

CITATION: Hortensius v. ASM Mortgages Inc., 2026 ONSC 4088
COURT FILE NO.: CV-25-00001411-0000
DATE: 20260713

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
KAREN HORTENSIUS and BRADLEY	)	
CRNKOVICH	)	Karen Hortensius, Self-Represented
	)	
Plaintiff	)	Bradley Crnkovich, not appearing
	)	
– and –	)	
	)	
ASM MORTGAGES INC. (aka	)	
CONTEMPORARY INVESTMENT	)	L. Moazzam, for the Defendant, ASM
CORP.), JEFFREY BELESKEY and	)	Mortgages Inc.
SCOTT GREEN	)	
	)	
Defendants	)	A. Hershtal, for the Defendant, Jeffrey
	)	Beleskey
	)	
	)	
	)	HEARD: June 15 and 22, 2026, by
	)	videoconference

REASONS ON MOTION TO STRIKE PLEADING AND LEAVE TO AMEND

MCCARTHY J.

The Motions

- [1] The Defendants bring a joint motion under r. 21.01 (3) (d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to strike the Plaintiffs’ claim (“the claim”) on the basis that it is frivolous, vexatious, and an abuse of process.
- [2] The Plaintiff, Karen Hortensius opposes the motion but moves for leave to serve and file a fresh as amended statement of claim (“the proposed claim”), and for various other forms of relief.
- [3] The Plaintiff, Bradley Crnkovich did not appear on this motion.

Rule 21.01(3)(d)

[4] The applicable rule reads as follows:

3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Action Frivolous, Vexatious or Abuse of Process

(d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

[5] Unlike its counterpart rule 21.01 (1) (a) and (b), a motion under rule 21.01 (3) allows the court to consider evidence without leave or consent of the parties. Indeed, to evaluate whether a claim constitutes an abuse of process, regard must often be had to an evidentiary record.

The Basis for the Motion

[6] The Defendant, ASM Mortgages Inc. (“ASM”), contends that the Plaintiffs have commenced and pursued overlapping proceedings in motions and actions under court file numbers CV-23-1905 “1905”, CV-23-2218 “2218”, and this present action, CV-25-1411 “1411”, all arising from ASM’s enforcement of a mortgage (“the mortgage”) over 37 Yeoger Drive, Port McNicoll, Ontario (“the property”).

[7] ASM asserts that the Plaintiffs are guilty of abuse of process in attempting to relitigate previously determined issues and launching collateral attacks on court orders. Along the way, the Plaintiffs have failed to pay multiple costs awards which now total \$16,270; they have long since lost any legal or equitable interest in the property; they have been noted in default; they have been found to be in contempt of court; and they have neglected to appeal or move to set aside orders, preferring instead to flood the court with new proceedings about the same issues.

Procedural History

[8] The Plaintiffs defaulted on the mortgage on or about April 10, 2023.

[9] ASM discovered that the Plaintiffs were undertaking renovations at the property in October 2023. Fearing substantial harm to the property which served as security for the mortgage debt, ASM moved ex parte and obtained an order (“the injunction order”) enjoining the Plaintiffs from continuing any demolition, deconstruction, renovations or alterations. That injunction order was granted in proceeding “1905” and renewed by the court in November 2023.

- [10] On December 11, 2023, ASM commenced a mortgage enforcement action (“the mortgage action – court file number 2218) seeking payment of the principal, and possession and sale of the property. The Defendant, Jeffrey Beleskey was counsel of record for ASM in both the injunction proceeding and the mortgage action.
- [11] The Plaintiff Bradley Crnkovich was noted in default in the mortgage action on February 2, 2024. The Plaintiff, Ms. Hortensius was noted in default in the mortgage action on August 13, 2024. At the same time, she was found to be in contempt of the injunction order by Corkery J. (“the Corkery order”).
- [12] On October 29, 2024, the Plaintiff moved to set aside the Corkery order on the basis that motion dates for the granting of the Corkery order had not been canvassed with her. Christie J. dismissed the motion, finding that the Plaintiffs had received notice and chose not to attend. In addition, Christie J. found that the Plaintiffs had admitted their mortgage default, had no defence to the mortgage enforcement claim, and that their allegations against Mr. Beleskey were without merit.
- [13] ASM obtained default judgment in the mortgage action in January 2025 and leave to issue a writ of possession on the property approximately 3 months later.
- [14] The Plaintiffs then launched the present action. In May 2025, Christie J. dismissed the Plaintiff’s motion for a certificate of pending litigation (“CPL”) and possession of the property finding that it was completely without merit.
- [15] As a result of being named as a Defendant in the present claim, Mr. Beleskey was forced to remove himself as counsel of record for ASM.
- [16] The property was sold under power of sale to Jenna Ladouceur on November 19, 2025.
- [17] The Plaintiffs then brought subsequent motions for various relief in the injunction proceeding and the mortgage enforcement action seeking damages; setting aside the default judgment; finding the Plaintiffs (Defendants in this action) in contempt of the injunction order; setting aside the order of Corkery J.; and for a return of the property. These motions were dismissed by Christie J. on January 7, 2026. She found, *inter alia*, that the relief sought was previously dismissed by the court, that there was no basis upon which to set aside the default judgment, that there was no evidence of fraud in the mortgage enforcement procedure, that there was no evidence of damages, and that the moving party could not identify any order breached by the respondents.

