

SUPREME COURT OF NOVA SCOTIA

Citation: *Canada Mortgage and Housing Corporation v. Gravelle*, 2023 NSSC 26

Date: 20230127

Docket: Hfx No. 496877

Registry: Halifax

Between:

Canada Mortgage and Housing Corporation

Applicant

v.

David Eugene Gravelle, also known as David E. Gravelle, also known as David T. Gravelle, Michelle Sadie Gravelle, also known as Michelle S. Hamilton, also known as Michele Saide Hamilton, also known as Michelle Sadie Hamilton and Bhupinder Boparai and Dhonkal Kamjit and Gurmeet Sing Dhonkal
Respondents

DECISION

Judge: The Honourable Justice Peter Rosinski

Heard: January 18, 2023, in Halifax, Nova Scotia

Written Decision: January 27, 2023

Counsel: Josh Santimaw, for the Applicant
Michael Curry, for the Respondent David Gravelle

By the Court:

Introduction

[1] A judgment requiring Mr. David Gravelle to pay money was rendered against him by the Court of Queen’s Bench of Alberta on August 18, 2010, and recorded as “filed” with the Court on August 26, 2020.¹

[2] On September 27, 2019, Canada Mortgage and Housing Corporation (“CMHC”) was substituted for CIBC Mortgages Inc. as plaintiff (having been assigned those rights by CIBC), and the order of that date also included adding various aliases for David Eugene Gravelle and Michelle Sadie Gravelle in the style of cause.

[3] On June 16, 2022, CMHC filed a second amended *ex parte* application requesting this court “to make two final judgments of the [Court of Queen’s Bench

¹ The Order contemplated a deficiency judgment calculation, pursuant to paragraph 7 thereof: “It Is Ordered That:… 7. The Plaintiff is granted judgment against the Defendants, David Eugene Gravelle…, jointly and severally, *in the amount to be verified by the Plaintiff filing an Affidavit attaching a Calculation of Deficiency Judgment.*” The foreclosure process in Alberta is different than it is in Nova Scotia. As I understand it, in Alberta, there is generally no judicial scrutiny in relation to “deficiency” amounts. The deficiency calculation is presented in a sworn affidavit, and by filing it with the court, it is legally imported into the court order, without further scrutiny. Thus, the court order effectively is completed once the affidavit is filed with that court. In the case at Bar, upon receipt of the affidavit of Amber Lafitte on April 4, 2011, which calculated the deficiency judgment amount as \$383,496 [and when tallied for the Writ of Enforcement, amounted to a total of \$388,884 as of its filing date on Aug. 12, 2011], the Order was completed. There being no appeal as against the judgment of August 26, 2020, it is a “final judgment” of the Court of Queen’s Bench of Alberta for present purposes.

of Alberta (as it then was named) dated August 26, 2010, and September 27, 2019], judgments of the Supreme Court of Nova Scotia, pursuant to the *Enforcement of Canadian Judgments and Decrees Act*, SNS 2001, c. 30, and to vary the same.”

[4] Mr. Gravelle contested the application here in Nova Scotia.

[5] I am satisfied that CMHC’s application should be granted.

[6] I will make the Order herein *nunc pro tunc* effectively backdating the “registration” of the two Orders with this Court, to February 25, 2020.²

The position of Mr. Gravelle

[7] Mr. Gravelle says that the *registration and enforcement* of the judgment(s) is statute barred “because the time for enforcement has expired in the province or territory where the judgment was made” [s. 7(1)(a) of the *Enforcement of Canadian Judgments and Decrees Act*, 2001 SNS c. 30 - “the *Enforcement Act*”].

² I have concluded that the Orders should have been permitted to be registered no later than February 25, 2020. The Prothonotary had some reasonable cause for concern, but erred in not accepting the orders for registration as judgments of this Court. I am satisfied that no injustice will prevail from my decision to backdate the registration of the Orders - *U.A.W., Local 720 v. Volvo Canada Ltd.*, [1980] 1 SCR 178 at para. 2; *Bluenose Lanes Ltd. v. Richardt*, (1975) 12 N.S.R. (2d) 540 at paras. 9-11 (NSSCAD per Coffin, J.A. in Chambers); *Cutcliffe Kymlicka v. Shipley*, 2021 NSSC 70, per Justice Ann Smith.

