

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Bonang v. Wolfridge Farm Limited*, 2015 NSSC 383

**Date:** 20150407

**Docket:** Hfx No. 352277

**Registry:** Halifax

**Between:**

Gerald P. Bonang and Dianne Bonang

Plaintiffs

v.

Wolfridge Farm Limited

Defendant

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**DECISION**

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**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** April 7, 2015, in Halifax, Nova Scotia

**Oral Decision:** April 7, 2015

**Written Decision:** June 4, 2015

**Counsel:** James J. White, for the Plaintiffs  
John T. Early, III, for the Defendant

**By the Court:**

[1] The plaintiffs, Gerald and Dianne Bonang, commenced an action seeking foreclosure on property they sold to the defendant, Wolfridge Farm Limited, in 2003. The notice of action and statement of claim was filed in this Court on July 12, 2011.

[2] Wolfridge Farm Limited defended the action. A trial to determine the issues in dispute took place beginning on October 15, 2013. It lasted four days. The Honourable Justice Heather M. Robertson reserved judgment until January 31, 2014. The plaintiffs were granted an Order for Foreclosure, Sale and Possession. The defendant's counterclaim was dismissed.

[3] The Order for Foreclosure, Sale and Possession was issued on April 3, 2014. Several attempts to sell the property at public auction have been frustrated by the defendant through the actions of its' representative, John T. Early, III.

[4] On at least two occasions Mr. Early has been declared the successful bidder at a public sale conducted by the Sheriff's office. Now it is three, the latest sale having taken place on Thursday, March 5, 2015. On each of these three occasions the successful bidder paid the requisite 10% deposit at the time of sale but reneged on the obligation to pay the balance in accordance with the time frame set out in the Supreme Court of Nova Scotia's Practice Memorandum No. 1. Such balance must be paid "not later than fifteen days following the date of sale..."

[5] The fifteen-day period may be extended for a further period, not exceeding fifteen days, if the plaintiffs or their solicitor agrees in writing. No such consent was given in the case that is now before me.

[6] Normally, in cases where the successful bidder fails to proffer the balance of the purchase price within the time period specified the deposit is forfeited and used first to cover Sheriff's fees, second to pay any outstanding property taxes, and the surplus, if any, would be applied to the plaintiffs' claim. The property would then be advertised and re-sold at public auction.

[7] Prior to the latest Sheriff's sale I declared that the Court would no longer countenance the defendant's attempts to frustrate the plaintiffs' right to sell the property at public auction.

[8] In addition to the two previous aborted attempts to enforce the Order of the Honourable Justice Robertson the defendant through its' agent, Mr. Early, derailed a third attempt to have the property sold by seeking relief under the *Farm Debt Mediation Act*, S.C. 1997, c. 21. The 30-day stay of proceedings was terminated after only 15 days when the Federal authorities were made aware of the true nature of the activities carried on by Wolfridge Farm Limited at 39 Dartmouth Road, Bedford, Nova Scotia. No matter how you try to describe it, it is not possible to have a used-car retail business included in the definition of "farming." At least not as it is defined in s. 2 of the *Farm Debt Mediation Act*.

[9] This is just one other example of how the defendant through its' agent and representative, Mr. Early, has attempted to frustrate the enforcement of a valid Court Order. Without so much as paying property taxes, let alone mortgage payments, the defendant and Mr. Early have continued to operate a used-car business by eliminating what would normally be a significant over-head expense.

[10] If not for the plaintiffs paying arrears of municipal property taxes, the property would have been sold for taxes, thus depriving the plaintiffs of their secured interest in the property.

[11] The Court made it clear to Mr. Early that if he, or the defendant, or any other individual or corporation acting on behalf of and in the interests of the defendant tried once again to frustrate the Sheriff's sale I would then decide if the property should be declared sold to the second highest bidder at the Sheriff's sale. I indicated that I would not simply order the forfeiture of the deposit paid at the time of sale and instruct the plaintiffs' counsel to re-advertise another public sale. That would only facilitate the further abuse of the rules of Court and prejudice the plaintiffs who have suffered far too much at the instance of Wolfridge Farm Limited and Mr. John T. Early, III.

