

Federal Court



Cour fédérale

Date: 20250613

Docket: T-1329-25

Citation: 2025 FC 1071

Ottawa, Ontario, June 13, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

GREGORY RICHARD BOSADA

Applicant

and

**ESTATE OF WILLIAM A. BROWN, CHRISTIAN B. BROWN, AND HEIDI K.
BROWN**

Respondents

ORDER AND REASONS

[1] The Applicant, Gregory Richard Bosada, has brought a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], seeking an order:

- i. discharging the mortgage dated December 9, 1994, in favour of William A. Brown against the pleasure craft known as “Sabbatical”, owned by the Applicant;
- ii. that the Ship’s Registry enter the Order in the Register as a discharge of the said mortgage, or, alternatively, grant authority to the Applicant to complete Form 11 in

lieu of the Respondents Christian B. Brown and Heidi K. Brown doing so, and register it as a discharge; and

- iii. that costs against the Respondents, Christian B. Brown and Heidi K. Brown, fixed in the sum of \$12,136.87 inclusive of fees, assessable disbursements and HST on the fees be paid forthwith by the Respondents to the Applicant.

[2] In support of the Motion, the Applicant relies on:

- 1. His affidavit sworn on May 21, 2025 [Applicant's Affidavit];
- 2. His Motion Record, which includes a copy of the Notice of Application and three affidavits filed in support of same being;
 - a. Affidavit of Richard Joseph Bosada sworn on March 19, 2025;
 - b. Affidavit of the Applicant sworn on March 21, 2025; and
 - c. Affidavit of Lyon Gilbert sworn on an unspecified date in March 19, 2025 [Gilbert Affidavit]

[collectively, the Application].

Background

[3] This is a most unusual motion.

[4] According to the affidavit of Richard Bosada, he purchased the "Sabbatical" in 1989 for recreational purposes to be enjoyed by his family. At some unspecified date, due to health issues,

Richard Bosada transferred ownership of the “Sabbatical” to his son, the Applicant, because Richard Bosada could no longer operate and maintain it. However, also according to that affidavit, the arrangement between father and son was that, while registered ownership was transferred to the Applicant who lives in the United States [US], Richard Bosada would continue to use, maintain and be responsible for the financial aspects of the vessel as the Applicant could only occasionally use it given his place of residence.

[5] Subsequently, a decision was made to sell the “Sabbatical.” A Purchase and Sale Agreement was entered into on October 12, 2024, with a third-party purchaser, which sale was conditional on the vendor providing title free of all encumbrances by May 15, 2025.

[6] Richard Bosada’s affidavit states that during the process of transferring title from the Applicant to the third-party purchaser, the agent handling the sale discovered that Mortgages A and B were registered, had not been discharged, and would have to be dealt with. In that regard, Richard Bosada contacted Lyon Gilbert to assist in the efforts to have Mortgage B discharged. Mr. Lyon’s affidavit states that he is a retired litigation lawyer who practiced in Ontario, he is also a mediator and arbitrator, and that Richard Bosada is a friend and former colleague. Richard Bosada requested, and Mr. Gilbert agreed, to assist Richard Bosada in this proceeding and also in contacting the Respondents.

[7] Attached as an exhibit to Richard Bosada’s affidavit is a Transcript of Registry issued by Transport Canada’s Ship Registration Computer System dated September 24, 2024. This indicates that the “Sabbatical” was registered on November 1, 1994, and that Ottawa is its Port of

Registry. The Applicant is listed as the registered owner and authorized representative (with an address in Ottawa). There are two recorded mortgages.

[8] Mortgage A, with respect to an “account current”, identifies the Applicant as the mortgagor/assignor “as shown on deed” and the “deed date” as October 28, 1994. Leonard M. Shore is identified as the mortgagee/assignee.

[9] Mortgage B, is described as \$10,000 US Dollars [USD] with interest at “10% P/A”, identifies the Applicant as the mortgagor/assignor “as shown on deed” and the “deed date” is also listed as October 28, 1994. William A. Brown is identified as the mortgagee/assignee.

