

CANADA / JUDGMENT

Laventure v. Ovelson

2020 BCSC 1527

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Supreme Court of British Columbia

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2020 BCSC 1527 Laventure v. Ovelson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Laventure v. Ovelson,

2020 BCSC 1527

Date: 20201015

Docket: H47134

Registry: Vernon

Between:

Robert Laventure, Executor of the Estate of

Victor Phileas Laventure a.k.a. Victor Joseph Laventure, Deceased

Petitioner

And

Carol Josephine Ovelson

Respondent

Before: The Honourable Mr. Justice Marchand

Reasons for Judgment

Counsel for the Petitioner:

R.B. Jacobs

Counsel for the Respondent:

G. Douvelos

Place and Date of Hearing:

Vernon, B.C.

September 22, 2020

Place and Date of Judgment:

Vernon, B.C.

October 15, 2020

Introduction

- [1] On October 1, 2007, the respondent, Carol Ovelson, entered into a contract to purchase a property near Armstrong, British Columbia from Victor Laventure for close to \$1.4 million (the "property"). Ms. Ovelson made a \$110,000 non-refundable deposit. The balance of the purchase price was financed by way of a "vendor take-back mortgage".
- [2] Mr. Laventure died on October 9, 2007, eight days after entering the contract with Ms. Ovelson. The transaction completed on November 1, 2007. Despite the fact that he was deceased, the transaction and Land Title Office ("LTO") registration were completed in the name of Mr. Laventure.
- [3] Ms. Ovelson defaulted on the mortgage when it came due on November 1, 2009. The petitioner, Robert Laventure, initiated foreclosure proceedings by filing this petition as the executor of his father's estate on October 15, 2010. I will refer to Robert Laventure, in his capacity as executor of his father's estate, as "the petitioner" to distinguish him from his father, who I will continue to refer to as "Mr. Laventure".
- [4] An order nisi of foreclosure was made on August 23, 2011. Ms. Ovelson did not redeem the mortgage. The court made an order approving a sale of the property to David and Shannon Horsfield on February 28, 2012 for \$800,000.
- [5] The petitioner has subsequently taken steps to enforce the rather large personal judgment granted against Ms. Ovelson in the foreclosure proceedings. Ms. Ovelson has responded by filing this notice of application. Ms. Ovelson seeks various orders to essentially undo all of the transactions and orders that I have outlined.
- [6] Respectfully, Ms. Ovelson's submissions suffer from a number of fatal flaws. Neither the law nor the equities support her position in the least. For the reasons that follow, I must dismiss her application with special costs.

- [7] Further, on January 29, 2020, Master Schwartz ordered Ms. Ovelson and a company she appears to own (at least in part), M.B.M. Marina Ltd. ("M.B.M."), to produce documents and records related to the petitioner's enforcement proceedings by April 3, 2020. If they were unable to do so, they were ordered to provide a detailed written explanation as to their efforts to locate the documents and records.
- [8] Having received no documents, records or explanations, on July 17, 2020, the petitioner filed an application seeking to establish a new (and short) deadline for Ms. Ovelson and M.B.M. to comply with the order made by Master Schwartz, failing which the petitioner would be at liberty to take certain steps to obtain documents and records directly from identified third parties.
- [9] During the hearing of the petitioner's application, Ms. Ovelson and M.B.M. consented to the document production order being sought, leaving the issue of costs with me. For the reasons that follow, I am awarding the petitioner costs, but not special or increased costs, in relation to the petitioner's document production application.

Can the Transactions and Orders be Set Aside?

Ms. Ovelson's Submissions

- [10] Ms. Ovelson's basic position is that it was statutorily impossible for a deceased individual, Mr. Laventure, to transfer title to the property to Ms. Ovelson. Ms. Ovelson submits that the transfer was a nullity, rendering all subsequent transactions and orders nullities. She submits that the court has the jurisdiction to declare all of the transactions and orders subsequent to the death of Mr. Laventure void.
- [11] Ms. Ovelson relies on ss. 387(1)(b) and (2) and s. 388 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA], *ex turpi causa*, s. 5 of the Law and Equity Act, R.S.B.C. 1996, c. 253 [LEA] and the inherent jurisdiction of the court.
- [12] Sections 387 and 388 of the LTA provide, in part, as follows:

Offence of fraud

387 (1) A person commits an offence who

- (b) fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of an order of the court affecting the title to land, or of a fraudulent entry on the register, or a fraudulent alteration or erasure of an entry on the register.
- (2) An order of the court affecting the title to land procured by fraud, an act consequent on the order and an endorsement, alteration or erasure made as a consequence of the fraud or the order is void as between all parties or privies to the fraud.

