

NOVA SCOTIA COURT OF APPEAL

Citation: *Wolfridge Farm Ltd v. Bonang*, 2016 NSCA 33

Date: 20160428

Docket: CA 439106

Registry: Halifax

Between:

Wolfridge Farm Ltd f.k.a Wolfridge Farm Limited

Appellant

v.

Gerald P. Bonang and Dianne Bonang

Respondents

Judge:

The Honourable Justice Cindy A. Bourgeois

Appeal Heard:

February 16, 2016, in Halifax, Nova Scotia

Subject:

Foreclosure practice – alternate remedies – *functus officio* – *res judicata* – adjournment – procedural fairness – adequacy of appeal record

Summary:

After a trial, an Order for Foreclosure, Sale and Possession was issued on April 3, 2014 against Wolfridge Farm Ltd. Several attempts to sell the property pursuant to that order were frustrated by the actions of Wolfridge’s agent, John T. Early, III. This included three occasions where, despite being the highest bidder at the foreclosure sale and paying the required deposit, Mr. Early failed to make payment of the final balance. The last such sale occurred on March 5, 2015. Ultimately, a chambers judge, on April 7, 2015, declared the Bonangs, as the second highest bidder at the most recent sale, to be the successful purchasers, and ordered Mr. Early’s deposit forfeited.
Wolfridge appeals on numerous grounds.

- Issues:**
- (1) Did the chambers judge err in declining Wolfridge's request to adjourn the April 7th hearing?
 - (2) Did the chambers judge err by failing to recognize Wolfridge's US bankruptcy proceedings, and stay the motion?
 - (3) Did the chambers judge, in ruling on the motion, breach the principles of *functus officio* or *res judicata*?
 - (4) Was Wolfridge denied procedural fairness?
 - (5) Was the chambers judge obligated by the *Civil Procedure Rules* and the foreclosure Practice Memorandum created thereunder, to set yet another foreclosure sale, as opposed to granting the Bonangs' motion?

Result: Appeal dismissed. The chambers judge's decision to refuse an adjournment is entitled to deference. On the material before the Court, there was no reason to interfere with that determination. The April 7th motion was not *res judicata*, nor was the chambers judge *functus officio*. The chambers judge did not err in declining to grant a stay. Finally, nothing in the Rules or Practise Memorandum prevented the chambers judge from granting the remedy he did.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 22 pages.