[10] With respect to Mortgage A, the affidavit of Richard Bosada states that he was a criminal lawyer practicing in Ottawa and that Mr. Shore is also a criminal lawyer who practices in Ottawa. Richard Bosada states that Mortgage A is to secure an account current, relates back to 1994, and:

given the fact that lawyers' records have to be preserved for 7 years after initiation. I firmly state that if I ever saw such a mortgage and I believe I never have, that I long ago destroyed my records or lost them in a flood. It also appears that it is not a mortgage for a specific amount being more akin to a line of credit secured against real property. For that reason alone, it is probably void for uncertainty and for lack of particulars. Furthermore, and most importantly, I have never received a demand for payment or an account in the 30 years gone by either orally or in writing showing that I am indebted to Mr. Shore for any amount of money. Furthermore, I had no idea there was such a registration against title. I only discovered it when I obtained a copy of the registry, and its particulars as set out in Exhibits “A and “C”. To my knowledge and belief, there is no actual mortgage document except for what is registered on title.

[11] Richard Bosada goes on to say that he recently contacted Mr. Shore to obtain his consent to a discharge of Mortgage A, which Mr. Shore refused and instead sought payment of \$10,000 to do so. Richard Bosada states that, in the circumstances, he saw no basis for such a payment. Further, that the debt, if any, has been extinguished by reason of the Ontario *Limitations Act*, 2002, SO 2002, c 24, Sch B, which he asserts is applicable in this case.

[12] He also refers to Exhibit C of his affidavit, which is a letter dated December 7, 1994, from Mr. Ernest G. Tannis, lawyer, to “Custom House” (the Ships Registry) enclosing “Form No. 7 – Mortgage” to be registered in favour of William A. Brown against the “Sabbatical” and the fee for same. By letter dated the following day, the mortgage was returned by the Ships Registry for correction. That letter also sought information as to the change of the typed principal amount from \$30,000 USD to \$10,000 USD and confirmed that a mortgage was already registered on the vessel. The final page of that exhibit appears to be a copy of the Ship’s Registry entry for the “Sabbatical” indicating the registration of Mortgage A on November 1, 1994, and Mortgage B on December 9, 1994. Richard Bosada’s affidavit states that he recently spoke with Mr. Tannis “who disavows representing anyone on these transactions and has no paperwork to produce”.

[13] The Applicant’s Affidavit states that since his father’s affidavit was filed in support of the Notice of Application, Mr. Gilbert had advised the Applicant that the Notice of Application and related materials were all received by Mr. Shore, who had reviewed same and subsequently agreed to execute a discharge of Mortgage A. The discharge was then registered with the Ships

Registry and a Notice of Discontinuance as against Mr. Shore was filed with the Registry of this Court with respect to the subject application.

[14] This leaves Mortgage B.

[15] Richard Bosada's affidavit states that in his criminal law practice, from time to time when his clients were alleged to have committed crimes in the US, he worked with a US attorney, William A. Brown. The "Sabbatical" was used as security for payment of Mr. Brown's fees. Richard Bosada states that:

The mortgage debt was paid off in full shortly after registration of the mortgage, some 30 years ago. As this was a debt that related to my practice at the time, the records that were required to keep by the Law Society of Ontario, and which I kept in the ordinary course of my practice, have now since been long ago destroyed or lost in the flood. Lawyers are only required to keep financial and client records for 7 years.

[16] Further, that inquiries indicated that Mr. Brown died in 2008, leaving his daughter, Heidi K. Brown, his son Christian B. Brown and his partner, Diane L. Esslinger. Mr. Gilbert was tasked with contacting these individuals, believed to be the beneficiaries of the estate, to seek the estate's consent to discharge the mortgage.

[17] The Applicant's Affidavit states that Mr. Gilbert advised him that he retained the services of a process server in Boston, Mr. Peter Vitale, to serve Diane Esslinger, Heidi Brown and Christian Brown personally, and on behalf of the estate of William Brown with the Notice of Application. Various email communications between Mr. Gilbert and the beneficiaries are

attached to the Applicant's Affidavit. It appears that personal service on Heidi Brown and Christian Brown was not effected.