Offence of false representation

388 (1) person commits an offence if the person, as principal or agent in an application to register title to land or in a transaction relating to land that is or is proposed to be registered, knowingly and with intent to deceive,

- (a) makes a material false statement or representation,
 - (b) suppresses or conceals from a court, or the registrar, or a person employed by or assisting the registrar, a material document, fact, matter or information, or
 - (c) is a party to anything mentioned in paragraph (a) or (b).
- (2) An act or thing done or obtained by means of anything mentioned in subsection (1) (a) or (b) is void, except in respect of a purchaser in good faith and for valuable consideration.

[13] The maxim *ex turpi causa non oritur actio* translates to "no right of action arises from a base cause". Generally, it prevents abuse and misuse of the judicial process. The idea is to prevent a plaintiff from profiting from their wrongful or illegal conduct: *Hall v. Hebert*, [1993] 2 S.C.R. 159 at 170-172.

[14] Section 5 of the LEA provides as follows:

Equitable relief for defendant

5. If a defendant claims to be entitled to an equitable estate or right or to relief on an equitable ground against a deed, instrument or contract, or against any right, title or claim asserted by a plaintiff or petitioner in a cause or matter, or alleges an equitable defence to a claim of the plaintiff or petitioner in the cause or matter, the court, whether as a court of law or equity, and every judge of it, must give to every equitable estate, right or ground of relief claimed, and to every equitable defence alleged, the effect by way of defence against the claim of the plaintiff or petitioner, that the court ought to have given if the same or similar matters had been relied on as a defence in a suit or proceeding commenced in that court as a court of equity for the same or similar purpose before April 29, 1879.

[15] Regarding the inherent jurisdiction of the court, Ms. Ovelson cites *Williams v. Local Union No. 1562 of the United Mine Workers of America* (1919), 45 D.L.R. 150 (ABCA) for the proposition that superior courts in Canada have inherent jurisdiction to control their own process and to make orders to do justice between the parties.

[16] As I understand it, Ms. Ovelson submits that the petitioner fraudulently completed the sale of the property to her knowing that he had not taken the appropriate and necessary interim step of first transferring the property to Mr. Laventure's estate.

- [17] As I understand it, Ms. Ovelson further submits that the petitioner fraudulently failed to properly disclose the status of the property in the disclosure statement he prepared for his application to obtain probate of his father's will. The property was listed as an asset with a sale pending when the petitioner should have listed the asset as a mortgage over the property. The disclosure statement was then included in the affidavit the petitioner swore in support of the foreclosure petition.
- [18] As a result, Ms. Ovelson submits that:
1. The petitioner committed an offence under ss. 387(1)(b) and/or 388(1) of the LTA;
 2. The orders made in the foreclosure proceedings are, therefore, void under ss. 387(2) and/or 388(2) of the LTA;
 3. In the alternative, applying *ex turpi causa*, all of the transactions and orders must be set aside to prevent the petitioner from profiting from his wrong; and
 4. In the further alternative, the court should exercise its jurisdiction under s. 5 of the LEA and/or its inherent jurisdiction to set aside all of the transactions and orders in issue in order to do justice between the parties.
- [19] Beyond the petitioner's alleged fraudulent conduct, Ms. Ovelson asserts that the petitioner "wrongfully converted the Property from the Estate probate process and from the beneficiaries of the Estate to take the property [for] himself" and subsequently sold the property to friends for less than fair market value.
- [20] In the result, Ms. Ovelson says that if the petitioner had taken the required intermediate step of transferring the property to his father's estate, the initial transaction would not have occurred and she would not be in the position she is today. She says that any negative impact on the current property owners is a separate issue that will have to be dealt with some other time.

