

NOVA SCOTIA COURT OF APPEAL
Citation: *MacGillivray v. Brown*, 2024 NSCA 56

Date: 20240524
Docket: CA 523484
Registry: Halifax

Between:

William MacGillivray

Appellant

v.

Stephen Brown and Brenda Brown

Respondents

Supplementary Reasons

Judges: Farrar, Bryson, and Beaton JJ.A.

Appeal Heard: January 17, 2024, in Halifax, Nova Scotia

Held: Appeal allowed, subject to final order, per reasons for judgment of Bryson J.A.; Farrar and Beaton JJ.A. concurring

Counsel: William MacGillivray, appellant, on his own behalf
Harvey McPhee, K.C. and Kelly O'Brien, for the respondents

Reasons for judgment:

[1] In this Court’s reasons in *MacGillivray v. Brown*, 2024 NSCA 31, we found that the appellant William MacGillivray was prevented from properly redeeming the mortgage for an appropriate payment. We further found that the respondents did not give Mr. MacGillivray a final figure to redeem his mortgage. We asked the parties to make submissions on what the correct amount should be to redeem the mortgage. Those submissions were received on May 13, 2024. What follows is a chart setting forth the position of the two parties on the appropriate amount for redemption.¹

	Respondent	Appellant
Interest from July 19, 2021 through October 31, 2023	\$12,111.43	\$12,096.91
Prejudgment interest on interest amount from November 1, 2023 through May 13, 2024 (195 days)	323.52	310.25
Costs	6,500.00	6,500.00
Prejudgment interest on costs award from July 21, 2021 through May 13, 2024 (1027 days)	914.45	908.22
Minimum Bid	5,266.86	4,116.86
Prejudgment interest on minimum bid from May 29, 2023 through May 13, 2024 (350 days)	252.52	247.47
Deed Transfer Tax and Recording Fee	5,000.00	0.00
Prejudgment interest on Deed Transfer Tax and Recording Fee from June 26, 2023 through May 6, 2024 (322 days)	220.55	0.00
Eviction Fees – Sheriffs and Security	331.60	0.00
Prejudgment interest on eviction fees from June 29, 2023 through May 13, 2024 (319 days)	14.49	0.00
Prejudgment interest on \$314,733.14 from June 1, 2023 through September 13, 2023	4,483.87	4,483.87
1.5% interest on \$314,733.14 from September 14, 2023 through May 13, 2024	3,130.09	0.00
Insurance on 3457 Eskasoni Road from June 5, 2023 through May 13, 2024	864.82	0.00
Prejudgment interest on insurance premiums from June 5, 2023 through May 13, 2024 (reduced by 50% due to payment over time) (343 days)	20.32	0.00
Nova Scotia Power bill – July 12, 2023	45.67	0.00
Prejudgment interest on Nova Scotia Power bill from July 12, 2023 through May 13, 2024 (306 days)	1.91	0.00

¹ The appellant, in his amounts, has calculated prejudgment interest to May 6, 2024. We have used May 13, 2024 as the appropriate date for calculating prejudgment interest.

Nova Scotia Power bill – September 12, 2023	344.88	0.00
Prejudgment interest on Nova Scotia Power bill from September 12, 2023 through May 6, 2024 (237 days)	11.20	0.00
TOTAL	\$39,838.18	\$22,097.21

[2] The following is determined by the Court to be the appropriate amounts to redeem.

Interest on \$106,011.29 at 5% Until Payment

[3] On October 30, 2023, the appellant paid the sum of \$106,011.29 into Sampson McDougall in Trust. Interest on that amount to October 30, 2023 is \$12,096.91. Prejudgment interest on that \$12,096.91 to May 13, 2023 is \$323.14.

Costs

[4] The parties are agreeable that costs in the amount of \$6,500.00 are payable. We would not allow prejudgment interest on the costs.

[5] We accept the appellant's position that the minimum bid should be the annual tax owed for 2023 in the amount of \$4,116.86. Prejudgment interest for 350 days on that amount is \$197.38 for a total of \$4,314.24.

Deed Transfer Tax

[6] With respect to Deed Transfer Tax and Recording Fees we would allow 50% of that amount in light of our finding that neither party was without fault with respect to this matter. It may be that the Deed Transfer Tax can be recovered if the Property is redeemed as set out in the Interim Order. We would allow \$110.27 in prejudgment interest on the Deed Transfer Tax for a total of \$2,610.27.

Eviction Fees

[7] We would not allow the claim for Eviction Fees.

Prejudgment Interest on \$314,733.14

[8] Again, because both parties bear fault for the way in which this proceeded, the sale should have never taken place in the manner it did. As a result, we would allow 50% of the prejudgment interest on \$314,733.14 from June 1, 2023 through September 13, 2023 in the amount of \$2,241.94.

[9] We would also allow half the prejudgment interest on \$314,733 from September 14, 2023 to May 13, 2024 in the amount of \$1,565.

[10] We would not allow any other amounts being claimed by the respondents as they were unnecessarily incurred by the impugned process followed by them.

Conclusion

[11] In summary, the allowable amount is \$29,653.20. The appellant has until noon on June 7, 2024 to redeem, which is an additional 26 days from May 13, 2024. We would allow interest on \$29,636.20 at 5% per annum until the date of redemption. If it is redeemed on June 7, 2024, the interest is \$105.61 or approximately \$4 per day for a total of \$29,758.81. If the appellant redeems before noon on June 7, 2024, the amount will reduce by \$4 per day. For example, if he redeems on June 5, 2024, the amount would be \$29,750.81.

Interest on \$106,011.29 from July 19, 2021 to October 30, 2023	\$12,096.91
Prejudgment interest from October 30, 2023 to May 13, 2024 (196 days)	324.79
Costs	6,500.00
Minimum bid prejudgment interest	4,116.86
Prejudgment Interest	197.38
Deed transfer tax	2,500.00
Prejudgment Interest	110.27
One-half of the prejudgment interest on \$314,733.14 from June 1, 2023 to September 13, 2023	2,241.94
One-half of the interest on \$314,733.14 from September 14, 2023 to May 13, 2024	1,565.05
TOTAL	\$29,653.20
Interest at 5% to June 7, 2024	105.61
TOTAL	\$29,758.81

[12] Therefore, the total amount to redeem is \$29,758.81 before noon on June 7, 2024.

[13] The appellant must tender that sum to Sampson McPhee on or before noon on Friday, June 7, 2024. On confirmation the amount has been paid, the Court will issue a final Order confirming redemption of the Property and ancillary directions. If he fails to do so, his right to redeem shall expire.

Farrar J.A.

Bryson J.A.

Beaton J.A.