

COURT OF APPEAL FOR ONTARIO

CITATION: 719299 Ontario Inc. v. West, 2012 ONCA 406

DATE: 20120612

DOCKET: C54561

Doherty, Juriansz and Ducharme JJ.A.

BETWEEN

719299 Ontario Inc.

Plaintiff (Respondent)

and

Ella Marie West and Stan West

Defendants (Appellants)

Aaron Lundrigan, for the defendants (appellants)

Angelo C. D'Ascanio, for the plaintiff (respondent)

Heard: June 11, 2012

On appeal from the order of Justice J.A. Desotti of the Superior Court of Justice,  
dated August 15, 2011.

APPEAL BOOK ENDORSEMENT

[1] The arguments about the deficiencies in the notice of sale proceedings are irrelevant to the appeal. The motion judge declared the notice of sale issued under the *Mortgage Act* void.

[2] The appellant argues that it was an implied term of the overall lending arrangement that the respondent was required to advance the entire amount of the loan (\$200,000) before moving against the appellant for any alleged default. We disagree. The General Security Agreement provides that the respondent could withhold payments in the event of a default. Paragraph 9 of the General Security Agreement provides that bankruptcy is an event of default. The borrowing company voluntarily petitioned itself in bankruptcy on April 27, 2007. There is no evidence that the remaining funds (\$50,000) were due to be advanced before the default occurred. The respondent was entitled to move for possession under the terms of the mortgage. The motion judge properly granted summary judgment.

[3] The appeal is dismissed. The stay of order granted by Cronk J.A. expires.

[4] Pursuant to para. 8 of the standard charge terms, the costs of the appeal shall be to the plaintiff (respondent) to be added to any amount found owing under the mortgage. For clarity, the relevant standard terms are those set out at Tab 17 of the respondent's compendium (#200033).