[18] Given Ms. Esslinger's information to Mr. Gilbert that she had no interest in and was not a beneficiary of the estate, a Notice of Discontinuance was filed discontinuing the application as against her.

[19] Heidi Brown advised that she had no prior knowledge of Mortgage B or its status and initially indicated that she was agreeable to executing Form 11, the discharge of mortgage. However, it appears that she decided against this and has not done so.

[20] As to Christian Brown, the Applicant's Affidavit attaches a May 3, 2025, email from Mr. Gilbert to Christian Brown. This email states that when he was initially contacted by phone, Christian Brown advised Mr. Gilbert that he would consult with his family and get back to Mr. Gilbert about the requested discharge but had not done so. Mr. Gilbert states that, given the circumstances, the Applicant then had no alternative but to commence litigation to resolve the situation. He goes on to say that, when contacted by the process server, Christian Brown did not accept service. Mr. Gilbert states in his email that he expected that Heidi Brown was "following the same tactics". Further, that if Christian Brown and his sister could not be served personally then a Court order permitting substituted service would be obtained. Mr. Gilbert then sets out his view that if the Respondents chose to participate in the legal proceeding, then they could expect to expend at least five times "what you believe to be your reward" and assures Christian Brown

that he has no chance of success, would be subject to an award of costs enforceable in the US, and encourages Christian Brown to engage in a dialogue to otherwise conclude the matter.

[21] Mr. Gilbert also sent an email to Heidi Brown on May 5, 2025, attaching the Application and stating, **“YOU HAVE NOW BEEN SERVED”** (emphasis original). Mr. Gilbert states in that email that he knows that Heidi Brown’s brother has been giving her advice on how to avoid service, that this is bad advice that “will be very costly to you in the end”, that if she continues to avoid the matter then the Applicant will ultimately succeed and obtain judgment against her for substantial costs, which are enforceable in the US and will result in collection procedures, such as garnishing her wages. Further, despite her brother’s advice, she has the authority to consent to the discharge and that she should consider advising her brother “that it was not wise of him to try to shake Mr. Bosada down for money” as that will never happen. She should also tell her brother that “we know where he lives, and one way or the other, he will be served.”

[22] In an email dated May 5, 2025, to Christian Brown and to Heidi Brown, Mr. Gilbert states that the Federal Court accepted that they have both been served with the Application, and that they have 10 days to appear and to govern themselves accordingly.

[23] Neither Christian Brown nor Heidi Brown have responded to the Notice of Application. The Notice of Motion was not sent to or served on them.

Analysis

[24] A number of concerns arise from this motion.

i. Service

[25] Rule 137(1) of the *Rules* concerns service outside of Canada. It states that documents to be served outside of Canada may be served in accordance with Rules 127 to 136 or in the manner prescribed by the law of the jurisdiction in which service is to be effected. Further, a notice of application is an originating document and is to be served personally (Rules 63(1)(d), 127(1)). With respect to service, Mr. Gilbert filed an affidavit dated May 7, 2025, entitled Affidavit of Service on Heidi Brown. Therein he deposes that he sent Heidi Brown, by email, a copy of the Notice of Application and three supporting affidavits, which email is attached as an exhibit to his affidavit. He also states that he is advised and does verily believe that under the Massachusetts Rules of Civil Procedure [Massachusetts Rules], service of court documents may be filed by email. He states that in Massachusetts, “originating processes are termed ‘Summons and Complaint’”, akin to the Notice of Application. The Massachusetts Rules provide that such process may be effected by “delivering a copy... to an agent authorised by appointment...”. Mr. Gilbert deposes that Heidi Brown acknowledged that she was a legally appointed agent to accept service and did so as such.

[26] This assertion is not clearly attributed but appears to stem from Heidi Brown’s May 5, 2025, email to Mr. Lyon where she expresses that it is not at all clear what he is or has been asking for but asks if a sworn statement granting discharge of the mortgage is what he seeks. If so, she would secure “(from my personal role as a beneficiary of the William A. Brown Estate, but none other) a sworn statement to that effect”.

