

Date: 20020613
Docket: S.H. 165787

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: Centennial Realities Ltd. v. Spiropoulos, 2002 NSSC 231]

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 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

- AND -

Docket: S. H. No. 117301

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**DELOITTE & TOUCHE INC., in its capacity as Liquidator of Prenor Trust
Company of Canada, by its lawful assignee GASTON CHAGNON**

PLAINTIFF

- and -

ARTHUR SPIROPOULOS of Halifax

DEFENDANT

DECISION

HEARD: At Halifax, Nova Scotia, before the Honourable Justice C. Richard Coughlan, on
June 12th, 2002

DECISION: June 13, 2002 (Orally)

**WRITTEN RELEASE
OF DECISION:** October 18, 2002

COUNSEL: W. Michael Cooke, for James Georgantas
Michael C. Moore, for Athur Spiropoulos
Peter Bryson, Q.C. and Andrew Inch (articled clerk), for Gaston Chagnon
Michael I. Iosipescu and Philip Whitehead (articled clerk), for Gaston Chagnon
Properties Limited

Coughlan, J.: (Orally)

- [1] This is an application pursuant to Civil Procedure Rule 53.13 by Arthur Spiropoulos for an order staying the Sheriff's sale pursuant to the **Sale of Land Under Execution Act**, R.S.N.S., 1989, c. 409 scheduled for Thursday, June 13th, 2002 at 12:30 p.m. and the Sheriff's sale scheduled for Thursday, June 20th, 2002 at 12:00 noon.
- [2] Civil Procedure Rule 53.13 provides:

Power of court to stay execution order

- 53.13.** (1) Where the court is satisfied that:
- (a) special circumstances exist that render it inexpedient to enforce an order for the payment or recovery of money;
 - (b) the applicant is for any reason unable to pay any money payable or recoverable under an order;
 - (c) for any other just cause;

the court may order the issue or enforcement of an execution order to be stayed, either absolutely or for such period and subject to such conditions as the court thinks just.

[3] Gaston Chagnon, the assignee of one of the judgment debtors, objects to certain paragraphs of Mr. Spiropoulos' affidavit dated June 11th, 2002. The issue of the proper content of affidavits was dealt with in **Waverley (Village Commissioners) et al. v. Nova Scotia (Minister of Municipal Affairs) et al.** (1993), 123 N.S.R. (2d) 46 in which Davison, J. stated at p. 52:

It would be helpful to segregate principles which are apparent from consideration of the foregoing authorities and I would enumerate these principles as follows:

1. Affidavits should be confined to facts. There is no place in affidavits for speculation or inadmissible material. An affidavit should not take on the flavour of a plea or a summation.
2. The facts should be, for the most part, based on the personal knowledge of the affiant with the exception being an affidavit used in an application. Affidavits should stipulate at the outset that the affiant has personal knowledge of the matters deposed to except where stated to be based on information and belief.
3. Affidavits used in applications may refer to facts based on information and belief but the source of the information should be referred to in the affidavit. It is insufficient to say simply that "I am advised".
4. The information as to the source must be sufficient to permit the court to conclude that the information comes from a second source and preferably the original source.

5. The affidavit must state that the affiant believes the information received from the source.

[4] The issue of the content of affidavits was also dealt with by the Court of Appeal in **Wall v. 679927 Ontario Ltd. et al.** (1999), 176 N.S.R. (2d) 96.

[5] After considering the paragraphs in question, I strike the following paragraphs:

Paragraph 5 - hearsay, does not set out by whom he was advised.

Paragraph 6 - hearsay, does not set out by whom he was advised.

Paragraph 7 - hearsay, does not set out by whom he was advised.

Paragraph 8 - hearsay.

Paragraph 12 - that part after "Halifax" in the second line is deleted as it is opinion.

Paragraph 15 - hearsay.

Paragraph 18 - opinion.

Paragraph 22 - opinion.

Paragraph 23 - argument or opinion.

- [6] Conclusion of paragraph 19 re “valuation of Fort Massey apartment” - opinion. Centennial Realties Ltd., by its assignee, James Georgantas, scheduled a Sheriff’s sale of Mr. Spiropoulos’ interest in Fort Massey apartments, Halifax, Nova Scotia, on June 13th, 2002.
- [7] Deloitte & Touche Inc. scheduled a Sheriff’s sale of Mr. Spiropoulos’ interest in Fort Massey apartments for June 20th, 2002. The interest of Deloitte & Touche Inc. has been assigned to Gaston Chagnon.
- [8] Mr. Spiropoulos conveyed fifty percent of the lands in question to Gaston Chagnon Properties Ltd. by warranty deed dated May 6th, 1988 and recorded May 11th, 1988 in book 4562 at page 1034 at the Registry of Deeds at Halifax, Nova Scotia. Mr. Spiropoulos mortgaged the property to Gaston Chagnon on May 3rd, 1991. The same day, Mr. Spiropoulos conveyed a twenty-three percent interest in the property to Gaston Chagnon.
- [9] On February 7th, 1997, Saunders, J. (as he then was) issued an order in the matter Arthur Spiropoulos v. Gaston Chagnon et al., in which Gaston Chagnon Property Ltd. was ordered to convey a twenty-three percent interest in the property to Mr. Spiropoulos. By deed dated September 2, 1999 Gaston Chagnon Property Ltd., referring to the deed from Mr. Spiropoulos to Gaston Chagnon, conveyed a twenty-three percent interest of

the property to Patricia Chagnon, Vincent Chagnon, Nicholas Chagnon and Gaston Chagnon.

- [10] Mr. Spiropoulos argues confusion about the extent of his interest in the property will deter persons from bidding at the sale.
- [11] Mr. Spiropoulos does not contest the validity of the judgments which are the basis for the scheduled sales.
- [12] A judgment creditor is entitled to follow the procedures set out in the **Sale of Land Under Execution Act** to realize on its judgment. Under the **Act**, a purchaser at the sale only takes the interest the judgment debtor has in the land. The bidder takes its chances with the title and a judgment debtor cannot hide behind bad title to prevent a creditor from selling the debtor's interest in land.
- [13] If the parties had no history with each other, what would be the position of the judgment creditor - the creditor could sell whatever interest the judgment debtor had in the property. Does it make a difference that persons involved with Mr. Spiropoulos in the history of the property have taken assignments of judgments against him? The answer is no. The validity of the judgments are not questioned. The judgment creditors are entitled to proceed with the

sale. No reason to justify the stay has been presented to the Court. The application is dismissed.

[14] Having heard submissions of counsel on the question of costs, bearing in mind that this application was brought about because of the inability of the judgment debtor to know the amount of the monies due on the judgment at the earlier hearing, and considering all of the circumstances as outlined by counsel, I will not award costs of this application to any party.

C. Richard Coughlan, J.