

CANADA / JUDGMENT

Urban Land Holdings Ltd. v. Babich

2020 BCSC 1326

COURT

Supreme Court of British Columbia

DECIDED

6 March 2020

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2020 BCSC 1326 Urban Land Holdings Ltd. v. Babich

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Urban Land Holdings Ltd. v. Babich,

2020 BCSC 1326

Date: 20200306

Docket: S33745

Registry: Chilliwack

Between:

Urban Land Holdings Ltd.

Petitioner

And

Earl Steven Babich and

Monique Jacqueline Babich

Respondents

Before: The Honourable Justice A. Ross

On appeal from: An order of a Master of Supreme Court of British Columbia, dated January 6, 2020 (Urban Land Holdings Ltd. v. Babich, Chilliwack Docket S33745).

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

A. Habib

The Respondent Earl Steven Babich, appearing in person:

E. Babich

Appearing as representative for
the Respondent Monique Babich:

A. Sello

Place and Date of Trial/Hearing:

New Westminster, B.C.

March 6, 2020

Place and Date of Judgment:

New Westminster, B.C.

March 6, 2020

- [1] THE COURT: This will be my ruling on the appeal. For the sake of expediency, I am providing these reasons orally. I reserve the right to edit them for grammar and syntax. The result will not change.
- [2] This is an appeal by the respondent from the decision of Master Keighley granting the petitioner's application for approval of sale. This appeal was set down for a full day in chambers. The appellant, Mr. Babich, who was self-represented, made submissions until 3 p.m. I heard the respondents for about 15 minutes each. Mr. Babich then had the chance to reply and I am providing these reasons at 4 p.m.
- [3] Master Keighley's order arose from two applications brought on January 6, 2020. The petitioner, Urban Land Holdings Ltd., brought its application for an order approving the sale of the subject property. At the same time, the appellant in this hearing, Earl Babich, sought an order dismissing the petitioner's application for approval of sale, extending the redemption period, and seeking other relief that is set out in paras. 2-10 of his application.
- [4] Master Keighley granted the petitioner's application and dismissed Mr. Babich's application.
- [5] As noted, Mr. Babich appeals Master Keighley's decision in both granting the approval of sale and dismissing of his own application. His notice of appeal sets out 24 grounds for his appeal. However, in effect, those 24 grounds boil down to the following:

- (a) The offers tendered in support of the application and before Master Keighley were not properly before the court because they were not provident and therefore the application should have been dismissed.
 - (b) There was evidence of a reasonable prospect of payment of the mortgage, and as such, the extension of time should have been granted.
 - (c) The marketing of the property was imprudent, leading to offers on the property that were, Mr. Babich submits, improvident.
 - (d) Thus, in the petitioner's application for approval, Mr. Babich says that the sale should not have been approved and should not have been allowed to proceed because of improvident offers being included in the notice of application.
- [6] The appellant argues that I should overturn the order approving the sale, grant him an extension of time and the other relief sought before Master Keighley on January 6, 2020.
- [7] The foundation of the appellant's argument is that he has been in the process of obtaining a subdivision of the subject property. Following that subdivision, there will be three lots which, he says, will be worth more than the approved sale price.
- [8] The procedural background leading to the January 6 hearing is complex. That procedural background up to August 2019 was described accurately by Justice Forth in her reasons indexed at 2019 BCSC 1318. That decision related to another appeal by Mr. Babich of another order of Master Keighley. I will not restate the procedural history, but I have reviewed and considered it.
- [9] Justice Forth's discussion includes a description of the family law proceedings between the two respondents. As of the date of Justice Forth's reasons, that litigation had not resolved. I understand that that litigation did resolve prior to the hearing before Master Keighley with the result that Earl Babich is obligated to pay Monique Babich \$150,000 from the sale of the property or otherwise.
- [10] EARL BABICH: That's not -- not entirely correct.
- [11] THE COURT: In December 2019, Urban Land Holdings Ltd., the mortgagor, brought an application for approval of the sale of the property. At the same time, the respondent Earl Babich brought his application for an extension of time and other relief. For that reason, the hearing of the approval of sale was adjourned to January 6, 2020, so that the two matters could be heard at the same time.

