

COURT OF APPEAL FOR ONTARIO

CITATION: UM Financial Inc. v. Central 1 Credit Union, 2026 ONCA 475

DATE: 20260629

DOCKET: COA-25-CV-0965 & COA-25-CV-1084

Tulloch C.J.O., Sossin J.A. and O'Marra J. (*ad hoc*)

BETWEEN

UM Financial Inc.

Plaintiff (Appellant)

and

Central 1 Credit Union and Grant Thornton Ltd.

Defendants (Respondents)

Petia Draguieva, for the appellant Noorani Sairally

Peter I. Waldmann, for the appellant Dr. Omar Kalair

Deepshikha Dutt, Douglas B.B. Stewart, and Stefan Rus, for the respondent
Central 1 Credit Union

Neil S. Rabinovitch, for the respondent Grant Thornton Ltd.

Heard: March 17, 2026

On appeal from the order of Justice William Black of the Superior Court of Justice,
dated May 6, 2025.

Tulloch C.J.O.:

A. OVERVIEW

[1] This appeal arises out of what the motion judge found to be the latest iteration of a long-running and abusive course of litigation against the respondents stemming from the 2011 receivership of UM Financial Inc. (“UM”). He dismissed UM’s underlying action as frivolous, vexatious, and an abuse of process and made a vexatious litigant order under s. 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“CJA”). The order applied to both UM and related non-parties, including the two non-party appellants here – UM’s former principal, Dr. Omar Kalair, and one of its current directors, Mr. Noorani Sairally. The motion judge further ordered that Mr. Sairally be jointly and severally liable with UM for the costs awarded to the respondents, finding that his swearing of an inaccurate affidavit merited censure.

[2] Both appellants seek to set aside the s. 140 order to the extent that it applies to them. They submit that s. 140 does not apply to non-parties and challenge the order’s propriety and fairness. Mr. Sairally also seeks leave to appeal costs.

[3] For the reasons that follow, I would dismiss the appeals and deny Mr. Sairally leave to appeal costs.

[4] The appellants misunderstand the important gatekeeping role of s. 140 orders. They do not block access to justice. Instead, they preserve it for the many. Through focused and proportionate terms, these remedial preventative instruments screen out vexatious litigation while permitting plausible claims to proceed. They protect innocent parties from abuse. They safeguard the integrity

of the judicial process. They conserve judicial resources to meet the needs of Ontario's growing population. They prevent the dissipation of those resources to serve the private vendettas of the vexatious few.

[5] In this case, the motion judge properly determined that including the appellants in the s. 140 order would advance these important goals. Section 140 applies to non-parties who initiate or conduct vexatious litigation through a party. The motion judge rejected the appellants' attempt to evade accountability through non-party status because they did precisely that – Dr. Kalair directed the action from behind the scenes, and Mr. Sairally conducted it vexatiously by swearing an inaccurate affidavit riddled with unfounded assertions. The motion judge was thus entitled to conclude that requiring them to seek leave before pursuing receivership-related claims was necessary to prevent further abusive relitigation.

[6] The motion judge's decision to award costs against Mr. Sairally for swearing an inaccurate and unfounded affidavit was equally justified. In the circumstances of this case, the integrity of motion practice demanded nothing less.

B. BACKGROUND

1. The Receivership and Bankruptcy

[7] The litigation has its origin in lending arrangements entered into between Central 1 Credit Union ("Central 1") and UM, together with an affiliated entity, UM

Capital Inc., beginning in or around 2005. The purpose of that financing was to support the development and facilitation of shariah-compliant mortgage products.

[8] By 2011, the UM companies were indebted to Central 1 in the approximate amount of \$30 million. Central 1 commenced receivership proceedings in March 2011. On October 7, 2011, Grant Thornton Ltd. (“Grant Thornton”) was appointed receiver of the assets, undertakings, and property of the UM companies.

[9] UM was assigned into bankruptcy on November 23, 2011. The motion judge found that it remains an undischarged bankrupt.

[10] Grant Thornton was discharged as receiver in January 2013. The orders made in the receivership required leave of the court before commencing proceedings against the receiver.

2. The Litigation History

[11] There is a lengthy history of proceedings brought by UM, related entities, and individuals associated with them against the respondents and others, all arising from the same essential factual matrix.

[12] Those proceedings included a 2011 action by the UM companies, a 2014 human rights complaint and civil action by Dr. Kalair, and a further action and proposed class proceeding commenced in 2021. The allegations shifted somewhat in form, but repeatedly returned to the same core themes: the lending

relationship, the alleged withdrawal or mishandling of funding, the commencement of the receivership, and alleged losses said to have flowed from those events.

