KILGORAN HOTELS LIMITED, ALBERT NIGHTINGALE and MORRIS NIGHTINGALE .... APPELLANTS;

AND

JOHN SAMEK, DAVID SYCH and MARY TRAVINSKI ..... RESPONDENTS.

1967

*Oct. 4, 5
Nov. 21

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Mortgages—Interpretation of repayment clause—Instalments to be applied in payment of interest and balance in reduction of principal—Whether "blended payments" within meaning of s. 6 of Interest Act, R.S.C. 1952, c. 156.

A mortgage granted by the appellants to the respondents for the principal sum of $315,000 provided for quarterly repayments of $7,002 on specified dates, "such instalments to be applied FIRST in payment of the interest due from time to time, calculated [quarterly, not in advance, at the rate of 6½ per cent per annum], and the BALANCE to be applied in reduction of the principal sum". On application for an order interpreting the said mortgage and declaring that no interest was chargeable thereunder, the appellants contended (1) that the payments of interest and principal as stated in the repayment clause were "blended payments" within the meaning of s. 6 of the *Interest Act*, R.S.C. 1952, c. 156; (2) that being blended payments the mortgage did not contain a statement sufficient to satisfy the requirements of said s. 6 showing the amount of such principal money and the rate of interest chargeable thereon calculated yearly or half-yearly not in advance; (3) that in consequence no interest whatever was payable under the said mortgage.

The trial judge dismissed the appellants' application, holding that the payments to be made under the mortgage were not blended. On appeal, the Court of Appeal dismissed the appeal and the appellants then appealed to this Court.

Held: The appeal should be dismissed.

The quarterly payments required to be made by the mortgagor were not blended payments of principal money and interest within the meaning of the word "blended" as used in s. 6 of the *Interest Act*. The purpose of this section is to protect a mortgagor from having concealed from him the true rate of interest which he is paying. In the case at bar there was no concealment. The amount of principal and the interest were clearly stated. On each quarterly payment date the mortgagor was required to pay interest at 6½ per cent on the principal outstanding and to pay on account of principal the difference between the amount of such payment and the sum of $7,002. It was impossible to say that this brought about the result that the payments of principal and interest were "blended", that is to say, "mixed so as to be inseparable and indistinguishable".

*PRESENT: Cartwright C.J. and Abbott, Martland, Judson, Ritchie, Hall and Spence JJ.

1967

KILGORAN HOTELS LTD *et al.* v. SAMEK *et al.*

APPEAL from an order of the Court of Appeal for Ontario, dismissing an appeal from an order of Brooke J. Appeal dismissed.

Claude R. Thomson, for the appellants.

R. N. Starr, Q.C., for the respondents.

The judgment of the Court was delivered by

HALL J.:—This appeal involves the interpretation to be placed on the repayment clause in a mortgage granted by the appellants to the respondents on March 12, 1965, covering an hotel property in Toronto for the principal sum of $315,000. The repayment clause in the mortgage reads as follows:

> PROVIDED THIS MORTGAGE TO BE VOID on payment of THREE HUNDRED & FIFTEEN THOUSAND ($315,000.00) Dollars of lawful money of Canada with interest at six & one-half (6½%) per centum per annum calculated quarter-yearly, not in advance, as well after as before maturity and both before and after default, as follows:—
>
> > The sum of THREE HUNDRED AND FIFTEEN THOUSAND DOLLARS ($315,000.00) with interest thereon at the aforesaid rate computed from the 23rd day of March 1965, shall become due and be paid in instalments of $7,002.00 each, on the 23rd day of March, June, September and December in each and every year from and including the 23rd day of June 1965 to and including the 23rd day of December 1984, (such instalments to be applied FIRST in payment of the interest due from time to time, calculated at the said rate of 6½% per centum per annum, and the BALANCE to be applied in reduction of the principal sum) and the BALANCE of the said principal sum of THREE HUNDRED AND FIFTEEN THOUSAND DOLLARS with interest thereon as aforesaid shall become due and payable on the 23rd day of March 1985.

The appellants contend: (1) that the payments of interest and principal as stated in this clause are "blended payments" within the meaning of s. 6 of the *Interest Act,* R.S.C. 1952, c. 156; (2) that being blended payments the mortgage does not contain a statement sufficient to satisfy the requirements of said s. 6 showing the amount of such principal money and the rate of interest chargeable thereon calculated yearly or half-yearly not in advance; (3) that in consequence no interest whatever is payable under the said mortgage.

Section 6 of the *Interest Act* reads:

> Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on

any plan under which the payments of principal money and interest are blended, or on any plan that involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance.

The learned trial judge, Brooke J., dismissed the appellants' application for a declaration that no interest was payable, holding that the payments to be made under the mortgage in question were not blended payments. He did not deal with appellants' contention #2 above. The Court of Appeal for Ontario, after hearing argument on the blended payment issue only, dismissed the appeal without giving reasons.

I would dismiss the appeal on the ground that the quarterly payments required to be made by the mortgagor are not blended payments of principal money and interest within the meaning of the word "blended" as used in s. 6 of the *Interest Act*. Section 2 of that Act reads as follows:

2. Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount that is agreed upon.

The rate of interest agreed upon as set out in the mortgage in this case is $6\frac{1}{2}$ per cent payable quarterly.

The purpose of s. 6 of the *Interest Act* is to protect a mortgagor from having concealed from him the true rate of interest which he is paying.

In the case at bar there is no concealment. The amount of principal and the rate of interest are clearly stated. On each quarterly payment date the mortgagor is required to pay interest at $6\frac{1}{2}$ per cent on the principal outstanding and to pay on account of principal the difference between the amount of such interest payment and the sum of $7,002. This is the plain effect of the repayment clause; it appears to me impossible to say that this brings about the result that the payments of principal and interest are "blended", that is to say, "mixed so as to be inseparable and indistinguishable". They are distinguished by the very wording of the clause:

Such instalments to be applied first to payment of the interest due from time to time calculated at the said rate of $6\frac{1}{2}$ per centum per annum and the balance to be applied in reduction of the principal sum.

1967

KILGORAN HOTELS LTD. *et al.* *v.* SAMEK *et al.*

Hall J.

The arithmetical calculation involved on each payment date could scarcely be simpler.

Having reached the conclusion that the Courts below correctly held that this is not a case in which the mortgage provides for blended payments of principal and interest within the meaning of s. 6 of the *Interest Act*, I find it unnecessary to consider the question whether had the mortgage provided for blended payments it contained a statement sufficient to satisfy the requirements of s. 6, that is to say, showing the amount of principal money and the rate of interest chargeable thereon calculated yearly or half-yearly not in advance.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellants: Claude R. Thomson, Toronto.

Solicitors for the respondents: Starr, Allen & Weekes, Toronto.