Standard of Review

- [12] The standard of review on an appeal from a master's decision is set out in *Abermin Corp. v. Granges Exploration Ltd.* (1990), 45 B.C.L.R. (2d) 188 (S.C.); that is, first, review of a purely interlocutory decision of a master is a true appeal, and a master's decision is not to be interfered with unless it is clearly wrong.
- [13] Second, a question of law, a final order, or a ruling that raises questions vital to the final issue in the case are reviewed by way of a rehearing on the merits based on the record before the master. Even where exercise of discretion is involved, the judge hearing the appeal may quite properly substitute his or her own view for that of the master.
- [14] The standard of appeal specifically relating to the order of a master in relation to the final order of sale in a foreclosure is set out by Justice Butler, as he then was, in *Tekamar Mortgage Fund v. Hegel*, 2018 BCSC 1369. Para. 19 of that decision state:
- [19] In *Kokanee*, Mr. Justice Gaul noted at para. 14 that because a final order for sale raises questions vital to the final issue, an appeal from an order for sale is a rehearing on the merits and the judge is able to substitute his or her own assessment of the evidence for that of the master. However, in commenting on the standard of review at para. 15, he referred to the decision of the Court of Appeal in *Baron Enterprises*:
- 15 The parties to the present appeal agree that the master's order in question is a final order and therefore the proceeding before me is in essence a *de novo* hearing. While the law permits me to substitute my judgment for that of the master, in considering this appeal I have kept in mind the fact that masters hear and resolve applications for the approval of sales in foreclosure proceedings on a much more regular basis than judges of this court, and consequently they have accumulated a level of expertise in this area of law that should not be ignored or quickly discounted. On this point, I have taken note of and have adopted the following observations of Mr. Justice Esson in *British Columbia v. Baron Enterprises Ltd.*, 2000 BCCA 317:
- [44] the masters, a relatively small and cohesive group, have heard the great majority of applications to approve sales. They have gained a level of experience in these difficult matters which is higher than that of most judges. That being so, it is appropriate that judges hearing appeals from masters in these cases should start with the assumption that the masters understand the legal principles and factual considerations applicable to such applications.
- [45] In saying that, I should not be taken as suggesting that the principles laid down in *Abermin Corp. v. Granges Explor. Ltd.* [citation omitted] should be modified . . . But, in deciding whether to give effect to a different view, a judge should give due recognition to the reality that masters have certain advantages arising out of their great experience in matters of this kind.
- [15] The standard of appeal from an Order for Sale is as follows. The court

- [20] ... must consider the evidence that was before the master and may substitute its judgment for that of the master. However, in doing so, the court must give due recognition to the expertise that masters bring to consideration of applications to approve sales in foreclosure proceedings. In other words, some deference is owed to the master's decision.
- [16] In this case, both standards of review apply. The appellant says that the process engaged by Master Keighley in rejecting his application for an extension of time and other relief was an interim order. The test to convince me to overturn that order is whether the decision was clearly wrong.
- [17] I find that it was not clearly wrong.
- [18] That leads me to a consideration of whether Master Keighley's order approving the sale of the property was correct. In that regard, the question is whether I would substitute my opinion for that of Master Keighley, giving due deference to his experience in foreclosure chambers.
- [19] The overriding question for this consideration is whether the sale was provident. In his long submissions, Mr. Babich argued a number of different matters, all of which attempted to indicate that improper evidence was considered by Master Keighley or, alternatively, that the value of the property was not properly considered by Master Keighley.
- [20] In his short submissions, Mr. Habib took me to the affidavit of Mr. Sunny Ahuja, who was the listing real estate agent. That affidavit, which was before Master Keighley, runs more than 98 pages and outlines all of the efforts that were made to market the property between March 1, 2019, and November 2019.
- [21] I note that pursuant to a prior order, Mr. Babich had conduct of sale between January and February 2019.
- [22] I have reviewed the decision of Master Keighley. I have reviewed the tests that he applied, and I have found that he applied the correct tests.
- [23] I also note that having reviewed the procedural history of this matter, it is replete with applications by the mortgagor that were opposed by Mr. Babich. Those decisions were followed by Mr. Babich's appeals of those orders.
- [24] Despite receiving some degree of relief over time, including prior extensions of redemption period, Mr. Babich has not been able to provide any evidence that there is any real prospect of obtaining the subdivision approval that is the crux of his argument for a higher value to the land.
- [25] I note the appraisals of the land that were provided to Master Keighley, including one dated November 27, 2019, indicated a value, at that time, of \$935,000. Based on that appraisal, an offer was tendered to Mr. Habib in the amount of \$947,000. That offer was the basis of the original application for approval that was set to proceed in December 2019.

- [26] Thereafter, a sealed bid process proceeded, leading to the offer that was considered by Master Keighley on January 6, 2020. The highest offer on that date was in the amount of \$1,200,000, which far exceeded the appraisal value that was in Mr. Ahuja's affidavit and the other offer.
- [27] Based on all of the evidence, it is clear that Master Keighley made his order with the proper legal tests in mind. There was ample evidence to support his decision. I find no evidence that would lead me to a different conclusion than that reached by Master Keighley.
- [28] On that basis, the appellant's appeal is dismissed with costs to follow the event. That concludes my reasons.
- [29] MR. HABIB: And I take it that is costs at Scale B?
- [30] THE COURT: Costs at Scale B.
- [31] MR. HABIB: And the approval as to form can be dispensed with, and I'll prepare the formal order?
- [32] THE COURT: Yes, that is correct, Mr. Habib.
- [33] MR. HABIB: Thank you, My Lord.

"A. Ross J."

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