CITATION: CELERNUS INVESTMENT PARTNERS INC v. 2348587 ONTARIO INC. et al, 2026 ONSC 1836
COURT FILE NO.: CV-23-00002593-0000
DATE: 2026-03-25

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
CELERNUS INVESTMENT PARTNERS INC Plaintiff	Ian P. Katchin, for the Plaintiff
- and -	
2348587 ONTARIO INC., SHAWN SAULNIER and BRIDGET SAULNIER Defendants	Christopher S.C. Hendry, for the Defendants
	HEARD: March 4, 2026

ENDORSEMENT

Glick, AJ.

Overview

[1] This is a mortgage enforcement action by the Plaintiff Celernus Investment Partners Inc. ("Celernus") for the payment of the sum of $4,047,856.37 and possession of the subject

property upon which a charge has been secured. The claimed amount includes the principal sum of $2,750,000.00 plus interest at 15% per annum compounded, plus charges and fees. The Defendant corporation is the owner of the property, which has a campground ("Campground Property"). The individual defendants provided personal guarantees with respect to the loan.

[2] The Plaintiff has moved for summary judgment. The date for the return of that motion is June 1, 2026. The motion is set for four hours. Evidence has been exchanged and cross-examinations have been conducted.

[3] It is in that context that the Defendants bring this motion for an order granting leave, pursuant to Rule 31.10 of the *Rules of Civil Procedure* (the "*Rules*") to examine four non-parties for discovery. The Defendants say that the four parties they seek to examine "may have information relevant to material issues in the proceeding." If that proves to be the case, the Defendants intend to bring a further motion to make use of that evidence on the Rule 20 motion. The Defendants have not served the non-parties, who have not had the opportunity to respond.

[4] For the reasons that follow, this motion is dismissed. Leaving aside the fact that the non-parties were not served with this motion, the motion is an abuse of process. It is brought under the wrong rule for the intended purpose of the evidence which the Defendants hope to adduce. Even if 31.10 was the proper rule, the test under 31.10 has not been met.

Background

[5] The Plaintiff commenced this action on August 31, 2023. The claim, as set out in the overview section above, is a mortgage action for the payment of money allegedly owed pursuant to a mortgage dated July 23, 2019. The Plaintiff alleges that the Defendants defaulted on the mortgage and seeks payment of the principal, the interest and various charges and fees. The Plaintiff also seeks possession of the Campground Property.

[6] The Defendants served their Statement of Defence on November 30, 2023. The Defendants raise an estoppel defence, a Waiver defence, a limitations defence and deny the Plaintiff has suffered any damages.

[7] The Plaintiff delivered a Reply on December 11, 2023.

[8] The Parties did not exchange affidavits of documents or conduct examinations for discovery. Instead, on October 28, 2024, almost a year after the Reply, the Plaintiff served its motion record for a motion for summary judgment. The Defendants delivered their responding record on January 14, 2025. The Plaintiff delivered a supplementary motion record on January 31, 2025.

[9] Cross-examinations for the summary judgment motion were held on May 14, 2025. Answers to undertakings given during cross-examinations were exchanged in June and July of 2025.

[10] The Defendants delivered the motion record for the within motion on September 15, 2025. The parties attended in front of Justice Coats at triage court on January 15, 2026. The summary judgement motion was booked for a four-hour hearing on June 1, 2026. The Defendants' motion was booked in front of me for March 4, 2026.

The Basis for Seeking Evidence From the Non-Parties

[11] The Defendants have asserted, in response to the summary judgment motion, that the President of Celernus interfered with a potential sale of the Campfire Property. If that sale had gone through, the Defendants say that they would have received enough money to pay out the mortgage.

[12] Mr. Saulnier is the President of the defendant 2348587 Ontario Inc. and a named defendant. In his affidavit in support of the motion, he says that he was approached about selling the Campground Property. That approach was made by Mathhew Vettese, a realtor acting on behalf of Pride Group. Pride Group was interested in buying the Campground Property for $12,500,000. The sale was conditional on the company also being able to purchase the neighboring property, upon which the Mohawk Inn and Conference Centre is located ("Mohawk Inn Property").

