

SUPREME COURT OF YUKON

Citation: 17077 Yukon Inc. v. Forrest
Heights Development Ltd., 2012 YKSC 12

Date: 20120222
S.C. No. 11-A0036
Registry: Whitehorse

Between:

17077 YUKON INC.

Petitioner

And

FORREST HEIGHTS DEVELOPMENT LTD.

Respondent

Before: Mr. Justice R.S. Veale

Appearances:

Gary Whittle
Grant Macdonald, Q.C.

Counsel for the Petitioner
Counsel for the Respondent

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the petitioner for a final order of foreclosure. On October 4, 2011, this Court ordered a redemption period ending December 31, 2011, based on an outstanding indebtedness of \$3,238,767.51. The respondent seeks an extension of the redemption period from December 31, 2011, to August 31, 2012, and an order that the petitioner have conduct of sale during the redemption period. The purpose of the respondent's application is to recoup its investment of approximately \$1,500,000.

BACKGROUND

[2] The petitioner sold an undeveloped property in Whitehorse, known as the tank farm, in June 2009 for a price of \$4,500,000. The petitioner took a mortgage back for 4

million to secure the payment of the purchase price. The respondent has made payments up to July 1, 2010, for approximately \$1,500,000.

[3] The tank farm was previously an oil tank storage area at the end of a pipeline and has contamination problems. The respondent wishes to develop the property as a residential subdivision.

[4] On October 31, 2009, the petitioner obtained the National Energy Board release of jurisdiction on the grounds that the chemical concerns did not exceed the soil criteria for industrial land use, a condition of closing. Jurisdiction then fell to the Yukon Environment Department which has determined that the tank farm is a contaminated site which will require significant remediation, pursuing the YESSA environment review approval and a zoning change before development can proceed.

[5] The respondent has not made any payments on the mortgage since July 2010 and the outstanding balance owed is in excess of \$3,200,000. The respondent has not paid the January 1, 2011, July 1, 2011 and January 1, 2012 payments totalling \$1,500,000. It has no proposal for any mortgage payment or new financing. It speculates that the land is worth more today than the \$4,500,000 purchase price in 2009, despite the contaminated site designation.

[6] The respondent says it has potential unnamed investors who will contribute \$200,000 for continued sampling of the monitoring wells and to begin the YESSA process with the goal of removing the contaminated site designation.

[7] There is no disagreement about the applicable law set out in *Louwerse v. 385171 B.C. Ltd.*, [1994] B.C.J. No. 2693. There is a twofold test to determine whether the redemption period should be further extended (para. 5):

(a) the respondents must show a reasonable prospect of payment to the petitioner of the amount outstanding under its mortgage during the extended redemption period; and

(b) the property must have sufficient value by way of security for the amount outstanding.

[8] Counsel for the respondent has filed an Alberta case (*Bank of Montreal v. Shepansky*, 2005 ABQB 249) and a British Columbia case (*Mission Creek Mortgage Ltd. v. Angleland Holdings Inc.*, 2010 BCSC 1593) where the courts exercised their discretion to extend the redemption periods. I would be inclined to do so as well given the significant investment of 1.5 million plus by the respondent which includes paying the taxes to date.

[9] However, both the cited cases had evidence of appraisal values permitting the court to exercise its discretion. There is no appraisal provided by the respondent in the case at bar. I also note that in both cases referred to by the respondent, there was evidence to establish that the petitioner had a reasonable prospect of payment. That evidence is unfortunately lacking in this case and the respondent has not satisfied the twofold test.

CONCLUSION

[10] I therefore grant the final order of foreclosure and the terms sought by the petitioner.

VEALE J.