

CITATION: Lardan Investments Inc. v. 11269682 Canada Inc. et al., 2026 ONSC 2936
COURT FILE NO.: CV-23-83066
DATE: 2026-05-21

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Lardan Investments Inc.

Plaintiff

– and –

11269682 Canada Inc., BFD Farms Inc.,
Omar Hasan Al Zahid, Xian Dong Meng and
Jie Helena Han

Defendants

) Jake Newton, Counsel for the Plaintiff

) Manvir Sohal, Counsel for the Defendants
) 11269682 Canada Inc. and BFD Farms Inc.

) Daniel Segal, Counsel for the Defendants
) Xian Dong Meng and Jie Helena Han

) **HEARD:** May 19, 2026

REASONS FOR DECISION

M. BORDIN J.

[1] This is a mortgage enforcement action concerning a mortgage between the plaintiff, as mortgagee, and the defendant 11269682 Canada Inc. ("112"), as mortgagor. The defendants Xian Dong Meng, Jie Helena Han, 112, and BFD Farms Inc. (collectively, the "defendants") are guarantors under the mortgage. The defendants served a joint statement of defence, crossclaim, and counterclaim on August 1, 2024 (the "pleading"). The pleading includes a section titled "counterclaim".

[2] When the pleading was filed with the court through the online portal, it was filed as a statement of defence and crossclaim. It was not filed as a defence and counterclaim.

[3] The defendants sent one letter to plaintiff counsel around August 16, 2024, reminding the plaintiff of the deadline to file a defence to the counterclaim. The defendants did not receive a request to extend the time provided by the rules for filing a defence to the counterclaim. On August 23, 2024, 22 days after the pleading was served on the plaintiff, the defendants filed a requisition to note the plaintiff in default on the counterclaim, which the court accepted.

[4] The plaintiff delivered a notice of change of lawyer on August 25, 2025. After being retained, current counsel discovered that no defence to the counterclaim had been delivered. Shortly thereafter¹, plaintiff counsel's office attempted to file a defence to the counterclaim. The online court filing portal would not allow the defence to counterclaim to be filed because, according to the portal, no counterclaim had been filed.

[5] On November 28, 2025, the plaintiff requested the court's complete file. It was received in December 2025. On review of the file, plaintiff counsel learned that the plaintiff had been noted in default on the counterclaim.

[6] The plaintiff first communicated with the defendants about setting aside the noting in default on January 5, 2026. This motion was served at the end of April 2026.

[7] In deciding whether to exercise my discretion to set aside a noting of default, I must consider "the context and factual situation of the case". The factors to be considered include the behaviour of the plaintiff and the defendant; the length of the delay; the reasons for the delay; and the complexity and value of the claim. These factors are not exhaustive: *Intact Insurance Company v. Kisel*, 2015 ONCA 205, at para 13. Some decisions have also considered whether setting aside the noting of default would prejudice a party relying on it. Only in extreme circumstances should the court require a defendant who has been noted in default to demonstrate an arguable defence on the merits: *Intact Insurance Company v. Kisel*, at para 13.

[8] The counterclaim seeks an accounting from the plaintiff, damages for improvident sale, and damages for oppression. The issue of improvident sale was also addressed in the body of the statement of defence. The counterclaim pleads and relies on the defence and also pleads additional facts. The defendants do not claim a specific amount of damages. The defendants have not tendered any evidence regarding the scope of their damages claim.

¹ Precisely when this happened is not clear.

[9] The plaintiff's original claim was for \$2.81 million. However, the property was sold in February 2024 under power of sale for \$1.85 million, leaving a claimed shortfall of \$914,000, plus interest.

[10] The defendants' counterclaim raises potentially significant issues that affect the determination of the plaintiff's claim.

[11] The defendants rely on the fact that the plaintiff, through counsel, had actual notice of the pleading and the counterclaim contained therein since August 1, 2024; that a reminder was sent to plaintiff counsel to file a defence before the noting in default; that the plaintiff delayed 17 months before raising the issue of a defence to the counterclaim; and that additional months passed before the plaintiff brought this motion.