[8] He relies on records from the province of Alberta that he argues indicate there has been no application to renew the August 26, 2010, judgment,³ and therefore “the originating judgment from Alberta has expired, and so enforcement of the judgment in Nova Scotia is statute barred, and the application should be dismissed. This authority stems from a plain reading and interpretation of [*the Enforcement Act*]” (per p. 1 Mr. Gravelle’s brief September 20, 2022).

[9] Mr. Gravelle specifically relies on section 7(1) of the *Enforcement Act*:

A Canadian judgment that requires a person to pay money must not be registered or enforced under this Act

(a) *after the time for enforcement has expired* in the province or territory where the judgment was made; *or*

(b) later than 20 years after the day on which the judgment became enforceable in the province or territory where it was made.

[10] The 10-year limitation period in section 11 of the *Alberta Limitations Act*, RSA 2000, c. L-12, governs how long a judgment remains *enforceable* in Alberta⁴

³ His counsel’s affidavit contains purported true photocopies of records from the province of Alberta, which he argues show “no application to renew or supporting documents were filed”, and that the records suggest there is no longer such a judgment against David Gravelle in Alberta. The records are date stamped as of July 25, 2022, and appear to be copies of records, as presented by his counsel. However, they are *not* certified by the court or other appropriate legal entity, and contain minimal information, such that it limits how much weight one can give to this evidence, though I bear in mind that this evidence was not expressly contested by CMHC.

⁴ See for example Justice T. Morrison’s reference to the Alberta/New Brunswick legislation in *Phillippe v. Phillippe*, 2022 NBKB 198, at para. 40.

(if not renewed - see for example: *Sunridge Nissan Inc. v. Colony Homes Inc.*, 2021 ABQB 928, paras. 45-50 - which it was not):

Judgment for payment of money

11 If, within 10 years after the claim arose, [in this case - once a judgment for payment of money issues from an Alberta Court] a claimant does not seek a remedial order in respect of a claim based on a judgment or order for the payment of money, the defendant, on pleading this *Act* as a defence, is entitled to immunity from liability in respect of the claim.

[11] “Remedial order” is defined in section 1 of the Alberta *Limitations Act*:

(i) ‘remedial order’ means a judgment or an order made by a court in a civil proceeding requiring the defendant to comply with a duty or to pay damages for the violation of a right, but *excludes*

(i) a declaration of rights and duties, legal relations or personal status,

(ii) the enforcement of a remedial order,

... .

[12] While a remedial order includes the Order herein of August 26, 2010, as completed by the April 4, 2011, affidavit (leading to the April 12, 2011, Writ of Enforcement) and that of September 27, 2019, I am satisfied that, simply stated, the definition of a “remedial order” is not intended to be applicable to actions taken by litigants that effect “the enforcement of a remedial order”, thus avoiding the limitation period being extended by enforcement actions.⁵

⁵ The actions taken up to and including the filing of Amber Lafittes’ Affidavit attaching Calculation of Deficiency Judgment and the September 27, 2019, Amending Order are not included in the terms “the enforcement of a remedial order” however the issuance of a Writ of Enforcement is included in the words “the enforcement of a remedial order”.

[13] CMHC had to register its Alberta judgment in Nova Scotia before the time for enforcement thereof had expired in Alberta [i.e. by August 26, 2020, or possibly, as late as April 4, 2021].⁶

[14] The Writ of Enforcement was expressly referenced in the September 27, 2019, Amending Order:

5. The Amended Documents [the August 18 [26] 2010 Order and the Writ of enforcement] shall be enforceable in any enforcement proceedings... against David Eugene Gravelle... and Michele Sadie Gravelle... [and their aliases].

[15] In paragraphs 11 and 12 of the January 15, 2020, Santimaw affidavit, it states:

Pursuant to paragraph 7 of that [August 26, 2010] Order, attached hereto as Exhibit “H” is a certified true copy of the affidavit of Amber Lafitte sworn on April 4, 2011, demonstrating that CIBC Mortgages Inc. has a deficiency judgment against the defendants in the amount of \$383,496.32.

