

COURT OF APPEAL FOR ONTARIO

CITATION: Hill v. Scotia Mortgage Corporation, 2015 ONCA 148

DATE: 20150305

DOCKET: C57324

Cronk, Pepall and Benotto JJ.A.

BETWEEN

Sedwick Hill and Merville Hill

Defendants/Appellant

and

Scotia Mortgage Corporation

Plaintiff/Respondent

Sedwick Hill, in person

Justin Winch, for the respondent

Heard and released orally: February 20, 2015

On appeal from the judgment of Justice Joseph M. Donohue of the Superior Court of Justice, dated June 26, 2013.

ENDORSEMENT

[1] The appellant appeals from the summary judgment granting the respondent amounts owing on a mortgage and a line of credit, leave to issue a writ of possession and dismissing the appellant's counterclaim.

[2] During the hearing of the summary judgment motion, the appellant admitted his indebtedness under the mortgage and the line of credit. There were also Revenue Canada liens and property tax arrears. The appellant says that he knew about the liens, but did not know until the motion, that the bank would be relying on them in support of summary judgment.

[3] The liens aside, the appellant acknowledged that the property taxes were in arrears. This fact on its own put the mortgage into default.

[4] The appellant argues here, as he did before the motion judge, that he had entered into an agreement with the respondent's employees and arranged for them to make payments on the mortgage.

[5] According to the appellant, a third party, Ms. Currie, loaned him \$75,000. Of this amount, \$35,000 was held back by the employees and was to be used by them to contribute towards his mortgage payments. The appellant led no evidence in support of this claim from the alleged third party lender Ms. Currie.

[6] The motion judge found, correctly in our view, that there was no evidence to contradict the evidence of the respondent, which established that it was entitled to the \$365,045.75 owed under the mortgage and to the \$20,686.86

owed under the line of credit. These defaults, together with the outstanding property taxes on the property, permitted the respondent to seek possession.

[7] We agree with the motion judge that there was no genuine issue requiring a trial, and that the summary judgment and leave to issue a writ of possession were warranted.

[8] The motion judge also dismissed the appellant's counterclaim against the respondent for excessive fees, on the basis that there was insufficient evidence in support of that allegation. She indicated that the dismissal was without prejudice to any separate claim against the respondent in respect to the alleged theft of \$35,000. We see no error in the motion judge's ruling on this issue.

[9] The appeal therefore is dismissed.

[10] The respondent bank is entitled to its costs of this appeal which, having regard to the terms of the mortgage, we fix in the total amount of \$10,000, inclusive of disbursements and HST.

"E.A. Cronk J.A."
"S.E. Pepall J.A."
"M.L. Benotto J.A."