

application for an Order to extend the time in which to apply for a deficiency judgment following the foreclosure and sale of a residential property of the respondent Phillips. The respondent Rendell was a guarantor.

Civil Procedure Rule 47.10(3) requires that the application for a deficiency judgment be made within six months from the date of the sheriff's sale "unless otherwise ordered by the court". **Civil Procedure Rule 3.03** authorizes the court to extend the time even though the period in which the party was to act has expired.

The sheriff's sale was held on November 30, 1992; the property was bought in by the appellant and sold on December 18, 1992, for the sum of \$125,000. The closing took place on January 15th, 1993. The application for the extension of time and for the deficiency judgment was dated December 21st, 1993 and was heard on January 26th, 1994. The appellant claimed a deficiency judgment against the respondents in the amount of \$60,446.

In dismissing the application for extension the learned trial judge stated:

The bank as mortgagee should operate within the time periods which are allowed to it and there has to be a very good excuse when it exceeds that time limit by a period such as this. Such an excuse has not been tendered.

Disposition of the Appeal

Despite the fact that the resale of the property by the appellant was finalized on January 15th, 1993, notice of taxation of the appellant's costs was not given until May 4th, 1993. The taxation was adjourned as the respondents required further information with respect to the calculation of the solicitor's fees and disbursements. On June 21st, 1993, the taxing master wrote the appellant's solicitor inquiring about the status of the taxation. The summer drifted by and it was not until September 23rd, 1993, that the appellant's solicitor wrote the taxing master seeking a new date for the taxation. The taxation took place on October 4th, 1993. It was not until December 21, 1993 that the application for the extension

of time and for the deficiency judgment was made.

The affidavits in support of the application do not really show any reason for the delay other than the delays in the taxation. The evidence does not satisfactorily explain why the taxation was delayed in the first instance until May nor why, after the adjournment, nothing was done until September 23rd, 1993. Nor is there any reason given for the failure to bring on the application for the extension of time and for the deficiency judgment before December 21st, 1993, two and a half months after the taxation and over one year from the sheriff's sale and the sale of the property to a third party.

A deficiency judgment following a mortgage foreclosure of residential property imposes an onerous burden on a mortgagor or guarantor because they would reasonably assume, at the time the loan was made and the mortgage security given, that the value of the home would exceed the loan. When this assumption is not borne out they become potentially liable for a debt that was not reasonably expected. As well, the mortgagee, in an ordinary residential mortgage transaction, would have decided at the time the loan was made that the security would be sufficient to cover the loan in the event of a default. In circumstances where it does not the mortgagee must apply for a deficiency judgment within the time allowed by the Rules unless there is a reasonable excuse for failing to do so. In this case the delays in the taxation do not in themselves justify the long delay in applying for the extension of time and the deficiency judgment. The appellant has not put forward a reasonable excuse for failing to apply within the 6-month period. I would not interfere with the Chambers Judge's exercise of discretion in refusing to extend the time. The appeal is dismissed with costs in the amount of \$500 plus disbursements.

Hallett, J.A.

Concurred in:

Jones, J.A.

Freeman, J.A.