[16] CMHC had a right to recover an ascertainable amount of money from David Gravelle at that time. The Naveed affidavit confirms this by the Writ of Enforcement being filed with the Court of Queen’s Bench of Alberta on April 12, 2011.

⁶ The evidence in support of the Orders issued by the Court of Queen’s Bench of Alberta and the amounts ordered are contained in the two Santimaw affidavits and confirmed by that of Afshan Naveed - including specifically a certified copy of the Writ of Enforcement, which was filed April 12, 2011, with that court (see also Exhibit “H” of the Santimaw affidavit sworn January 15, 2020).

When was a “final order[s]” registered with the Supreme Court of Nova Scotia?

[17] CMHC provided the Prothonotary of the Supreme Court of Nova Scotia on or about January 17, 2020, “court certified copies of two orders: an Amending Order issued September 27, 2019, and an Order issued August 26, 2010” (Santimaw affidavit sworn February 24, 2020, Exhibit “A”).⁷

[18] The Prothonotary, who had both of Mr. Santimaw’s affidavits, still had outstanding concerns. By email sent January 17, 2020, he further addressed Mr. Santimaw’s requests for registration:⁸

Neither order set *an amount* owing.

1. Is there a deficiency judgment issued by the ABQB confirming the amount to be paid to the [plaintiffs]?
2. Is the affidavit attached as Exhibit “H” to your affidavit an order of the ABQB?

If it is, please you provide confirmation that it is an order of the ABQB and also a ‘stand alone’ certified court copy that may be registered at this court?

⁷ The Orders of August 26, 2010 and September 27, 2019, were also identified as Exhibits “G” and “I” of the Santimaw affidavit sworn January 15, 2020.

⁸ It is understandable why he questioned whether the registration of the Orders could proceed. Ideally the Plaintiff would have included the certified Writ of Enforcement with his January 15 affidavit and letter to the Prothonotary, rather than just the purported secondary supporting documentation to prove the amount of the judgment, such as the April 4, 2011, affidavit of Amber Lafitte. Nevertheless, her affidavit did provide further particulars of an ascertainable dollar amount regarding the judgment to pay money. Mr. Santimaw’s supplementary affidavit sworn February 24, 2020, sufficiently addressed the Prothonotary’s concerns, such that the Orders should have been accepted for registration by the Prothonotary by February 25, 2020.

[19] Mr. Santimaw responded on February 3, 2020, by email:

The order issued provided for a default [*sic* deficiency] judgment to be determined only by the filing of the affidavit with the amount. The affidavit was filed setting forth the amount. By reciprocating the order, would that not reciprocate the amount of the deficiency since that would be what was enforceable. The affidavit was attached as an exhibit to my affidavit.

[20] The Prothonotary responded by email on February 4, 2020:

The [*Enforcement of Canadian Judgments and Decrees Act*] authorizes registration of orders of other Canadian superior courts. I do not interpret it to permit registration of affidavits. In any case, *the order provided does not stipulate the amount to be enforced*. If you think this is an error, a motion to a judge in Chambers could be made.⁹

[21] I am satisfied Mr. Santimaw's two affidavits filed on February 25, 2020, were available to the Chambers judge on March 4, 2020.

[22] On March 4, 2020, Mr. Santimaw appeared in General Chambers in Halifax.¹⁰

[23] Having listened to the recording of that appearance in General Chambers (with counsel, in open court), the material aspects thereof include:

⁹ The Prothonotary may have been suggesting a Chamber's motion pursuant to s. 8 of the *Enforcement Act*.

¹⁰ The Chambers motion document coversheet noted that this was a "motion for: register two final judgments of Queen's Bench of Alberta as orders of the Supreme Court of Nova Scotia pursuant to the *Enforcement of Canadian Judgments and Decrees Act*."

