

CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE
CIVIL ENDORSEMENT FORM
(Rule 59.02(2)(c)(i))

BEFORE: Justice/Associate Justice
Justice Koehnen
Court File Number:
CV-23-00703334-0000

Title of Proceeding:
GOLD Applicant(s)/
Plaintiff(s)
-v-
KAMRA et al Respondent(s)/
Defendant(s)

Case Management: Yes If so, by whom: No

Participants and Non-Participants: (Rule 59.02(2)(vii))

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Counsel for Plaintiff – Rhonda Gold	J. Daniel McConville	dmconville@whlawerys.ca		Y
2) Counsel for Defendants – Sam Kamra, Sana Abdallah, Danielle Desjardins, 2707551 Ontario Inc. and 2724582 Ontario Inc.	Obaidul Hoque	obaidul@owslaw.ca		Y
3) Counsel for CIBC	Christopher Staples	chris@chaitons.com		Y
4)				

Date Heard: (Rule 59.02(2)(c)(iii)) February 23, 2026

Nature of Hearing (mark with an “X”): (Rule 59.02(2)(c)(iv))
 Motion Appeal Case Conference Pre-Trial Conference Application

Format of Hearing (mark with an “X”): (Rule 59.02(2)(c)(iv))
 In Writing Telephone Videoconference In Person
If in person, indicate courthouse address:

Relief Requested: (Rule 59.02(2)(c)(v))

Disposition made at hearing or conference (operative terms ordered): <i>(Rule 59.02(2)(c)(vi))</i>

Costs: On a N/A		indemnity basis, fixed at \$	are payable
by	to	[when]	

Brief Reasons, if any: <i>(Rule 59.02(2)(b))</i>
<ol style="list-style-type: none">1. The plaintiff seeks an order granting her costs on an interim basis, payable by the Kamra parties (the defendants other than Jitendra Panchal and 877799 Canada Inc.). For the reasons set out below, I grant the order. 2. The Supreme Court of Canada set out the test for interim costs as follows in <i>British Columbia (Minister of Forests) v. Okanagan Indian Band</i>, 2003 SCC 71 (CanLII), [2003] 3 SCR 371 at para. 36: <ol style="list-style-type: none">(a) The moving party must be impecunious to the extent that, without an order for interim costs, that party would be deprived of the opportunity to proceed with the case; (b) The moving party must establish a prima facie case of sufficient merit to warrant pursuit; and (c) There must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise is appropriate.

3. The plaintiff has demonstrated impecuniosity. She has filed a full statement of assets and liabilities which demonstrates she is impecunious. To date, the plaintiff's counsel has been proceeding pro bono. This action has become considerably more expensive than anticipated because of the numerous steps the Kamra defendants have taken to delay a disposition on the merits. The action has required numerous case conferences, cost wards have gone unpaid until threats to strike defences were made, and the Kamra defendants have installed tenants on the property under suspicious circumstances, all in an apparent effort to delay the action and prevent the sale of the property. All of these have required further legal steps on the part of the plaintiff to have the court address. In almost all cases, the court has found against the Kamra parties. Plaintiff's counsel has now advised they can no longer continue pro bono. In the absence of funds to pay the plaintiff's legal fees, the plaintiff will be unable to continue her action.
4. I am satisfied that the plaintiff has established a prima facie case of sufficient merit to warrant pursuit. The claim arises out of a mortgage that the Kamra parties advanced to her in the amount of \$267,000 in 2019. By August 2022 the mortgagee had increased to \$848,679.31 as a result of numerous renewal fees, lender fees and interest penalties.
5. In 2024, Kamra arranged for a third mortgagee, Panchal, to pay down a large portion of the second mortgage in exchange for a third mortgage on the property. The Kamra Parties were paid \$632,179.01 as a result of registering the third mortgage. The second and third mortgagees now claim \$1,300,000.00 on a loan of \$267,000.
6. When the Kamra parties arranged the third mortgage, they had the plaintiff sign a release as surrendering all claims relating to the mortgages. The release also contained a commitment not to file any complaints against the Kamra parties with a wide variety of regulatory bodies.
7. After the plaintiff commenced this action, the Kamra parties raised the release as a bar to the action. In

December 2024, Justice Parghi found that the release was not a bar because she found it to be void and unenforceable because it was an unconscionable transaction which formed part of an unconscionable mortgage regime.

