

MORTGAGE ACTIONS IN ALBERTA, by Francis C.R. Price and Marguerite J. Trussler, Carswell Legal Publications, Western Division, 1985, pp. v and 619, hard cover.

This is the first book dealing specifically with mortgage actions in Alberta. As Master Hyndman states in his foreward, the only texts previously available relating to mortgage actions were those from England and Ontario where the law and practice differ materially from Alberta. The authors have completed a remarkable task when one considers that both are busy full-time practitioners and that much of the development of the law in this area (certainly since 1980) has been through various unreported cases.

The chapters flow in a logical progression and the book is well organized. The authors have used numerous footnotes which appear at the bottom of each page to support the text. This work is both an academic and practical text. It is academic in the sense that it is a complete overview of the law, supported by case citations, and often deals with very technical areas which must be carefully read. Examples include the discussion of actions on the covenant to pay and their inter-relationship with ss. 62 and 63 of The Land Titles Act,¹ and the matter of priorities, especially those between writ holders *inter se*. It is practical in the sense that many useful hints are scattered throughout the book, covering such matters as problems encountered in dealing with tenants, bankruptcy and affidavit evidence.

The chapter on receivers is a good treatment of a comprehensive topic, expounding the law relating to the duties of a receiver, assignment of rents and attornment (a topic most lawyers forget after they leave law school). There is a very detailed review of the enforcement procedures for agreements for sale which reminds us that although there is much similarity in this area of practice to mortgage foreclosure, there are substantial differences. The true nature of the relationship of vendor and purchaser is also outlined. The authors further point out the need to revise the forms which are presently extracted from the Rules of Court and which have been there since the last revision in 1942. Although the authors do not advocate such, it might be prudent to consider dropping these forms from the Rules of Court since the practice of our courts is now well established. To round off the book, there is a general chapter dealing with such matters as preservation orders, acceleration clauses, private sale provisions in Alberta, tax implications and in addition there are appendices containing forms for use in mortgage and agreement for sale actions.

The authors were faced with the problem of continuing changes in legislation and case law. For example, the decision of *Guaranty Trust Co. of Canada v. Bailey*² (dealing with the implied covenant to pay contained in s. 62 of The Land Titles Act)³ was rendered by the Alberta

1. R.S.A. 1980, c. L-5., as am.

2. (1985) 38 Alta. L.R. (2d) 262.

3. *Supra* n. 3.

Court of Appeal early in May, 1985. The trial decision was upheld, but it is significant to note that the trial decision was cited five times in the book's table of cases.

Similarly, the Alberta Court of Appeal in *Canada Permanent Trust Co. v. King Art Developments Ltd.*⁴ expressed the view that, on Rice order applications, only the forced sale for terms value will be accepted. However, in September 1985, the Alberta Court of Appeal specified that the market value is to be used unless special considerations exist *Yorkshire Trust Co. v. Armwest Developments Ltd.*⁵ The Court did not state what these special considerations might include. However, the recent judgment of MacCallum J. in *Fidelity Trust Co. v. Philion*⁶ indicated that revenue properties which are unoccupied dictate lower values from those which are occupied. Lastly, the unreported decision of *Alberta Mortgage and Housing Corporation v. Ciereszko*⁷ by MacDonald J. in November, 1985 will affect the discussion concerning the Crown in Chapter 3. The learned judge held that the Crown must act strictly within the purview of the legislation creating the corporation and determined that the Law of Property Act⁸ provisions relating to individual mortgagors do bind the Crown.

The book is a complete work on the subject matter and has already come into general use by lawyers, judges and masters dealing with foreclosures, a fact which was predicted by Master Hyndman in his foreword. In a work of this magnitude, one cannot give detailed, expansive treatment to all subjects. Thus, the treatment of collateral security is brief yet concise. Overall, however, most subject areas are covered in sufficient detail and the book is highly recommended as a primary reference in the area.

John Sterk
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4. (1984) 32 Alta. L.R. (2d) 1.

5. Unreported, 12 Sept. 1985, J.D. of Edmonton, I.A. 18540 (Alta. C.A.).

6. [1985] A.W.L.D. 1615.

7. Unreported, 7 Nov. 1985, J.D. of Calgary, No. 8401 32207 (Alta. Q.B.).

8. R.S.A. 1980, c. L-8., as am.