

CITATION: Wilson v. Scotia Mortgage Corporation, 2016 ONSC 8106
COURT FILE NO.: CV-11-442476
DATE: 20161223

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Paul Wilson, Plaintiff/Responding Party

AND:

Scotia Mortgage Corporation and GCAN Insurance Company,
Defendants/Moving Parties

BEFORE: S.F. Dunphy, J.

COUNSEL: *Carrie Kennedy*, for the Moving Party Scotia Mortgage Company

Neil Colville-Reeves for the Moving Party CGAN Insurance Company

Phillip J. Trotter for the Plaintiff/Responding Party Paul Wilson

HEARD: In Writing

SUPPLEMENTARY ENDORSEMENT

[1] On November 14, 2016, I issued a ruling in a summary judgment matter on fairly complex facts and issues. My reasons are reported at *Wilson v Scotia Mortgage Corporation et al.*, 2016 ONSC 7000 (CanLII) and I shall not seek to summarize or repeat them here.

[2] Among the many matters my ruling left to be determined was the question of the interest rate to be applied to the amount that remains due and owing by Mr. Wilson to Scotia under the Settlement Agreement that I enforced as well as the amount of property taxes and other amounts that have accrued due thereunder. If the parties were unable to resolve their differences, I asked them to prepare written submissions setting forth their positions. They were not and they did.

[3] The Settlement Agreement contemplated payment within 90 days and only provided for adjustment of the settlement amount for property taxes and for insurance premiums. It made no express provision for interest if not paid in full within the 90 days.

[4] The parties are in agreement that the amount of insurance premiums paid since 2010 is \$1,950.

[5] The disagreements between the parties that remain are (i) whether “property tax” includes utilities and garbage; and (ii) interest.

[6] With respect to the former question, the short answer is “yes”. The plaintiff has remained in occupation of the house – however dilapidated its current state – without interruption and has paid nothing whatsoever in the way of normal occupation costs. In my view, the Settlement Agreement contemplated property tax as including all of the amounts usually encompassed within that concept. Water and garbage are components of property tax and collected as such if unpaid. That is why mortgagees pay them. The Bank had been paying all of the charges before the Settlement Agreement and these were included in the agreed amounts as part of the Settlement Agreement. They are also to be included now.

[7] I would therefore *include* a tally of all property tax including water and garbage from the time of the Settlement Agreement until the time of judgment. That amount I find to be \$21,419.18 calculated as of the last such payment being July 25, 2016.

[8] Scotia is entitled to be reimbursed for future payments of insurance and property tax until the Settlement Agreement is paid in full.

[9] This leaves the question of interest.

[10] Scotia seeks the full 6.45% interest rate under the original mortgage in the alternative it seeks the rate under s. 128 and s. 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[11] Mr. Wilson on the other hand takes a different view. He is prepared to accept the .5% pre-judgment interest rate proposed by Scotia in the alternative, but suggests that it should apply only to the principal amount due under the Settlement Agreement and not to the mortgage and insurance amounts to be added. He does not dispute the 2% post-judgment interest rate being applied. He also calculates that the rate of interest implicit in the Settlement Agreement is about 1% per year (\$13,627.84 in interest vs. \$220,015.80 in principal over a period of almost exactly 6 years = 1.03% per year).

[12] Mr. Wilson has had a free ride for a very long time on this house. I have found for him to a limited degree in my decision, but only to a degree. The fire was not his fault perhaps, but it was not Scotia’s fault either and he cannot charge Scotia with his own default under the Settlement Agreement. He has denied the mortgagee occupation of the house or the ability to sell it for six years while he himself has paid strictly none of the costs of occupation. This forced loan was done not in the abstract but in the context of a mortgage that had an interest rate attached that he was well aware of.

[13] I find that that the Settlement Agreement was a compromise of claims under the mortgage up until the time of the Settlement Agreement and the time it stipulated for payment. Thereafter, the only thing that I can reasonably conclude is that the interest rate under the mortgage continues to govern until the debt (albeit as compromised under the Settlement Agreement) is paid in full. It has not been paid in full.

[14] The Settlement Agreement settled existing disputes on a mortgage that was in the contemplation of the parties. There was no intent to agree to a perpetual interest-free or even *Courts of Justice Act* interest rate if the plaintiff defaulted. The plaintiff’s default was not the

fault of Scotia – it was under no obligation to make and process a claim under the insurance policy before the date for completion of the Settlement Agreement.

[15] Mr. Wilson correctly points out that proceeds of the insurance should have been received at an earlier date. That is true to a point. It is not yet established what those proceeds should have been. My ruling was that the proceeds can be assumed to have been received on the 90th day from the fire.

[16] The fairest outcome in my view is that interest shall accrue at the full 6.45% contract rate on all amounts due under the Settlement Agreement from the 60th day when payment was due but not paid under the Settlement Agreement. This includes all amounts of property tax and insurance up until that date. Thereafter, interest accrues at the 6.45% rate on property tax (as discussed above to include water and garbage) as well as insurance premiums from the dates of payment to the date of judgment. Post judgment interest accrues at the same 6.45% rate until the property is sold and the proceeds paid into court.

[17] The sooner the property is sold and the proceeds paid into court, the sooner the interest clock stops ticking.

[18] Lastly, this case is evidently a fair distance from being over. I have been assigned to the criminal team from January 1, 2017 and shall remain there at the pleasure of the Regional Senior Judge. It will not be practical to arrange hearings before me on a reasonable timetable hereafter. Accordingly, it is not in the interest of justice that I remain seized since doing so will hinder rather than enhance the chances of an efficient handling of the remaining issues. I shall deal with the issue of costs that remains under reserve as that is restricted to submissions in writing the time for which has not yet expired.

[19] Order accordingly.

S.F. Dunphy, J.

Date: December 23, 2016