

CANADA / JUDGMENT

Bryce v. Rala Investments Ltd.

2020 BCSC 51

COURT

Supreme Court of British Columbia

DECIDED

14 January 2020

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2020 BCSC 51 Bryce v. Rala Investments Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Bryce v. Rala Investments Ltd., 2020 BCSC 51 Date: 20200114 Docket: S184679 Registry: New Westminster Between: John Peter Bryce Plaintiff And Rala Investments Ltd. and Allan Sadler Defendants Corrected Oral Ruling: The cover page of the Oral Ruling was corrected on January 16, 2020 Before: The Honourable Mr. Justice G.C. Weatherill Oral Ruling re: Admissibility of the Expert Report of John Ribalkin Counsel for the Plaintiff: T.J. Hewitt B. Goertz, Articled Student Counsel for the Defendants: A. Dhinsa J. McGreevy Place and Dates of Submissions during trial: New Westminster, B.C. January 13-14, 2020 Place and Date of Ruling: New Westminster, B.C. January 14, 2020

introduction

- [1] The defendants apply, during the course of the trial of this action, for a ruling that an expert report the plaintiff proposes to tender in evidence is inadmissible.
- [2] The plaintiff claims damages for the professional negligence of the defendant mortgage broker and its principal who he alleges provided him with a property appraisal upon which he relied to provide third mortgage property financing. The property was subsequently foreclosed. The plaintiff says he never would have loaned the moneys but for the appraisal and alleges that he lost approximately \$202,000 as a result.

background

- [3] The appraisal in issue is dated February 2, 2012 and was prepared by a company called Canadian Home Appraisals. It was not for the plaintiff but rather for an entity called Verico Select Mortgages ("Verico") and its principal J. McLean. Although I have yet to hear evidence on the point, I assume that Verico was an unrelated prospective private mortgage financing firm and J. McLean was a principal at Verico. A copy of the appraisal was obtained by the defendants (I believe from an independent mortgage brokerage firm called "Canadian Mortgage Strategies & Investments" although I have yet to be provided with any confirmatory evidence) and was provided by the defendants to the plaintiff on April 5, 2012, approximately five weeks prior to him advancing the third mortgage financing in question.

- [4] The parties are in agreement that the appraisal valued the property significantly higher than its actual market value at the time and that, for the purpose of trial, was prepared negligently. The plaintiff originally named Canadian Home Appraisals, its principal, Jeff Pokoroka, and the author of the appraisal, Kevin Janzen, as defendants. However, the action was discontinued against them because it was determined by plaintiff's counsel that the limit of liability and waiver language contained in the appraisal precluded an action against them.
- [5] Fundamental to the plaintiff's case against the remaining defendants, namely the mortgage brokerage firm and its principal, is the assertion that they breached the standard of care expected of them in the circumstances. In particular, the plaintiff alleges that the defendants had a duty to and failed:
- a) to recommend that the plaintiff obtain his own appraisal of the property before providing mortgage financing; and/or
 - b) failed to advise the plaintiff to obtain what is called a Letter of Transmittal from the author of the appraisal before using and relying upon it.
- [6] The plaintiff served and proposes to rely at trial upon the expert report of John Ribalkin, an experienced mortgage broker. While the defendants do not object to Mr. Ribalkin's qualifications and experience, they do object to the admissibility of the report itself. Their principle objection is that the opinions Mr. Ribalkin purports to express are an attempt to usurp the function of the trial judge.
- [7] I have read Mr. Ribalkin's report which, excluding its voluminous attachments, is a relatively short 4 pages.
- [8] Mr. Ribalkin begins his report by properly setting out his duty under Rule 11-2 of the Supreme Court Civil Rules, followed by a listing of the documents he was provided by plaintiff's counsel and upon which he has relied for his report. He then exhibits and comments upon various information bulletins published online by the British Columbia Financial Institutions Commission Registrar of Mortgage Brokers that were in existence at the relevant time as support for his opinion regarding a mortgage broker's duty of care when supplying a property appraisal to a potential investor. The Financial Institutions Commission administers the Mortgage Brokers Act of British Columbia, R.S.B.C. 1996, c. 313 [Act]. Mr. Ribalkin also refers to various regulations passed under the Act.
- [9] After reading the definition of "Sophisticated Person" as set out in the regulations, Mr. Ribalkin opines that the plaintiff "is not in my opinion a 'Sophisticated Person' as defined in these regulations".
- [10] After then stating and/or interpreting various provisions of the Act regarding the statutory duties owed by mortgage brokers, Mr. Ribalkin states that "In this mortgage transaction 'Sadler' in my opinion was acting on behalf of 'Bryce'".