[13] Mr. Saulnier says he contacted Gord Martin, the President of Celernus, about the potential buyer. He says Mr. Martin told him he was on good terms with the owners of the company that owned the Mohawk Inn Property. These individuals were Mr. Sherk and his partner Sean Rogister. Mr. Saulnier says Mr. Martin told him that he would reach out to Mr. Sherk

and Mr. Rogister and see whether they would sell the Mohawk Inn Property and at what price. Mr. Saulnier says that Mr. Martin did so and then advised him that Mr. Sherk and Mr. Rogister would be willing to sell the Mohawk Inn Property for $16,500,000.00.

[14] Mr. Saulnier says that based on Mr. Martin's representation to him, Pride Group made offers to purchase the Campground Property for $12,500,000 and the Mohawk Inn Property for $16,500,000.00.

[15] This is when Mr. Saulnier alleges that Mr. Martin interfered with the sale. Mr. Saulnier says that upon receipt of the offer, Mr. Martin told him that in fact the company that owned the Mohawk Inn Property wanted an additional $3,000,000. Mr. Martin allegedly learned this from Mr. Sherk. If Mr. Saulnier wanted the deal to happen, he was told by Mr. Martin that he needed to take $3,000,000.00 less for the Campground Property. Mr. Saulnier says he could not do that because there were additional creditors that needed to be satisfied. Mr. Saulnier says that the deal ultimately fell through when Pride Group heard they needed to pay an extra $3,000,000.00 to buy both properties.

[16] Mr. Saulnier says he learned in 2025 that Mr. Sherk had never actually told Mr. Martin that the purchase price of the Mohawk Inn Property needed to be $19,500,000. He says Mr. Sherk told him they would have taken the $16,500,000. Mr. Saulnier says it was actually Mr. Martin changing the figures so that he would receive $3,000,000 less. Mr. Sherk, he says, also told him that he never had direct communication with Mr. Martin, but rather it was his partner Mr. Rogister who spoke to Mr. Martin.

[17] Mr. Saulnier says that what Mr. Sherk has told him is contrary to Mr. Martin's evidence on his cross-examination. He says that Mr. Sherk has relevant evidence to give. Similarly, he says that Mr. Rogister has relevant evidence to provide on communications with Mr. Martin. Mr. Saulnier also says that the realtor, Mr. Vettese, has relevant evidence on the aborted transaction. Finally, Mr. Saulnier says that Mr. Jas Jamal, an executive with Pride Group, has relevant evidence about Pride Group's "readiness, willingness and ability and the impact of the price change".

[18] Mr. Saulnier says that he has asked for an affidavit from Mr. Sherk and from Mr. Vettese, but both refused. He says he has been unable to reach Mr. Rogister or Mr. Jamal. As such he says that "in order to properly defend this matter and oppose the summary judgment motion" he needs to conduct examinations of the four individuals.

The Responding Party's Position

[19] Mr. Martin, in his responding affidavit on this motion, notes that the allegations regarding the aborted sale of the Campground Property were dealt with in Mr. Saulnier's affidavit on the motion for summary judgment. That affidavit was sworn in January 2025. Mr. Martin provided his response to these allegations in the Plaintiff's supplemental motion record on the summary judgement motion, but he repeats them in his affidavit on this motion as well.

[20] Mr. Martin says he met with Mr. Saulnier to discuss Pride Group's interest in the Campground Property. He agrees he said he would call the owner of the Mohawk Inn Property to gauge their interest in a sale. He also says that after his discussion with them,

he told Mr. Saulnier that $16,500,000 was probably not enough for the property. He denies ever saying that $16,500,000 would be enough to close the deal. He agrees that in June 2023 Celernus was negotiating with various third parties to sell the Campground Property and that if a sale had occurred at or above the balance then due on the mortgage, no loss or deficiency would have been sustained.

[21] Mr. Martin says that he spoke with Mr. Sherk who told him that the Mohawk Inn Property could be sold for $19,500,000. He did suggest that in order to get a deal done, the price of the Campground Property could be reduced. Mr. Saulnier refused.

[22] Mr. Martin says Mr. Saulnier's allegation that he was lying about the price Mr. Sherk would take for the Mohawk Inn Property is false. He says that the allegation that the deal didn't close because of him is also false. He says as a creditor of the Defendants, all he ever wanted was for Celernus to be made whole.

