

COURT OF APPEAL FOR ONTARIO

CITATION: RCML Corp. v. 2524258 Ontario Inc., 2023 ONCA 352

DATE: 20230518

DOCKET: COA-22-CV-0152

Pepall, van Rensburg and Harvison Young JJ.A.

BETWEEN

RCML Corp.

Plaintiff (Respondent)

and

2524258 Ontario Inc. and Sina Sadeddin

Defendants (Appellants)

Peter B. Cozzi, for the appellants

Milton Davis and Natalia Sidlar, for the respondent

Heard and released orally: May 15, 2023

On appeal from the judgment of Justice Edward Belobaba of the Superior Court of Justice, dated August 23, 2022.

REASONS FOR DECISION

[1] The appellants appeal from the summary judgment granted by Belobaba J. on August 23, 2022. The judgment was for the deficiency owing on a mortgage debt following sale of the mortgaged property pursuant to power of sale proceedings. The appellants alleged that the respondent failed to take reasonable precautions to obtain the property's true market value and thus the sale amounted to an improvident realization.

[2] The motion judge applied the correct test for summary judgment and properly concluded on the record before him that there was no genuine issue requiring a trial. There was no evidence that the respondent failed to take reasonable precautions to obtain the best and highest price for the property nor was there any evidence of any improvident sale. As the motion judge stated:

Over the 11 months that the property was listed (the last nine of which were on MLS) there were some 50 showings and only the two offers as noted above. The accepted offer was in the range of the two November, 2019 (pre-Covid) appraisals and was at or near the sale price of two comparable properties on the same street. The advent of the Covid-19 pandemic clearly impacted Toronto house sales. But there is nothing in the record that suggests that the final sales price of just under \$4 million, as determined by the market at the end of August, 2020, did not reflect the property's true value at that time.

[3] The appellants complain that the evidence before the motion judge was inadequate as there was no evidence from the real estate agent on his marketing efforts. However, as the motion judge observed, if the appellants believed that the real estate agent could have provided relevant evidence, they could have obtained evidence from him. The appellants were obliged to put their best foot forward but they failed to do so. We see no basis for this ground of appeal.

[4] The appellants also submit that the motion judge applied the wrong legal test governing a mortgagee's duty when taking power of sale proceedings because he considered that the respondent's conduct had to be "plainly wrong" rather than "plainly on the wrong side of the line". Counsel was unable to draw a distinction between these two concepts and we fail to see one. In any event, the respondent's conduct met the requirements demanded of a mortgagee who sells pursuant to power of sale proceedings.

[5] Lastly, the appellants submit that the motion judge erred in stating that even if the mortgagee breached its duty, the mortgagor must show that a higher price would have been obtained but for the breach.

[6] We disagree. First, there was no breach. Second, this principle derives from this court's decision in *Manufacturers Life Insurance Co. v. Granada Investments Ltd.*, 2001 150 O.A.C. 253, at para. 67, quoting from Saunders J. in *Oak Orchard Developments Ltd. v. Iseman*, [1987] O.J. No. 361, aff'd [1989] O.J. No. 2394 (C.A.). Third, the appellants specifically pleaded at para. 10 of their statement of defence that a significantly higher price would have been obtained but for the respondent's breach of duty.

[7] We see no reason to interfere with the motion judge's decision.

[8] For these reasons, the appeal is dismissed. The appellants are to pay the respondent \$35,000.00 in costs on a substantial indemnity scale inclusive of disbursements and applicable tax.

“S.E. Pepall J.A.”
“K. van Rensburg J.A.”
“A. Harvison Young J.A.”