Analysis

- [21] At the outset of my analysis, I have to say that I agree with Ms. Ovelson that the petitioner failed to take certain required intermediate steps before completing the sale of the property to her.
- [22] On my reading of Part 17 of the LTA, the petitioner was required to obtain a grant of probate and then register the transmission of the property to himself (as executor of the estate) before transferring the property to Ms. Ovelson: LTA, ss. 264 and 266(5); *R. v. D'Agola*, 2015 BCSC 1337 at para.15. While the petitioner failed to take these steps, I do not agree that the court can now void the sales transaction and all of the subsequent court orders and transactions. It is too late for that now.
- [23] I will deal with each of Ms. Ovelson's arguments in turn.

Fraud

- [24] At the time the sale was completed, the petitioner clearly knew that his father was deceased and that his father's will had not been probated. Mr. Laventure died on October 9, 2007, the sale completed on November 1, 2007 and a grant of probate was not made until April 7, 2008. Mr. Laventure's interest in the property as mortgagee (lender) was then transferred to the petitioner as the executor of his father's estate on April 21, 2008.
- [25] Further, as noted by Ms. Ovelson, the grant of probate included a disclosure statement which incorrectly stated that the estate owned the property and that the property was subject to sale. I agree with Ms. Ovelson, it should have stated that moneys were owing to the estate from a sale of the property and that the moneys owing were secured by a mortgage.
- [26] While the petitioner may have made some errors, I am not prepared to infer that he committed fraud or acted knowingly with an intent to deceive.
- [27] First of all, I am not sure who the petitioner may have wished to defraud or deceive. It certainly could not have been Ms. Ovelson as she was fully aware that Mr. Laventure had died (she attended his funeral on October 22, 2007), was represented throughout, and signed the LTA Form 17 transfer of the property from Mr. Laventure to herself (witnessed by her lawyer) on October 31, 2007.
- [28] Secondly, there is no evidence to suggest that the petitioner, a resident of Alberta, was knowledgeable about estate administration and property transactions in British Columbia. Indeed, his evidence is that he was also represented throughout and relied on his counsel.
- [29] Finally, there was nothing secretive or misleading about the petitioner's actions. The relevant history was transparently disclosed in his affidavit and the supporting exhibits filed in support of the petition on October 15, 2010, including that:
1. The contract between Ms. Ovelson and Mr. Laventure was entered on October 1, 2007;
 2. Mr. Laventure died on October 9, 2007;
 3. The property was transferred on November 1, 2007;
 4. Probate was granted on April 7, 2008; and
 5. Mr. Laventure's interest in the property as mortgagee was not transferred to the petitioner as executor of his father's estate until April 21, 2008.
- [30] The evidence falls far short of establishing that the petitioner acted fraudulently or with knowing intent to deceive. At worst, the evidence indicates that the petitioner, Ms. Ovelson and their counsel took some missteps.

