

1988 CarswellAlta 910, 9 A.C.W.S. (3d) 325

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Bank of Montreal v Mack

Bank of Montreal Appellant -v- James E. Mack and Patricia Mack Respondents

Alberta Court of Appeal

Haddad, Harradence and Bracco JJ.A

Judgment: April 8, 1988

Docket: 19216

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Counsel: R.A. **Low** for the Appellant

J.T. Huzil for the Respondents

Subject: Property

***HARRADENCE, J.A. (FOR THE COURT):***

1 With the greatest respect for the finding of the learned Trial Judge that the equitable mortgage of the Respondents, residence (Exhibit 4) was granted without consideration. we are of the view that this was error in Law. The evidence clearly reveals that while the funds referred to in the equitable mortgage were never disbursed to the Respondents personally. they were deposited to the account of W. Mack. the Respondents, private company.

2 We are all of the view that this in law was good and sufficient consideration for the execution of the equitable mortgage by the Respondents.

3 The appeal must be allowed; the order for foreclosure will go and the matter will be remitted back to the Court of Queen's Bench.

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