

Case Name:

Vespra Country Estates Ltd. v. 1522491 Ontario Inc.

Between

**Vespra Country Estates Ltd., and
1522491 Ontario Inc. operating as Pine Hill Estates,
Bravakis and Associates Ltd., Peter Bravakis and 981772
Ontario Inc. operating as Hassey Realty Corp.**

[2004] O.J. No. 3861

134 A.C.W.S. (3d) 96

Court File No. 04-B7344

Ontario Superior Court of Justice

Salmers J.

Heard: September 8, 2004.

Oral judgment: September 13, 2004.

(11 paras.)

Mortgages -- Payment of mortgage -- Prepayment -- Loss of right or privilege -- Discharge of mortgage -- Discharge by court order -- When available.

Application by the defendant 1522491 for an order to pay off the entire amount owed on a charge given by it to Vespra Country Estates. Vespra opposed the request for prepayment because it claimed that 1522491 was in default of some of the additional provisions of the charge. The charge stipulated that prepayment could only be made when 1522491 was not in default. 1522491 submitted it was not in default.

HELD: Application allowed. 1522491 was to pay \$500,000. Vespra would receive the minimum amount payable as of the date of payment. This amounted to \$217,193. The balance, which included security for costs, was to be paid into court. Once the payment was made 1522491 would be entitled to a discharge. Other than the payment of money, all other obligations of 1522491 could be enforced by Vespra in actions independent of the charge action. The \$500,000 that 1522491 paid represented the maximum amount that Vespra would be entitled to under the charge. The issue of whether a default occurred

could be determined separately once the payment was made. Vespra would not be prejudiced because 1522491's other obligations were included in an amending agreement to the agreement of purchase and sale and could be pursued independently of the charge.

Statutes, Regulations and Rules Cited:

Mortgages Act.

Counsel:

Paul J. Daffern, for the defendants, moving party.

William J. Leslie, for the plaintiff, responding party.

REASONS FOR ENDORSEMENT

1 SALMERS J. (oral endorsement):-- This is the motion of the defendant 1522491 Ontario Inc. operating as Pine Hill Estates (Pine Hill). Pine Hill is requesting to pay off the entire amount owing on a charge given by it to the plaintiff.

2 The plaintiff opposes Pine Hill's request. The plaintiff's position is that Pine Hill is in default of some of the additional provisions of the charge. The charge stipulates that pre-payment can only be made when the chargor is not in default.

3 Pine Hill states, for various reasons, that it is not in default of the additional provisions of the charge.

Analysis

4 The charge is held as security for obligations. Ultimately, if the chargor defaults on all other obligations, the most that the plaintiff can recover from the chargor is the money owed pursuant to the charge. In this case, other than the payment of money, all other obligations of the chargor can be enforced by the plaintiff in actions independent of the charge action. The chargor is willing to pay all possible money that the plaintiff could receive under the charge.

5 There exist issues as to whether or not there is default and if there is default, whether that prevents a order discharging the charge. For the reasons that follow, it is unnecessary at this stage to determine the existence of default, and a discharge of the charge can be ordered.

6 Default only prevents the chargor from ending the interest obligations of the chargor as of the date of prepayment. The chargor can still pay all possible principal and interest owing to the maturity date of the charge. (In this case, the charge matures on May 15, 2008.) Upon making this payment, together with an additional amount as security for costs, there is no reason why the chargor should not be entitled to a discharge of the charge. There is no prejudice to the plaintiff because the chargor's obligations under the additional provisions of the charge, are included in an amending agreement to the original agreement of purchase and sale. The plaintiff can still pursue enforcement of those obligations inde-

pendently of the charge. In any event, in the charge action, the plaintiff could not enforce performance of those additional obligations in addition to the payment of all money owing under the charge.

7 Therefore, there will be an order to go upon payment by the moving party of certain amounts. The total amount to be paid by Pine Hill is \$500,000.00. This includes:

- (a) The maximum principal amount owing under the mortgage, \$317,193.20; and,
- (b) All interest thereon from August 15, 2004 to May 15, 2008 rounded off to \$80,000.00;

for a subtotal rounded off to \$400,000.00, and,

- (c) An additional amount as security for costs. In this case, I am using the same percentage as is used in construction lien matters, namely 25% of \$400,000.00 for an amount of \$100,000.00 to be paid as security for costs.

The total of (a), (b) and (c) above is \$500,000.00.

8 Of this \$500,000.00, the chargee should receive at least the minimum amount payable to the chargee as of the date of payment. This minimum amount would be \$217,193.20 for principal plus per diem interest of \$41.66 calculated from August 15, 2004 to the date of payment.

9 The balance of the \$500,000.00 is to be paid into court by the chargor.

10 After making this payment of \$500,000.00, Pine Hill would be entitled to a discharge or cessation of the charge. The Mortgages Act entitles a mortgagor (or chargor) to be entitled to a transfer of the charge if desired in such circumstances. The chargor has requested that the charge be transferred to 544644 Ontario Limited and an order will go accordingly.

Costs

11 Counsel made submissions to me on the issue of costs. While a cessation or discharge of the charge was awarded as requested by the moving party, the amount ordered to be paid to the chargee and into court substantially exceeded the amount requested by the chargor to be paid in order to obtain a cessation or discharge of charge. I am, therefore, of the view that there was mixed success on this motion. Each party is to bear their own costs of this motion.

SALMERS J.

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