

## KAISERHOF HOTEL CO. v. ZUBER.

1912

\*May 23.

\*June 14.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Mortgage—Sale under power—False bidding—Withdrawal of bid.*

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment of a Divisional Court(2), by which the judgment at the trial in favour of the plaintiffs was reversed and the action dismissed.

The defendant Zuber was holder of a second and a third mortgage on hotel property and the plaintiffs owned the equity of redemption. Under powers of sale contained in his mortgages Zuber took proceedings to sell the property and the plaintiffs brought action to restrain the sale, and obtained an interim injunction which was afterwards discharged. The property was then put up for sale at auction. One Boehmer, acting for the appellants, instructed a man named Fish to bid and he ran the price up to \$43,500, the respondent Roos having bid \$43,000. At request of Zuber's solicitor the auctioneer inquired of Fish if he was prepared to pay the money if the property was knocked down to him and he requested and was given half an hour to satisfy the mortgagee of his ability to do so. He did not return at the expiration of that time and Roos withdrew his last bid. The property was offered for sale again and knocked down

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\*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 25 Ont. L.R. 194.

(2) 23 Ont. L.R. 481.

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to Roos at \$39,500, and was conveyed to him a few days later by Zuber.

The appellants then proceeded with their action to restrain the sale, adding Roos as a party, and alleged that it was not conducted in a fair, open and proper manner; that Roos was not the highest bidder; that the conditions of sale were unduly onerous; that there was collusion between Zuber and Roos to enable the latter to obtain the property for less than its value; and that Roos was acting as agent for Zuber and the sale was not *bonâ fide*.

The trial judge gave judgment for the plaintiffs on the grounds that the conditions of sale did not furnish full information as to the first mortgage and as to existing leases and liens; that the deposit to be made by the purchaser was fixed at twenty per cent.; and that only seven days were given for the purchaser to make objections to the title. This judgment was reversed by a Divisional Court, which held that no one was deterred from bidding by reason of the conditions and that there was no omission or misstatement of any fact material to be known; that the price obtained for the property was a fair one; and that Roos had a right to withdraw his bid when Fish failed to put up the deposit. This judgment was affirmed by the Court of Appeal and the plaintiffs then appealed to the Supreme Court of Canada.

After hearing counsel for both parties the Supreme Court reserved judgment, and at a subsequent date dismissed the appeal with costs.

*Appeal dismissed with costs.*

*Secord K.C.* for the appellants.

*Watson K.C.* for the respondents.