

KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 29

Date: 2024 02 23
File No.: QBG-RG-02544-2015
Judicial Centre: Regina

BETWEEN:

SSC SECURITY SERVICES CORPORATION (FORMERLY INPUT
CAPITAL CORP.)

PLAINTIFF/DEFENDANT
BY COUNTERCLAIM

- and -

JEREMY EDWARD THOMAS, ROSE ANNA CROWE, THE BANK OF
NOVA SCOTIA, HIS MAJESTY THE KING IN RIGHT OF CANADA
(AAFC), WELLS FARGO EQUIPMENT FINANCE, NIESNER
PROPERTIES INC., CANADA REVENUE AGENCY, RCCS DIVISION,
BOB THOMAS, MAGNUM GRAIN HANDLING COMPANY LTD., and
DOREEN ANN WITCHEKAN

DEFENDANTS

- and -

JEREMY EDWARD THOMAS

PLAINTIFF BY COUNTERCLAIM

Counsel:

Graham E. Quick for SSC Security Services Corporation
Jeremy Edward Thomas self-represented defendant/plaintiff by counterclaim

JUDGMENT
February 23, 2024

TOCHOR A.C.J.

I. Introduction

[1] On November 25, 2022, an order *nisi* for sale was granted and this order provided the subject lands were to be sold in accordance with a number of terms. On

December 19, 2023, an amended order *nisi* for sale was granted and this order amended some terms of the initial order.

[2] Pursuant to the amended order *nisi*, the lands were listed for sale on a 120-day multiple listing with a realtor. On January 17, 2024, an offer was received for the sum of \$2,000,000; this offer was rejected. On January 19, 2024, a second offer was received (from the same party) for the sum of \$2,130,000. This offer was accepted by the realtor, who states the terms of this accepted offer appear to comply with all terms of the amended order *nisi*.

[3] SSC Security Services Corp. now applies for an order confirming the sale.

[4] However, Mr. Thomas asks that this sale not be confirmed by the court, and that the listing realtor be given an opportunity to pursue another potential offer from a different party. Mr. Thomas submits he has information that another party is interested in making an offer in the range of \$2,600,000 and he submits that if this offer is made and accepted, most, if not all, creditors will be fully satisfied. He submits that if the current sale is confirmed, the creditors will receive far less than they are owed. Therefore, he requests the application for confirmation of the sale be adjourned so another potential offer can be explored.

[5] Importantly, Mr. Thomas does not suggest any impropriety or irregularity in the conduct of the sale. He does not suggest any term of the amended order *nisi* for sale was not followed. His request for an adjournment of this application is based on the hope that a better offer may arise through further efforts of the listing realtor. This, in turn, would result in a larger payout to creditors.

[6] For the reasons that follow, I dismiss the request to adjourn this application to allow time for a further exploration of better potential offers and I grant an order confirming the sale arranged by the selling officer.

II. Analysis

[7] After considering the request for an adjournment by Mr. Thomas, I conclude I am unable to give effect to his request. There are several reasons for this conclusion. A number of principles regarding applications to confirm judicial sales are considered in *Farm Credit Canada v Hamdorf*, 2021 SKQB 97 and are repeated below.

(a) No Irregularity or Impropriety in the Sale

[8] First, the case law establishes that, absent some irregularity or impropriety in the conduct of the sale, a court is usually obliged to confirm an order for sale.

[9] Here, Mr. Thomas does not allege a breach of any term of the amended order *nisi* of December 19, 2023. Nor does he suggest any irregularity or impropriety occurred in the sale process. Inherent in his position is a recognition that the selling officer has complied with the terms of the order *nisi* and the amended order *nisi*.

[10] Danyiuk J. provides a helpful articulation of the court's obligation in *Kokanee Mortgage M.I.C. Ltd. v Rozdilsky*, 2020 SKQB 52 at para 40 [*Kokanee*]:

[40] ... confirmation orders should issue unless there is cogent proof of some compelling reason not to do so. ...

[11] An important summary of this obligation is also provided by Jackson J.A. in *D & H Farms Ltd. v Farm Credit Canada*, 2002 SKCA 88 at paras 22-26, 214 DLR (4th) 589 [*D & H*]:

[22] While there are no Saskatchewan cases dealing with the extent of a chamber judge's discretion to confirm a judicial sale by tender, there are several cases dealing with such discretion in the area of judicial sale by auction.

