

COURT OF APPEAL FOR ONTARIO

CITATION: 1238915 Ontario Limited v. Ferri, 2026 ONCA 169

DATE: 20260306

DOCKET: COA-25-CV-0762

van Rensburg, Miller and Coroza JJ.A.

BETWEEN

1238915 Ontario Limited

Plaintiff (Respondent)

and

Andrew Adam Ferri, Interfund Mortgage Corporation,
Universal Management Consultants Inc.,
Niagara Home Builders Inc. and Connie Nothdurft*

Defendants (Appellant*)

Simon Sigler and Reihan Ahmed, for the appellant

Cameron D. Neil, for the respondent

Heard and rendered orally: March 3, 2026 by video conference

On appeal from the order of Justice David L. Edwards of the Superior Court of Justice, dated April 16, 2025.

REASONS FOR DECISION

[1] Over a lengthy course of litigation, the appellant sought to adjourn a 2017 trial date. The motion judge, who was to conduct the trial that day, granted the adjournment, but on terms that the appellant pay an outstanding costs order within 30 days, failing which the respondent would be entitled to bring a motion without

notice to strike the pleadings. The costs were not paid, the motion was brought, the pleadings were struck, and the uncontested trial proceeded.

[2] Judgment was ordered in the amount of \$110,000 against the appellant and others, as well as \$50,000 in punitive damages.

[3] Seven years later, the appellant brought a motion to set aside the judgment on the basis of Rule 19.08 and Rule 59.06 alleging fraud. A second motion sought an order finding that Mr. Mammoliti had no authorization to act on behalf of the respondent.

[4] The motions were dismissed.

[5] The appellant appeals on the basis that the motion judge erred in his application of the test for setting aside a default judgment under Rule 19.08. The motion judge made no error. The motion was not brought promptly or pursued diligently. The motion judge rejected the purported explanation for not bringing the motion promptly – that the appellant believed she had a valid release from the respondent. Having reviewed the record, the motion judge disbelieved the *bona fides* of the explanation.

[6] It was not appropriate to consider the merits of the defence, as the defence was struck for non-compliance with an order.

[7] There was a finding of prejudice and tarnishing of the administration of justice. We would not interfere with these findings.

[8] There is no basis for appellate intervention on any other issue raised in the appellant's factum or oral argument.

[9] The appeal is dismissed.

[10] Costs of the appeal are awarded to the respondent in the amount of \$13,000 all inclusive.

"K. van Rensburg J.A."

"B.W. Miller J.A."

"S. Coroza J.A."