

CANADA / JUDGMENT

V.W.R. Capital Corp. v. Keremelevski

2009 BCCA 479

COURT

British Columbia Court of Appeal

DECIDED

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2009 BCCA 479 V.W.R. Capital Corp. v. Keremelevski COURT OF APPEAL FOR BRITISH COLUMBIA
Citation: V.W.R. Capital Corp. v. Keremelevski, 2009 BCCA 479 Date: 20091029 Docket: CA036524
Between: V.W.R. Capital Corporation Respondent (Petitioner) And Bozidar Vujicic and Svetlana Vujicic Canadian Western Trust Company Ivanco Keremelevski Appellants (Respondents) Before: The Honourable Madam Justice Saunders The Honourable Madam Justice D. Smith The Honourable Madam Justice Garson Application to vary order: British Columbia Court of Appeal, February 25, 2009 (V.W.R. Capital Corp. v. Keremelevski, Vancouver Reg. CA036524) Oral Reasons for Judgment Appellants appearing In Person: B. Vujicic, I. Keremelevski Counsel for the Respondent: P. Roxburgh Place and Date of Hearing: Vancouver, British Columbia October 29, 2009 Place and Date of Judgment: Vancouver, British Columbia October 29, 2009

- [1] SAUNDERS J.A.: This is the application of Bozidar Vujicic under section 9(6) of the court of Appeal Act for an order to discharge or vary the order of Madam Justice Newbury made on 16 February 2009 refusing leave to appeal the order nisi of foreclosure pronounced by Madam Justice Bruce in Supreme Court on Wednesday Sept 24, 2008.
- [2] I would not grant this application.
- [3] In the action V.W.R. Capital Corp., brought foreclosure proceedings, seeking a declaration that the Mortgage and Assignment of Rents, made between the V.W.R. Capital Corp., as Mortgagee and Bozidar Vujicic and Svetlana Vujicic as Mortgagors, charged the lands mentioned in the mortgage, and was in default. It also sought a redemption period of six months and other related relief.
- [4] Madam Justice Bruce granted the orders sought in the petition. Her reasons for judgment are brief, they are found in the Appeal Record, and simply record the making of the order nisi, her determination of the redemption amount, the setting of a six months redemption period, the award of costs on a party and party basis, and the giving of personal judgment against the mortgagors.
- [5] Mr. Vujisic contests the order in the foreclosure proceeding on several bases. The major issues he raises are a contention that the mortgage is not enforceable because he did not receive the disclosure documents, that his signature on one document may be forged, that

the mortgage was not in default because the Mortgagee had an assignment of the rents on the property, received the rents and was obliged to apply them to the mortgage such that the mortgage then would not be in default, that the Mortgagee proceeded too expeditiously with the foreclosure petition, and that the petition and other documents in the court proceedings were not properly served. I do not repeat here all the points made by Mr. Vujisic because some of them are so unrelated to the foreclosure proceedings, such as application of other laws, that they have no bearing at all on the foreclosure proceedings. We have, however, read the submission, the written memorandum that Mr. Vujisic presented to the Court.

- [6] It is of significance to these proceedings that the funds secured by the mortgage were advanced to pay out a pre-existing mortgage in the amount of about \$100,000, and a judgment. Mr. Vujisic contends that \$2,800 was paid to a Brick store which ought not to have been paid. Mr. Vujisic has a counter claim which is not part of the order he wishes to appeal.
- [7] I am satisfied that there is no prospect the order of Madam Justice Bruce would be set aside by a division of this Court for any of the grounds I have listed by a division of this Court. First, as to the disclosure statement, I observe that Mr. Vujisic, before Madam Justice Newbury, agreed he had signed most of the pages of the disclosure statement. At page 34 of the transcript of the hearing before her he said: If you go first to let me - - here we have fixed credit disclosure statement - - ... On the bottom we have stamped approved and my initials, the second page we have approved, my initials, and two signatures. That's my signature here, and then we have a third page also with stamp on the bottom my initials and fourth page is some signature, is not - - I believe is not mine and we could -- I believe is not mine, ...,
- [8] While today Mr. Vujisic says one of the signatures may be forged, the time for him to adduce that evidence was in the Supreme Court of British Columbia, and not at this late date. In the context of his agreement that he signed the other pages, or initialled them, and seeing that those pages reflect the payments required, I see no basis at all for an order refusing to enforce the terms of the mortgage in issue.
- [9] In regard to the assignment of rents, it is clear that the mortgage at the time was in default. Indeed an e-mail sent by Mr. Vujisic to the Mortgagee on February 29, 2008 said: . . . I didn't approve (sic) that you pay to B.C. Brick supply \$11837.98, since as we talked I made settlement with them on \$9000 and I want back immediately my \$2837.98 as I have signed in documentation at your office and as I discussed with Norman from Delta Equities. I am not going to pay any mortgages before it is fixed. . . .
- [10] Thus we see that Mr. Vujisic was refusing to pay on the mortgage. At the same time the first payment by him by cheque on the mortgage had not been honoured by the bank. It is, then, no wonder that the Mortgagee moved to obtain the proceeds of the rent. As to those proceeds, an accounting was provided to the Supreme Court of British Columbia. One of the problems in the matter of receiving from the rents money sufficient to bring the mortgage into good standing and keep it there, was that one of the tenants, Mr. Keremelevski, did not pay his rent consistently.

- [11] Throughout the proceedings in this court Mr. Vujisic has made complaints concerning receipt of documents, and notice not given, including that his wife was served in Montenegro. However, she was served according to a court order and there can be, therefore, no complaint as to service upon her.
- [12] Mr. Vujisic also complains that he was not served. Yet he entered an appearance to the petition, filed a response, and eventually filed a counterclaim. That complaint then is without merit.
- [13] It is clear to me that there is no basis upon which to consider an appeal of the order of Madam Justice Bruce in the foreclosure proceedings could succeed. During the hearing Madam Justice Bruce said: Well, Mr. Vujicic, unfortunately the key issue here is whether or not you're paying the mortgage. And it doesn't appear that you are. It doesn't appear that you paid the mortgage since March. And I don't believe that you've pointed anything to me in the mortgage document, and I believe I've looked at that, that would allow you to hold back your mortgage payments because of some sort of dispute that you had with the mortgagor. So in my view VWR Capital Corporation is entitled to an order nisi today in the usual terms.
- [14] In dismissing Mr. Vujisic's application, Madam Justice Newbury came to the same conclusion. Her reasons are brief indeed, but there is really little else that needs to be said - there is a mortgage, the mortgage is in default, there is no hint of a reason in law or equity as to why the terms of the mortgage should not be enforced. In other words, there is no merit at all to the proposed appeal. Nor is there a point of importance to the practice. The interests of justice simply do not favour extending this matter by entertaining an appeal that cannot succeed.
- [15] In considering an application to vary an order of a single justice we consider whether the chambers judge erred in law, acted upon a wrong principle, or misunderstood the matter before her. In this case I am satisfied no basis exists for varying the order of Madam Justice Newbury and she was entirely correct in concluding the application should be dismissed.
- [16] I would dismiss this application.
- [17] D. SMITH J.A.: I agree.
- [18] GARSON J.A.: I agree.
- [19] SAUNDERS J.A.: The application is dismissed. "The Honourable Madam Justice Saunders"

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