[27] In his affidavit, Mr. Gilbert then refers to Rule 147 of the *Rules*, which states that if a document has been served in a manner that is not authorized by the *Rules* or by an order of the Court, the Court may validate the service if it is satisfied that the document came to the notice of the person to be served or that it would have come to that person's notice except for the person's avoidance of service. He states that it is clear that Heidi Brown received and acknowledged receiving the Application.

[28] I note that Mr. Gilbert practices law in Canada. He does not suggest that he is licensed to practice law in Massachusetts. Nor does he provide the source of his information and belief as to the Massachusetts Rules or the basis of his understanding of the application of same. Further, his affidavit does not establish that, under the Massachusetts Rules, Heidi Brown is an "agent authorised by appointment..." as he suggests. In short, I am not satisfied that the Rule 137(1) requirement that service be effected "in the manner prescribed by the law of the jurisdiction in which service is to be effected" has been established.

[29] As to Rule 147, the May 5, 2025, email from Mr. Gilbert to Heidi Brown indicates that it attaches the Application. In his Affidavit of Service on Christian Brown, sworn May 7, 2025, Mr. Gilbert deposes that he spoke with Christian Brown on May 5, 2025, at 2:25 pm during which Christian Brown advised him that he had just received from Heidi Brown an email containing a copy of Mr. Gilbert's email to her on May 5, 2025, attaching the Application and related affidavits.

[30] In my view, if Mr. Gilbert and the Applicant were of the view that Heidi Brown and Christian Brown were actively avoiding personal service, then the appropriate course of action was for the Applicant to seek an order for substituted service pursuant to Rule 136. It is also clear from Mr. Gilbert's above communication that he was aware that this was the appropriate next step in that circumstance. That said, Mr. Gilbert's affidavit evidence establishes that both Heidi Brown and Christian Brown received the Application via email – regardless of defects in service. Based on that evidence, I will exercise my discretion under Rule 147 and validate service on those Respondents (see *Figueroa v Canada (Public Safety and Emergency Preparedness)*, 2020 FCA 7 at paras 11–12; *Laquerre v Canada*, 2016 FCA 62 at paras 68–70).

[31] As to the Notice of Motion, the Applicant takes the position that, pursuant to Rule 145, because the Respondents have not filed a notice of appearance, the Applicant was not required to serve them with the Notice of Motion.

[32] Rule 145(a) states that, subject to s 207(2) or unless the Court orders otherwise, a party who has been served with an originating document is not required to be served with any further documents in the proceeding prior to final judgment if the party has not filed a notice of appearance or a defence within the time set out in these Rules. A notice of appearance is to be filed within 10 days of being served with a Notice of Application (Rule 305). However, only entitlement to service is affected by Rule 145(a). This does not mean that the party is no longer interested in the application or that they can be treated as having no interest. Indeed, the party is entitled to receive a copy of the Court's decision and to appeal same (see *Canada (Human Rights Commission) v Saddle Lake Cree Nation*, 2018 FCA 228 at para 18).

[33] I am concerned that the Notice of Motion was not served on the Respondents. Even if this was not strictly required, it could have been sent via email as was the Notice of Application. Had this been done, then the Respondents would have at least been aware that the motion was before the Court for determination. They may still have declined to participate, but that would be their informed decision.

ii. Jurisdiction

[34] The Applicant has not established the jurisdiction of this Court to cause a discharge of mortgage to be filed in these circumstances.

[35] There is no doubt that the Court has jurisdiction pursuant to s 22(1) of the *Federal Courts Act* RSC 1985, c F-7 [*Federal Courts Act*] over matters of shipping and navigation, and under s 22(2)(c) with respect to claims pertaining to ships mortgages. Rather, the issue here is the Court's authority to order the discharge of a mortgage. This is not a circumstance where there is a judicially ordered sale of an arrested ship to satisfy creditors in which case, pursuant to Rule 490(3), the sale would be free of any liens under Canadian Maritime Law.