The Position of Mr. Beleskey

- [18] The Defendant Beleskey supports the grounds relied on by ASM but adds that as solicitor of record for the opposite party ASM throughout the injunction and mortgage proceedings, he owed no duty of care to the Plaintiffs as Defendants in those proceedings. The law is well settled in Ontario on this point; nowhere does the pleading set out any material facts which might form the basis for the very narrow exception to this principle. The allegations

against Mr. Beleskey disclose no recognizable cause of action and they amount to an abuse of process.

The Position of ASM

- [19] The Defendant, ASM argues that the Plaintiffs' action seeks to relitigate the mortgage default, the injunction proceedings, the default judgment, the writ of possession, the power of sale process, the transfer of the property, the denied request for a CPL on the property, and the court's findings of contempt. The Plaintiffs' action represents a collateral attack on previous court orders and amounts to an abuse of process. It should be struck in its entirety without leave to amend.

The Position of the Plaintiffs

- [20] While opposing the r. 21 motions, the Plaintiff brings a cross-motion which seeks leave to issue a fresh as amended statement of claim ("the proposed claim"). Among other things, the proposed claim would seemingly abandon the claim against Mr. Beleskey ("removal sought") while at the same time adding a new defendant Jenna Lynn Ladouceur ("Ms. Ladouceur"), who was purchaser of the property under power of sale. In submissions, Ms. Hortensius was unwilling to concede to a dismissal against Mr. Beleskey without conditions.

Abuse of Process

- [21] A hallmark of abuse of process is a party's attempt to relitigate matters already determined by a court or quasi-judicial bodies. The doctrine of *res judicata*, which is a Latin term meaning "a matter judged", operates so as to preclude an issue or cause of action from being relitigated between the same parties where it has already been finally determined on its merits, as opposed to having been dismissed or struck on technical grounds. The doctrine is meant to ensure judicial finality, guard against conflicting decisions on the same issue, and prevent repetitive litigation.
- [22] In addition, the court's abuse of process jurisdiction is broad and flexible and goes beyond the parameters of the more traditional doctrine of *res judicata* or issue estoppel. Invoking that jurisdiction, the court sees to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 37.

The Claim

- [23] The Plaintiffs' Claim, amended on June 10, 2025, was served and filed subsequent to the original claim issued on or about May 8, 2025. The relief claimed is limited to an immediate/emergency CPL, an order for immediate/emergency mediation, an order setting costs of the mediation, an order for financial damage in the amount determined through mediation for various wrongdoings of the Defendants as well as interest, costs, and other

unspecified relief. It is not clear from the prayer for relief whether the Plaintiffs seek an assessment of damages by the court or merely an order for the payment of any damages agreed upon at mediation. Regardless, there is no monetary amount claimed.

- [24] The body of the claim is a disjointed jumble of commentary, complaints, accusations, denunciations, and criticisms levelled against the actors involved in the injunction and the mortgage enforcement actions. It questions the manner in which ASM made a mortgage demand; it dissects Mr. Beleskey's performance throughout the litigation and questions his instructions; it even criticizes the court, saying it has been biased and that there is something gravely wrong with the court system; it suggests that the process server Scott Green should be prosecuted to the full extent of the law for trespass; it includes an allegation that the claim is a suitable alternative to appealing previous orders; it asks for mediation; it poses questions in place of allegations; it plucks the word "misunderstanding" from a court ruling and subjects it to a tortured analysis; it references irrelevant complaints about the Defendants made to the Law Society, government departments, and regulatory agencies; it contains a suggestion that it would have been in the best interests of all the parties to refinance the mortgage; and throughout, the claim returns to the theme of the injunction being wrongfully obtained and enforced.

