

Date: 20020717
Docket: S. H. 165814

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: *CIBC v. Ofume*, 2002 NSSC 180]

BETWEEN:

CIBC MORTGAGE CORPORATION

APPLICANT

- and -

DR. PHILIP OFUME and MAUREEN OFUME

RESPONDENTS

DECISION

HEARD BEFORE: The Honourable Justice Glen G. McDougall, at Halifax,
Nova Scotia, on February 19th, 2002, in Chambers

DECISION: February 21st, 2002

WRITTEN RELEASE: July 17th, 2002

COUNSEL: John A. Keith, for the Applicant
Mr. Phillip Ofume, Self-Represented

McDougall, J.: (Orally)

- [1] This is an interlocutory application brought on behalf of CIBC Mortgage Corporation against Dr. Phillip Ofume and his wife, Mrs. Maureen Ofume. The original action for foreclosure was commenced on the 5th day of September, 2000. The respondents defended the original foreclosure action and also made a counter application in reply to this interlocutory application.
- [2] The applicant seeks an order under *Civil Procedure Rule* 41A.08 or alternatively *Rule* 13 of the *Nova Scotia Civil Procedure Rules* for:
- (a) judgment in accordance with signed minutes of settlement dated December 22, 2001 together with all related documentation executed by the parties hereto in connection with these minutes of settlement;
 - (b) a declaration that these minutes of settlement are binding and enforceable;
 - (c) a further declaration that all documentation executed with these minutes of settlement including a mortgage also dated December 22, 2001 and registered in the Halifax Registry of Deeds are valid, binding and enforceable;
 - (d) an order dismissing the within action on consent and without costs in accordance with the expressed terms of these minutes of settlement;
 - (e) the costs of this application on solicitor and client scale payable forthwith;
 - (f) such further and other relief as this Honourable Court deems just.

[3] The respondents in their counter application seek to, among other things, have the minutes of settlement that they had entered into with the applicant on December 22nd, 2001, on the advice of counsel, set aside; monies they have paid to the applicant pursuant to the minutes of settlement returned; an order dismissing the present application; a declaration “that the secret foreclosure action on September 1, 2000” (which I believe should be September 5th) “is senseless and a mark of alcoholic and chameleon racism, racial discrimination, xenophobia, and related intolerance, etc.”; along with numerous other declarations based on various allegations of fraud, coercion, flagrant abuse and breach of rules, ethics and other forms of racist acts being perpetrated against Dr. Ofume, his wife and family by pretty well everyone and every institution they have come into contact with including the lawyer that they had selected to provide them with independent legal advice prior to entering into the minutes of settlement they now wish to avoid.

[4] I find there is no basis for setting aside the minutes of settlement that were signed by the parties on December 22nd, 2001. Dr. and Mrs. Ofume had the opportunity to select counsel of their choice and paid for (at least to the amount of \$500.00) by CIBC. They had ample opportunity to review the documents they were being asked to sign. Indeed they, through counsel,

managed to negotiate more favourable terms for themselves which the bank agreed to in order to have this matter resolved.

- [5] From the evidence it is apparent that the applicant, through its legal counsel, negotiated in good faith with Dr. and Mrs. Ofume personally at first and later with the Ofumes' independent legal counsel. There is no evidence that Dr. and Mrs. Ofume were taken advantage of.
- [6] I have reviewed the case law supplied by the parties, in particular the case of *Stephenson v. Hiltie (Canada) Limited* (1989), 93 N.S.R. (2d) 366, a decision of Justice Hallett who was then sitting as a member of the trial division of the Nova Scotia Supreme Court. I find this was helpful in reaching the conclusion that the agreement reached by the parties in this particular case is not unconscionable. Indeed, it appears to me that the bank made a number of concessions in order to have the matter resolved.
- [7] I feel compelled to say that a number of remarks made by Dr. Ofume against his former solicitor, Dr. Ikechi Mgbeoji, are most regrettable. I have allowed Dr. Ofume a great deal of latitude in making his submissions to the court. While he is not legally trained, Dr. Ofume strikes me as a very intelligent and highly educated man. Although he now claims that he did not know what he was signing and felt pressured into signing for a myriad number of

reasons, I simply do not buy it. If he did not understand all the details of the minutes of settlement and the mortgage he was required to sign to settle this foreclosure action, then he certainly had ample opportunity to receive independent legal advice from Dr. Mgbeoji who appears to me to be eminently qualified to render such advice.

[8] I will therefore grant the application and declaratory relief sought by CIBC; dismiss the respondent's counter application; and award costs to the applicant in the amount of \$750.00 all inclusive, payable by March 31st, 2002.

J.