[12] The plaintiff has provided no explanation for why the plaintiff's previous counsel took no steps to address the counterclaim, or for what occurred between August 1, 2024, and August 2025, when current counsel took over the file. Some explanation is provided for the delay between August 2025 and January 5, 2026, when the plaintiff first raised the noting in default. I do not find this five-month period of delay to have been unreasonable or unexplained.

[13] With respect to the delay between first raising the noting in default with the defendants and the bringing of the motion, the record establishes that there was some communication between counsel and that there was some lack of response from defence counsel. It was reasonable for new counsel to try to negotiate a resolution before bringing the motion.

[14] The defendants also question the delay between the allegedly unknown date that current counsel was first retained and the date the notice of change of lawyers was served. The defendants are speculating about when new counsel was retained.

[15] There is nothing in the record to substantiate any prejudice to the defendants if the noting in default is set aside. The defendants, without supporting evidence, assert prejudice because they have conducted this litigation on the basis that the plaintiff has been noted in default. However, there is no evidence that any steps were taken by any parties in the litigation, including the defendants with respect to the counterclaim, after the plaintiff was noted in default. The evidence suggests that no steps were taken. The parties admitted as much in submissions. The defendants could not otherwise point to any prejudice they would suffer if the noting in default is set aside.

[16] On the other hand, the plaintiff faces significant prejudice if the noting in default is not set aside. The property has been sold. The counterclaim raises an issue as to what, if anything, the defendant owes the plaintiff.

[17] The plaintiff also asserts that it intends to bring a summary judgment motion and that the noting in default may inhibit its ability to do so because of issues with partial summary judgment. This issue cuts both ways. If the noting in default is set aside, the counterclaim may still be an obstacle to summary judgment.

[18] Even if the plaintiff's prejudice is self-inflicted as the defendants assert, there is no prejudice to the defendants.

[19] The defendants assert that the plaintiff has not advanced a meritorious defence. They submit that "extreme circumstances" exist that require the court to consider the merits of the defence. Those circumstances are asserted to be that there is no explanation for what occurred in the 17 months between the service of the pleading and new counsel's communication with the defendants about the noting in default. As discussed above, this is true with respect to the first 12 months. The defendants insinuate that the delay may be the fault of the plaintiff's first counsel. If true, in the circumstances before me, that fault should not be visited on the plaintiff.

[20] In my view, "extreme circumstances" do not exist in this case. What the defendants allege are extreme circumstances are typical in cases like this.

[21] Therefore, while the defendants assert that the defence is thin and nothing more than a blanket denial, the defendants have not established that this is a case in which the court should consider the merits of the defence.

[22] In summary, there is no explanation for 12 months of delay. This is not insignificant. However, the plaintiff points out that the defendants did not deliver the pleading until about nine months after they were served with the claim, but, noted the plaintiff in default after one warning letter, 22 days after serving the pleading. The issues raised in the counterclaim are potentially significant, may impact the plaintiff's claim, and may cause significant prejudice to the plaintiff. There is no prejudice to the defendants if the noting in default is set aside. There is no evidence that any steps have been taken on the counterclaim or in the action. There are no exceptional circumstances. This matter needs to be determined on its merits.

[23] Balancing the above, I find that the noting in default should be set aside.

[24] The plaintiff has succeeded on his motion and is entitled to costs. The plaintiff seeks \$8,500 on a partial indemnity basis. Had the defendants been successful in resisting the motion, the corporate defendants would have sought \$8,300 on a full indemnity basis, and the individual defendants \$4,800 on a full indemnity basis. I note that counsel for the individual defendants is junior in year of call to counsel for the other parties.

[25] I fix the costs, payable jointly and severally by the defendants to the plaintiff, in the amount of \$8,000, all-inclusive. Costs are payable within 30 days.

Justice M. Bordin

Released: May 21, 2026

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Defendants

REASONS FOR DECISION

Justice Bordin

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