

NOVA SCOTIA COURT OF APPEAL

Citation: *Baypoint Holdings Ltd. v. Royal Bank of Canada*, 2018 NSCA 17

Date: 20180221

Docket: CA 460374/464441

Registry: Halifax

Between:

Baypoint Holdings Limited, and
John T. Early, III

Appellants

v.

Royal Bank of Canada

Respondent

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: January 24, 2018, in Halifax, Nova Scotia

Subject: **Summary Judgment. Foreclosure Proceeding. Civil Procedure Rule 13.04**

Summary: The Royal Bank of Canada (RBC) extended a loan to Baypoint Holdings Limited and as security for the loan took a mortgage over real property owned by Baypoint and John T. Early, III. Baypoint defaulted on the mortgage. The RBC commenced an action for foreclosure and sale. Baypoint and Mr. Early defended and counterclaimed.

The RBC moved for Summary Judgment. The motions judge granted Summary Judgment and struck the Defence of the appellants.

Following the Summary Judgment motion, the RBC applied *ex parte* for an Order for Foreclosure and Sale. The order was granted. Again, the appellants appealed seeking to set aside the Foreclosure Order or, in the alternative, staying the Foreclosure Order pending the resolution of all issues between

the parties.

Issues:

- (1) Did the motions judge misapply the test for summary judgment?
- (2) Did the motions judge commit an error of law by dismissing the appellants' motion to strike the affidavit of Brian Higgins, a representative of RBC who swore an affidavit in support of the Summary Judgment Application?
- (3) Should leave to appeal be granted in the appeal from the Foreclosure Order;
- (4) Should the Foreclosure Order be stayed pending disposition of the Counterclaim?

Result:

Leave to appeal was denied in the Foreclosure Order appeal. The appellants' grounds of appeal did not raise an arguable issue.

The appeal from the Summary Judgment Order was dismissed. The motions judge committed no error in determining that there was no genuine issue of fact for trial and the Defence of the appellants had no real chance of success.

Finally, the stay of the Foreclosure Order was denied.

Costs were awarded to RBC in the amount of \$5,000 inclusive of disbursements.

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 14 pages.