Voiding the Transactions Under the LTA

- [31] Even if I was satisfied that the petitioner was guilty of fraud or a knowing intent to deceive, I could not void the transactions and orders at issue. At this late stage, I do not have jurisdiction under the LTA to do so. The order nisi was a final order that is now immune to this sort of attack and, in any event, ss. 387(2) and 388(2) of the LTA do not apply.
- [32] In *Ba-Oose Inc. v. HSBC Bank Canada*, 2011 BCCA 511, the plaintiffs brought an action against the defendant bank alleging that the bank had engaged in various unlawful, unconscionable and/or deceptive practices in relation to the renewal of a mortgage. The plaintiff had defaulted on the mortgage and an order nisi of foreclosure had been granted prior to the commencement of the action. The action was dismissed in chambers on the basis that it was an abuse of process.
- [33] The Court of Appeal upheld the finding of the chambers judge. At paras. 21-23, the Court held:
- [21] In my view, the chambers judge was correct in finding that this action (or, at least, most of it) is an abuse of process. As the respondent contends, an order nisi in a foreclosure proceeding is a final judgment of the court (see *Bank of Montreal v. Singh* (1979), 109 D.L.R. (3d) 117 (B.C.C.A.)). An order nisi of foreclosure cannot be granted unless the court is satisfied that the mortgage is both valid and legally enforceable. The court must also determine the amounts secured by the mortgage and whether there has been a default.
- [22] Once an order nisi is pronounced, it is not open to a mortgagor to challenge the validity of the mortgage by way of a separate action. Because the validity and enforceability of the mortgage are prerequisites to the granting of an order nisi, the facts necessary to determine that the mortgage is enforceable become *res judicata*.
- [23] In the case before us, most of the plaintiffs' claims go directly to the question of whether the mortgage was valid and enforceable according to its terms. If the plaintiffs wished to argue that the mortgage was unconscionable or entered into in an unlawful manner, their opportunity to do so was in defence of the application for an order nisi of foreclosure. They could not consent to the granting of the order nisi and then commence a separate action to challenge the validity of the mortgage. The order nisi, either expressly or by implication, affirmed the legality and enforceability of the mortgage.
- [34] Though the plaintiff in *Ba-Oose* commenced a separate action whereas Ms. Ovelson has applied for relief within the foreclosure petition, the same principles apply. The validity and enforceability of the mortgage were prerequisites to the order nisi. The order nisi was a final order that was not appealed. The facts necessary to determine the enforceability of the mortgage are, therefore, *res judicata*. Given that "[t]he order nisi, either expressly or by implication, affirmed the legality and enforceability of the mortgage", Ms. Ovelson's attempt to re-litigate a final order of the court is an abuse of process.

- [35] Further, the court-approved sale of the property to the Horsfields precludes Ms. Ovelson from any resort to ss. 387 and 388 of the LTA.
- [36] Section 387(2) expressly provides that orders affecting the title to land procured by fraud are void - but only as between all parties or privies to the fraud. Similarly, s. 388(2) provides that transactions relating to land are void if supported knowingly by material false representations - except in respect of a purchaser in good faith and for valuable consideration.
- [37] Ms. Ovelson has baldly asserted that the Horsfields are friends of the petitioner but the evidence is otherwise. The petitioner's unequivocal evidence is that he does not know the Horsfields nor does he have any personal relationship with them.
- [38] Either way, there is no evidence that the Horsfields were "in on" the petitioner's alleged fraud and/or knowing deception. They purchased the property through a court-approved process without any notice of potential problems underlying the sale of the property to Ms. Ovelson, the mortgage registered against the title to the property or the foreclosure proceedings. The Horsfields were clearly good faith purchasers for value. No matter what view is taken of the petitioner's conduct, the Horsfields' good faith purchase of the property for value cannot be declared void under ss. 387(2) or 388(2) of the LTA.

Ex turpi causa

- [39] Ms. Ovelson's resort to ex turpi cause is misplaced. There is no evidence whatsoever that the petitioner has abused or misused the court process, and the evidence falls far short of establishing that the petitioner committed any moral wrong or illegal act.
- [40] Ex turpi causa is not directed towards innocent mistakes like those made by the petitioner: *Toronto-Dominion Bank v. Novielli*, 2014 ONSC 7111. Absent proof of any "wrong" by the petitioner, the maxim does not arise.

The Equities

- [41] Ms. Ovelson has cited no authority regarding the scope of s. 5 of the LEA or the court's inherent jurisdiction to do justice between the parties. She has also not cited any authority to demonstrate that the court ought to assist her in the circumstances of her case. That is not surprising. The equities simply do not support the orders that she seeks.
- [42] Ms. Ovelson entered a binding vendor-financed contract to purchase the property on October 1, 2007. She was represented by counsel.
- [43] Ms. Ovelson was aware that Mr. Laventure died prior to the property being transferred into her name. She had ample time to discuss this with her counsel prior to closing the transaction.

[44] Ms. Ovelson took possession of the property on November 2, 2007 but defaulted on the mortgage when it came due two years later. She enjoyed use of the property for several years, including after defaulting on the mortgage.

[45] Ms. Ovelson was given notice of the foreclosure proceedings. In fact, she filed a response and participated throughout. For the most part, she was represented by counsel.

