

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
CELERNUS INVESTMENT PARTNERS) Terry M. Walman, for the Plaintiff
INC.)
)
Plaintiff)
)
– and –)
)
RAMESH SOOD, RAMA SOOD,) Ted Evangelidis, for the Defendants
AQORPIONS INC. and UNIQUE)
LUXURY RETREATS INC.)
)
Defendants)
)
AND BETWEEN:)
)
RAMESH SOOD, RAMA SOOD,) Ted Evangelidis, for the Plaintiffs by
AQORPIONS INC. and UNIQUE) Counterclaim
LUXURY RETREATS INC.)
)
Plaintiffs by Counterclaim)
)
– and –)
)
KEEP CAPITAL INC. and CELERNUS) Jamie Macdonald, for the Defendants to the
INVESTMENT PARTNERS INC.) Counterclaim
)
Defendants to the Counterclaim)
)
)
HEARD: May 23, 2024

2024 ONSC 3855 (CanLII)

REASONS FOR DECISION

DE SA J.:

Overview

[1] Celernus Investment Partners Inc. (“Celernus”) provided a blanket mortgage to the Defendants/Plaintiffs by Counterclaim (the “Soods”) that the Soods used to develop a

luxury rental property. On July 1, 2023, the Soods defaulted on the mortgage leaving an outstanding balance of almost \$3.6 million (the 2022 Mortgage).

- [2] On August 31, 2023, Celernus commenced the present action to recover the amounts owing pursuant to the 2022 Mortgage. In order to further protect its interests, Celernus served a Notice of Sale Under Charge for all properties.
- [3] The Soods commenced a counterclaim against Celernus and Keep Capital for “the sum of \$4,000,000 in damages for breach of contract and breach of the duty of honest contractual performance” and “punitive and exemplary damages in the amount of \$1,000,000”.
- [4] The Soods have now brought a motion for an interim order to prevent Celernus from continuing power of sale proceedings until the court has tried their counterclaim.
- [5] The Soods have not denied the validity of the mortgage charges on each of the properties. They also admit that they have not made any payments towards the debt since June 20, 2023.
- [6] Despite various efforts, the Soods have been unable to find alternate financing since July 2023. There is no evidence that their situation will get any better if they are given additional time.
- [7] I have considered the Soods’ request for an interim injunction. In the circumstances here, I see no basis for it to be granted.
- [8] Subject to the terms outlined below, the motion is dismissed.

Summary of Facts

The Parties

- [9] The Plaintiff/Defendant by Counterclaim, Celernus Investment Partners Inc. (as above, “Celernus”), is an Ontario corporation engaged in the business of wealth management for high-net-worth families, entrepreneurs and professionals through investment management engaged in various sectors including the real estate sector and private mortgage lending.
- [10] The Defendant by Counterclaim, Keep Capital Ltd. (“Keep Capital”), is an Ontario corporation that carries on business as a private lender specializing in funding hard-to-place mortgages using capital provided by mutual fund trusts. Celernus and Keep Capital are related companies that operate out of the same office. Keep Capital provided mortgage administration services in respect of Celernus’ mortgages and provided mortgage brokerage services to the Defendants.
- [11] The Defendant/Plaintiff by Counterclaim, Aqorpions Inc. (“Aqorpions”) is an Ontario corporation that carries on business as a real estate development company. Aqorpions is the owner of 794 Dorcas Bay Road, Tobermory, Ontario (the “Tobermory Property”) and Lot 423001, and a tenant-in-common owner of Lot 423003.

- [12] The Defendant/Plaintiff by Counterclaim, Unique Luxury Retreats Inc. (“Unique”) is an Ontario corporation that carries on business as a short-term vacation rental company. Along with Aqorpions, Unique is an owner of Lot 423003.
- [13] The Defendants/Plaintiffs by Counterclaim, Rajesh Sood (“Raj”) and Rama Sood (“Rama”) are spouses (husband and wife respectively) and are directors and officers of Aqorpions and Unique. Raj and Rama are the registered owners of 796 Dorcas Bay Road, Tobermory, Ontario (“796 Dorcas”) as well as 2 Sylvid Court, Loretto, Ontario (the “Loretto Property”).

The Properties

- [14] The Tobermory Property and 796 Dorcas are two adjacent waterfront lots on Lake Huron. 796 Dorcas is a vacation rental home. The Tobermory Property is being developed into a luxury beachfront property and is 79.5% complete. According to the Soods, the Tobermory Property has been appraised to be worth at least \$5,300,000 once completed.
- [15] Lots 423001 and 423003 (the “Meaford Properties”) consist of approximately 1500 feet of Georgian Bay waterfront and 34 acres of land and are in the process of being developed into a proposed resort development that will be comprised of five severed lots.
- [16] The Loretto Property is Raj and Rama’s personal residence and matrimonial home and is a 4-bedroom, 2,500 square foot bungalow situated on a 2.5 acre parcel and wood lot alongside a picturesque lake and the Humber River. The Loretto Property was recently listed for sale by Raj and Rama for \$1,849,000 to mitigate damages.

