

CANADA / JUDGMENT

Guy v. Kent

2007 BCCA 518

COURT

British Columbia Court of Appeal

DECIDED

19 October 2007

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2007 BCCA 518 Guy v. Kent COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Guy v. Kent, 2007 BCCA 518 Date: 20071019 Docket: CA034237 Between: Bob Guy Appellant (Plaintiff) And Roselyn Dale Kent Respondent (Defendant) Before: The Honourable Madam Justice Rowles The Honourable Madam Justice Ryan The Honourable Madam Justice Saunders Oral Reasons for Judgment C.D. Brousson Counsel for the Appellant Respondent appearing In Person Place and Date: Vancouver, British Columbia 19 October 2007

- [1] SAUNDERS, J.A.: Mr. Guy started these proceedings in the Supreme Court of British Columbia seeking, in essence, to recover monies said to be owing on a loan that was secured by a mortgage. He sought and obtained an order of foreclosure from a Master of the Supreme Court of British Columbia. That order provided in part:
3. the amount of money due and owing under Mortgage and the amount of money required to redeem the Lands and Premises on this day is the sum of \$77,117.59, together with interest at a daily rate, which is currently \$23.24, to accrue to and including the date of payment, plus the assessed costs of the Petitioner of and in connection with this proceeding (the "Amount Required to Redeem"); . . .
6. the Respondent shall pay to the Petitioner the sum of \$77,117.59, plus the Petitioner's assessed costs of and in connection with this proceeding;
- [2] The Master's order was appealed to Madam Justice Morrison by Ms. Kent. Madam Justice Morrison found that there was no valid mortgage which would found an order of foreclosure, and set aside the Master's order. Her reasons for judgment are indexed at 2006 BCSC 946.
- [3] Mr. Guy appeals from her order. Mr. Guy does not dispute the conclusion on the non-existence of a mortgage, but seeks to re-establish para. 6 of the Master's order as a judgment, he says, on the debt owing to him.

- [4] In my view, para. 6 is ancillary to the balance of the order nisi. While a Master has jurisdiction in foreclosure proceedings, a Master does not have independent jurisdiction to grant a final order on a claim in debt. Because the basis for the Master's order has vanished, there is no mortgage, he could not make a final order on the debt claim. That means that this Court cannot revive para. 6 as sought.
- [5] If there is to be an action in debt it must be pursued in the Supreme Court of British Columbia in properly constituted proceedings. Ms. Kent has explained to us that she disputes the debt and Mr. Guy's position as a creditor. Those are not matters we can deal with because we are not a trial court and those matters have not been adjudicated by a trial court.
- [6] I would therefore dismiss the appeal.
- [7] Ms. Kent has also made application to adduce fresh evidence. Given that I would dismiss the appeal, there is no basis, in my view, upon which that evidence is required or is useful. Thus, I would dismiss Ms. Kent's application to adduce fresh evidence.
- [8] I would order costs to the respondent.
- [9] ROWLES, J.A.: I agree.
- [10] RYAN, J.A.: I agree.
- [11] ROWLES, J.A.: The appeal is dismissed with costs to the respondent. "The Honourable Madam Justice Saunders"

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