

COURT OF APPEAL FOR ONTARIO

Court File No.: M51800

Date: 20201023

C & K Mortgage Services Inc. v. Camilla Court Homes Inc. and Elite Homes Inc.

BEFORE: Tulloch J.A.

DATE: October 8, 2020 by video conference

INTERIM DECISION:

[1] This is a motion brought by Jereemy Tan (the “Moving Party”) seeking, amongst other things, an extension of time to file a notice of appeal of the decision of the Honourable Dietrich J. of the Superior Court, authorizing the appointed Receiver in Bankruptcy (the “Receiver”) to proceed to disclaim an agreement of purchase and sale for the property known municipally as 180 Mateo Place, Mississauga, Ontario (the “Property”). The Moving Party had entered into an agreement to purchase the Property, and the closing was scheduled for June 26, 2020.

[2] The underlying decision that is the subject of this motion was rendered on August 27, 2020.

[3] Pursuant to s. 31(1) of the *Bankruptcy and Insolvency General Rules*, C.R. C., c. 368, (the “Rules”) a notice of appeal was to be delivered within ten days following the rendering of the decision. Due to inadvertence on the part of the

Moving Party's lawyer, this was not done. The lawyer operated on the basis that the Moving Party had 30 days to deliver a notice of appeal.

[4] Under the Rules, ten days from August 27, 2020 was September 6, a Sunday and non-judicial day. The Monday, September 7, was Labour Day, a holiday and non-judicial day. Accordingly, the notice of appeal was due on September 8, 2020.

[5] On Monday, September 14, 2020, the Moving Party's lawyers notified the other parties to the proceedings (the mortgagee and Receiver) of the Moving Party's intention to appeal. On September 17, 2020, the Moving Party's lawyers served the notice of motion to extend time.

[6] The Moving Party's lawyers have now been advised that the Property has been sold, subject to court approval, to a new purchaser. The closing date is November 5, 2020.

[7] All parties agree on the applicable legal principles and test to be applied to determine whether this court should exercise its discretion and grant the order to extend time. However, the parties differ as to whether the Moving Party has met the test.

[8] For the reasons to follow shortly, the motion for an extension of time to file the notice of appeal is hereby granted.

[9] I am also satisfied that the Moving Party has an appeal as of right, based on ss. 193 (b) and (c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. Accordingly, the decision below and accompanying order are hereby stayed, pending the appeal.

A handwritten signature in blue ink, appearing to read "J.A.", is located in the lower right quadrant of the page.