

ONTARIO  
SUPERIOR COURT OF JUSTICE

**B E T W E E N:** )  
 )  
**ROYAL BANK OF CANADA** ) Ms. Amanda Jackson  
 ) Gowling Lafleur Henderson LLP  
 )  
 )  
 ) Plaintiff )  
 )  
 )  
**- and -** )  
 )  
 )  
**OLEG POLEI** ) Mr. Vadim Kats  
 ) Landy Marr Kats LLP  
 )  
 )  
 ) Defendant )  
 )  
 )  
 ) **HEARD:** October 6, 2009

**FESTERYGA J.**

**OVERVIEW**

[1] The plaintiff, Royal Bank of Canada (RBC) brings the motion for summary judgment against the defendant, Oleg Polei (Oleg) for the sum of \$342,017.13 up to and including March 20, 2008 together with interest thereon at the rate of 5.89% per annum from the said date to the date of payment or judgment.

[2] Further claims are brought for possession of the lands municipally known as 461 Jones Avenue, Toronto, Ontario, M4J 3G7, leave to issue a Writ of Possession in respect of the said premises, post judgment interest at the rate of 5.89% per annum, and costs on a substantial indemnity basis.

[3] The defendant has added third parties, Edward Lawrence Stone (“Stone”) who is a suspended solicitor and Brian Steinberg (“Steinberg”). It would appear that the third parties took part in a fraud to deprive RBC of the funds claimed. Oleg pleads that he is an innocent victim of the fraud and that he did not know what he was signing. He alleges that the documents were not explained to him and his understanding was that he was not to be personally responsible.

### **Issue**

[4] Is Oleg responsible to repay RBC as claimed in the summary judgment motion?

### **Defence**

[5] The defendant takes the position that he is a victim of fraud. He alleges that the third party, Steinberg asked him to take the subject property in his name and basically act as a “straw man” for which Oleg would receive \$4,000.00. He needed Oleg’s help because of his alleged inability to obtain financing.

[6] Oleg says that he was introduced to Stone, a solicitor who is now suspended. He went to the office of Stone and met a clerk of the lawyer. He alleges that there was no explanation given to him as to the personal liability on him to repay the loan.

[7] Oleg admits signing the mortgage documents. The property was registered in his name. As the mortgage payments came due he would receive money from Steinberg which he would deposit into a bank account. RBC would withdraw the monthly mortgage payments from the bank account.

[8] Eventually, Steinberg defaulted on the mortgage payments and now RBC is after Oleg for the recovery of the money and possession of the property.

[9] Oleg alleges that RBC ought to have been aware of the fraud that was going on between Stone and Steinberg. He argues that Stone was an agent of RBC and the knowledge of Stone is imputed to the Bank.

[10] There is no evidence before me that there were any representations made by Stone or his clerk to induce Oleg to sign the documents. He signed the mortgage and received a mortgage. He took part in this charade for \$4,000.00.

[11] Oleg does not put his best foot forward to satisfy me that there any “red flags” that would make RBC aware that there was a fraudulent scheme in the making. He in effect was part of the fraud in that he received payment in the sum of \$4,000.00.

[12] There is no evidence before me that any knowledge of Stone can be imputed to RBC.

### **Discussion**

[13] The situation before me appears to be on all fours with the case of *National Bank of Canada v. Meneses* [2008], O.J. No. 2108, a decision of Master Graham heard on March 5, 2008 and judgment was given on May 15, 2008.

[14] Oleg never signed any agreement of purchase and sale and later found out that the property was “flipped” on June 29, 2006 from a price of \$161,000.00 to \$342,000.00.

[15] The case before me is also similar and close to all fours on *Scotia Mortgage Corp. (“SMC”) v. Anwar* [2006], O.J. No. 1735 (Ont. S.C.J.). Mr. Justice G.F. Spiegel sets out the facts on page 2 of 4 and then on page 3 of 4 para. 9, he states:

...However the defendants sign documents by which they indicated they were the full owners of the premises. There was no indication of a trust in any of the documents that they signed. The moment that they signed the mortgage documents (knowing full well) that they were not the beneficial owners of the land; and knowing that the very purpose in setting up the documentation in the manner in which it was done was to induce SMC into doing something that it would not otherwise have done had it known the true facts, the defendants lost their innocence. In effect, if what they say is true, the defendants, Ramdeen and Khosla, all conspired to and did deceive SMC. This is no defence to SMC’s claim.

[16] As Oleg alleges, there was a scheme between Stone and Steinberg. In addition, Oleg received \$4,000.00 for taking part in depriving the plaintiff of the mortgage funds which was an innocent party.

[17] The law under summary judgment is pursuant to *Rule 20.04(2)* which indicates that if I am satisfied that there is no genuine issue for trial with respect to a claim or defence, then summary judgment should be granted.

[18] The defendant who responds to the summary judgment motion has not set out in affidavit material or other evidence specific facts to show that there is a genuine issue for trial. It is not sufficient for the responding party to say that more and better evidence will, or may, be available at trial.

[19] On the material before me, it is not at least arguable that any knowledge of Stone or his clerk can be imputed to the Bank. The only innocent party here is RBC.

### **Conclusion**

[20] There is no genuine issue for trial.

[21] There will be judgment for the plaintiff for \$342,017.13 with interest at the rate of 5.89% per annum from March 20, 2008 to October 23, 2009, in the amount of \$32,507.36 making the total judgment inclusive of interest \$374,524.49.

[22] The plaintiff will have judgment for possession of the lands described as PCL-4-2 SEC M183; PT LT 4 E/S JONES AV PL M183 TORONTO COMM AT A POINT IN THE E LIMIT OF JONES AV 21 FT; THENCE ELY PARALLEL WITH THE N LIMIT OF SAID LT 100 FT MORE OR LESS TO A LANE IN REAR OF SAID LT; THEN NLY FOLLOWING THE WLY LIMIT OF SAID LANE 21 FT TO A POINT IN THE WLY LIMIT OF SAID LANE 21 FT FROM THE NO LIMIT OF SAID LT 4; THEN WLY PARALLEL TO THE SAID NLY LIMIT OF SAID LT 100 FT MORE OR LESS TO THE POB; TORONTO, CITY OF TORONTO, Property Identification Number 21047-0153 (LT). The property is municipally known as 461 Jones Avenue, Toronto, ON M4J 3G7.

[23] The plaintiff shall have leave to issue a Writ of Possession in respect of the said premises.

[24] The plaintiff shall have post-judgment interest at the rate of 5.89% per annum.

**Costs**

[25] If the parties cannot agree on costs, they may make written submissions not to exceed ten pages and in accordance with the standards set out in *Rule 4.01* within 20 days.

---

**FESTERYGA J.**

**Released:** October 23, 2009

**COURT FILE NO.:** 08-373

**DATE:** 2009/10/23

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

ROYAL BANK OF CANADA

Plaintiff

- and -

OLEG POLEI

Defendant

---

**REASONS FOR JUDGMENT**

---

**Festeryga J.**

2009 CanLII 58060 (ON SC)

**Released:** October 23, 2009