

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2011 SKQB 437

Date: 2011 11 18
Docket: Q.B.G. No. 39 of 2011
Judicial Centre: Regina

BETWEEN:

AFFINITY CREDIT UNION

PLAINTIFF

- and -

MARK WARREN GRAY

DEFENDANT

Counsel:

Adam T. Ailsby

for MNP Ltd., Trustee in Bankruptcy
for the defendant Mark Warren Gray

Megan Milani

for Susan Gray

FIAT
November 18, 2011

MALONE J.

[1] This is an application on behalf of the Trustee in Bankruptcy of Mark Warren Gray to determine whether property known as 192 Ritter Avenue, Regina be sold to either Susan Gray and Brian McMurdo or to Ken Kreklewich.

[2] The property was sold pursuant to an order for judicial sale granted by Chicoine J. which contained the following provisions:

- (d) The Judicial Sale Officer shall have the right to reject any Offer to Purchase which it feels comes from a person who will be

unable to furnish the necessary funds to meet the Offer which the person is making;

- (e) Any sale pursuant to an offer accepted by the Judicial Sale Officer (the "Third Party Offer") shall be subject to subparagraph (f) below and further shall be conditional until confirmed by this Court, with application for confirmation of the sale to be made to this Court within six weeks following the date of the accepted Offer to Purchase;
- (f) Upon the acceptance by the Judicial Sale Officer of a Third Party Offer, the Judicial Sale Officer shall give written e-mail notice of the terms of the Third Party Offer to Neil Tulloch, solicitor for Susan Gray, and Susan Gray shall then have 72 hours from the time of the e-mail notice within which to deliver to the Listing Agent a written Offer to Purchase, matching all of the terms of the Third Party Offer, including the delivery of a deposit of \$5,000.00 by way of solicitor's trust cheque (the "Susan Gray Offer");
- (g) Should a Susan Gray Offer be made in accordance with subparagraph (f) above, the Judicial Sale Officer shall accept it;
- (h) Any Susan gray Offer accepted by the Judicial Sale Officer, shall be conditional until confirmed by this Court, with application for confirmation of the sale to be made to this Court within six weeks following the date of the accepted Offer to Purchase;

[3] The affidavit of Victor Martens who was retained by counsel for the Trustee in Bankruptcy to act as its agent in regard to the sale of the property sets out the background of the application and the relief sought by the Trustee.

[4] According to the affidavit Mr. Martens determined that the proper purchase price for the property would be \$229,500.00 with a deposit of \$5,000.00. On October 17th, 2011 Mr. Martens received a cash offer from a real estate agent on behalf of Mr. Ken Kreklewich of \$229,500.00.

[5] Counsel for Ms. Gray was notified of the Kreklewich offer on October 18th, 2011.

[6] On October 20th, 2011 Mr. Martens received an offer to purchase the property from counsel for Ms. Gray and her son Brian McMurdo with a deposit of \$5,000.00.

[7] In this regard he deposed as follows:

26. The Gray Offer outlines a purchase price of \$229,500.00 and a deposit of \$5,000.00; however, the entire purchase price apart from the deposit is to be covered by mortgage. The closing date is December 1, 2011. Susan Gray and Brian McMurdo are co-purchasers pursuant to the Gray Offer.

27. I am advised by the Judicial Sale Officer and believe it to be true that there is no clear indication that Susan Gray and Brian McMurdo have obtained a mortgage financing commitment in regard to the funds that they intend to use in order to finance their purchase of the Property.

28. As the Gray Offer uses different language than the Kreklewich Offer and the Gray Offer requires mortgage financing to succeed, it is unclear to me whether the terms of the Gray Offer match those of the Kreklewich Offer as required by the Order. As such, and further to consultation with the Judicial Sale Officer, the Gray Offer has not yet been accepted.

...

30. I make this Affidavit in support of the Judicial Sale Officer's application for an Order authorizing the sale of the Property to either Ken Kreklewich or Susan Gray and Brian McMurdo.

[8] On the return date of this application counsel for Ms. Gray advised that she and her son had received mortgage confirmation and would be in a position to match the offer of Mr. Kreklewich by paying cash for the property. That being the case I believe

paras. (f) and (g) of the order for judicial sale are applicable and accordingly the property should be sold to Ms. Gray and Mr. McMurdo and I so order.

[9] If for some reason Ms. Gray and Mr. McMurdo are unable to complete the transaction the matter can be returned to the chamber list on three days notice to the interested parties.

J.
E. C. Malone