(i) The Allegations against Mr. Beleskey

- [25] The allegations against Mr. Beleskey focus on his lack of professional courtesy; his refusal to negotiate; his statements to the court and to the Plaintiff in discussing and prosecuting the case; his breaking undertakings; and his misrepresentations (lying) to the court.
- [26] The claim against Mr. Beleskey has no merit and the Plaintiffs' proposed conditions for conceding a dismissal of the action against him, such as maintaining that the claims against him are subsumed in the claims against ASM or that he is an important witness at trial, are not conditions the court would impose; nor should they stand in the way of the court granting the relief sought by this Defendant. The rule against suing an adverse lawyer is well established in Ontario. In *Chuvale v. Worsoff*, 2022 ONSC 4079, my brother Chown J. carefully explained how and why the courts look dimly on actions brought against the lawyers of opposing parties in litigation, at paras. 31-34:

Lawyers owe duties of care and duties of loyalty to their clients. They owe no such duties to adverse parties. Despite this, lawyers sometimes get sued by the parties they act against. For good reason, such claims are treated with scrutiny by the courts. Our adversarial system depends on the ability of lawyers to fearlessly advance their clients' positions.

In our system, the lawyer gives advice, and the client makes decisions and instructs the lawyer. A lawyer's advice as to strategy is typically subject to privilege and cannot be disclosed by the lawyer without the client's consent. An adverse party who feels wronged by the strategy taken is not entitled to know if the strategy

was taken in accordance with or against the adverse lawyer's advice. Parties cannot get around this by suing the adverse lawyer.

Our system requires that any complaint over the strategy taken by an adverse party must be resolved in the litigation where that strategy was taken, and not in a further lawsuit. If our system was without this feature, serial lawsuits could spawn from a single underlying dispute. "There would be a temptation, which many would find irresistible, to relitigate in actions against their opponent's counsel the issues which they have lost in the main litigation, or to attempt to handicap the other side by eliminating experienced and knowledgeable counsel from the case."

The rule against suing an adverse lawyer is authoritatively stated in *The Law of Civil Procedure in Ontario*:

The lawyer of record has no duty of care or liability to the opposing party for advising his client to sue or to defend the proceedings, and solicitor-and-client privilege not only protects the communications between lawyer and client, it also protects the lawyer from being sued by the opposing party under the guise of any cause of action for his or her conduct of a case.

- [27] The exceptions to this general rule are confined to narrow, limited circumstances where it can be demonstrated: that the lawyer actually knows that the non-client third party was relying on her skill; that the non-client third party must actually rely on the lawyer's guidance and skill; and that the reliance must be objectively reasonable: see 9383859 *Canada Ltd. v. Saeed*, 2020 ONSC 4883, at para. 30, citing 2116656 *Ontario Inc. v. Grant and LLF Lawyers LLP*, 2019 ONSC 114, at para. 36.
- [28] Nowhere in the claim are there material facts pleaded which would raise the possibility that these narrow, limited circumstances could be established.
- [29] The allegations against Mr. Beleskey disclose no reasonable cause of action. The claim against him has no chance of success. Moreover, an action brought against an opposing party's counsel constitutes an abuse of process.
- [30] The claim and allegations of the Plaintiffs as against the Defendant, Jeffrey Beleskey are hereby struck in their entirety.

(ii) The Allegations against ASM

- [31] It is plain and obvious that the claim against ASM cannot succeed. The claim for a CPL has been litigated and denied. The Plaintiffs no longer have any legal or equitable interest in the property. Both have been completely extinguished by the mortgage default, the default judgment, the writ of possession, the transfer of possession to ASM, and the sale

of the property under power of sale. There is absolutely no basis for the property to be returned to the Plaintiffs.

- [32] The issues raised in the claim have all been finally determined by the court. Appeals were never launched. Any attempts to vary or set aside those orders have met with failure. Any attempt to challenge, vary, undermine or set aside those orders in the context of a claim constitutes an abuse of process and is doomed to fail. Any attempt to undo the mortgage enforcement and sale of the property amounts to nothing but impermissible collateral attacks on properly taken mortgage enforcement steps and legally obtained court orders.
- [33] The Plaintiffs seek to relitigate their mortgage default, contempt findings, the proprietary of the mortgage enforcement and their entitlement to a CPL. These have all been previously determined by the court. Issue estoppel, cause of action estoppel, *res judicata*, and the need for a finality of litigation arise and interact here to foreclose the Plaintiffs from raising these same issues and claims in a separate proceeding
- [34] The claims for punitive and exemplary damages cannot succeed given that there is no underlying cause of action to support them.
- [35] The claim against ASM represents an abuse of process. It must be struck in its entirety. It is an attempt to relitigate matters previously decided (the injunction, the default judgment, the mortgage enforcement and sale of the property). It is an attempt to launch a collateral attack on those same court orders, which were not the subject of appeals or requests for variation.