- (i) the Chambers judge was not satisfied that there had been any judicial oversight and scrutiny of the deficiency judgment amount, and consequently the process to complete registration of these judgments would have to continue further before they could be registered;
- (ii) he suggested the matter could be treated as an application for directions from the court (s. 8 of the *Enforcement Act*). The Chambers judge characterized it as “a question of procedure” and indicated that if there was an opportunity for some judicial scrutiny, registration of the order would “be no problem”.¹¹

Conclusions

[24] As Justice Bryson pointed out in *Quadrangle Holdings Inc. v. Coady*, 2015 NSCA 13 (leave to appeal to SCC denied Oct. 15, 2015):

54 The *ECJDA* was intended to ensure that courts do not approach interprovincial orders as truly "foreign" judgments under the common law. Its "underlying principle is that it is inconsistent with interprovincial comity for Canadian courts to pass judgment on the actions of the courts of other provinces." (Walker, Janet. *Castel & Walker: Canadian*

¹¹ Somewhat inexplicably, it was not until May 13, 2022, that CMHC filed an amended *ex parte* application set for hearing on June 20, 2022, seeking an order under the *Enforcement Act*. On June 16, 2022, a second amended *ex parte* application was filed for an appearance September 6, 2022. By letter dated September 1, 2022, both counsel confirmed the matter should be removed from General Chambers docket and a Special Chambers day be set for arguments. On September 20, 2022, Mr. Gravelle filed a Notice of Contest arguing that registration and enforcement of the judgment is statute barred by the Act “because the time for enforcement has expired in the province or territory where the judgment was made”.

Conflict of Laws, 6th ed., loose-leaf (updated May 2014), (Markham, Ont: LexisNexis, 2005) at page 14-112.)

[25] The August 26, 2010, Order “to pay money” should properly have been registered by this Court when presented in January/February 2020, even though the August 26, 2010, Order did not expressly specify an amount of judgment.

[26] As a matter of statutory interpretation,¹² in my opinion, the reference in s. 2(aa) of the *Enforcement Act*, to “Canadian judgment” (i.e. “*means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than the Province, (i) that requires a person to pay money...*”) does not necessarily require that the amount thereof must be ascertainable at the time the registration is sought-that issue is properly addressed at the latest, before the means of enforcement are intended to be put in motion. Section 8 of *the Enforcement Act* appears to address this concern.

[27] More specifically, the evidence presented satisfies me that Mr. Gravelle was required “to pay money” for an ascertainable amount, under judgment in Alberta:

- (i) arguably as early as August 26, 2010;

¹² See the *Interpretation Act*, c. 235 RSNS, 1989, and for example Justice Bodurtha’s reasons in *United Pentecostal Church of Nova Scotia v. Nova Scotia Power Incorporated*, 2020 NSSC 286, at paras. 23-27.

(ii) but certainly so by April 4, 2011 [when the Affidavit referenced in para. 7 of the August 26, 2010, Order/Affidavit Including Calculation of Deficiency Judgment was filed with the court in Alberta as confirmed by the Writ of Enforcement filed on April 12, 2011], bearing in mind the references that it must be a “final judgment” obligation “to pay money” (ss. 2(aa), 4(2), and 7(1) of the *Enforcement Act*.

[28] Section 7 of the *Enforcement Act* reads in part:

(1) A Canadian judgment in the requires a person to pay money must not be registered or enforced under this Act

(a) after the time for enforcement has expired in the province or territory where the judgment was made; or

(b) later than 20 years after the day on which the judgment became enforceable in the province or territory where it was made.

[29] Section 11 of the *Limitations Act*, RSA 2000, c. L-12 reads:

Judgment for payment of money

11 If, within 10 years after the claim arose, [in this case- once a judgment for payment of money issues from an Alberta Court] a claimant does not seek a remedial order in respect of a claim based on a judgment or order for the payment of money, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

[30] Therefore, the s. 11 *Alberta Limitations Act* 10-year time period for enforcement to be taken, ends on or about April 4, 2021, (or at the earliest August 26, 2020).

[31] Having fulfilled, by at the latest on February 25, 2020, all the statutory conditions necessary to “register” the August 26, 2010, judgment before August 26, 2020, CMHC was in compliance with section 7 of the *Enforcement Act*.

[32] Consequently, the defendant Mr. Gravelle is not entitled to immunity from liability in respect of the CMHC claim against him pursuant to the two orders that CMHC sought to have registered under the *Enforcement Act* in January/February 2020.