Law and Analysis

Service

[23] The Defendants did not serve their motion materials on any of the four non-parties. When asked why they had not served the non-parties, the Defendants argued that service wasn't necessary. They took the position that if I made an order requiring the non-parties to attend for examinations the non-parties could then raise any objections at that time. The Defendants are incorrect in this assertion.

[24] Subrule 37.07(1) requires that a notice of motion be served on any party or other person who will be affected by the order sought, unless the Rules provide otherwise. This subrule applies to motions brought under subrule 31.10.

[25] Support for this proposition is found throughout the case law, both generally and specifically in respect of motions brought pursuant to Rule 31.10. Master Dash found that service was necessary on a 31.10 motion at paragraph 5(b) in *Suchan v. Casella*, 2006 CanLII 25273. Master Dash again found that service was required on motions under Rule 31.10 at paragraph 10 of *Teti v. Mueller Water Products Inc.*, 2015 ONSC 2289. Master Beaudoin, as he was then, came to a similar conclusion in the earlier case of *Flynn v. Wijay*, 2004 CanLII 16485 at paragraph 15 of that decision.

[26] Most recently, in *Liu v. Chan*, 2022 ONSC 5069, Associate Justice McGraw at paragraph 28 of that decision stated:

> [28] Rule 31.10 provides that the court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action. The Plaintiff has not properly identified the or served the proposed non-party witnesses. The proposed witnesses are entitled to notice so that it can be determined if they even have any relevant information, what position they take and if they wish to retain counsel. Further, the court cannot properly consider the motion without knowing the identity of the proposed witnesses and their positions.

[27] The non-parties ought to have been given notice of this motion. This would have allowed them to respond to the motion and make submissions. The failure to give the non-parties notice is, by itself, at least potentially fatal to the Defendant's motion.

[28] Subrule 37.07(5) states:

> Where it appears to the court that the notice of motion ought to have been served on a person who has not been served, the court may,
>
> (a) dismiss the motion or dismiss it only against the person who was not served;
>
> (b) adjourn the motion and direct that the notice of motion be served on the person; or
>
> (c) direct that any order made on the motion be served on the person. R.R.O. 1990, Reg. 194, r. 37.07 (5).

[29] The Defendants changed their position on service as the hearing continued. After reviewing the decision of *Liu v. Chan* they agreed that notice ought to have been provided. They argued that if an order couldn't be crafted to allow the non-parties to raise objections after the fact, that this motion should be adjourned to allow them to serve the non-parties.

[30] This motion has been pending since September 2025. Even so, if this motion was otherwise viable, I would adjourn the motion to allow the Defendants to properly serve the non-parties. The motion though, as explained below, is not otherwise viable. The appropriate outcome, both because of the lack of notice, and the other issues identified below, is that the motion is dismissed.

Rule 31.10

[31] The Defendants have moved pursuant to subrule 31.10. Subrule 31.10(1) states that "the court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation."

[32] The test for granting leave is set out in subrule 31.10(2). That subrule states that an order under subrule (1) shall not be made unless the court is satisfied that:

a. The moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person the party seeks to examine;
b. It would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and
c. The examination will not,
    i. unduly delay the commencement of the trial of the action,
    ii. Entail unreasonable expense for other parties, or
    iii. Result in unfairness to the person the moving party seeks to examine.

[33] Associate Justice Frank summarized the principles to be considered in determining whether to grant leave to examine a non-party at paragraph 23 of *Merritt v. London Health Sciences Centre*, 2021 ONSC 4351 as follows:

a. The requirements of Rule 31.10 are cumulative and a party seeking such relief must satisfy both Rule 31.10(1) as well as each of the requirements in Rule 31.10(2).
b. There must be good reason to believe that the non-party has information relevant to a material issue.
c. Before being entitled to an examination of non-parties, the moving party must establish that he or she has been unable to obtain the information sought from the other parties to the action as well as from the non-parties they wish to examine.
d. There must be a refusal, actual or constructive, to obtain the information from the other parties to the action, and the non-parties, before the moving party will be able to meet the onus under Rule 31.10(2)(a); and,
e. If that onus is met the court may then look to Rule 1.04 to decide whether the court's discretion, as set out in Rule 31.10(1), should be exercised on the facts of each particular case.

