

Date: 20020717
Docket: S.H. No. 165787

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: **Centennial Realties Ltd. v. Arthur Spiropoulos et al, 2002NSSC179**]

BETWEEN:

CENTENNIAL REALTIES LIMITED, by its lawful assignee,
JAMES GEORGANTAS

PLAINTIFF

- and -

DANAI SPIROPOULOS (sometimes also known as Danai Spire or Spiro)
and SOPHIA SPIROPOULOS (sometimes also known as Sophia Maxwell)
of Halifax, in the Province of Nova Scotia and ARTHUR SPIROPOULOS
of Halifax, in the Province of Nova Scotia

DEFENDANTS

- and -

GASTON CHAGNON PROPERTY LIMITED

INTERVENOR

D E C I S I O N

HEARD: In chambers in Halifax on May 8, 2002 before the Honourable Justice
Suzanne Hood

DECISION: May 9, 2002

WRITTEN RELEASE

OF ORAL: July 17, 2002

COUNSEL: **W. Michael Cooke, CD, Q.C.** for the Plaintiff (*not appearing*)
Michael C. Moore for the Defendant, Arthur Spiropoulos
Michael Iosipescu and Philip Whitehead for the Intervenor, Gaston
Chagnon Property Limited
Peter Bryson for Gaston Gagnon personally

HOOD, J. (Orally):

[1] Gaston Chagnon Property Limited intervenes in the matter of the sale of a one-half interest in the Fort Massey Apartments. The sale is pursuant to the *Sale of Land Under Execution Act* and results from a judgment by Centennial Realities Ltd. against Arthur Spiropoulos and others and James Georgantas is the assignee of that judgment and the person who initiated the sale under execution.

[2] In a previous decision of this court, Associate Chief Justice MacDonald ordered that reference be made, in the notice of sale, to a co-tenancy agreement with respect to the Fort Massey Apartments which agreement is between Mr. Spiropoulos and Gaston Chagnon Property Limited.

[3] The company now seeks an order directing the sheriff to recognize the right of first refusal contained in the registered co-tenancy agreement. Mr. Spiropoulos objects saying this will depress the price obtainable at the sale and will thereby result in a lesser recovery to the judgment creditor and a lesser surplus payable to him.

[4] *Civil Procedure Rule 47.16(2)* provides that:

(2) The court may give such directions as it thinks fit for the purpose of effecting a sale, including, without restricting the generality of the foregoing, directions,

(b) fixing the manner of sale, whether by contract conditional on the approval of the court, private treaty, public auction, sheriff's sale, tender or some other manner;

[5] I am satisfied that I have authority to deal with this issue, including the power to order the sheriff to recognize the right of first refusal.

[6] The co-tenancy agreement between Mr. Spiropoulos and Gaston Chagnon Property Limited is recorded at the Registry of Deeds. It contains s. 7 which is entitled “Sale, Transfer, Mortgage or Charge Herein”. Clause 7.02 of that agreement deals with the right of refusal and it provides, in the parts that are relevant to this application:

... if a mortgagee, chargee or other encumbrancer ... receives at any time a bona fide offer which offer it desires and intends to accept, it shall give notice to the other Co-Tenant Owner ...

[7] Gaston Chagnon Property Ltd. submits that this means that the sheriff must recognize the right of first refusal. Mr. Spiropoulos, on the other hand, says that this section must be read in conjunction with s. 7.01(3)) which provides:

7.01 (3) Any person becoming entitled to an Ownership interest in consequence of the bankruptcy or insolvency of any Owner, an action to enforce a mortgage or other security interest, or otherwise by operation of law or contract, shall be subject to the terms hereof and shall become an Owner for the purposes hereof only upon production of the proper evidence of such entitlement and upon execution of a counterpart of this Agreement (or otherwise agreeing to be bound by the terms of this Agreement and the Management Agreement between the parties and to assume the obligations of an Owner hereunder with respect to the interest to be transferred).

[8] Mr. Spiropoulos says that, properly interpreted, this means that the purchaser at the sheriff’s sale is subject to the right of first refusal if he later receives an offer, but that the sheriff does not need to give notice of the receipt of an offer at the sheriff’s sale. In

effect, he says the purchaser at the sheriff's sale is not subject to having his offer matched by the other co-tenant. He says that the purchaser must only consider the right of first refusal if he later receives a *bona fide* offer. Mr. Spiropoulos also says that to interpret this otherwise will depress the price obtainable at the sale which is contrary to the purpose of the sale as set out in *Civil Procedure Rule 47*. The last part of *Civil Procedure Rule 47.16 (1)* says that the sale shall occur and the sheriff will sell the property:

... for the best price that can be obtained.

However, I cannot interpret the two clauses as Mr. Spiropoulos submits I should. Section 7.02(3) applies to someone who purchases at a sheriff's sale. It does not mean that s. 7.03 does not apply to that party. The person or body to which s. 7.03 is directed is the person selling the interest in the property. In this case, that is the sheriff who is selling for the judgment creditor. That judgment creditor, according to the *Registry Act*, s. 20, has, in effect, a mortgage on the lands. The sheriff sells the interest of the judgment debtor. In this case, that interest is encumbered by the co-tenancy agreement to which reference will be made in the notice of sale.

[9] Once a *bona fide* offer is received (in this case at the sheriff's sale), the right of first refusal requires certain action to be taken. The sheriff, acting pursuant to the *Sale of*

Land Under Execution Act, must then give the other co-tenant, Gaston Chagnon Property Limited, notice of the offer and an opportunity to match it. The means of notice is set out in clause 10.01 of the co-tenancy agreement. It provides for personal service or service by registered mail.

[10] Although it may be that the result will be a depressed price for the one-half interest in the Fort Massey Apartments, that is the only interpretation that can be given to the right of first refusal. When Mr. Spiropoulos entered into the co-tenancy agreement, this is one of the things he agreed to. This result may have been unforeseen but Mr. Spiropoulos sold the one-half interest in the property on this basis. Had the situation been reversed, Gaston Chagnon Property Limited would have been subject to the effects of this section of the agreement. It should have been foreseeable that a provision like this in the agreement might have such an effect on the price either might get for his interest in the property.

[11] The right of first refusal requires certain action when, and only when, there is a *bona fide* offer. Accordingly, there is no requirement for advance notice of the existence of the right. The notice of sale already refers to the co-tenancy agreement which contains the right of first refusal. When a successful bid is accepted for the one-half interest in the property, then the sheriff is required to notify the other co-tenant. He must therefore notify the successful bidder then and only then that there is a right of first

refusal. This is something of which a prudent bidder would already have knowledge in any event, having been put on notice of the co-tenancy agreement in the notice of sale.

[12] Clause 7.02 of the agreement sets out the requirement of written notice of a *bona fide* offer. It therefore presupposes that the co-tenant seeking to enforce the right of first refusal will not have knowledge of the offer. If Gaston Chagnon Property Limited, by its agent, attends the sheriff's sale, this may raise an issue of promissory estoppel or waiver of the right of first refusal but that is not the issue before me today. I leave that to the parties for their consideration.

[13] I conclude that the sheriff must give effect to the right of first refusal in the co-tenancy agreement. He need do so only when a bid is accepted for the sale of Mr. Spiropoulos' one-half interest in the property. He does not need to give advance notice of the right of first refusal. It is in the co-tenancy agreement, notice of which has been given, and the right only in effect crystalizes when a *bona fide* offer is accepted.

Hood, J.