

CITATION: The Toronto-Dominion Bank v. Muthusamy, 2026 ONSC 4642
COURT FILE NO.: CV-24-94339
DATE: 2026/08/06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Toronto-Dominion Bank, Plaintiff

-and-

Sakthivel Muthusamy, Defendant

BEFORE: Justice K. Perron

COUNSEL: Nicholas Przulj for the Plaintiff, moving party

Manmeet Kang for the judgment creditor, RBC

Oyindamola Omisore for the judgment creditor, Capital One

HEARD: August 6, 2026

ENDORSEMENT

PERRON J.

Overview

[1] This is a motion by TD Bank pursuant to the Trustee Act and Rule 43.02 of the Rules of Civil Procedure seeking to pay surplus proceeds into Court arising from the bank's sale of the underlying mortgaged property. The total surplus proceeds are \$133,386.94.

[2] TD's motion was brought on notice to the defendant based on the defendant's last known address in accordance with an updated skip trace.

[3] The motion was also brought on notice to Royal Bank of Canada, Capital One Bank and PRA Group Canada Inc. each of which have registered writs as against the defendant based on an execution search conducted on January 14, 2025.

- a. RBC's writ was registered for a judgment dated October 22, 2019 in the amount of \$19,124.63 plus costs, plus interest of 11.99% on the judgment and 3% on costs. I note that

the execution search states that the writ expired on June 17, 2026. It is not known if RBC renewed the writ.

- b. Capital One's judgment is dated February 9, 2021 and is the amount of \$9,620.53 plus costs plus interest at 19,8%. Capital One's writ is set to expire in February 2027.
- c. PRA's judgment is dated March 19 2020 in the amount of \$14,119.40 plus costs plus interest at 19.99%. PRA's writ is set to expire in February 2027.

[4] The motion was also brought on notice to Canada Revenue Agency because they registered two liens against the property based on a parcel register obtained on January 14, 2025. The tax liens appear to have been registered on June 3, 2019 in the amount of \$35,232.96 and \$111,084.85 plus interest.

[5] On the Notice of lien for the lesser lien amount, the Minister claims a priority pursuant to subsections 227(4) and (4.1) of the Income Tax Act and/or section 222 of the Excise Tax Act. On the other Notice of lien, the Minister claims a priority over all encumbrances or claims registered or attaching to the subject property subsequent to the registration of the notice.

[6] That said, based on the same parcel register, it appears that the tax liens may have been deleted from title by CRA.

[7] The motion was originally before me on November 13, 2025. On that day, I adjourned the motion because additional evidence was required by TD Bank in support of the relief sought. In particular, and in support of TD's request to be extinguished from liability, I requested additional evidence regarding the sale and marketing process for the property, the attempts to locate and serve the defendant and particulars of the distributions/payments made by the bank from the total proceeds of sale.

[8] On the original return of the motion, RBC filed a responding record seeking payment of its judgment from the surplus funds prior to payment into court of the balance of funds. I also adjourned that request because there was insufficient evidence before me about the priority of RBC's indebtedness vis-à-vis the other execution creditors and other encumbrances on title

including CRA's potential claim. I was also concerned about RBC's service by mail of its materials on the defendant (and its attempts to locate the defendant) and on the other interested parties in view of labour issues with Canada Post affecting mail delivery.

[9] On the return of the motion today, TD Bank filed revised materials which included evidence on the issues I raised previously including the sale and marketing process for the property and its updated attempts to locate and serve the defendant.

[10] I am satisfied based on the evidence in the revised record that TD Bank's motion should be granted, including that the bank's liability regarding the property and the proceeds be extinguished.

[11] The bank requests that its costs of this motion in the amount of \$4,000 be paid from the surplus proceeds prior to the funds being paid into court. The costs sought by the bank are reasonable and appropriate.

[12] RBC again attended at today's motion. RBC did not upload updated materials to case centre. RBC stated that it would bring a motion seeking payment out of court at a later date.

[13] Capital One also appeared at the motion today. Capital One filed a responding motion record to confirm that it has obtained judgment in this matter however the same problems exist with Capital One's materials as those that I flagged initially with RBC's materials.

[14] In particular, Capital One's evidence does not include an updated quantification of its judgment debt, does not address its efforts to locate the defendant and serve them with the responding material and it does not address the priority issues arising from the fact that there are multiple judgment creditors who have filed executions.

[15] That said, if CRA has in fact deleted its tax liens from title to the property, there may be sufficient funds from the surplus proceeds to payout the interests of the three execution creditors. However, the Court has insufficient evidence to make that determination today.

[16] The above issues often arise on interpleader motions which prevent the Court from adjudicating the issues at the first appearance. Adjournments are often required which tax the

Court's already-limited resources and adds unnecessary delays and costs for parties in dealing with the surplus proceeds or seeking payment from those funds.

[17] In addition to the requirements set out in rule 43, it would be prudent for a party claiming an interest in surplus proceedings/property at the interpleader motion to consider the following:

- a. Ensure that its responding materials clearly set out the specific relief that the party is seeking including the precise quantum of the payment to be made from the funds/proceeds;
- b. The materials should include a notice of motion seeking payment out of court particularly if the proceeds were previously paid into court;
- c. The motion materials must be served on all potential claimants to the funds/property;
- d. Provide evidence to support their interest in the funds or property such as evidence of a valid judgment and a valid, unexpired writ;
- e. Provide evidence of the total, updated quantum of its claim inclusive of any accrued interest and costs;
- f. Provide evidence of any other potential claims to the funds/property and any efforts made or searches conducted to ascertain such potential claims;
- g. Ensure that their materials address any priority issues, by way of evidence and/or caselaw, arising from the claims of multiple stakeholders such as multiple executions or encumbrances registered against the property;
- h. If there are multiple claims against the property, such as in the present case where there are multiple execution creditors, the claimants should schedule a meeting to discuss their claims and attempt to reach an agreement with a view of presenting the Court with a proposal for distribution of the funds; and,
- i. If a dispute arises between the stakeholders regarding the proposed distribution, a party's claim to the funds or any other issue, the parties should prepare accordingly and provide

the Court with necessary evidence and supporting authorities to permit the Court to adjudicate the dispute at the hearing.

[18] TD Bank's motion for payment into court is granted, with costs payable from the surplus funds in the amount of \$4,000. I have signed TD Bank's draft order as requested and it shall be issued.

[19] For the reasons set out above, RBC and Capital One's requests for payment from the surplus proceeds are adjourned. The claimants should coordinate the return of their motion(s) seeking payment out of court once they have conferred with the other claimants.

Justice K. Perron

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Released: August 6, 2026