further, the fact that the parties separated before the impugned transaction and made a settlement agreement after does not, by itself, prove that there was no fraudulent conveyance. See, *e.g.*, *Fernandes v Khalid*, 2021 ONSC 190.

[17] Second, the mortgage amount. BMO's evidence on the without-notice motion was that Qader transferred his interest in the property to Qaderi for her "assumption of a

mortgage in the amount of $350,000.00". The source of this information is Qader and Qaderi's Land Transfer Tax Affidavit. Qader and Qaderi haven't shown how BMO knew that she was assuming the full amount of the mortgage, which was closer to $800,000. Though the parcel register shows that Qaderi got a mortgage for $800,000 after the transfer, BMO was entitled to rely on the parties' affidavit.

[18] As a result, I conclude that BMO didn't fail to make full and frank disclosure on the without-notice motion.

**B. Issue #2: should the CPL be extended or discharged?**

[19] To obtain a CPL in an action claiming to set aside an alleged fraudulent transfer before obtaining judgment in the main action and where the main action does not concern an interest in the land allegedly fraudulently conveyed, the plaintiff must:

(a) satisfy the court that there is a high probability that they would recover judgment in the main action;

(b) show that the transfer was made with the intent to defeat or delay creditors; and

(c) show that the balance of convenience favours issuing a CPL in the circumstances.

See *Grefford v Fielding* (2004), 70 OR (3d) 371 (Sup Ct), at para 26; *Crepulja v Masterson*, 2026 ONSC 3559, at para 14. Though the test for setting aside a CPL engages different considerations, the *Grefford* test applies where the claim is for fraudulent conveyance. See *McNeil v Kaloustian*, 2022 ONSC 118, at para 66.

### 1. There's a high probability that BMO will get judgment against Qader.

[20] Qaderi argued this branch of the test based on whether BMO can prove a fraudulent conveyance from Qader to Qaderi. That's not the question. The issue is whether BMO can show that it's likely to prove that Qader defaulted on the loan. See *Grefford*, at paras 27-31.

[21] On that question, Qader and 2104 don't raise a defence. They haven't filed a statement of defence. Qader's affidavit and factum don't deny that 2104 defaulted on the loan, and Qader is liable under the guarantee.

### 2. BMO has adduced evidence of a fraudulent conveyance.

[22] BMO argues that the evidentiary record shows that there's a triable issue on whether Qader fraudulently conveyed the property to Qader. Qader and Qaderi respond that BMO is ignoring the fact of their separation, which allegedly explains the transfer.

[23] The defendants may have a defence at trial. But at this early stage of the proceeding, BMO has adduced enough evidence of a triable issue.

### i. Law

[24] Every conveyance of real property or personal property made with intent to defeat, hinder, delay, or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties, or forfeitures are void as against such persons and their assigns. See *Fraudulent Conveyances Act*, RSO 1990, c F.29, s 2.

[25] The elements of a fraudulent conveyance claim are (a) the plaintiff is a creditor (i.e., a person to whom a debt is owed); (b) the debtor is an insolvent person or can't pay their debts in full; and (c) the debtor conveyed their property to another person with intent to defeat, hinder, delay, or prejudice creditors. See *EnerWorks Inc. v Glenbarra Energy Solutions Inc.*, 2012 ONSC 414, at para 51.

[26] The types of facts that can support an inference of such an intention to convey property away from creditors—present or future—are often described as "badges of fraud":

- the debtor's financial state at the time of the transaction was precarious, including deficiencies in income, assets, solvency, and an inability to pay debts
- the existence of a family or close relationship between the parties to the transaction
- the transfer effectively divested the debtor of a substantial portion or all their assets

- the transfer had the effect of defeating, hindering, delaying, or defrauding creditors
- there was evidence of haste in making the transaction
- there was evidence of secrecy, fabrication, falsehood, destruction or loss of documents, or suspicious circumstances in making the transaction
- the transaction occurred near in time to notice of debts or claims against the debtor
- the consideration for the transfer did not correspond to the value of the property
- the absence of a business purpose or other justification for the transaction
- the transferor retained possession or use of the property
- the transferor retained a benefit or an ownership interest in the property

See *Ontario Securities Commission v Camerlengo Holdings Inc.*, 2023 ONCA 93, 478 DLR (4th) 185, at para 12.

[27] On a motion to extend or discharge a CPL, the threshold for showing a fraudulent conveyance is low. The court need only be satisfied "that a triable issue exists" based on the evidence. The court shouldn't weigh the evidence, evaluate the parties'

credibility, or draw inferences—it's not a summary judgment motion. See *Jodi L. Feldman Professional Corporation v Foulidis*, 2018 ONSC 7766, at para 21.

### ii. Disposition

[28] The evidentiary record shows that there's a triable issue whether Qader transferred the property to judgment-proof himself against the eventual debt to BMO.

[29] First, there's no dispute that there was a close or familial relationship between Qaderi and Qader. The parties were married in July 2015. They have three children. The parties made a separation agreement in March 2021. Under the agreement, they declared that they separated in April 2019.

