

# COURT OF APPEAL FOR ONTARIO

CITATION: Centurion Farms Ltd. v. Citifinancial Canada Inc., 2013 ONCA 79

DATE: 20130206

DOCKET: C55762

Armstrong, Blair and Pepall JJ.A.

BETWEEN

Centurion Farms Ltd.

Plaintiff/Applicant

and

Citifinancial Canada Inc.

Defendant/Respondent

William P. Dermody and Angela Papalia, for the applicant

Kevin D. Sherkin and Robert A. Gold, for the respondent

Heard and released orally: January 28, 2013

On appeal from the judgment of Justice C.A. Tucker of the Superior Court of Justice, dated July 6, 2012.

## ENDORSEMENT

[1] This is an appeal from an order for summary judgment dismissing an action for damages for an alleged improvident sale under a mortgage that had gone into default and for an accounting under s. 27 of the *Mortgages Act*.

[2] The appellant held a third mortgage on the property in issue and received nothing from the proceeds of the sale.

[3] The appellant makes three submissions:

(i) The motion judge applied the wrong test for determining whether the sale was improvident. Counsel for the respondent conceded this issue.

(ii) The appellant argued that if the proper test were applied, the motion judge would have found the sale to be improvident.

(iii) The respondent, who was the second mortgagee, was not entitled to add to its claim the amount of the payout to discharge the first mortgage.

[4] In respect of the second submission, the proper test is whether a mortgagee has taken reasonable precautions to obtain the true market value of the property as of the date of the sale. See *Oak Orchard Developments Ltd. v. Isehan* [1987] O.J. No. 361 (Ont. H.C.) aff'd [1998] O.J. No. 2334 (Ont. C.A.). We are satisfied on the record before the court that the respondent took reasonable precautions to obtain the true market value of the property. In respect of the third submission, we are satisfied that the respondent was entitled to take the amount of the payout to the first mortgagee from the proceeds of the sale in accordance with the doctrine of equitable subrogation.

[5] The appeal is therefore dismissed. The respondent shall have its costs of the appeal fixed in the amount of \$7,500 including disbursements and applicable taxes.

“Robert P. Armstrong J.A.”

“R.A. Blair J.A.”

“S.E. Pepall J.A.”