

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Royal Bank of Canada v.
Widrig, et al.*,
2004 YKSC 25

Date: 20040315
Docket: S.C. No. 03-A0067
Registry: Whitehorse

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

**CHARLES CORBIN WIDRIG,
TAMMY ELAINE CROMARTY and
YUKON HOUSING CORPORATION**

RESPONDENTS

Before: Mr. Justice R. S. Veale

Appearances:
Glen Thompson
Tammy Cromarty

For the Petitioner
On behalf of the Respondents

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): The facts in this application are somewhat complex and I am not going to set them out in complete detail. Suffice it to say that an Order Nisi was granted to the Royal Bank on September 18, 2003, with a redemption period up to March 18, 2004. The Royal Bank had been in letter contact with Ms. Cromarty and Ms. Cromarty was acting on behalf of the mortgagors, to determine how the matter could be resolved.

[2] Ultimately, after a great deal of correspondence back and forth, the Royal Bank suggested that the matter could be resolved by payments of legal fees in the amount of \$5,023.73 by certain dates. That offer, unfortunately, was not accepted by Ms. Cromarty, with the result that the legal fees now exceed \$8,041.46. Those fees are based on the usual mortgage clause, allowing the bank to recover costs on a solicitor and client basis, which means the exact amount that the solicitor for the Royal Bank charges.

[3] The precise issue that has been raised by Ms. Cromarty this morning is whether she is entitled to have that account taxed before she is required to pay it to the Royal Bank. The Royal Bank takes the position that s. 15 of the *Judicature Act*, R.S.Y. 2002, c. 128, only permits the costs to be taxed after the mortgage has been redeemed; in other words, the legal fees paid.

[4] I am satisfied on the material before me that Ms. Cromarty - and I say this with all due respect, Ms. Cromarty, because you have been acting on your own behalf - has to some extent been the author of her own misfortune. I appreciate that there are other personal circumstances involved, but on the basis of the facts before me and the timing of the application, with March 18 coming up this week, I am not prepared to make the order that you can tax the account of \$8,041.46, which includes today's hearing, prior to payment. But I am going to order that you pay that sum of money and the other outstanding amounts to redeem the mortgage by March 18, 2004. I am ordering that the law firm of Davis and Company hold the monies in trust pending an application by you to review the bills that have been submitted.

[5] I want to make some further remarks, though, because this is a matter that may come up again between mortgagors and mortgagees. I am of the view, I should say, that a law firm acting for a bank in a mortgage foreclosure situation, should give the mortgagor an accounting of that bill in the form of the normal computer printout, that one would expect, with details of the entries of time and the amount charged for each entry.

[6] Although it would appear that s. 15 of the *Judicature Act, supra*, implies that the taxation of those bills or fees can only be done after the mortgage has been redeemed, I am of the view that if the matter is brought forward before the expiry of the redemption period, it is certainly possible to have a bill taxed prior to the redemption period expiring. I say that based on my reading of s. 13, which empowers the court to give relief from forfeiture and my view, as well, that the bills should be presented to the mortgagor once they are finalized for the process of determining the amount of redemption.

[7] I do hasten to add, though, that the bank is always in the position to come back and say that further costs have been incurred so that the fact that they render an account at a particular time does not mean that that is the end of the matter. So, in my view, under certain circumstances, it would be open to a mortgagor to have the matter taxed prior to the expiry of a redemption date.

[8] Anything further?

[9] MR. THOMPSON: Yes, My Lord, just a clarification if possible? Your order that our law firm hold the funds in trust pending an application to render the bill

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[10] THE COURT: There should be a time limit on that.

[11] MR. THOMPSON: Well, that, perhaps more, but also just thinking that the amount that we are going to receive will include taxes and mortgage arrears.

[12] THE COURT: Oh, sir, I am only saying the fee portion.

[13] MR. THOMPSON; Just the fee portion?

[14] THE COURT: Yes.

[15] MR. THOMPSON: I just want to make that clear, My Lord.

[16] THE COURT: No. Quite clearly, they will apply the arrears of taxes and mortgage payments to the account immediately, to bring the account in good standing.

[17] MS. CROMARTY: I am going to walk in and pay that.

[18] THE COURT: Well no, let me make it clear. It has to be paid to Davis and Company.

[19] MS. CROMARTY: Okay.

[20] MR. THOMPSON: That's correct.

[21] THE COURT: Okay?

[22] MS. CROMARTY: Okay.

[23] THE COURT: I would also order that Davis and Company provide a mortgage statement to Ms. Cromarty indicating that the mortgage is in good standing. I am not putting a time limit on that, but I am saying that it should be done in a reasonable length of time. Was there something else?

[24] MR. THOMPSON: I think, perhaps, My Lord, that order should probably be made against vis-à-vis the Royal Bank, as opposed to the law firm, simply because I believe they control that and that's something that they're able to do.

[25] THE COURT: That is fine. I agree.

[26] MS. CROMARTY: My Lord, at this moment I'm not allowed to communicate with the Royal Bank. It has to be everything through the lawyers to request that. But as well, I question how long will it be until I receive that detailed bill, that I can do the proper forms and submit it to the court?

[27] THE COURT: He does not know, unfortunately, but why do I not put a time limit of 30 days after receipt of payment by Davis and Company.

[28] MR. THOMPSON: We should be able to do that, My Lord. Also I believe there is a form of tax and bill --

[29] MS. CROMARTY: Yes, I have that already.

[30] MR. THOMPSON: If Ms. Cromarty has that, she can take out --

[31] THE COURT: Yes, and you should make sure you follow the correct procedure and speak with the court, so when you bring the matter on for the review of the bill, it is in the proper form.

[32] MS. CROMARTY: So, My Lord, with all the fees, the 20 thousand plus being paid by March 18, does the Order Nisi automatically become released from my home?

[33] THE COURT: That is a good question. What is your view on that, Mr. Thompson?

[34] MR. THOMPSON: The Order Nisi, My Lord, as I understand, is a final order and if no further action is taken with respect to receipt -- to go for approval for sale or conduct of sale, there's an automatic conduct of sale that is granted. Simply with reinstatement, the Order Nisi, if no further action is taken, that's the end of it because it's essentially not vacated and it is a final order.

[35] THE COURT: But what happens with respect to -- I take it there is a *lis pendens* against the property?

[36] MR. THOMPSON: That will be released. We already have instructions from Bilkie Quinn (phonetic) with regard to releasing the *lis pendens* upon payment of these funds. So that will take place. The Order Nisi, to put Ms. Cromarty's mind at rest --

[37] THE COURT: I think you can provide her with an acknowledgement of payment under the Rules, which would be a document that could be filed in court.

[38] MS. CROMARTY: I will file it, My Lord.

[39] THE COURT: I think that would be important for Ms. Cromarty.

[40] MR. THOMPSON: I think that's right. If reinstatement is permitted, because essentially the essence of this application, or this appearance, is to review the status of reinstatement. If those funds are paid, reinstatement is accomplished, we will acknowledge the receipt of the funds, obviously the subject of the taxation as we discussed, there will be no further action taken on the Order Nisi. Because it's a final order, there's no vacating of the order or removal of the order. It's just no further action is taken on it because we have a right to seek sale. We will not proceed with that, is what I understand.

[41] THE COURT: But I am directing that the Royal Bank file an acknowledgement of payment so that will be on the record on the file. Anything further?

[42] MS. CROMARTY: Thank you, My Lord.

[43] THE COURT: Thank you.

[44] MR. THOMPSON: Thank you, My Lord.

VEALE J.