- [11] Then, having read on the face of the appraisal that it had been addressed to Verico-J. McLean, Mr. Ribalkin states that "therefore 'McLean' was the only party that could rely on this appraisal". He goes on to state that: For another party or lender to rely on this appraisal then a Letter of Transmittal (hereinafter referred to as "LOT") has to be obtained from the appraisal firm so that the lender, in this case "Bryce", is then by the "LOT" has [sic] gained ownership of the report and can then rely on it to make a lending decision. Without a "LOT" this [appraisal] has no value to "Bryce" whatsoever.
- [12] Mr. Ribalkin states that the defendants "should have advised "Bryce" that to rely on that appraisal report that [sic] a "LOT" would have to be obtained or "Bryce" would have to procure another appraisal addressed directly to him that he could rely on for lending purposes".
- [13] Mr. Ribalkin then states: I have read through all the documents as supplied to me by [plaintiff's counsel] and I see no declaration from "Sadler" to "Bryce" that he should obtain a "LOT" to be able to rely on the appraisal This is a basic standard of care that a Mortgage Broker should do for a lender. [Emphasis added.] (the "Standard of Care Opinion").
- [14] Mr. Ribalkin then pontificates about how best a lender can recover an investment in the case of default, including through the means of foreclosure or Errors and Omissions Insurance that "all appraisal companies and their employees carry to cover their work".
- [15] Finally, Mr. Ribalkin states that: Seeing no "LOT", seeing no declaration from "Sadler" to "Bryce" that without the "LOT" or a new appraisal the appraisal that was included in the [Investor/Lender Disclosure Statement] prepared by "Sadler" had no value to "Bryce". In my opinion, "Sadler" by not obtaining a "LOT" for the lender or advising the lender to obtain his own "LOT" or advising the lender to obtain a new appraisal he could rely upon failed in his Duty of Care to "Bryce".

Analysis

- [16] The role of an expert is to assist the court by providing an impartial and objective opinion on matters outside the experience and knowledge of the trier of fact: Royce Holdings Inc. v. Jupe, 2018 BCSC 2025 at para. 81.
- [17] It is not the function of an expert in court proceedings to simply regurgitate plain language he or she has read in text books, periodicals or, as in this case, in a statute and regulations and related bulletins, and then simply opine on the outcome of a case based upon those readings. Such postulations are neither necessary nor relevant. The court is fully capable of reading and understanding such passages.
- [18] It is even more improper for an expert to usurp the function of the court in a negligence case by opining that a party has breached a duty of care. That is for the trier of fact to determine, not an expert.

[19] Mr. Ribalkin's report is flawed in all of these respects.

[20] As was stated by this court in *CMC Engineering and Management Limited v. Pinnacle Renewable Energy Inc.*, 2018 BCSC 2457 at para. 13(g), in exercising my gatekeeping function, I may take into account that I am sitting without a jury and am able to disregard shortcomings in the phrasing of the expert report that might be problematic if the trier of fact was a jury.

Conclusion

[21] I find that Mr. Ribalkin's report is admissible to the extent that it provides an opinion as to the standard of care expected of a mortgage broker by the industry in the circumstances of this case. The only place in his report that he does so is in the passage quoted at para. 13 above. However, I am satisfied that, in exercising my gatekeeping function, I am able to disregard the shortcomings in phraseology used by Mr. Ribalkin in the final sentence of his report and give his opinion set out in that sentence the appropriate weight on the basis and only on the basis that the sentence is amended to read as follows, which I find is effectively what Mr. Ribalkin was attempting to convey: In my opinion, before making use of an appraisal prepared for a third party, it was standard practice in the mortgage brokerage industry for a mortgage broker to first:

- (a) obtain an "LOT";
- (b) advise the lender to obtain an "LOT"; or
- (c) advise the lender to obtain his own appraisal.

[22] The balance of the opinions set out in the report are inadmissible. Specifically, the portions of the report from the last paragraph at the bottom of page 2 to the end of the report are inadmissible with the exception of the Standard of Care Opinion and the final sentence as I have reformulated it. "G.C. Weatherill J."

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Prepared on 24 October 2026 · Esheria