

CANADA / JUDGMENT

Paradigm Quest Inc. v. Pacific Pask Holdings Ltd.

2021 BCSC 1455

COURT

Supreme Court of British Columbia

DECIDED

26 July 2021

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2021 BCSC 1455 Paradigm Quest Inc. v. Pacific Pask Holdings Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Paradigm Quest Inc. v. Pacific Pask Holdings Ltd.,

2021 BCSC 1455

Date: 20210726

Docket: H125760

Registry: Kelowna

Between:

Paradigm Quest Inc.

Petitioner

And

Pacific Pask Holdings Ltd., Arvind Shankar, Mahmood Mangalji, Shairoze Chagan, Axus Property Corporation, also known as Axus Property Corp.

Respondents

Before: The Honourable Mr. Justice N. Smith

On appeal from: An order of the Supreme Court of British Columbia, dated June 16, 2021 (Paradigm Quest Inc. v. Pacific Pask Holdings Ltd., Kelowna Registry, H125760).

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

July 20, 2021

Place and Date of Judgment:

Vancouver, B.C.

July 26, 2021

- [1] The mortgagors in a foreclosure proceeding appeal from a Master's order approving sale of the property at issue.
- [2] The proceeding concerns a development property consisting of six vacant lots in Kelowna. Following an order nisi of foreclosure and expiry of the redemption period, the court gave conduct of sale to the holders of a second mortgage. On June 16, 2021, the Master approved sale of the property for \$8,311,000. The appeal was heard on July 20, 2021 and the sale is to complete on July 31, 2021.
- [3] The property was listed for sale on April 21, 2021 at a price of \$7.1 million. That price was consistent with an appraisal by NCA Commercial Appraisers that estimated the property's value to be \$7 million (the "NCA appraisal"). The NCA appraisal is dated April 19, 2021.
- [4] The mortgagees received and sought approval for an offer of \$7,020,000. That offer was received on the first day the property was listed and was originally in the amount of \$7,120,000, but was subsequently reduced because of a potential issue relating to a pending development permit application. Two other offers were received at lower prices and were rejected.

- [5] At the hearing before the Master on June 16, 2021, the mortgagors relied on an appraisal they had obtained from Kurjata Consulting that estimated a value of \$8,530,000 (the "Kurjata appraisal"). The Kurjata appraisal is dated May 16, 2021--that is after the mortgagees had listed the property in accordance the NCA appraisal and received an offer. The mortgagees say they had no knowledge of the Kurjata appraisal until it was exhibited to an affidavit from the mortgagors dated June 14, 2021.
- [6] At the hearing to approve the sale, the master received and approved a competing offer from another buyer in the amount of \$8,311,000. Although that approved sale price is very close to the appraised value the mortgagors relied upon, they say the entire process was tainted by inadequate marketing efforts and a listing price that was too low.
- [7] An order for sale is a final order that a Master is permitted to make. The appeal from it is therefore in the form of a rehearing, although with some measure of deference to the Master's reasoning due to the greater level of experience that Masters have in such matters: 366671 British Columbia Ltd. v. Arbutus Bay Estates Ltd., 2021 BCSC 884 [Arbutus Bay] at para. 3.
- [8] In order to obtain approval for sale, "the mortgagee must go about finding a buyer in a businesslike manner and the court must be satisfied that the proposed sale is provident in all the circumstances." Mission Creek Mortgage Ltd. v. Angleland Holdings Inc., 2013 BCCA 281 [Mission Creek] at para. 40.
- [9] The first branch of the test relates to the efforts that led to an offer being made and presented to the court. If the mortgagee cannot satisfy the Court that the sales process was conducted in a businesslike manner, the Court will likely be unable to find that the sale was provident: Arbutus Bay at para. 28. In any event, the question of whether the offer represents a provident sale is assessed as of the date the approval application is heard, not the date the offer was signed. That is why, in foreclosure proceedings, properties under offer continue to be marketed until the date set for court approval. MCAP Service Corporation v. Chichak 2015 BCSC 1514 at para. 41.
- [10] In considering whether the property had been marketed in a businesslike manner, the Master had evidence contained in a marketing summary prepared by the mortgagees' realtor. The stated facts included:
- a) the Property is comprised of vacant land, and has been so for the duration of the listing;
 - b) the Property has been listed on the MLS system throughout the listing, and has been also advertised on the realtor's website;
 - c) the web listing has been viewed 219 times as of May 19, 2021;
 - d) an email campaign targeted 329 recipients, including developers and land purchasers;

- e) over the course of the listing, there were 12 inquiries and three offers (as set out in paragraph four above); and
- f) the Property was appraised according to its pending development permit application for 110 residential units, and rezoning from RU6 to RM5 Medium Density Residential.

[11] The Master concluded:

[15] In my view, the marketing of the Property has been properly executed by Mr. Hudson. The Property has been exposed to the market via the MLS system. It has also been marketed on the realtors' website, and was the subject of a targeted email campaign, among other efforts.