Celernus advances funds to the Soods

- [17] In 2017, Celernus and related entities began to advance funds to Rajesh and Rama Sood for the development of a new luxury rental property on the Tobermory Property. The initial mortgage was a blanket mortgage for \$750,000, guaranteed by Aqorpions Inc. and secured against the Tobermory Property and the properties referred to above as the Loretto Property and 796 Dorcas.
- [18] The mortgage was renewed multiple times over the years as the Soods continued their attempts to develop the Tobermory Property, with the amounts required increasing with every renewal. In response to the increased value of the blanket mortgage, the parties eventually agreed to add the property known as Lot 423003 to the list of secured properties.
- [19] The mortgage at issue commenced on January 1, 2022 (the “2022 Mortgage”). The 2022 Mortgage provided a facility totalling \$5,000,000, with \$2,750,000 advanced at the commencement of the mortgage to satisfy existing debts. The 2022 Mortgage was originally set to mature on January 1, 2023.
- [20] The purpose of the 2022 Mortgage was to satisfy the existing debt obligations for the Tobermory Property, to provide funding for the construction of the new luxury rental home at the Tobermory Property, and to allow the Soods to finance Lot 423001.

- [21] While the 2022 Mortgage provided a \$5,000,000 facility (half of which was used at inception), it was not a line of credit that the Soods were able to draw on at their discretion. As set out in paragraph 11 of the commitment letter, all construction draws were at the “discretion” of the lender (Celernus).
- [22] Celernus authorised two draws totalling \$600,000 under the 2022 Mortgage for the development of the Tobermory Property.
- [23] In addition to the 2022 Mortgage, Celernus agreed to advance funds for the property known as Lot 423001 on the condition that a separate blanket charge of \$725,000 would be registered on all five properties at the time the funds were advanced. The funds were advanced on August 4, 2022, with the charge registered on August 9, 2022.

The Soods were unable to refinance the mortgage

- [24] By the end of 2022, Celernus determined it no longer wished to renew its existing facility with the Soods during the term of the 2022 Mortgage. This was a business decision made in light of the nature of the progress at the Aqorpions Manor Project, market conditions, and Celernus’ decision to suspend lending for construction-related loans.
- [25] Despite being advised of Celernus’ decision, the Soods were not able to obtain refinancing prior to the maturity of the 2022 Mortgage. In order to provide further time for the Soods to secure financing, Celernus agreed to renew the 2022 Mortgage for six months. The renewal started on January 1, 2023 and renewed the terms and conditions of the 2022 Mortgage. All five properties were provided as security for the renewal. At the time of the renewal, the principal amount owing under the 2022 Mortgage was \$4,115,750. The mortgage was to mature on July 1, 2023.
- [26] The Soods were not able to find refinancing for the entirety of their outstanding obligations to Celernus. The Soods were able to secure a partial financing through Frontenac Mortgage Investment Corporation, which closed on June 15, 2023. This required Celernus to consent to being placed second in priority for the 796 Dorcas Property, which it agreed to.
- [27] Despite the above steps, the Soods were unable to refinance the mortgage and failed to make the required payment when it matured on July 1, 2023. The outstanding balance as of that date was \$3,596,561.99.
- [28] On August 31, 2023, Celernus commenced the present action to recover the amounts owing pursuant to the 2022 Mortgage. In order to further protect its interests, Celernus served a Notice of Sale Under Charge on September 18, 2023 for all properties with the exception of Lot 423001. On January 24, 2024, Celernus provided a Notice of Sale Under Charge for Lot 423001.

The Soods’ counterclaim and allegations of interference

- [29] The Soods delivered their defence on October 24, 2023. The Soods have not denied the validity of the mortgage charges on each of the properties. Instead, the Soods commenced

a counterclaim against Celernus and Keep Capital for “the sum of \$4,000,000 in damages for breach of contract and breach of the duty of honest contractual performance” and “punitive and exemplary damages in the amount of \$1,000,000”.

- [30] The Soods are not seeking an order for a permanent injunction with respect to Celernus’ enforcement rights or an order setting aside the mortgages but rather have sought an interim injunction to prevent Celernus from proceeding with power of sale proceedings until the court has tried its counterclaim.

Analysis

Should an injunction be Granted?

- [31] Pursuant to the test in *RJR-MacDonald*,¹ the Soods must demonstrate to the court’s satisfaction that:

- (a) the action raises a serious question to be tried;
- (b) they would suffer irreparable harm if the court does not grant the relief sought; and
- (c) the balance of convenience favours granting the relief sought.