[13] Those proceedings were dismissed on various grounds, including limitation periods, lack of standing, abuse of process, collateral attack, and res judicata. In earlier proceedings, the motion judge had written that “[t]his litigation must come to an end.” This court also described one of the related proceedings as “entirely vexatious and an abuse of process.”

3. The Present Action

[14] On February 29, 2024, UM commenced the present action against the respondents, claiming damages of \$5 million for breach of contract, negligence, and misrepresentation.

[15] The theory advanced in the action, as the motion judge understood it, was that the respondents had misled UM and the courts concerning the effect of Grant Thornton’s discharge as receiver, and that this had prejudiced UM in earlier proceedings.

[16] Mr. Sairally became one of UM’s directors on January 14, 2025, after the action was commenced.

[17] The respondents moved to dismiss the action and sought broader relief, including a vexatious litigant order against UM, the appellants, and related persons. The respondents also sought costs against Mr. Sairally and his fellow

directors personally. Mr. Sairally swore an affidavit in support of UM's response to the motion on February 17, 2025.

C. THE DECISIONS BELOW

1. The March 31, 2025 Endorsement

[18] The motion judge dismissed the action on multiple grounds.

[19] First, he held that UM lacked standing to commence or continue the action because it remained an undischarged bankrupt. He rejected Mr. Sairally's assertion in his affidavit that UM had somehow been discharged from bankruptcy, finding that the receiver's discharge did not remove the corporation's bankruptcy status.

[20] Second, he concluded that the proceeding was simply a further attempt to relitigate matters that had already been determined. He rejected the submission that changes in UM's directors, officers, or shareholders severed the corporation from the consequences of its earlier litigation conduct. He described the contrary proposition as one that would produce a "wild west" in which corporations could avoid prior orders and consequences by merely changing the individuals behind them.

[21] Third, he rejected the suggestion that the present corporation, under new management, might yet identify some novel claim arising from the same historical events. He found that no such claim had been identified.

[22] Fourth, the motion judge determined that both appellants played a role in the vexatious litigation. He found that Dr. Kalair commenced the prior vexatious proceedings, failed to pay outstanding costs awards, and directed the present action from behind the scenes despite UM's attempts to conceal his involvement. He further concluded that Mr. Sairally allowed himself to be used as the dupe of UM and Dr. Kalair. As he found, Mr. Sairally made "troubling and unacceptable" assertions in his sworn affidavit without making any effort to confirm their accuracy. Moreover, he emphasized that both appellants ignored court orders – Dr. Kalair by orchestrating the prior and present proceedings, and Mr. Sairally by seeking to continue the action.

[23] Having concluded that the action represented another abusive iteration of the same long-running dispute, the motion judge dismissed it as frivolous, vexatious, and an abuse of process.

[24] He then made a vexatious litigant order under s. 140 of the CJA. In substance, that order declared UM, related UM entities, and past, present, and future directors, officers, and shareholders – including the appellants – vexatious with respect to proceedings arising from the 2011 receivership and related matters. He further prohibited the commencement or continuation of such proceedings without leave of a judge of the Superior Court.

[25] The motion judge also awarded the respondents their costs on a full indemnity basis.

2. The April 10, 2025 Costs Endorsement

[26] By a subsequent endorsement dated April 10, 2025, the motion judge addressed whether costs should be awarded personally against certain individuals, including Mr. Sairally.

[27] The motion judge declined at that stage to make such an order against the other current directors. He did, however, conclude that there was a sufficient evidentiary basis to order that Mr. Sairally be jointly and severally liable with UM for the costs already awarded.

[28] The motion judge relied in particular on the contents of Mr. Sairally's affidavit and his evidence on cross-examination. He found that Mr. Sairally had sworn to propositions that proved to be unfounded, demonstrated very limited knowledge of the underlying facts, and failed to make any meaningful effort to verify the statements to which he had sworn. The motion judge concluded that this conduct was unacceptable and warranted costs consequences.

3. The May 6, 2025 Order

[29] The formal order issued on May 6, 2025 gave effect to the reasons in the two endorsements. It dismissed the action, imposed the vexatious litigant

restrictions against UM and both appellants, and fixed costs payable to the respondents, jointly and severally by UM and Mr. Sairally.

D. ISSUES

[30] The appeal raises two issues:

- (1) Did the motion judge err in making an order under s. 140 of the *CJA* that applies to the appellants?
- (2) Did the motion judge err in ordering that Mr. Sairally be jointly and severally liable with UM for costs?

