

COURT OF APPEAL FOR ONTARIO

CITATION: ResMor Trust Company v. Wlotzka, 2012 ONCA 840

DATE: 20121129

DOCKET: C55987

Blair, Rouleau and Tulloch JJ.A.

BETWEEN

ResMor Trust Company

Plaintiff

(Respondent)

and

Michael Norbert Wlotzka and Leslie Ann Wlotzka

Defendants

(Appellants)

Leslie Ann Wlotzka, acting in person

Amanda Jackson, for the respondent

Heard and released orally by teleconference call: November 19, 2012

On appeal from the judgment of Justice Donald J. Gordon of the Superior Court of Justice, dated July 24, 2012.

ENDORSEMENT

[1] The appellants appeal from the decision of the Honourable Mr. Justice Gordon dated July 24, 2012, granting the ResMor Trust Company (ResMor) summary judgment for payment under a charge between ResMor and the

appellants, possession of the charged property at 827 Larchwood Crescent, Kingston, and leave to issue a writ of possession.

[2] The charge matures on November 23, 2012. It has been in default of payment since November 23, 2011. The last payment was made on October 30, 2011. No payments have been made since that date. The appellants submit that according to their understanding, there is a distinction between the definitions of the term “arrears” and “default”. They claim that they were late with two mortgage payments which in their view was “being in arrears” as opposed to “being in default”, which they viewed to be a more permanent state of non-payment or inability to pay the stipulated mortgage payments.

[3] The appellants raised the following issues on appeal:

- a) that ResMor made unauthorized changes to the charge that allowed it to treat the charge as a default at its discretion and in contravention of s. 24 of the *Mortgage Act*, R.S.O. 1990, c. M. 40;
- b) that the allegedly unauthorized changes made by ResMor are in contravention of the Canadian Payments Association Rules; and
- c) that the allegedly unauthorized change to the charge made by ResMor entitles the appellants to rescind the charge and entitles the appellants to a refund of the amount owing.

[4] We disagree. In reviewing the terms of the mortgage, we see no distinction in the definition of late payments and default. According to the mortgage terms, the mortgage payments were due on the 23rd of each month. The appellant failed to make mortgage payments on November 23, 2011, as well as December 23, 2011. The failure to make the payments on the stipulated dates constitutes a default.

[5] According to clauses 10 through 13 of the charge terms, a single event of default was sufficient to accelerate the mortgage debt and trigger ResMor's rights of enforcement. The evidence also indicates that notwithstanding the default in payments, ResMor made numerous subsequent attempts to contact the appellants – in particular, a letter of December 29, 2011, which made it clear what the mortgagors were required to do, how much they were required to pay, and how and to where those payments were to be made – to which there was no response until March 24, 2012, by which time legal proceedings had already commenced.

[6] The major change in terms of the mortgage alleged by Ms. Wlotzka, is ResMor's requirement that the mortgage be repaid in full, rather than in accordance with the monthly schedule provided. There is no merit in this submission because there was no change in the mortgage contract in this regard. As noted, a default in payment triggers the mortgage company's right at its option to demand payment in full. The Canadian Payments Association Rules

do not apply as they have no relevance to the defaults here. It follows that there is no basis for a claim of rescission.

[7] Accordingly, the appeal is dismissed.

[8] The respondent is entitled to its costs of the appeal fixed in the amount of \$9,500.00 inclusive of disbursements and all applicable taxes.

“R.A. Blair J.A.”

“Paul S. Rouleau J.A.”

“M. Tulloch J.A.”