1) Is there a serious question to be tried?

- [32] In this case, the Soods allege that Celernus breached a contractual obligation to provide continuous construction financing. However, under the terms of the 2022 Mortgage, Celernus was clearly permitted to advance funds at its discretion. The Soods agreed to financing on these terms.

- [33] Celernus has also not breached a contractual obligation by refusing to consent to lifting its blanket mortgage to allow the Soods to refinance select properties.

- [34] Even assuming there is merit to the counterclaim, none of the issues that the Soods have raised go to the validity of the mortgage or any of its terms. It is evident that the Soods are seeking an interlocutory order not because they are challenging the validity of the mortgage, but in order to stall Celernus’ recovery efforts and give them more time to find refinancing.

- [35] In my view, there is no serious issue to be tried with respect to Celernus’ enforcement rights.

2) Will the Soods suffer irreparable harm?

¹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 (SCC).

- [36] While I recognize the Soods may lose the opportunity to develop some of the properties if sold, any loss will be quantifiable in damages should they succeed in their counterclaim.
- [37] In any mortgage context, the mortgagor knowingly assumes the risk of losing their property by pledging it. As the Court of Appeal noted in *Starkman v. Home Trust Co.*, 2015 ONCA 436 (CanLII), at para. 17, a mortgagor will not suffer irreparable harm just because a lender exercises its contractual rights.

I do not accept Ms. Starkman's submission that her eviction from the property would cause her irreparable harm. The issue of irreparable harm must be assessed in the context of the specific facts of this case. Home Trust and ING lent money to Ms. Starkman on the security of the mortgages which she granted on her property. As part of those standard mortgage transactions, Ms. Starkman agreed that if she defaulted on her obligations to repay the mortgages, the mortgagees could take possession of her property, sell it, and then account to her for the net proceeds from the sale. [Emphasis added.]

- [38] Celernus has a legal obligation to take reasonable precautions to obtain the true market value of the real property as of the date of sale. Assuming that the properties sell in excess of the amounts owed, those amounts will be accounted for and provided to the Soods.
- [39] The Soods will also continue to have their claim against Celernus.
- [40] In my view, the Soods will not suffer irreparable harm if the injunction is denied.

3) The balance of convenience

- [41] In considering the balance of convenience, the jurisprudence makes clear the importance of upholding a lenders' contractual rights. As the court noted in *Canadian Western Trust Company v. 1324789 Ontario Inc.*, 2019 ONSC 4789, at paras. 34-35:

The underlying rationale for the doctrine [established in *Arnold*] is straightforward: there is a very strong public interest in allowing mortgagees to enforce their contractual rights; lenders will not lend if they cannot enforce their right to be paid back. [Emphasis added.]²

- [42] Celernus lent money to the Soods on the basis that it would receive sufficient security and be able to enforce its security if the Soods were unable to meet their obligations. If Celernus is prohibited from enforcing its contractual rights, it will be deprived of the very rights it bargained for with the Soods.

² See *Arnold v. Bronstein et al.*, 1970 CanLII 245 (ONCA).

- [43] It has been almost a year since the Defendants defaulted on the 2022 Mortgage. Being restrained from listing and selling the properties, potentially for years, will ultimately erode any equity in the properties and will deprive Celernus the opportunity to reinvest the funds.
- [44] I recognize that the Soods have invested a great deal to increase the value of the properties. However, the Soods' investment goals should not be allowed to take priority over what are otherwise recognized important enforcement rights. The longer Celernus is restrained from selling the properties, the greater the risk there will be nothing left for the Soods at the end of the litigation.

Disposition

- [45] On May 23, 2024, I agreed to extend the interim injunction for 60 days (from May 23, 2024) to provide the Defendants with another opportunity to arrange alternate financing.
- [46] Accordingly, any sale proposed by Celernus would be subject to this 60-day period that permits the Defendants the right to settle the matters with Celernus and keep the properties.
- [47] I have signed the draft order forwarded by Celernus.
- [48] Costs are ordered in the amount of \$38,000 inclusive of HST.

Justice C.F. de Sa

Released: July 5, 2024

CITATION: Celernus Investment Partners Inc. v. Sood, 2024 ONSC 3855

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CELERNUS INVESTMENT PARTNERS INC.

Plaintiff

– and –

RAMESH SOOD, RAMA SOOD, AQORPIONS INC.
and UNIQUE LUXURY RETREATS INC.

Defendants

AND BETWEEN:

RAMESH SOOD, RAMA SOOD, AQORPIONS INC.
and UNIQUE LUXURY RETREATS INC.

Plaintiffs by Counterclaim

– and –

KEEP CAPITAL INC. and CELERNUS
INVESTMENT PARTNERS INC.

Defendants to the Counterclaim

REASONS FOR DECISION

Justice C.F. de Sa

Released: July 5, 2024