E. STANDARD OF REVIEW

[31] A vexatious litigant order under s. 140 of the *CJA* is discretionary and intensely fact specific. The motion judge's determination is owed deference absent an extricable material legal error, a palpable and overriding error of fact, or a failure to exercise discretion judicially: *College of Registered Nurses of Manitoba v. Hancock*, 2023 MBCA 70, [2024] 2 W.W.R. 589, at para. 77.

[32] The same is true, and to an even greater degree, of costs decisions. Appellate intervention in relation to costs is limited to cases where the motion judge has made an error in principle or the order is plainly wrong: *Barry v. Anantharajah*, 2025 ONCA 603, 178 O.R. (3d) 742, at paras. 25-30. Leave to appeal a costs order will not be granted unless "strong grounds" for appellate intervention are shown:

Brad-Jay Investments Ltd. v. Szijjarto (2006), 218 O.A.C. 315 (C.A.), at para. 21, leave to appeal refused, [2007] S.C.C.A. No. 92.

F. ANALYSIS

1. The s. 140 Order

[33] The appellants challenge the lawfulness, propriety, and fairness of the s. 140 order. They submit that s. 140 does not authorize the motion judge to include them in the order because they are non-parties, that their conduct did not meet the statutory thresholds, that the order is disproportionate and overbroad, and that procedural safeguards were not respected.

[34] I disagree. The order is lawful, proper, and procedurally fair. The appellants have not shown any reversible error.

a. Section 140 Authorizes Orders Against Vexatious Non-Parties

[35] First, s. 140 of the *CJA* authorizes orders against vexatious non-parties.

[36] Section 140 provides:

140 (1) If a judge of the Superior Court of Justice or of the Court of Appeal is satisfied that a person has persistently and without reasonable grounds instituted vexatious proceedings in any court or conducted a proceeding in any court in a vexatious manner, the judge may make an order that includes any of the following terms:

1. No further proceeding may be instituted by the person in any court, except by leave of a judge of the Superior Court of Justice.

2. No proceeding previously instituted by the person in any court shall be continued, except by leave of a judge of the Superior Court of Justice.

3. Any other term that is just.

[37] These words sweep in vexatious non-parties. Section 140 applies to “a person”, an inclusive term which covers non-parties and parties alike. The words that follow similarly require not party status but personal conduct – instituting or conducting vexatious litigation. Non-parties can perform those very acts by acting through a party: *Lenczner Slaght LLP v. GlycoBioSciences Inc.*, 2025 ONCA 841, at para. 7.

[38] The context confirms that s. 140 applies to vexatious non-parties. The legislature applied s. 140 to “a person” despite restricting many other CJA provisions to parties. This deliberate choice of a broader term must be respected: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 81-82; see CJA, ss. 105(2), 112(7), 116(7), 126(4).

[39] Further, including vexatious non-parties advances s. 140’s gatekeeping purpose – to prevent vexatious litigation from draining the time, energy, and resources of innocent parties and courts alike. Sometimes, directing minds of corporate entities or non-party “invisible litigants” are responsible for that unacceptable conduct. Applying s. 140 to those vexatious non-parties furthers its preventative purpose by giving them “skin in the game”, while exempting them from its reach encourages further abuse by making their abusive actions a “no-risk

proposition”: see, by analogy, *Leitch v. Novac*, 2020 ONCA 257, 150 O.R. (3d) 587, at paras. 45-46, leave to appeal refused, [2020] S.C.C.A. No. 194; see also *McLean v. Connell*, 2025 ONCA 495, at para. 17; *Lenczner Slaght*, at para. 7.

[40] Including vexatious non-parties within s. 140’s protective scope also advances the CJA’s broader aims – strengthening public confidence in the administration of justice and ensuring timely access to justice for all Ontarians. The courts of this province are public institutions with a public service mission. Their resources are meant to benefit all. They must be managed wisely to meet the needs of Ontario’s growing population. By diverting those public resources to serve the vendettas of a private few, vexatious litigation harms the many. It fuels delays that erode public confidence and frustrate access to justice. By preventing those harms, applying s. 140 to vexatious non-parties strengthens systemic efficiency, public confidence, and access to justice: *McLean*, at para. 17; *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720, at paras. 16-21; *Canada v. Olumide*, 2017 FCA 42, [2018] 2 F.C.R. 328, at paras. 17-20.