[36] The *Canada Shipping Act 2001*, SC 2001, c 26 [CSA] also addresses the registering (s 65) and discharging of ships' mortgages. As to the latter, s 66 states that on receipt of satisfactory evidence that a mortgage has been discharged, the Chief Registrar is to enter the discharge in the Register. In the normal course, to discharge the mortgage in instances where the original endorsed mortgage deed has been lost or destroyed, this would be in the prescribed form of Form 11, which would be completed by the mortgagee and signed under oath.

[37] Based on ss 22(1) and 22(2)(c) of the *Federal Courts Act* and ss 65 and 66 of the CSA, the Applicant asserts that the Court can issue an order for the Ship's Registry to enter a discharge of Mortgage B. Or, alternatively, that the Court can grant authority to the Applicant to complete Form 11, in lieu of Christian and Heidi Brown, and order the registering of such a discharge.

[38] I am not persuaded that these provisions authorize this Court to take such actions. Nor has the Applicant referred to any jurisprudence in support of this position.

[39] Further, and in any event, with respect to Mortgage B, the evidence before me does not clearly establish that the mortgage has been paid in full or otherwise has been agreed as satisfied and, therefore, should be discharged.

[40] The affidavit evidence of Richard Bosada is that the "Sabbatical" was used by him as security for payment of Mr. Brown's fees. He states that the mortgage debt was paid off in full shortly after registration of the mortgage, some 30 years ago, and that Mortgages A and B were not thought of again until the recent decision to sell the vessel.

[41] However, the Transcript of Registry indicates that as of October, 28, 1994, the mortgagor for both mortgages is the Applicant, not Richard Bosada. There is no explanation as to how or when the Applicant became the mortgager or assignor of Mortgages A or B. Section 71(1) of the CSA states that a registered mortgage of a vessel may be transferred to any person, in which case the instrument effecting the transfer must be filed in the form and manner specified by the Chief Registrar. The Chief Registrar is then to enter the particulars of the transfer in the Register (s

71(2)). It seems probable that the mortgages would have been known to the Applicant in 1994 either as the mortgagor or because he assumed the mortgages upon transfer of title to the vessel. This is not clarified in the affidavits before me.

[42] In his affidavit, Richard Bosada also states that Mr. Tannis, the lawyer who placed Mortgage B, “disavows representing anyone on these transactions and has no paperwork to produce”. While Mr. Tannis’s letter does not identify his client, Mortgage B was submitted to the Ships Registry on December 7, 1994, and was registered on December 9, 1994, naming the Applicant as the mortgagor. Generally, a mortgage would be registered at the request of the mortgagor, would act as security for a debt owed by the mortgagor to the mortgagee and, prior to registration, would be signed by the mortgagor. It is not apparent to me why Mr. Tannis would disavow this recorded action or why the Applicant, as the named mortgagor, would not have been aware of the registration. It is also unclear why Richard Bosada would assert that Mr. Tannis disavowed this action – given that Richard Bosada also deposes that Mortgage B, which Mr. Tannis sought to have registered, was used as security for payment by Richard Bosada of Mr. Brown’s fees.

[43] Richard Bosada’s evidence is also that because the debt was related to his practice at the time, the records that he was required to keep by the Law Society of Ontario, and which he kept in the ordinary course of his practice, have now since been long ago destroyed or lost in “the flood”. He states that lawyers are only required to keep financial and client records for seven years.

[44] It is entirely unclear from the evidence before me why Richard Bosada would choose to mortgage his personal family pleasure boat to secure the fees of Mr. Brown presumably incurred by or on behalf of a client of Richard Bosada. And, if he did, why he would not have kept records of this transaction as this would not appear to have been done in the ordinary course of his practice. Nor is this a client record in the usual sense. Rather, it was an encumbrance on his own personal asset. Accordingly, I have difficulty with the Applicant's assertion that Richard Bosada was "legally entitled to destroy [the mortgage documentation] after 7 years".

