



Bayshore Trust Co. v. Richardson (Gen. Div.), 1991 CanLII 7160 (ON SC)

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Bayshore Trust Co. v. Richardson (Gen. Div.)

**2 O.R. (3d) 522
[1991] O.J. No. 181
Action No. 54689/90Q**

**ONTARIO
Ontario Court (General Division)
Steele J.
February 5, 1991***

*Released February 12, 1991.

Mortgages -- Possession -- Mortgagee applying for writ of possession against tenant -- Master dismissing application after taking judicial notice of Bill that would provide retrospective protection for tenants in proceedings for possession -- Master erring in giving effect to legislation before it was passed -- Evidence Act, R.S.O. 1980, c. 145, s. 25(1) -- Statutes Act, R.S.O. 1980, c. 483, s. 5 -- Mortgages Act, R.S.O. 1980, c. 296.

Evidence -- Judicial notice -- Statutes -- Mortgagee applying for writ of possession against tenant -- Master dismissing application after taking judicial notice of Bill that would provide retrospective protection for tenants in proceedings for possession -- Master erring in giving effect to legislation before it was passed -- Evidence Act, R.S.O. 1980, c. 145, s. 25(1) -- Statutes Act, R.S.O. 1980, c. 483, s. 5 -- Mortgages Act, R.S.O. 1980, c. 296.

The plaintiff, the mortgagee of a single family dwelling, obtained a default judgment for possession against the defendant mortgagor. Notice of the judgment was given to G, the tenant, and he refused to give up possession. On a motion without notice, the plaintiff applied for a writ of possession. The master dismissed the motion upon taking judicial notice of Bill 40, which Bill would retrospectively amend the Mortgages Act to provide protection to tenants. The plaintiff appealed.

Held, the appeal should be allowed.

The master erred in taking judicial notice and in giving effect to the Bill. The common law permits judicial notice of the common law or general statutes in effect in Ontario, but does not permit judicial notice of other laws. A Bill does not take effect until it is passed. Leave to issue a writ of possession should be granted since the plaintiff had obtained judgment in the appropriate manner and had satisfied the notice requirements.

APPEAL from a master's order dismissing a motion for possession against the defendant tenant.

Canada Trustco Mortgage Co. v. McLean (1983), [1983 CanLII 3050 \(ON SC\)](#), 33 C.P.C. 117, 143 D.L.R. (3d) 101, 27 R.P.R. 131 (H.C.J.), conso Statutes referred to Evidence Act, R.S.O. 1980, c. 145, s. 25(1) Statutes Act, R.S.O. 1980, c. 483, s. 5 Rules and regulations referred to Rules of Civil Procedure, O. Reg. 560/84, rule 60.10(2)

Robert A.L. Shour, for plaintiff.

L.C. Ducas, for defendant.

STEELE J. (orally):-- This is an appeal from the order of Master Sandler in which he dismissed a motion for possession against the tenant. A counsel for the tenant appeared but chose to make no submissions. The parties had agreed that if a writ of possession was granted it would not be enforced for two weeks and that there would be no costs.

The plaintiff is the mortgagee of a single family dwelling and obtained a default judgment on November 14, 1990 in an action for possession of the premises against the defendant who was the mortgagor of the premises. Notice of this judgment was given to the only tenant, Richard Griffiths, by mail together with a notice demanding possession. Possession was not given by the tenant, and an ex parte application was made to the master for a writ of possession pursuant to the judgment.

The master took notice of Bill 40, 1990, being the Mortgages Amendment Act, 1990. This Bill provides retrospective protection to tenants where a mortgagee gains possession. The Bill has been given first reading on December 20, 1990, but no further proceedings have been taken on it. The master acknowledged that the Bill was not yet law, but felt the motion should be adjourned to await the Bill's final passage. However, he felt it appropriate to dismiss the motion so that it could be brought again after the Bill was passed.

With respect, I believe that the master erred in law. A Bill does not take effect until it is passed. See the Statutes Act, R.S.O. 1980, c. 483, s. 5. The Bill may never become law or may be amended before it is enacted. Bill 40 was not in evidence before the master. It could have been introduced as evidence under the provisions of s. 25(1) of the Evidence Act, R.S.O. 1980, c. 145, but that would have required an affidavit to which it would be attached and submitted as evidence. Even if it had been admitted to evidence, I believe that the master erred in giving effect to the Bill.

The common law permits judicial notice of the common law and public or general statutes in effect in Ontario, but does not permit judicial notice of other laws. In my opinion, the plaintiff had obtained judgment in the appropriate manner and once it had satisfied the notice requirements, which clearly it has done under r. 60.10(2) of the Rules of Civil Procedure, O. Reg. 560/84, it is entitled to leave to issue a writ of possession. See Canada Trustco Mortgage Co. v. McLean (1983), [1983 CanLII 3050 \(ON SC\)](#), 33 C.P.C. 117, 143 D.L.R. (3d) 101, 27 R.P.R. 131 (H.C.J.).

I need go no further than this because the master should have issued the writ of possession. Notice of today's hearing was given to the tenant who has chosen not to participate. I will

leave it to a further court to determine what effect any retrospective effect of the Bill, if it becomes law, has upon tenants.

For these reasons the appeal is allowed and an order for possession will issue but enforcement thereof is deferred until February 19, 1991.

There will be no costs.

Appeal allowed without costs.