

SUPREME COURT OF NOVA SCOTIA
Citation: *Jaskolka v. Penney* 2015 NSSC 156

Date: 2015-05-26

Docket: S.H. No. 425042

Registry: Halifax

Between:

Alan Jaskolka, Bonnie Jaskolka, Bryan Jaskolka, Klee Rogers

Applicants

v.

Brian Penney, Small Fortunes Inc.

Respondents

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Judge: The Honourable Justice Peter P. Rosinski

Heard: April 16, 2015 in Halifax, Nova Scotia

Oral Decision: April 16, 2015

Subject: Adjournment of motion CPR 22.18/When conditions thereto may be imposed.

Summary: The plaintiffs lent money to the defendants. That debt was secured by mortgages [at 12% per annum] on two separate properties. On default, the plaintiffs issued a statement of claim [action S.H. No. 417117], and on motion proceeded to foreclosure sale and possession of the first property pursuant to the first mortgage. The day before the hearing for the assessment of the deficiency, the plaintiffs advised the court they were not in a position to proceed and asked the matter [and the following day in court] be adjourned *sine die*, which it was. In the result, pursuant to Rule 72.12(3) the default judgment was deemed 15 days after the day of the sale by public auction [September 6, 2013]; and by the mere filing of the notice of motion for the assessment of a deficiency judgment, the judgment thereunder did not extinguish “six months after its effective date” pursuant to Rule 72.12(6).

These events triggered the 5% interest rate arising from the *Interest on Judgments Act*, from September 2013 onward. No further action was taken by the plaintiffs in that action.

Just weeks prior thereto the plaintiffs issued another statement of claim [action S.H. No. 425042], and sought as relief, in part, an order for foreclosure sale and possession of the second property pursuant to the second mortgage. The plaintiffs made a motion for summary judgment on evidence. The motion was granted by Hood J, who set the matter over for the assessment of damages pursuant to Rule 13.05(2). At the motion for assessment of damages, the defendants argued that the motion arising from the second mortgage, ought to be adjourned until a deficiency judgment was ordered in relation to the settled amount of the debt arising from the first mortgage. To date, the judgment in the first action, which had been stayed, was nominally accumulating interest at the rate of 12%.

Issues: (1) Should the assessment of damages under the second mortgage be adjourned until the deficiency under the first mortgage had been determined by the court?

Result: The assessment of damages under the second mortgage was adjourned *sine die*, and on condition that the motion not proceed until the motion for a deficiency judgment in the first action has been perfected, and heard/decided by the court, and the applicable appeal period has expired. In proper circumstances such conditional adjournments are permissible: *Armoyan v. Armoyan*, 2013 NSCA 99 at paras. 175 and 179. There was no compelling demonstrable evidence of prejudice to the plaintiffs in so proceeding; and to permit the assessment of damages to precede the assessment of the deficiency would permit the plaintiffs' advantages that bring into question the fairness of so proceeding

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