[30] The nature of Qader and Qaderi's relationship during the period of the transfer is unclear. According to Qader, their relationship became strained in 2019. The Transfer form, dated April 2020, states the parties are "spouses of another". They could've but didn't use the separation statement. See *BDC v Yin*, 2023 ONSC 6159, at para 24(c). Qader says that he has not lived at the property since Spring 2021 (which implies that he lived there before 2021) but both parties say Qaderi has been the only resident of the property since April 2020.

[31] Even if the parties were separated as of April 2019, they were still married and co-parents. The fact that the transaction occurred between close or familial relations and under suspicious circumstances is sufficient to place an evidentiary burden on the defendants to establish its bona fides. In such cases, their evidence and explanations

must be examined with particular care, and will rarely, without more, be sufficient on their own. See *Bank of Montreal v Javed*, 2015 ONSC 1229, at para 30.

[32] Second, BMO has adduced evidence that might lead to a finding that the consideration for the transfer was less than the property's value. Qader told BMO that the property was worth $1.1m in 2019. Qader also told BMO that he and Qaderi were earning $4500 monthly in rental income. As such, it's arguable that the property was worth more than $1.1m. In 2020, Qaderi assumed Qader's share of the mortgage. The total amount of the mortgage was around $800,000 but she only assumed $350,000.

[33] Neither Qader nor Qaderi have explained the supposed shortfall. In other words, why did Qader gift his share of the equity—around $150,000—to Qaderi? There's no evidence that the property had lost that much equity by 2020. Also, the parties agreed that Qaderi would pay $15,000 monthly for child and spousal support so the equity transfer wasn't in lieu of these obligations.

[34] Third, BMO has shown that Qader may have continued to use the property after the transfer. As I discussed above, their evidence is inconsistent on when Qaderi moved out. And, again, he and Qaderi described themselves as spouses in the transfer and mortgage documents. Qaderi's own evidence suggests that the parties weren't separated as of April 2020—he acknowledges that he "still held hope that we could reconcile and continue as a family." See *Tsarynny v Topchiy*, 2025 ONCA 175, at para 19.

[35] Qaderi and Qader have made several arguments in support of their discharge request. First, they submit that 2104 and Qader defaulted long after the transfer. It doesn't matter that the transfer was made five years before 2104 defaulted on the loan. A claimant who was not a creditor at the time of the transfer can attack a transfer if the transfer was made with the intention to "defraud creditors generally, whether present or future." See *Camerlengo Holdings*, at para 11.

[36] Second, Qaderi argues that there's no evidence that she intended to defraud BMO. Her intention doesn't matter. Under the *FCA*, s 3, a conveyance made for good consideration is exempt from section 2, provided the transferee acted in good faith and without notice or knowledge of the transferor's fraudulent intent. But where a conveyance is not supported by good consideration, it's not protected by section 3 and may be set aside under section 2 regardless of the transferee's intent. See *CIT Financial Ltd. v Zaidi*, 2006 24 RFL (6th) (Ont Sup Ct), at para 21.

[37] Third, Qader and Qaderi argue that their separation explains the transfer. Again, the parties' separation and subsequent agreement do not, without more, establish that the conveyance was not fraudulent. To add, the transfer happened a year before the separation agreement was signed. Further, Qader deposes that he transferred the property to Qaderi to "provide [her] and our daughters with security"—one inference from that evidence is that he was seeking to judgment-proof himself if they ever separated.

[38] Fourth, Qaderi and Qader argue that BMO is not acting with clean hands because it didn't seek a CPL against his investment condo on Front Street. BMO can't do so—there's no basis for a fraudulent conveyance claim in relation to that property.

[39] In capsule form, the badges of fraud present here raise a triable issue whether Qaderi transferred the property to Qader shortly after he guaranteed 2104's loan to judgment-proof himself.

### 3. The balance of convenience favours extending the CPL.

[40] The harm suffered by BMO if the CPL is not extended exceeds the harm that will be suffered by Qaderi.

[41] If the trial judge concludes there was a fraudulent conveyance and the property is sold or encumbered in the meantime, Qader will have managed to render himself judgment-proof. Again, he's bankrupt and voluntarily surrendered his Front Street property.

[42] On the other hand, Qaderi has no adduced no evidence of any harm to her. She argues that she's a CPA and there may be professional repercussions to her. There are no grounds to this argument given that there's no finding of fraud yet.

[43] For all these reasons, I endorse an order granting an extension of the CPL registered against the property until trial.

## IV. COSTS

[44] Subject to the provisions of an act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid. See *Courts of Justice Act*, RSO 1990, c C.43, s 131.

[45] It's unusual to award costs of an interlocutory injunction motion to the successful plaintiff before trial. As there has been no final determination of the parties' rights, but only an order to protect the plaintiff's position pending trial, the preferable course is to reserve the question of costs to the trial judge. See Hon Robert J Sharpe, *Injunctions and Specific Performance*, looseleaf (November 2024), §2:42.

[46] As a result, I endorse an order that the costs of this motion be in the cause of the action.

Agarwal J

**Date:** August 25, 2026