[12] I have asked the Deputy Sheriff who conducted the public sale for a report. Deputy Sheriff Craig Pothier presented me with his report dated April 2, 2015. In it he says:

Justice McDougall,

On the 5<sup>th</sup> day of March, 2015 I was tasked with executing a foreclosure sale in the matter of Bonang v. Wolfridge Farms Hfx. 352277. At approximately 1225hrs I attended at Courtroom 402 for the sale. The sale was announced on the public area on the third and fourth floors as well as in the public area on the first floor.

At 1231hrs the sale commenced. The notice of public auction was read aloud as was the information regarding taxes and fees to be paid. The opening bid was for the minimum amount of \$16,047.43 by John Early III. The second bid was for \$278,636.86 by Dianne [sic, Debbie] Bowes for the Plaintiff. The third bid was for \$279,000.00 by John Early III. After three further opportunities were given to advance on the bid, nothing further was forthcoming and the property was sold to John Early III, Esq. Trustee 25 Vista Rd. North Haven, Connecticut 06473 for \$279,000.00.

Mr. Early provided funds totalling \$27,900.00, being ten percent of the sale price, at that time and was provided a receipt for the same.

As of 1400hrs on the 2<sup>nd</sup> of April, 2015, the remainder of the funds for the sale had not been received by Sheriff Services.

Respectfully,

D/S Craig Pothier  
Sheriff Services...

[13] The successful bidder at the Sheriff's sale, Mr. John T. Early, III, paid the 10% deposit but failed to remit the balance "not later than fifteen days following the date of sale." [Practice Memorandum No. 1, Standard Procedure for Sheriff's Sale by Public Auction – Instructions to the Sheriff – para. 2 (c)]

[14] Based on my calculations the deadline for paying the balance expired on March 26, 2015. According to Deputy Sheriff Pothier's report the second highest bid was offered on behalf of the plaintiffs.

[15] The plaintiffs are therefore declared by me to have been the successful bidders. In accordance with paras. 2(a) and (d) of Practice Memorandum No. 1 – Instructions to the Sheriff – the Sheriff may deliver a deed to the plaintiffs upon receipt of the minimum bid covering the Sheriff's fees and outstanding property taxes.

[16] The defendant is ordered to immediately vacate the premises at 39 Dartmouth Road, Bedford, Nova Scotia, failing which the Sheriff and his Deputies are authorized and instructed to take all necessary and reasonable steps to remove the defendant, its representatives and all lawfully owned chattels and other personal possessions that might be located in or on the foreclosed property.

[17] Any refusal or failure on the part of the defendant or its representatives to immediately vacate the premises at 39 Dartmouth Road, Bedford, Nova Scotia and

any further abuse of the Court's processes (*Civil Procedure Rule 88*) could result in proceedings being taken against the alleged perpetrator in accordance with *Civil Procedure Rule 88 – Abuse of Process* – or by way of contempt proceedings pursuant to *Civil Procedure Rule 89*.

[18] The latest attempt by Wolfridge Farm Limited to avoid and to frustrate the enforcement of this Court's Order for Foreclosure, Sale and Possession arises from its filing for Chapter 11 protection under the United States Bankruptcy Code. The filing was made at the United States Bankruptcy Court in New Haven, Connecticut on March 3, 2015.

[19] This was just two days before the day set for the Sheriff's sale. If not for the defendant's abuse of the rules of this Court and its disregard for a valid Court Order the sale of the defendant's property at 39 Dartmouth Road, Bedford, Nova Scotia would have happened last July or, at the very latest, sometime in September, 2014.

[20] I am not convinced that the protection afforded Wolfridge Farm Limited under United States legislation extends to Nova Scotia, especially in the circumstances of this case. The United States Bankruptcy Court notice has not been endorsed under the Bankruptcy and Insolvency Act here in Nova Scotia.

[21] As well, the Order allowing for the foreclosed property to be sold was issued over one year ago on April 3, 2014. Enforcement of that Order cannot be stayed by a foreign decree issued some eleven months later. To allow this to happen would not only be prejudicial to the plaintiffs but it would reward a party that has continuously thumbed its nose at the processes of this Court. This can no longer be tolerated. This sorry saga must come to an end.

McDougall, J.