Mortgage prepayment charges: Class action dismissed again at the authorization stage

October 18, 2024

On Oct. 15, 2024, the Superior Court of Québec, presided over by the Honourable Christian Immer, J.S.C., rendered a significant judgment in a class action (*Haroch 2*) arising from a bank dispute brought against the Toronto-Dominion Bank (TD) and other banks.

Background

Katy Haroch and Claude Vaillancourt (the Applicants) applied for class action authorization for the second time, challenging the mortgage prepayment charge (MPC) clauses required by banks and the method used to calculate the interest rate differential (IRD) on fixed rate mortgages.

A first application for class action authorization had been dismissed by Superior Court Justice Chantal Corriveau on July 19, 2019 (Corriveau Judgment, which was upheld by the Court of Appeal on Oct. 4, 2021 (*Haroch 1 QCCA*)). In the new application, the Applicants challenged the use of a discount applied to the posted rate in the IRD calculation method.

Judgment in brief

Noting that the Court is required to analyze whether the legal syllogism proposed by the Applicants is tenable, Immer, J.S.C. dismissed the application for class action authorization, finding that the cause of action argued was untenable in law (art. 575(2) C.C.P.) and that it failed to assert any issue common to all members of the proposed class (art. 575(1) C.C.P.).

The banks argued that, contrary to what the Applicants contended, the Applicants in *Haroch 2* were not focusing exclusively on the effect of the [translation] “discount” in the IRD calculation, but were again attacking the IRD formula as a whole, on the basis that it would systematically result in the banks being overcompensated for their [translation] “actual” loss.

After analyzing the test of article 575(2) C.C.P. and applying the rule of *stare decisis*, Immer, J.S.C. found that the previously rendered judgments set out the state of the law as to whether the IRD calculation method was valid and made the syllogism raised in this case untenable. Immer, J.S.C. also found that the Applicants had failed to prove that the MPC calculation methods based on an IRD disadvantaged them, let alone that such calculation methods excessively or unreasonably disadvantaged them.

Taking his analysis a step further, Immer, J.S.C. determined that an argument to show the undueness of the MPC clause calculated on the basis of the IRD necessarily splintered the debate and that, therefore, there was no common issue in this case that could pass the test of article 575(1) C.C.P.

Takeaways

This judgment reaffirms the authority of *res judicata* as set out in article 2848 C.C.Q. Under this principle, a judgment cannot be challenged if the issues have already been decided, provided the parties, object and cause are identical.

The Superior Court also stressed the significance of *stare decisis*, a principle that, while less demanding than *res judicata*, does allow an action to be declared inadmissible where the legal precedent invoked covers the entire debate and provides a complete, certain and definitive solution. In this case, the Applicants sought to challenge an issue already settled in the case law, specifically in *Haroch 1 QCCA*, absent valid justification, thereby rendering their syllogism untenable and their action inadmissible.

The defendant banks, including Bank of Montreal (BMO) and the Bank of Nova Scotia (Scotiabank), ultimately won their cases. BMO was represented by the BLG team of Guy Pratte, Patrick Plante and Amanda Afeich,and Scotiabank by the BLG team of Alexander De Zordo, Karine Chênevert and Maude Lamoureux-Bisson.

Contact us

For any questions about this judgment or for assistance in a similar legal matter, reach out to our counsel in this case, the contacts below or any BLG Class Actions or Banking Litigation professional.

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