[45] I also note that the Applicant's Affidavit states that he is advised by Mr. Gilbert that in a May 5, 2025, phone conversation between Mr. Gilbert and Christian Brown, the latter was aggressive and hostile and advised that he would not cooperate to discharge the mortgage and offered no explanation for his refusal. Although Mr. Gilbert has filed an affidavit in support of the Application (and the affidavits of service discussed above) it does not mention this.

[46] I acknowledge that Richard Bosada's affidavit states that Mortgage B was paid off long ago. However, he does not state that he has never received a demand for payment with respect to Mortgage B. And while the Applicant is the named mortgagor, nor does he state in his affidavit that no demand has been received with respect to Mortgage B.

[47] All of which is to say, even if this Court has the jurisdiction to cause Mortgage B to be discharged, which the Applicant has not established, I am not satisfied that the evidence before me would justify that course of action.

iii. Limitation Period

[48] The Applicant also refers to s 39(1) of the *Federal Courts Act*, which states:

Prescription and limitation on proceedings

39 (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.

Prescription and limitation on proceedings in the Court, not in province

(2) A proceeding in the Federal Court of Appeal or the Federal Court in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

[49] According to the Applicant, the “cause of action” arose in Ontario, where the applicable limitation period is two years. Further, because the Respondents did not make a demand for payment during that time and did not take steps to extend the running of the limitation period, even if the Applicant had not paid off the debt, an action for recovery would be time barred.

[50] Again, the Applicant offers no jurisprudence or other authority to support this position. Nor do either the Applicant or Richard Bosada depose that no demands for payment have been made. This is so despite Richard Bosada specifying in his affidavit that he has “never received a demand for payment or an account in the 30 years gone by either orally or in writing” regarding Mortgage A. Demands on payment for Mortgage B, if any, remain an open question.

Conclusion

[51] In my view, the Applicant has failed to establish that this Court has jurisdiction to effect the relief sought or, even if it does, that the evidence provided in support of this motion is sufficient to justify the granting of such relief.

[52] I am also not satisfied that the Applicant has established that the Respondents would be precluded from commencing an action for the unpaid debt, if any.

[53] I am also concerned that the Notice of Motion was not served on the Respondents, even if this was not strictly required. I note that Rule 145 “provides a discretion to the Court to provide for service of documents even if a notice of appearance is not properly served or filed” (*Sabok Sir v Canada*, 2021 FCA 188 at paras 11, 7).

[54] In these circumstances, I am dismissing the motion. However, I will grant the Applicant the option to file a fresh motion, which has been served on the Respondents by email and by registered mail, which fresh motion provides: a clearer explanation of when and how the “Sabbatical” was conveyed to the Applicant and the effecting of Mortgage B; any further evidence as to the status of Mortgage B; and, jurisprudence or other authorities speaking to both the Applicant’s assertion as to the Court’s authority to grant the requested relief as well as the application and effect of the applicable limitation period in the absence of demand for payment of the mortgage.

ORDER IN T-1329-25

THIS COURT ORDERS that:

1. The style of cause is hereby amended to remove the Respondents Diane L. Esslinger and Leonard M. Shore against whom Notices of Discontinuance have been filed.
2. The motion seeking to discharge the mortgage dated December 9, 1994, in favour of William A. Brown against the pleasure craft “Sabbatical” owned by the Applicant, Mortgage B in the Ships Registry, is dismissed with leave to the Applicant to bring a fresh motion in accordance with these reasons.
3. There is no order as to costs.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1329-25

STYLE OF CAUSE: GREGORY RICHARD BOSADA V ESTATE OF
WILLIAM A. BROWN, CHRISTIAN B. BROWN,
AND HEIDI K. BROWN

**MOTION HEARD IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL*
COURTS RULES, SOR/98-106 AT OTTAWA, ONTARIO**

ORDER AND REASONS: STRICKLAND J.

DATED: JUNE 13, 2025

SOLICITORS OF RECORD:

Gregory Richard Bosada
Ottawa, Ontario

FOR THE APPLICANT
(ON THEIR OWN BEHALF)