[46] Despite having:

1. full knowledge that the transaction and LTO registration were completed in the name of Mr. Laventure;
2. the probate documents;
3. the Form 17 transfer of the mortgage to the petitioner; and
4. legal advice,

Ms. Ovelson did not raise allegations of fraud or other impropriety at any time leading up to the court-approved sale.

[47] The only substantive issue raised by Ms. Ovelson in opposition to the order nisi was that the "[i]nterest claimed by the Petitioner under the mortgage contravenes s. 8.1 of the Canada Interest Act, R.S.C. 1985, c. I.15." [1]

[48] The only issues raised by Ms. Ovelson in opposition to the sale to the Horsfields were that the proposed sale price was below market value and, if the court approved the proposed sale, she needed more time to move.

[49] Ms. Ovelson did not appeal either the order nisi of foreclosure or the order approving the sale of the property.

[50] The property has now been sold to good faith purchasers for value who have been in possession of the property for more than eight years. She has not given them notice of her application and comes to court with absolutely no plan to deal with their vested interests.

[51] Ms. Ovelson says that it was not until counsel for the petitioner wrote to her in 2019 that she "became fully aware that a personal liability was being alleged." This is hard to accept given that:

1. On October 31, 2007, she acknowledged in writing that she received a copy of the prescribed standard mortgage terms and that she understood they formed part of the mortgage she received. These well-known terms stipulate what happens in the event of a default by a borrower, including the possibility of a foreclosure;
2. The petition expressly sought personal judgment against Ms. Ovelson on her covenant to pay; and

3. Ms. Ovelson was represented by counsel when she entered the contract of purchase and sale with Mr. Laventure and throughout most of the foreclosure proceedings.
- [52] Ms. Ovelson has adduced no evidence to establish that she would not have completed the contract of purchase and sale if she had been made aware that the transaction had to be completed by Mr. Laventure's executor. Perhaps that is because it is so apparent that she would have.
- [53] Had the parties identified that the transaction had to be completed by Mr. Laventure's executor, there may have been a delay but there is no reason to think that Ms. Ovelson would have tried to wiggle out of the transaction. Ms. Ovelson obviously wanted the property, and thought the purchase price and terms of financing were fair. Surely, that is why she entered the contract of purchase and sale, and completed the transaction in the first place.
- [54] Ms. Ovelson has failed to demonstrate that she could have escaped the binding contract she entered due to Mr. Laventure's untimely death.
- [55] Ms. Ovelson defaulted on and was unable to redeem the mortgage. There is no reason for me to think that would have changed. No matter what else happened, the property would inevitably have become the subject of foreclosure proceedings.
- [56] The court was satisfied that the sale to the Horsfields was provident or it would not have approved the sale. No matter what else happened, Ms. Ovelson would be facing a substantial personal judgment.
- [57] At the end of the day, I simply fail to see how it is unfair to Ms. Ovelson to hold her to a deal she wanted and completed, especially after she received the benefit of the deal (ownership of the property) but then failed to live up to her obligations under the deal (payment of the balance of the mortgage).
- [58] I also fail to see how voiding the transactions and orders would be fair to Mr. Laventure's estate and beneficiaries. Contrary to Ms. Ovelson's bald assertions that the petitioner wrongfully converted the property for his own benefit, the petitioner's unequivocal evidence is that all proceeds of the court-approved sale have been appropriately distributed to Mr. Laventure's beneficiary grandchildren through the terms of a trust. The estate is clearly entitled to the benefit of the deal Mr. Laventure struck with Ms. Ovelson.
- [59] Finally, I fail to see how voiding the transactions and orders would be fair to the Horsfields. They are innocent third parties who purchased the property transparently through a court-approved sale process without notice of any of the concerns Ms. Ovelson has raised in her application.

Conclusion

[60] For the reasons expressed, the evidence falls far short of establishing fraud or knowing deceit on the part of the petitioner, the court lacks jurisdiction under the LTA to make the orders sought by Ms. Ovelson, the maxim *ex turpi causa* does not arise, and the equities do not support Ms. Ovelson. I must, therefore, dismiss her application.