[33] In summary, I am satisfied that:

- (i) the two Alberta judgments (2010 and 2019) were “registered”¹³ with the Supreme Court of Nova Scotia on February 25, 2020, by virtue of

¹³ Registration in Nova Scotia is effected by the *administrative act* of a litigant having paid the fee and provided the requisite information in proper form to the Prothonotary of the Supreme Court of Nova Scotia. Only once a “Canadian judgment” is registered, is the judicial function potentially engaged - see for example the compelling reasons of Justice Smith, albeit in dissent, in *Alsager v. Alsager*, 2007 SKCA 134, at para. 37: “...Section 3 of [*The Enforcement of Canadian Judgments Act* of Saskatchewan/s. 4 of the *Nova Scotia Enforcement Act*] addresses when a judgment may be registered for the purpose of enforcement. *This section provides for no discretion at all in the matter*, and clearly reflects a policy decision that, in general, the registering jurisdiction is not to look behind orders of the court of another Canadian jurisdiction to the merits of such orders. This is confirmed by consideration of section 4 [s. 5 of the *Nova Scotia Enforcement Act*] which provides for registration of a Canadian judgment on payment of the appropriate fee. *Registration is an administrative not a judicial procedure*. [para. 38] Section 7 [s. 8 of the *Nova Scotia Enforcement Act*] by contrast, provides that any party to the proceedings in which the registered

their inclusion with the accompanying letter, as Exhibits “G”, “H” and “I” in the affidavit of Joshua J. Santimaw sworn January 15, 2020, in the context of the *ex parte* application concurrently filed on February 25, 2020 (with a set hearing date of March 4, 2020);¹⁴

- (ii) the time for enforcement of the Alberta judgments had not expired by February 25, 2020;
- (iii) as required by s. 9 of the *Enforcement Act*, “interest is payable as if it were an order or judgment of the Supreme Court of Nova Scotia” and “the amount owing on the registered Canadian judgment is the total of the amount owing on that judgment on the date it is registered under this Act; and interest that has accrued to that date under the laws

judgment or order was made, may apply to the Court of Queen’s Bench for directions respecting enforcement of the order. It is this section that provides discretion to the judge hearing such an application to modify, stay or limit the enforcement of the judgment or order, but only in the very limited circumstances set out in s. 7(2), which are further limited by subsection (3).” [My italicization added] See also Justice Punnett’s reasons in *Apollo Real Estate Limited v. Streambank Funding Inc.*, 2012 BCSC 1088, at paras 23-27.

¹⁴ The August 18, 2010, Order of the Court of Queen’s Bench of Alberta, which was pronounced that day, but only officially recorded on August 26, 2010, was then capable of registration, as it directed the Plaintiff to file an affidavit attaching the calculation of deficiency judgment. That affidavit, *as ordered*, was filed with the court on April 4, 2011 (in the amount of \$383,496.32). This affidavit was used to obtain the Writ of Enforcement (filed April 12, 2011) against the Defendants for \$388,884, which judgment amount was assigned by CIBC Mortgages Inc. on August 30, 2011, as owing to CMHC in Alberta, and confirmed by Order on September 27, 2019. Alternatively, I would conclude that the Order dated August 18, 2010, was not formally “completed” insofar as an *ascertainable amount owing* is concerned, until at least April 4, 2011, if that is a prerequisite for it to be a “final judgment” under the Nova Scotia *Enforcement Act*, and for purposes of calculating when the expiry period of the order begins to run per s. 11 of the Alberta *Limitations Act*, that period began to run on April 4, 2011, (see for example Justice McDougall’s reasons at paras. 24-5 in *Skye Properties Ltd. v. Wu*, 2014 NSSC 382]. See also the affidavit of Afshan Naveed).

applicable to the calculation of interest on that judgment in the province or territory where it was made.”

[34] As a indicated earlier, it is in the interests of justice to declare, and I will effect such by *nunc pro tunc* order, that the August 26, 2010, and September 27, 2019, Court of Queen’s Bench of Alberta Orders were “registered” as that term is used in the *Enforcement of Canadian Judgments and Decrees Act*, SNS 2001, c. 30, on February 25, 2020.

Costs of the application

[35] In response to my written inquiry after the hearing concluded, Counsel agreed that “costs will be \$1500 inclusive of disbursements”.

[36] Therefore, I order \$1500 costs payable forthwith by Mr. Gravelle to CMHC.

Rosinski, J.