

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : THE COURT OF APPEAL (WA)

CITATION : PUGLIA -v- RHG MORTGAGE CORPORATION LIMITED [2013] WASCA 143

CORAM : NEWNES JA
MURPHY JA

HEARD : 24 MAY 2013

DELIVERED : 13 JUNE 2013

FILE NO/S : CACV 3 of 2013

BETWEEN : BASIL JOHN PUGLIA
CONCETTA PUGLIA
Appellants

AND

RHG MORTGAGE CORPORATION LIMITED
Respondent

ON APPEAL FROM:

Jurisdiction : SUPREME COURT OF WESTERN AUSTRALIA

Coram : MASTER SANDERSON

File No : CIV 2345 of 2012

Catchwords:

Appeal - Commenced out of time - Application for an extension of time to appeal - Whether grounds of appeal have reasonable prospects of success

Legislation:

Nil

Result:

Application for an extension of time to appeal dismissed
Appeal dismissed

Category: B

Representation:

Counsel:

Appellants : In person
Respondent : Mr J Lin

Solicitors:

Appellants : In person
Respondent : Jackson McDonald

Case(s) referred to in judgment(s):

McLean v Westpac Banking Corporation [2012] WASCA 152
RHG Mortgage Corporation Ltd v Astolfi [2011] NSWSC 1526
Simonsen v Legge [2010] WASCA 238
Westpac Banking Corporation v Mason [2011] NSWSC 1241

1 **REASONS OF THE COURT:** The applicants seek an extension of time to appeal against a judgment of Master Sanderson dated 29 October 2012. The respondent contends that the application should be refused and the appeal dismissed.

Background

2 Master Sanderson ordered summary judgment for possession against the applicants upon the application of the respondent following the applicants' alleged default in the repayment of certain loan monies secured by a registered mortgage over their property.

3 At the hearing of the summary judgment application before the master, someone who described himself as 'Mr Ahmed' was given leave to speak on behalf of the applicants. The master said, in effect, that he understood that there was no dispute that the respondent had lent money to the applicants and that the applicants had failed to repay it. Mr Ahmed did not contend to the contrary, but informed the master that it was 'simpliciter obiter' to focus on the loan and the default in repayment, and that the 'nitty gritty' was that the respondent had 'sold' the mortgage and failed to disclose this, and the applicants had not received any consideration from the respondent, and that is why the applicants 'have to be paid by bill of exchange' (ts 3 - 4). The master delivered extempore reasons for judgment as follows:

This is an application for summary judgment based upon a mortgage action. The application is supported by an affidavit of Warren Handel, which was sworn 12 October 2010. As he is required to do by order 15, Mr Handel verifies the contents of the statement of claim and the onus then falls on the defendant to satisfy the court that there is an arguable defence. I should say that the affidavit of Mr Handel also annexes a loan agreement, a mortgage and memorandum, together with a default notice, all of which go to establish the matters that are pleaded in the statement of claim. So prima facie then, the plaintiff is entitled to judgment.

The defendant has filed two documents, one of which is called a counterclaim, the other of which is untitled, but it would seem to be a further explanation of what the defence may be. I am not sure after reading both documents just what is put against the claim. I think what is being said is that the present holder of the mortgage is not the party suing. It would seem to me that there is nothing in that argument. RHG Mortgage Corporation Ltd, the plaintiff, is the party who is entitled to the mortgage and it is they who, if paid out, would provide a good discharge. There has been no attempt to tender payment.

As to other matters raised in the counterclaim, in all honesty and with the best of intentions, I cannot ascertain what might be put against the

plaintiff's claim. It seems that there may be an allegation of some form of non-disclosure, but nothing emerges from the documents which would in my view provide an arguable defence to the claim, nor am I satisfied that there is any counterclaim, despite an assertion by the defendant to the contrary. In my view, there should be judgment for the plaintiff in this matter and I will enter judgment in terms of the application for summary judgment (ts 4 - 5).

4 The appeal was required to be commenced by 20 December 2012. A notice of appeal was filed on 14 January 2013. The applicants say, in their affidavit in support of an application for an extension of time to appeal, that Mr Ahmed Abouabdillah, who had a power of attorney, had lodged an appeal notice 'on their behalf' on 20 December 2012 as the male applicant (Mr Puglia) was unwell and the female applicant (Mrs Puglia) was overseas. The applicants say that after Mrs Puglia returned from overseas, she was advised by registry that the notice of appeal was required to be signed by both applicants and the power of attorney did not conform with legal requirements. As a result, a signed notice of appeal seeking an extension of time was filed on 14 January 2013, as was the affidavit in support referred to above.

5 The principles for an extension of time were outlined in *Simonsen v Legge* [2010] WASCA 238 [8]. The respondent resisted the application principally on the basis that the appeal has no prospects of success. The respondent contended that the application, and the appeal, should consequently be dismissed.

6 There are 15 grounds of appeal. They may be divided into the following broad categories:

- (a) the master was biased (grounds 1 and 6);
- (b) the court lacked jurisdiction (grounds 7, 9 and 15);
- (c) the proceedings were irregular because the master had acted on affidavit evidence without requiring the respondent's deponent for cross-examination (grounds 2, 3, 5, 8 and 9);
- (d) the master did not consider or address the counterclaim (grounds 6 and 11);
- (e) the respondent's affidavit material failed to identify or support any cause of action against the applicants (grounds 10, 13 and 14); and

(f) the master failed to find that 'a controversy' existed between the applicants and the respondent (ground 12).

7 None of the grounds of appeal has any prospect of success. There is nothing to support the allegation of bias. The contention that the master lacked jurisdiction has no foundation. An application for summary judgment is required to be supported by an affidavit which may contain statements of information and belief: O 14 r 2 of the *Rules of the Supreme Court 1971 (WA) (RSC)*. There was no application before the master to cross-examine Mr Handel, who had sworn the supporting affidavit on behalf of the respondent.

8 The contention that the master did not consider the applicants' counterclaim is plainly incorrect. The master did so in terms and found that there was nothing in it which showed any cause as to why the respondent's application should not be granted. There is no material before this court to indicate any arguable error by the master in that regard.

9 The allegation that there was no cause of action stems, it seems, from generalised assertions to the effect that the respondent had 'sold' approximately '\$1 billion worth of mortgages to National Australia Bank (NAB)'. However, there was no evidence before the master (or before us) that the respondent had effected a legal assignment of its interest in the loan agreement with the applicants or the mortgage granted by the applicants. There is no suggestion that the mortgage was not registered. It follows that the applicants' contention that the respondent had sold mortgages to NAB provided, and provides, no arguable defence: see, eg, *Westpac Banking Corporation v Mason* [2011] NSWSC 1241; *RHG Mortgage Corporation Ltd v Astolfi* [2011] NSWSC 1526; *McLean v Westpac Banking Corporation* [2012] WASCA 152.

10 The last two categories of complaint also lack any foundation. The respondent's causes of action were claims in possession and in debt. There has been no attempt to show that the affidavit in support of the summary judgment application was wrong in any respect. There may have been a 'controversy' as the applicants allege, but whatever it was, it did not constitute showing cause as to why the first respondent's application for summary judgment should not be granted: see O 14 r 4(1) RSC.

11 The application for an extension of time should be dismissed and the appeal should be dismissed.