

# Court of King's Bench of Alberta

**Citation: 1353678 Alberta Ltd v High Profile Cannabis Corp, 2023 ABKB 443**

**Date:** 20230725  
**Docket:** 2203 17865  
**Registry:** Edmonton

Between:

**1353678 Alberta Ltd**

Plaintiff

- and -

**High Profile Cannabis Corp**

Defendant

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**Reasons for Decision  
of the  
Honourable Applications Judge L.A. Smart**

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## **Background**

[1] The Defendant High Profile Cannabis Corp (High Profile or Defendant) purchased an approximately 60 acre parcel of industrial land in the vicinity of Alberta Beach from the Plaintiff 1353678 Alberta Ltd (135 or Mortgagee) for \$890,000 under an Agreement of Purchase and Sale dated March 8, 2019. High Profile granted a Vendor Take Back Mortgage for \$887,000 with interest at 6% and maturing 2 years from the closing date. The mortgage was amended by further Agreement effective October 28, 2021 establishing a balance of \$347,000 with interest at 5% and maturing October 28, 2022.

[2] High Profile defaulted under the terms of the Mortgage as amended (Mortgage) and 135 commenced foreclosure proceedings by Statement of Claim on November 16, 2022. A Demand for Notice was filed by High Profile on December 7, 2022.

## Application

[3] 135 has applied for a Redemption Order-Sale seeking a one-day redemption period followed with a sale by tender by posting a Judicial Sale of Mortgaged Lands for 5 days on the Clerk's Office bulletin board in Edmonton with tenders closing on the 7<sup>th</sup> day following the posting and setting a return date for further application by 135.

[4] The current indebtedness under the Mortgage is approximately \$372,000 with interest accruing at \$1500 per month.

[5] 153 had an appraisal conducted by Alan Cahoon, AACI, P.App of Glen Cowan and Associates dated February 27, 2023. In his Affidavit of Value, he arrived at a Market Value Estimate of \$375,000 and a Forced Sale Value Estimate of \$320,000. High Profile had an appraisal conducted by Stephen Healy, CRA, P.App (reviewed by Derek Van Lersberghe, AACI) of Knight and Company dated March 31, 2023. In his Affidavit of Value, he arrived at a Market Value of \$1,900,000 and a Forced Sale Value of \$1,650,000. Mr. Healy had previously appraised the property on November 20, 2020, arriving at a Market Value of \$3,235,000.

[6] The Municipal Assessment for property taxes services was \$658,910 in 2022.

[7] Conor Gillen a licensed realtor with Colliers Macaulay Nicolls Inc was retained by High Profile as listing agent for the lands. In his May 29, 2023 affidavit, he indicates that based on the earlier Healy appraisal and reviewing comparable sales acquired from the Gettel Network, he concluded that a value of \$3,000,000 to \$3,400,000 was supported. The property was listed at "market" for approximately 18 months ago. Since then, the price has been reduced twice with the most recent listing at \$2,400,000 and more recently, a price reduction was approved by High Profile to \$1,990,000. Gillen goes on to opine that the appropriate market value ranges from \$1,650,000 to \$2,100,000.

## Considerations

[8] The Mortgagee's Counsel points to the Alberta Law Review article, *Foreclosure of Corporate Mortgages*, (1983) [Vol. XXI, No. 2] by Marguerite J. Trussler then a partner at the firm of Parlee, Irving, Henning, Mustard and Rodney of Edmonton. Under the provisions of the *Law of Property Act* (now RSA 2000, c L-7) there is no set redemption period for mortgages granted by a corporation nor is the Court bound by the factors in the *Act* for determination of the redemption period to be set. Nonetheless, the Court does look at the ability of the debtor to pay, the value of the land, the maturity date of the mortgage and the interest rate relative to the current market rates. A further factor is whether there are subsequent encumbrancers that would also have the right to redeem the mortgage. In this case there are two subsequent mortgages with registered face values of \$1,600,000 and \$43,000, respectively.

[9] Both parties refer to *Fuhr v Madison Development Corporation Ltd*, 1984 CanLII 1144 (ABKB) where an application was made for a sale to plaintiff (Rice Order) based on the forced sale for terms value in the Affidavit of Value prepared on behalf of the plaintiff following an Order for Sale by tender. No tenders were received. In *Fuhr*, the Court was presented with three appraisals. The market value in the plaintiff's appraisal was \$570,000. The defendant presented two appraisals, one dated June 29, 1983, and a second dated August 15, 1983 stating market values of \$1,029,000 and \$780,000, respectively.

[10] Justice D.C. McDonald (as he then was) was asked to approve the proposed purchase by the plaintiff. He concluded that the appropriate value, at the very least, would be the market value from the plaintiff's own evidence. He observed furthermore that it was for the plaintiff to satisfy him that the fair market value was less than what the defendant had said, but whether it ought to be more, must be based on the evidence in the case. He read the appraisals filed by the defendant and concluded they were particularly unconvincing; ultimately finding they were entitled to no weight.

[11] 153's argument is that I ought to disregard High Profile's appraisal in this case. In support of that argument, 153 has cross-examined High Profile's appraiser. There is no question that the two appraisers come to widely different conclusions as to value although in many ways their analysis is consistent. The fundamental difference arises from the discrepancy in the comparables they use. Criticisms of the Defendant's appraiser regarding their choices in my mind provided a basis for similar criticism of the Mortgagee's appraiser. Suffice it to say this is a difficult property to value in light of its location and other characteristics.

[12] Regardless, it is not my task to decide the value of this property rather what redemption period ought to set and what marketing the Court should direct. It is clear to me that the practices followed in 1984 have been refined and modified by the court with many Rule changes also taking that place. Requirements for notice to mortgagors and subsequent mortgagees is now mandatory and the Court in setting a redemption period in corporate mortgagor situations is less arbitrary. I must be mindful that it is arguable 153 is in some jeopardy based on its evidence, but as alluded to in *Fuhr*, considerable emphasis should be placed on there being a process to achieve a fair value and recovery.

### **Conclusion**

[13] 153 seeks a one day redemption period followed by posting on the Clerks bulletin board. In dealing with commercial properties such a perfunctory process in my view will almost always be inappropriate. Having said this, I am also well aware that this property has been on the market for some time albeit at prices well above even the Defendant's most recent appraised value. Furthermore, the Defendant has not suggested that it is or will be in a position to redeem this mortgage by payment.

[14] The goal here is to see this property sold at the highest possible value. The Defendant has had ample opportunity to market the property. I see no basis to grant a lengthy redemption period. The mortgage has matured, the interest rate is low, and subordinate mortgagees are at risk. The market will in all probability decide this property's value.

[15] Based on the foregoing, I set the redemption period at one day from service of the Order arising from these reasons. At the expiry of the Redemption period the property will be listed for 90 days at \$1,900,000 (being the market value set out in the Defendant's appraisal) by a realtor selected by the Plaintiff. Commissions will not exceed 3% of the selling price. The other usual terms of a Redemption Order will apply.

Heard on the 14<sup>th</sup> day of June, 2023.

**Dated** at the City of Edmonton, Alberta this 25<sup>th</sup> day of July, 2023.

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**L.A. Smart**  
**A.J.C.K.B.A.**

**Appearances:**

Murray Olsen  
M.K. Olsen Professional Corporation  
for the Plaintiff

Mandi A. Deren-Dube  
MLT Aikins LLP  
for the Defendant