8. The Kamra parties appealed, the Court of Appeal dismissed their appeal.

9. Justice Parghi's reasons included the following findings: Kamra persuaded Gold to stop working with her existing mortgage broker and work with him instead. Kamra was a fiduciary of Gold. He gave Gold the false impression that he was arranging loans that reflected market rates, were similar to what Gold would be able to obtain if she worked with another mortgage broker, and were arms length. He was dishonest and deceptive. The mortgage Kamra placed on the property was not arm's-length because it appears to have been advanced by way of funds that his live-in girlfriend advanced to his mother who then purported to advance the mortgage through a numbered company. Kamra's mother, the ostensible principal behind the mortgagee corporation, did not understand basic concepts central to the relationship with the plaintiff such as what a mortgage enforcement action is or what a private second mortgage is. She did not understand the statements contained in her own affidavit. Ms. Desjardins, Mr. Kamra's live-in girlfriend at the time the second mortgage was registered, was unable or unwilling to provide basic information about how money flowed from her corporation to Mr. Kamra's mother. Ms. de Chardin also had little or no knowledge of how mortgages were made or administered.

10. Counsel for the defendant points out that the Court of Appeal noted specifically that Justice Parghi's findings do not bind the trial judge. I agree. Her findings are nevertheless relevant to determine whether the plaintiff has made out a prima facie case of sufficient merit to warrant pursuit.

11. The view of Justice Parghi in the Court of Appeal for Ontario that the release does not preclude this action is relevant to the issue of Ms. Gold having a prima facie case that is worthy of pursuit.

12. Neither in their factum nor in oral argument did the Kamra defendants present any evidence to contest the submission that Ms. Gold has a prima facie case worthy of pursuit.

13. Instead, the Kamra defendants rely on the third factor in Okanogan Indian Band namely that there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary relief exercise is appropriate.

14. Courts have included the following circumstances as examples of special circumstances that warrant an interim cost award:

(a) the potential effect of the litigation is widespread and significant;

(b) the outcome of the litigation would resolve continued legal uncertainty;

(c) the outcome of the litigation may reduce the need for related litigation, and thereby reduce private and public costs;

(d) the issue would not be resolved but for the litigation;

(e) the litigation involves scrutiny of government actions;

(f) determination of the issue is an urgent matter;

(g) the applicant was forced into the litigation or had no choice but to resort to

litigation to assert their rights; and

(h) one party controls all of the funds that are at issue in the litigation: *Karas v Ontario*, 2016 ONSC 8152 (CanLII), at para. 55.

15. The plaintiff's case would appear to fall within several of these factors.

16. First, the potential effect of the litigation is widespread and significant. In recent years, a variety of forms of abusive mortgages and mortgage fraud have unfortunately become commonplace. It is important as a matter of policy to get these cases to a resolution on the merits quickly so that the courts can set out clear policies on the principles applicable to such cases both in order to act as a deterrent to bad actors and as a guide to the parties and courts to enable the speedier resolution of such cases. This factor also tangentially effect factors (b) and (c) set out in paragraph 15 above.

17. The determination of the issue for the plaintiff is an urgent matter. The underlying property is scheduled to be sold on March 16, 2026. As noted, the plaintiff is impecunious. She has a strong, legitimate interest in having the issue resolved soon as possible to determine what, if any, portion of the proceeds of sale can be paid to her.