[12] The mortgagors point out that the offer presented by the mortgagees was received on the first day the property was listed and say the property was therefore not exposed to the market for a sufficient length of time. They rely on the fact that both appraisals recommended a listing period of three to six months.

[13] In Mission Creek, the Court of Appeal said at para. 57 that such time estimates by appraisers do not require marketing for that length of time:

That period of time is only a suggestion as to how long it might take to find a judicially-acceptable buyer, not how long the property must be on the market before the necessary approval can be sought. An acceptable offer might be made at any time and the issue becomes whether a particular offer, regardless of when it is made, should be approved.

[14] The Master's analysis on that point was consistent with that authority:

[15] I also point out that the three-to-six-month number set out in the two appraisals is not a strict requirement as to how long a Property must be marketed to achieve fair market value. Similarly, there was no order that the Property be marketed for that period of time. Those are simply recommendations in which the appraisers set out the range in which one would normally expect land be marketed in order to obtain fair market value.

[16] Certainly, if there is an offer for the purchase of land before three months pass, and that offer represents fair market value, there is certainly no requirement that a listing party hold off on accepting that offer. It is possible that the market changes and the seller perhaps loses that offer, and is not able to obtain another one that strong.

[15] The offer presented was slightly higher than the value stated in the NCA appraisal that the mortgagees had obtained. There is no challenge to the qualifications of that appraiser. There is no evidence of any reason the mortgagees should not have relied on the NCA appraisal or should have anticipated the subsequent Kurjata appraisal and its substantially higher estimate of value. The mortgagees continued to market the property after the offer was received, as they were required to do, but they were not required to ignore an offer that accorded with their appraisal and listing price simply because it came too early.

- [16] On the question of whether the property was marketed in a businesslike manner, I find that the Master's conclusion was well-supported by the evidence and I would reach the same conclusion.
- [17] Having decided the property was marketed in a businesslike manner, the Master turned to the question of whether the sale was provident and said:
- [18] The original offer before the court at \$7,020,000 clearly exceeds the amount set out in the NCA appraisal, and in my view that offer does represent fair market value. As such, it is therefore appropriate take the next step, which is to examine the competing bids.
- [18] I find the Master's statement that the offer of a little more than \$7 million represented fair market value to be somewhat puzzling. It certainly represented what the mortgagees reasonably understood to be fair market value when the property was listed, when the offer was received, and when the application for approval of sale was filed. That may be what the Master was referring to
- [19] By the date of the hearing, the \$8.5 million value suggested by the Kurjata appraisal was before the Court. The Master could not have found the \$7 million price to represent fair market value without some analysis of the competing appraisals and a reason to reject the Kurjata appraisal. However, that is irrelevant in view of what the Master actually did and no such analysis of the appraisals was necessary.
- [20] Even if the Master intended to say that the \$7 million offer represented fair market value as of the date of the hearing, he did not approve sale at that price. Instead, he approved a competing bid at \$8.3 million--approximately 97% of the value suggested by the Kurjata appraisal. For all practical purposes, the Master gave effect to the Kurjata appraisal, although he didn't express his decision in those terms.
- [21] The mortgagors argue that the subsequent offer that was approved cannot be relied upon as representing fair market value because the listing price set too low a baseline for subsequent offers. They rely on a passage from *Arbutus Bay*, where Justice Saunders said at para. 25:

The fact that bidding took place might be treated as evidence that the sale was provident, but only if the marketing were found to have been businesslike. What would have attracted another bidder is that the first bid, submitted for court approval, was perceived as low. The receipt of a low bid, in relation to the appraised value, when the Lands had not been marketed at a steady, realistic price for a significant period of time, is not an indication that the marketing had been appropriate.

- [22] In Arbutus Bay, the property at issue was listed for sale at a price of a little less than \$2.1 million, which was close to the value in a recent appraisal. However, that listing price was reduced twice over the following three months and again after a further three months. The final listing price was \$1,799,000. Three days after that final price reduction, an offer of \$1,630,000 was accepted subject to court approval. At the hearing for approval, two new bids were received, and the Master approved one for \$1,830,000. Saunders J. said at para 24:
- [24] The Master considered that the sale ultimately approved of was only 15% less than the appraised value. That is of course the case; but that offer was the highest of a series of bids that began with an offer that was only 75% of the appraised value. The Master's reasons did not account for how the sales process may have been tainted by the pattern of steady successive price reductions; had the price not been lowered in that manner, the bidding may very well have started from a higher floor.
- [23] The facts of this case are in no way comparable. The property price here was not reduced below the appraised value that the mortgagees reasonably relied on. The offer the mortgagees presented was consistent with that appraised value. More important, the mortgagors put forward a subsequent appraisal that placed a higher value on the property and the sale price that the Master approved was in accordance with that higher value.
- [24] I find that the sale, as approved by the Master, was provident based on the appraisal evidence that the mortgagors themselves relied on. Even if the property could somehow have been listed at a price consistent with the Kurjata appraisal (which did not yet exist at the time of listing), there is no evidence to support the mortgagors' speculation that might have attracted an offer significantly higher than what was ultimately accepted.
- [25] The appeal is dismissed.

"N. Smith, J"

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