

SUPREME COURT OF NOVA SCOTIA

Citation: *Scotia Mortgage Corporation v. Chudobskyi-Walker*, 2017 NSSC 236

Date: 20170906

Docket: Hfx No. 448517

Registry: Halifax

Between:

Scotia Mortgage Corporation

Plaintiff

v.

Richard Chudobskyi-Walker and Natalie Blackwood

Defendants

Decision

Judge: The Honourable Justice Gerald R.P. Moir

Heard: May 25, 2017, in Halifax, Nova Scotia

Counsel: Stephen Kingston, for the Plaintiff
Derek Brett, for the Defendants

Moir, J. :

[1] Scotia Mortgage Corporation moves to assess its deficiency judgment against Mr. Chudobskyi-Walker. It proposes \$61,655.49 plus costs. Mr. Chudobskyi-Walker proposes \$21,485.31 less costs.

[2] The property went to the lender at the foreclosure auction. It has not been resold. The issues are the amount to be credited based on appraisals, and recovery of some of the property management expenses.

[3] The property is a large, eighty-five year old home on Main Street in Stewiacke. It was sold at the foreclosure auction to the lender for taxes and expenses. It was put on the market last October for \$159,900. Little interest appeared. It remains unsold.

[4] A full appraisal in August 2016 found the market value to be \$169,000. A full appraisal in October 2016 found \$135,000 and one in January found \$132,000. The realtor selected by the mortgagee suggested listing between \$159,900 and \$169,900.

[5] She concluded the probable sale price was between \$156,000 and \$169,900.

[6] For the borrower, Mr. Brett suggests averaging all appraisals including so called “drive-by appraisal”. This produces a value of \$185,000. For the lender, Mr. Kingston suggests using the list price.

[7] I am to subtract “the value of the property” from the mortgage debt (plus taxes, expenses, and costs) to assess the deficiency: Rule 72.13(1)(d). Mr. Brett says that the property was not actively marketed for a time last spring. That would not affect the assessments, unless it called into question the fairness of the mortgagor’s efforts. Nor am I prepared to give weight to the earlier drive-by appraisals when we have three full appraisals.

[8] In addition to the full appraisals, I am giving weight to the realtor’s suggestions. They resulted from her comparative market analysis. In light of the low interest in the property during the first months of marketing, the bank’s choice to go with the lower end of the realtor’s suggested list price is understandable. However, the realtor knew the history and it seems to me that the high end is a reasonable valuation more fair to the borrower. I find the value to be \$169,900.

[9] Property management fees total \$9,799.31. Most are for Veranova Properties Limited and its contractor, Paul Williams Property Services Inc.

[10] Mr. Brett refers to *CIBC Mortgages Inc. v. Samson-Hahn* 2015 NSSC 149, in which Justice Warner refused some of the property manager's charges because the evidence supporting them was so thin, and *Scotia Mortgage Corporation v. Fogarty* 2016 NSSC 52, in which Associate Chief Justice Smith followed Justice Warner on the insufficiency of the evidence being offered regularly by property managers.

[11] Mr. Chudobskyi-Walker submits, through his counsel, that the invoices lack detail and he requests disallowance of all charges unsupported by sufficient evidence.

[12] For me, the *Fogarty* decision revealed an unwillingness of property managers to be candid with the court. Since that decision was issued, I have refused to credit information coming from property managers. I will refuse property management fees until a person in authority with the property manager convinces me, through testimony, that I can rely on them or another judge reaches such a conclusion. So far, neither has happened even though I presided in chambers for three months in 2016 and six this year.

[13] The evidence contains invoices or statements from independent third parties for water, oil, and electricity. They total \$1,748.96. That is all I will allow for protective disbursements in assessing this deficiency judgment.

[14] I will grant an order assessing the deficiency based on \$169,900 in value and \$1,748.96 for protective disbursements. Thanks to counsel for their professional presentations. They may make submissions on costs in writing, if necessary.

J.