[41] It follows that I would reject the appellants’ interpretive counterarguments. The premise of those submissions – that a s. 140 order bars them from accessing the courts – is incorrect. They can seek the court’s leave to proceed, which is itself a right of access. That screening mechanism properly separates the wheat of plausible claims for which the courthouse doors remain open from the chaff of vexatious litigation which the appellants have no constitutional right to bring: *Law*

Society of Upper Canada v. Chavali (1998), 31 C.P.C. (4th) 221 (Ont. C.A.), at para. 4; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31, at para. 47; *R. v. C.P.*, 2021 SCC 19, [2021] 1 S.C.R. 679, at para. 157, *per* Wagner C.J.

b. The Appellants Met s. 140's Threshold

[42] Second, the motion judge made no reversible error in concluding that the appellants' conduct met the threshold for a s. 140 order – persistently and without reasonable grounds initiating vexatious proceedings or conducting a proceeding vexatiously.

[43] The appellants wisely do not contest the motion judge's decision to make a s. 140 order against UM itself. The history before him disclosed repeated proceedings, over many years, arising from the same essential factual matrix and directed, in one form or another, against the same respondents. Those proceedings had repeatedly failed. Prior courts had found them statute-barred, abusive, duplicative, or without merit. Costs had been awarded. Those orders had not brought the litigation to an end. The motion judge was entitled to conclude that the present action was not a genuinely new claim, but another repackaging of allegations already advanced and rejected.

[44] Instead, the appellants challenge their inclusion within the s. 140 order. They submit that the motion judge conflated their “association” with UM with the personal actions that s. 140 requires.

[45] I disagree. The motion judge’s findings establish that both appellants meet the statutory threshold. Those findings are entitled to deference.

[46] The motion judge properly rejected Dr. Kalair’s attempt to use UM’s purported leadership change to shield himself from accountability. That change did not erase the motion judge’s finding that Dr. Kalair directed prior vexatious proceedings. As the motion judge further found, Dr. Kalair orchestrated the present action from behind the scenes even after his alleged departure from the company.

[47] The motion judge also appropriately held Mr. Sairally accountable for his conduct of the proceeding. When Mr. Sairally joined the board after the historical proceedings and the commencement of the present action, the motion judge found that he allowed himself to be used as a “puppet” for UM and Dr. Kalair. He swore an affidavit in the action which inaccurately asserted, without any reasonable grounds, that UM had been discharged from bankruptcy. As he admitted in cross-examination, his affidavit contained numerous other unfounded assertions. The motion judge further found that he spoke with Dr. Kalair before cross-examination and allowed him to influence the litigation from behind the scenes. The motion judge was entitled to conclude that these acts met the threshold.

[48] I would also reject Mr. Sairally's argument that the motion judge should have analyzed his actions in isolation from UM's vexatious history. The motion judge was required to consider the "whole history", including prior litigation for which Mr. Sairally may not have been personally responsible: *Re Lang Michener and Fabian* (1987), 59 O.R. (2d) 353 (H.C.), at p. 358. He properly rejected the argument that UM's change in management rendered Mr. Sairally and his fellow directors somehow free of the corporation's prior procedural history. Mr. Sairally can neither escape the legal consequences of prior orders made against UM before he joined the board nor carry on the very abusive litigation which those orders barred.

c. The Motion Judge's Exercise of Discretion Was Proper

[49] Third, I would reject the appellants' challenge to the motion judge's discretionary judgments to include them in the order and set its scope.

[50] Section 140 orders should be purposive, proportionate, and tailored. The court should consider whether an order would further the legislative aims – protecting innocent parties from abusive litigation, preserving the integrity of the judicial process, and safeguarding judicial resources to serve the needs of the many – as well as the effectiveness of alternative remedies. If an order is appropriate, the court should craft focused terms to achieve those goals in the specific context of the case while avoiding overbreadth: *Jonsson v. Lymer*, 2020 ABCA 167, 448 D.L.R. (4th) 275, at paras. 12, 63; *Olumide*, at para. 31.

[51] The motion judge's exercise of discretion respected these principles.

[52] First, the motion judge properly determined that the order had to extend beyond UM itself to effectively advance s. 140's aims. The record showed repeated use of related individuals and entities in advancing substantially the same claims as well as the presence of "invisible litigants" like Dr. Kalair, who sought to direct litigation from behind the scenes. As he found, this vexatious litigation harassed the respondents, undermined the integrity of the judicial process, and harmed access to justice for other Ontarians by diverting judicial resources to fuel a private vendetta. In light of this history, the motion judge was entitled to conclude that this litigation pattern and these consequent harms could continue through past and current directors unless the order captured those acting in relation to the same dispute, whether in their own name or through the corporation or other persons.