[23] In *Baker Lumber Company Ltd. v. Lee et al* [[1921] 2 WWR 142 (Sask KB) 142], the Court dealt with an application to confirm a judicial sale by auction. The Court stated:

. . . The Court will always strive in sales under its direction to obtain the highest possible price. That can be obtained only if a proposed bidder can feel that should he be the highest bidder and be declared by the auctioneer to be the purchaser that he is secure in his purchase. How otherwise would a purchaser care to sign an agreement to purchase binding upon him and pay his purchase-price unless he had such security? He is bidding for the property, not for a chance to buy the property, and while this is probably a hard case, yet, to hold that the Court would refuse to confirm a sale held under judicial process or its direction where sale proceedings were regularly and properly conducted in accordance with the order of the Court, would be liable to work hardship to a great number. [*ibid* at p 145]

In reaching this conclusion, the Court commented as follows:

My understanding of the practice in vogue in this province is that the order for confirmation of sale goes as a matter of course unless there is some irregularity or impropriety in the sale. [*ibid* at p 146]

...

[24] For example, in *Trust & Loan Company of Canada v. Lindquist and Lindquist* [[1933] 2 WWR 410 (Sask KB)], the Court heard an appeal from a decision of the local master who refused to confirm a sale held under court order on compassionate grounds. In upholding the sale, the Court said:

In the absence of any irregularity of the proceedings, or impropriety in the conduct of the sale, I think the sale to the highest bidder must be confirmed. [*ibid* at p 412]

...

[26] In *Northland Bank v. Viscount Developments Ltd. et al* [[1980] SJ No 236 (QL)], Estey J. applied the principles in *Pew v. Zinck et al* [[1953] 1 SCR 285] to an application to confirm the judicial sale of lands sold by sheriff's auction. On the basis that there was no evidence of fraud or misconduct on the part of any of the purchasers, or any default in connection with the proceedings surrounding the sale, or any mistake or error on the part of the sheriff in advertising or carrying out the terms and conditions of the *order nisi*, the Court confirmed the sale.

[Footnotes omitted]

[Emphasis added]

[12] Further, in *FMI Developments Ltd. v 1269917 Alberta Ltd.*, 2011 SKQB 240, 380 Sask R 13 [*FMI Developments*] Smith J. reviewed the direction in *D & H* and observed at para. 34:

[34] Thus, if the selling officer has *prima facie* complied with the terms of the order nisi for judicial sale, then the order confirming such sale should be granted unless there has been manifest and substantial departure by the selling officer and/or the listing agent from commercial best practices or if the subject matter of the judicial sale was sold at an unfairly low price.

[Emphasis added]

[13] The case authorities make clear the obligation on a selling officer to strictly comply with an order *nisi*, and the obligation on a court to confirm such a sale if the order *nisi* has been complied with. In the absence of any suggestion of irregularity or impropriety, an order confirming the sale should issue.

(b) Protecting the Integrity of the Sale Process

[14] Second, the case law places significant importance on the need to protect the integrity of the sale or tender process. If a prospective purchaser complies in good faith with the sale process and makes an offer which is acceptable, those arrangements should be respected, and confirmed, by the court.

[15] In *Smith Street Lands Ltd. v KEB Hana Bank of Canada*, 2020 SKCA 41, 446 DLR (4th) 605 [*Smith Street*], Leurer J.A. (as he then was) considered this aspect and accepted the concerns of a chambers judge as to the integrity of the process:

[33] In my respectful view, the second interpretation best comports with the Chambers judge's reasons. Early in the *Chambers Decision* [*KEB Hana Bank of Canada v Westgate Properties Ltd.*, Regina, QBG 2952 of 2018 (Sask)], the Chambers judge recognized that her discretion was not unlimited. She oriented herself with reference to *D & H*, as well as several decisions from the Court of Queen's Bench. She then rooted her reasons for accepting the Selling Officer's recommendation in her concern over the damage that might be done

to the integrity of the sales process established in the Order *Nisi* were she not to follow the Selling Officer's recommendation:

[22] The selling agent derives his or her authority from the court by virtue of the order *nisi*. The selling agent is vested with the responsibility of ensuring that the property is listed and sold in accordance with the terms of the order *nisi*. ...