Special Costs

[61] In *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 8, Walker J. neatly summarized the principles regarding special costs as follows:

[8] Special costs are awarded where a litigant engaged in reprehensible conduct. The purpose of an award of special costs is to chastise a litigant. Special costs are punitive in nature and encompass an element of deterrence. A wide meaning is given to the word "reprehensible". The term represents a general and all encompassing expression of the applicable standard for an award of special costs. "Reprehensible" conduct includes conduct that is scandalous, outrageous, or constitutes misbehaviour, as well as milder forms of misconduct that in a court's view deserves reproof or rebuke. In determining whether the conduct of a party is reprehensible, courts may consider whether the conduct complained of is a type from which it should seek to dissociate itself: [cites omitted].

[62] At para. 11, Walker J. then listed a number of situations in which special costs may be awarded:

[11] Special costs may be ordered in the following circumstances:

- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
- (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- (c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
- (d) where a party made the resolution of an issue far more difficult than it should have been;
- (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
- (f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;
- (g) where a party brings a proceeding for an improper motive;
- (h) where a party maintains unfounded allegations of fraud or dishonesty; and

- (i) where a party pursues claims frivolously or without foundation.

[cites omitted]

[63] In my view, the circumstances justify an award of special costs in this case.

[64] Ms. Ovelson has pursued a meritless claim and has been reckless with regard to the truth. For example, she has baldly but incorrectly asserted that the petitioner wrongfully converted the property for his own benefit and that the Horsfields were his friends.

[65] Ms. Ovelson has made unfounded allegations of fraud and knowing intent to deceive against the petitioner.

[66] Ms. Ovelson has been recklessly indifferent by failing to recognize at an early stage that her claim was manifestly deficient. She based her claim on fraud and proceeded with no evidence that any fraud had occurred. On a plain reading of the LTA, she had to know that ss. 387 and 388 could not assist her unless she could establish that the Horsfields were not good faith purchasers for value. Rather than recognize she had no evidence to support such a position, she made up an allegation that the petitioner and the Horsfields were friends. She also proceeded despite the equities being squarely against her.

[67] The petitioner's response clearly articulated all of the reasons why Ms. Ovelson's application was completely devoid of merit and bound to fail. Rather than abandon her application, she persisted with it.

[68] Ms. Ovelson has made enforcement of the petition far more complicated than it ought to be. Her application was not supported by any authorities on key points and, respectfully, has been a giant waste of time.

[69] In all of the circumstances, I am forced to conclude that Ms. Ovelson pursued her application frivolously and without foundation.

[70] Ms. Ovelson's conduct has been reprehensible as that term is used in the context of special costs. The court must dissociate itself from her conduct. I am doing so through an award of special costs.

Costs of the Petitioner's Application for Disclosure

[71] The deadline for Ms. Ovelson and M.B.M. to comply with the order of Master Schwartz was April 10, 2020. This date fell several weeks after British Columbia declared a state of emergency in relation to the COVID-19 pandemic and I am prepared to accept that the pandemic played a role in the failure of Ms. Ovelson and M.B.M. to comply.

[72] While the petitioner should not have been put to the effort of making a second disclosure application, to their credit, Ms. Ovelson and M.B.M. ultimately consented to the order sought.

- [73] In the circumstances, I am unable to conclude that the conduct of Ms. Ovelson and M.B.M. has been reprehensible. An award of special costs is, therefore, not justified.
- [74] The petitioner's application was of no more than usual difficulty. There is no basis to award costs at a higher scale or in a lump amount that is greater than ordinary costs at scale B.
- [75] In the result, the petitioner will have his costs in relation to his disclosure application at scale B.

Conclusion and Order

- [76] Ms. Ovelson's application was, from the outset, a badly misguided exercise in futility. Her application filed on April 29, 2020 to set aside the transactions and orders at issue is dismissed with special costs.
- [77] It is unfortunate that the petitioner was compelled to make a second disclosure application but Ms. Ovelson and M.B.M. consented to the substantive order sought by the petitioner and have not engaged in reprehensible conduct. The petitioner shall have the costs of his application filed on July 17, 2020 at scale B.

"L.S. Marchand J."

MARCHAND J.

- [1] There is no s. 8.1 of the Canada Interest Act. Presumably, Ms. Ovelson meant s. 8(1) which provides: "No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears."

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