(iii) Leave to Amend

- [36] Where a claim has been struck as disclosing no reasonable cause of action or as frivolous, vexatious or an abuse of process, the plaintiff will be denied leave to amend that pleading where it contains a “radical defect” such that it could not be improved by an amendment: *Roche v. McLeod Law Firm*, 2018 ONSC 2760.
- [37] The proposed claim is a breathtaking 150 pages featuring a little bit of everything: dissection of previous court orders and decisions, lengthy citations from case law, direct quotes from participants in previous proceedings (including the respective motions judge), reference to administrative error, argument, and commentary about previous court decisions, re-hashing of matters previously decided, a discussion of the difference between setting aside and appealing a previous court order, an analysis of ASM’s business motto, a claim for a “return of the property” which was conveyed under power of sale to an arm’s length third party (now a proposed defendant) and of course a claim that natural justice was denied the Plaintiff throughout the mortgage, and related proceedings.
- [38] At its core, however, the proposed claim is a flagrant attempt to challenge previous rulings and to raise the same issues which this court has previously determined. The proposed claim is as much an abuse of process as its predecessor. This amounts to a radical defect in the claim which no amount of amending can cure. The claim and the proposed claim are both doomed to fail.

[39] I would deny the Plaintiffs leave to amend their statement of claim.

Scott Green – Remnant Defendant

[40] The court was not informed of the status of the claim against Green. I can find no statement of defence from him. He was not noted in default. He did not participate in the motion and does not appear to be represented. Neither the style of cause on the Plaintiffs' notice of motion nor their proposed claim includes him as a party. The allegations against him set out in both the claim and the amended claim have vanished from the proposed claim. This would seem to indicate that the Plaintiffs have either discontinued against him or are content to abandon this aspect of their claim. In light of the uncertainty left by the materials and the submissions, the status and future of this claim against the remnant Defendant should be addressed at a case conference.

The Plaintiffs' Cross-Motion

[41] The relief sought by the Plaintiffs on the cross-motion is inappropriate, unavailable, misplaced or denied. The underlying claim is now struck without leave to amend. The Defendant, ASM obtained possession of the property under a lawful writ of possession. Storage costs cannot be claimed and are in any event not an appropriate aspect of an order at a motion.

[42] The relief sought against Jenna Ladouceur (vacant possession of the property) is unavailable since she was not served with the motion. The court cannot conceive of any cause of action that the Plaintiffs could have against this arm's length, third-party purchaser of property conveyed under a power of sale by a mortgagee in possession in these circumstances. The Plaintiffs' interest in the property has been extinguished by the judgment in the mortgage action, the writ of possession, and the sale of the property. That said, the court cannot prevent the Plaintiffs from launching a separate action against Ms. Ladouceur; such a claim would have to be dealt with in its turn. Nonetheless, granting leave to amend the claim to include Ms. Ladouceur as a Defendant in this action is wholly inappropriate and unwarranted because the near entirety of the present claim has been struck without leave to amend.

[43] I am not prepared to order the preparation of transcripts from previous hearings. The Plaintiffs should make requests for transcripts through the court services division and pay the appropriate fees. The request for an accounting of the proceeds of the sale of the property is misplaced; it should be made in the mortgage action. In the interest of expedience, the court will consider the issue at a case conference at which other remaining issues in this and the mortgage action shall be canvassed.

Summary and Disposition

[44] The Defendants' motion is allowed, and the Plaintiffs' claims against the Defendants ASM Mortgages Inc. and Jeffrey Beleskey are hereby struck without leave to amend.

- [45] The issue of the claim against the remnant Defendant Green is adjourned to a case conference before me to be arranged by the trial coordinator at Barrie (Barrie.SCJ.TC@ontario.ca).
- [46] The Plaintiffs' motion is dismissed save and except for the issue of an accounting for the sale of the property in the mortgage enforcement action. That aspect of the motion is adjourned to the case conference to be scheduled.
- [47] Should the parties be unable to agree upon the issue of costs or the form and content of any order arising out of these reasons, the parties may address those and other outstanding issues at the case conference to be scheduled.

MCCARTHY J.

Released: July 13, 2026