[53] Second, the motion judge appropriately concluded that lesser remedies would be ineffective. As he found, both appellants ignored court orders and Dr. Kalair had not paid hundreds of thousands of dollars in outstanding cost awards. Ordering costs that are unlikely to ever be paid is an illusory remedy, not an effective alternative: *Schwilgin v. Szivy*, 2015 ONCA 816, at paras. 21-25, motion to review dismissed, 2017 ONCA 453.

[54] Third, the scope of the order is focused and proportionate. Importantly, the order does not impose a blanket leave requirement on unrelated litigation. Instead,

the need to seek leave is confined to proceedings against the respondents and related persons arising from the receivership and related subject matter. That is a conventional and proportionate means of controlling abusive litigation.

d. The Process Was Fair

[55] Finally, I would reject the appellants' procedural challenges. The respondents properly served the appellants with the motion materials in accordance with the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and the appellants participated in the motion – as the motion judge found, Mr. Sairally swore an affidavit, and Dr. Kalair helped him prepare for cross-examination.

[56] I would not address whether the respondents were required to proceed by application against the non-party appellants pursuant to s. 140(2) of the *CJA* and r. 2.2.03(1) of the *Rules*. That issue is not properly before the court because the appellants never raised it, and this judgment should not be taken as deciding it.

e. Conclusion

[57] I would, therefore, reject the appellants' challenge to the s. 140 order.

2. The Costs Order Against Mr. Sairally

[58] I likewise see no basis to interfere with the order making Mr. Sairally jointly and severally liable for costs.

[59] It is well established that costs may, in exceptional circumstances, be awarded against non-parties who are directors or principals of corporations where

their gross misconduct, vexatious behaviour, or other acts that undermine the fair administration of justice amount to an abuse of process: *1318847 Ontario Limited v. Laval Tool & Mould Ltd.*, 2017 ONCA 184, 134 O.R. (3d) 641, at paras. 73-77.

[60] Here, the motion judge did not impose costs on Mr. Sairally merely because he had become a director. Nor did he do so simply because UM's action failed. He grounded the order in specific findings about Mr. Sairally's conduct as a deponent and participant in the litigation.

[61] As I have explained, the motion judge found that Mr. Sairally swore an affidavit containing assertions said to be based on personal knowledge and review, but that on cross-examination, he was unable to support those assertions, had not reviewed key materials, demonstrated little familiarity with the litigation history, and could not identify any meaningful effort made to verify the contents of his affidavit.

[62] Those were factual findings squarely within the motion judge's purview. The motion judge had the advantage of the record and of the cross-examination evidence. There is no basis on this appeal to disturb those findings.

[63] The motion judge was entitled to insist that a deponent who swears to factual propositions in court materials bear responsibility for ensuring that those propositions are grounded in fact. The integrity of motion practice depends on nothing less. For affidavits are not bare assertions. They are evidence given under oath or affirmation meant to bind the deponent's conscience. Their role is to help

the courts get at the truth. That truth-seeking function is vital. It sets robust quality standards. It demands that deponents take particular care to inform themselves of the truth of the asserted facts before they swear the oath or make the affirmation. When such care is not taken, meaningful consequences may be necessary to preserve the integrity of the judicial process: *Saccon (Litigation Guardian of) v. Sisson* (1992), 9 C.P.C. (3d) 383 (Ont. Gen. Div.), at paras. 4-5.

[64] In the circumstances, it was open to the motion judge to conclude that Mr. Sairally's conduct contributed to the continuation of abusive litigation, undermined the fair administration of justice, and justified personal costs consequences.

[65] The order was discretionary. No error in principle has been shown, and the result cannot be said to be plainly wrong. Because the appellants have not shown strong grounds for appellate intervention, leave to appeal costs is denied.

G. DISPOSITION

[66] The motion judge was confronted with a record showing persistent efforts, through changing combinations of corporate and individual actors, to relitigate matters arising from the 2011 receivership that had already been finally determined. He was entitled to conclude that the present action was another such effort, that the appellants' vexatious conduct met the statutory thresholds, and that imposing a tailored leave requirement on them under s. 140 was necessary to prevent further abuse. He was also entitled to conclude that costs should be borne

personally by Mr. Sairally in light of the role he played in advancing the proceeding through unsupported affidavit evidence.

[67] Accordingly, the appeals are dismissed and leave to appeal costs is denied.

[68] The appellants shall pay costs of the appeal to the respondents in the amount of \$50,000 all-inclusive.

Released: June 29, 2026 "M.T."

"M. Tulloch C.J.O."

"I agree. Sossin J.A."

"I agree. A. O'Marra J. (*ad hoc*)"