18. There is no doubt that with respect to factor (g) set out in paragraph 14 above that the plaintiff was forced into the litigation. The action came about as a response to two mortgage enforcement actions that have now been consolidated with Gold's action. The defendants had commenced two power of sale proceedings with respect to the Property and only then did Ms. Gold commence her action seeking relief against unconscionable mortgage transactions, breach of fiduciary duty, and other claims.

19. With respect to factor (h), the Kamra defendants control a large part of the proceeds arising from the agreement of purchase and sale. The property is being sold for \$1.2 million. The amount outstanding on

the first mortgage in favour of CIBC is approximately \$684,000. The Kamra defendants have already been paid \$632,179 by Panchal on the registration of the third mortgage, almost 2 ½ times the amount they advanced to the plaintiff. Moreover, all rental income from the property has been paid into trust as a credit to the mortgages.

20. The Kamra defendants rely on statements in case law to the effect that it is only a “rare and exceptional” case that is “special enough” to warrant an advance cost award: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 (CanLII), [2003] 3 SCR 371, at paragraph 1, and *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 (CanLII), [2007] 1 SCR 38, at paragraph 38.

21. I do not disagree with that qualification. Whether it applies, however, depends on the detailed nuances of each case. In *Little Sisters* the plaintiff had succeeded in an earlier case against Canada Customs involving their prohibition on the importation of erotic publications. Book sales represented approximately 30 to 40% of *Little Sisters*’ business. It constantly struggled to make a profit. The current case involved four books and broader declaratory relief. There was no evidence about the importance of the four books to the profitability of the business. In those circumstances, the court was not prepared to order Canada Customs to pay advanced costs to *Little Sisters*.

22. The facts before me are quite different. Here, it is the conduct of the Kamra defendants that has led to the plaintiff’s impecuniosity. There was no such evidence in *Little Sisters*. In *Little Sisters* there was no evidence about the financial importance of the four books in issue to the business of the plaintiff in that case. Here, the home in question represents the plaintiff’s sole asset, the equity of which has been devoured by the fees and charges of the Kamra defendants. Those are very different circumstances which put this case into the category of rare and special cases that warrant advance on costs.

23. Finally, the Kamra defendants submit that the plaintiff should not have carte blanche with respect to costs

but should be required to present litigation budgets that are approved by the court. I am satisfied that the plaintiff has done so. The affidavit of Haya Sardar sworn March 31, 2025 and exhibit a to that affidavit set out in detail the breakdown of costs and disbursements for the various stages of the action. They create a budget of \$105,580 in fees on a partial indemnity scale plus \$31,000 and disbursements, principally for transcripts and experts fees to arrive at a total fee of \$154,222.40. That does not strike me as an unreasonable amount to get this matter to trial.

24. I am mindful that there is always the possibility that the Kamra defendants might succeed at trial, in which case they may find recovery challenging. That is a risk-benefit analysis that will have to be carried out in each case for an advance on costs and turns primarily on the strength of the plaintiff's case balanced against the injustice of depriving the plaintiff of the ability to pursue the case. In this case, the plaintiff has made out more than merely a prima facie case warranting pursuit. The findings of Justice Parghi and the Court of Appeal (even though not binding on the trial judge), the discrepancy between the initial amount of the mortgage and its amount when the third mortgage was placed, and the absence of any real argument by the Kamra defendants about a prima facie case, in my mind, create a case of sufficient merit here such that it would lead to a fundamental injustice to deprive the plaintiff of the ability to proceed when the inability is brought about by the conduct of the Kamra defendants. In those circumstances, I order the Kamra defendants to advance the sum of \$154,222.40 on account of costs of the plaintiff in the action.

Additional pages attached: Yes No

February-23

, 2026

Date of Endorsement (Rule 59.02(2)(c)(ii))



[[Applied Signature]]

[[Applied Signature Display Name]]

Signature of Judge/Associate Judge (Rule 59.02(2)(c)(i))