[23] Prospective purchasers must be able to have confidence in the fairness and integrity of the judicial process relating to a sale in accordance with an order *nisi*. The selling agent, as a court-appointed officer, must also have confidence that absent some irregularity or non-compliance with the order *nisi*, an offer that he or she accepts will not be lightly interfered with.

[Emphasis added]

[16] Leurer J.A. concluded in *Smith Street* at para 41:

[41] Based on all of this, I can find no error in principle on the part of the Chambers judge when she determined, in the circumstances of this case, that it would undermine the confidence of prospective purchasers in the fairness and integrity of the process of sale prescribed in the Order *Nisi* and judicial sales processes more generally if she were to have entertained the Smith Street Offer [offer to purchase land for \$2,800,000].

[17] A similar concern for the importance of the integrity of the process is found in *FMI Developments* at paras 32-33:

[32] The lesson I draw from *D & H* is that although a chambers judge has discretion on the issue of confirming a judicial sale, such discretion must be exercised cautiously. The Court and the administration of justice have an abiding interest in maintaining commercial probity and reasonableness in any sale directed by the Court.

[33] Any act or judicial fiat that detracts from commercial certainty may negatively affect the integrity of the judicial sale process.

[18] Courts generally refuse to interfere with a selling officer's recommendations in all but exceptional circumstances.

[19] In these circumstances, I conclude the request of Mr. Thomas for an adjournment – to allow the realtor extra time to find a better offer than the one already

accepted – would diminish the integrity of the judicial sale process. Allowing an adjournment for this purpose would understandably discourage potential purchasers from engaging in the sale process and making offers.

(c) **The Discretion of a Chambers Judge**

[20] Third, the case law provides that the discretion of a chambers judge, when considering an application for confirmation of a sale, is governed by the terms of the order *nisi* and the general law.

[21] Leurer J.A. in *Smith Street* provides this foundation at para. 43:

[43] ... The basis for the consideration by the Chambers judge of any application to approve the sale of the Land was the Order *Nisi*, which determined the process to be followed by KEB to enforce its security, including what must be done to sell the Land. As stated by Jackson J.A. in *D & H*, **a Chambers judge’s “discretion on an application to confirm a land sale of this sort is not unfettered. It is governed by the terms of the *order nisi* and the general law”** (at para 44).

[Bolded emphasis added – Underlined emphasis in original]

[22] Here, the obligations of the selling officer were defined in the amended order *nisi* for sale, including this provision at para. 1(d) as follows:

1(d) ... the selling officer has discretion to accept any offer and to make any counteroffer as the selling officer considers advisable ...

[23] In these circumstances, in the absence of “cogent proof of any irregularity in the process”, a reviewing court does not have a basis to refuse an order confirming the sale.

(d) **The Speculative Nature of the Request**

[24] Fourth, the reason advanced by Mr. Thomas for not confirming the sale is speculative.

[25] There is no other offer for the selling officer to consider. Instead, Mr. Thomas wants time for the realtor to simply explore another possibility. Although Mr. Thomas expresses confidence that another offer will be forthcoming, in these circumstances, it is inappropriate for the court to risk losing the current offer in the hope of perhaps receiving another offer.

IV. Summary

[26] In these circumstances, there is no suggestion of irregularity or impropriety in the tender or sale process; nor is there any suggestion that any terms and conditions of the order *nisi* were breached: see *Kokanee* at para 40; *D & H* at paras 22-26; and *FMI Developments* at para 34.

[27] Further, in these circumstances, in the face of a good faith offer to purchase from a *bona fide* purchaser, a refusal to accept the recommendations of the selling officer – and to attempt to entertain the possibility of another offer - would jeopardize the integrity of the sale process: see *Smith Street* at paras 33 and 41; *FMI Developments* at paras 32-33.

[28] Finally, the court’s discretion to refuse an application to confirm a sale must be exercised within the confines of the order *nisi* and the general law: see *Smith Street* at para 43; and *D & H* at para 44. I am not satisfied in these circumstances that an appropriate basis exists to justify the exercise of my discretion to refuse the application.

[29] For these reasons, the draft order confirming the sale may issue.

A.C.J.
M.D. TOCHOR