[34] The Defendants say they meet the test and that orders should issue. They say the non-parties have relevant evidence, that the evidence cannot be obtained from other parties or other sources and that leave will not cause delay. They say the motion is timely and procedurally appropriate and that the evidence is required.

[35] The Plaintiff says the test is not met, and in any event the Defendants are moving under the wrong rule. The Plaintiff says that the Defendants should be moving under 39.02 for leave to conduct cross-examinations of the non-parties if the intent is to use the evidence on the summary judgment motion. They also say that the test under that rule is not met either.

[36] The Plaintiff states that in the case of *Khosa v. Homelife/United Realty Inc*., 2016 ONCA 3, the Court of Appeal confirmed that there is no right to discovery while a summary judgment motion is proceeding. I do not read that case as supporting this proposition.

[37] The paragraphs in *Khosa* cited by the Plaintiff go to the question of whether summary judgment is available in the absence of examinations for discovery. They also address whether the motion judge in that case was correct to deny a request to adjourn a summary judgment motion to conduct cross-examinations after the party had failed to comply with multiple timetables. The Court of Appeal found that summary judgment is available in appropriate cases where cross-examinations or examination for discovery have not taken place. The Court of Appeal in that case did not say that examinations for discovery are precluded when a summary judgment motion has been brought.

[38] Nevertheless, I agree with the Plaintiff that the Defendants have brought their motion under the wrong rule. The intended use of the potential evidence is to resist the summary judgment motion. Defendants' counsel, in oral argument stated that if the evidence is relevant, by which he meant helpful to the Defendants, they would bring another motion to have that evidence introduced on the summary judgement motion.

[39] The intended purpose of the evidence is set out even more clearly in the motion materials. Statements about the purpose of the examinations and the intended use of the evidence are found in Mr. Saulnier's affidavit and the Defendants' factum. One example is found at paragraph 42 of the Defendants' factum where they state:

> The Defendants' grounds are set out in their Motion Record and in the Affidavit of Shawn Saulnier sworn September 15, 2025, establishing the necessity of the examinations to "properly defend this matter and oppose the summary judgment motion."

[40] As the evidence is intended for use on the summary judgment motion, the correct approach would have been to seek leave to conduct examinations under subrule 39.03. Leave or the consent of the Plaintiff would have been required under subrule 39.02 because the Defendants have already cross-examined the Plaintiff's witness. The test if the motion had been brought under that subrule is different than the test on a 31.10 motion.

[41] When understood in this context, whether by the Defendants' error or design, this motion is an abuse of process. It is an attempt to avoid both the test and potential consequences of subrules 39.02 and 39.03. If allowed to use Rule 31.10 as they propose, the Defendants will be able to obtain evidence they hope is helpful and then, if it is, introduce it on the

motion. This ability to gatekeep the evidence may protect their interests, but it is not how the Rules are meant to be used. On this basis as well, the motion ought to be dismissed.

[42] Finally, even if I am wrong on the points above, I would still dismiss the motion as the Defendants have not met the test for an order under subrule 31.10. The test in subrule 31.10(2)(a) is cumulative. The moving party must prove that they have not been able to obtain the evidence from the non-parties and also the parties to the action. As the discoveries have not yet taken place, the Defendants are unable to show that they have not been able to obtain the evidence from the parties to the litigation (see paragraph 37 of *Merritt*).

Subrules 39.02 and 39.03

[43] The Plaintiff, correctly recognizing that this is the subrule that ought to apply, spent significant time explaining why the test under subrule 39.02 wasn't met. The Defendants argued in reply that they had met the test for relief under this subrule as well as subrule 31.10. In these circumstances, I am tempted to make a finding as to whether the Defendants met the test under 39.02.

[44] The problem with proceeding down this path is that the Defendants moved for relief under 31.10. There is no motion before me for relief under subrule 39.02. As a result, I make no finding as to whether the Defendants would meet or would not meet the test on the record before me.

Conclusion

[45] For all of the reasons set out above, the Defendants' motion is dismissed.

[46] I was not provided with costs outlines. Costs of the motion are therefore reserved to the summary judgment motion in June.

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Glick, AJ.

Released: March 25, 2026

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