

SUPREME COURT OF NOVA SCOTIA

Citation: Royal Bank v. Keith Estate, 2010 NSSC 217

Date: 20100608

Docket: Hfx No. 326927

Registry: Halifax

Between:

Royal Bank of Canada

Applicant

and

Alger & Associates Inc. Trustee in Bankruptcy for the Estate
of Cameron Arnold Keith, Bankrupt and Haley & Associates
Inc., Trustee in Bankruptcy for the Estate of Anne Julie Keith,
Bankrupt

Respondents

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Date of Hearing: June 4, 2010

Counsel: Rebecca Hiltz LeBlanc, counsel for the plaintiff

Moir, J.:

[1] I refused to grant an order for foreclosure and sale in this case because the agent's affidavit exhibits the standard Royal Bank of Canada summary statement of account, which is misleading or worse. In the past, I have discussed the deficiencies with Ms. Hiltz LeBlanc and Mr. Wolfson who also often represents the bank on foreclosures. No improvements have been made and, in my view, the time has come for the court to insist on compliance with the *Civil Procedure Rules*.

[2] The summary is required by Rule 72 - Mortgages. Rule 72.05(1) requires that a motion for an order for foreclosure, sale, and possession be supported by:

- (e) a statement of account and the evidence of the mortgagee, or agent of the mortgagee, that the statement is true;
- (f) a summary of the statement of account that accurately states the total of the charges and credits on the statement and shows a total that reconciles with the amount claimed.

Paragraph 2.5(d) of Practice Memorandum No. 1, Foreclosure Procedures repeats the requirement for a summary that summarizes "all charges and payments". The precedent for a summary provided by the practice memorandum includes lines for the original principal amount, accrued interest, and the total of principal payments.

It also provides for the totals of outstanding principal, outstanding interest, taxes, and other charges. This way we can check the calculation of the amount outstanding against two sources, if the summary accurately summarizes the loan accounting.

[3] The summaries provided by the Royal Bank of Canada fail to accurately summarize the loan accounting.

[4] The body of the summary in this case, which follows the standard approach taken by the bank on all consumer foreclosures, reads as follows:

1.	principal amount as of the June 16, 2006	\$89,964.00
2.	interest accrued since date in line 1	\$14,289.98
3.	other charges incurred since date in line 1	\$0.00
4.	principal payments made since date in line 1	\$22,606.21
	Amount Outstanding:	
5.	principal	\$81,647.77
6.	interest	\$40.26
7.	taxes (debit or credit)	\$0.00
8.	other outstanding charges	\$0.00
9.	amount claimed	\$81,688.03

[5] A close examination of the loan accounting shows that line 4 is wrong. The sum of \$22,606 is not the total of principal payments. It represents an unnecessary

and unhelpful number, the total of all payments including the amount for principal, the amount for interest, and the amount for insurance.

[6] Similarly, line 5 is not the outstanding principal. It is the total outstanding on November 30, 2009 including interest and, possibly, insurance payment arrears. Line 6 is obviously wrong, just at a glance. A \$90,000 loan that has been in arrears for months generates more than \$40.26 in arrears of interest.

[7] The problem may be that the bank officer relies on a printout of loan balances that does not give a separate cumulative total for principal, interest, or insurance premiums. The printout does show a record of each payment and the amounts for principal, interest, and insurance. To summarize them, the officer must tabulate each manually or get the software necessary to do that.

[8] The problem may be that the bank officer treats compounded interest as principal. I notice that the loan accounting uses "CAP" as code for interest. As the precedent for the summary shows, we do not regard compound interest to be principal, nor is that the ordinary meaning.

[9] Judges cannot ignore deficient summaries and rely blindly on what the officer says the loan account shows. Judges should not have to do the bank's work for it and manually tabulate interest and principal. The only alternative is to require compliance with the Rules.

[10] In this case, I also require confirmation that interest has been calculated at the prime rate or, in view of the fact that there are no subsequent encumbrancers, that the defendant agreed to a rate higher than is found in the mortgage instrument.

J.