

Her Majesty the Queen (appellant/respondent) v. James Keith Steinhubl (respondent/appellant)
(1003-0301-A; 1103-0050-A; 2012 ABCA 260)

Indexed As: R. v. Steinhubl (J.K.)

Alberta Court of Appeal
Costigan, Paperny and Belzil, JJ.A.
September 12, 2012.

Summary:

The accused real estate developer was charged with 60 counts of fraud by providing false information in support of various mortgage applications. It was alleged that, working in conjunction with others, he defrauded the complainant lenders and mortgage insurers of approximately \$3.9 million.

The Alberta Court of Queen's Bench, in a decision reported at 492 A.R. 1, convicted the accused of 13 of the counts of fraud over \$5,000 in the indictment. The court acquitted the accused of two other counts of fraud over \$5,000, but convicted him of the lesser included offence of attempted fraud. The court then stayed one of the latter convictions on the basis of the Kienapple principle. The court acquitted the accused of the other counts in the indictment. The Crown appealed 15 of the acquittals. The accused appealed his convictions.

The Alberta Court of Appeal allowed the Crown's appeal and remitted the matter back to the trial court for sentencing. The court dismissed the accused's appeal.

Civil Rights - Topic 3265

Trials - Due process, fundamental justice and fair hearings - Speedy trial - Accused's right to - What constitutes "within a reasonable time" - The accused (Steinhubl) and others were each charged with 60 counts of fraud by providing false information in support of various mortgage applications - Steinhubl applied for a stay of prosecution based on delay - The overall delay was from October 2005 when the charges were laid to September 2009 when the trial was now scheduled to be heard (almost four years) - Steinhubl had not been in custody for any appreciable portion of this period, if at all - Bielby, J., dismissed the application - All periods of delay other than inherent delay which arose between the date of committal for trial and the current trial start date arose because of the actions of Steinhubl's co-accuseds, rather than the Crown - The delay was not unreasonable, nor was it likely to affect trial fairness - The accused brought another application for a stay at trial because of delay - It was also refused - The accused was convicted of some counts and acquitted of others - The Crown appealed 15 of the acquittals; the accused appealed his convictions - The Alberta Court of Appeal held, inter alia, that Bielby, J., made no reviewable error in refusing to stay the proceedings - See paragraph 22.

Criminal Law - Topic 2005

Fraudulent transactions - Fraud - Elements of fraud - The accused real estate developer was charged with 60 counts of fraud by providing false information in support of various

mortgage applications - It was alleged that, working in conjunction with others, he defrauded the complainant lenders and mortgage insurers of approximately \$3.9 million - The scheme involved using "straw buyers" with good credit to obtain the mortgages - At the heart of the frauds were alleged misrepresentations made by the straw buyers to the mortgage lenders at the instigation of the accused and his business partner - The trial judge acquitted the accused of the majority of the counts in the indictment, holding that the Crown had failed to prove the essential element of reliance to the required standard in relation to those counts - The Crown appealed 15 of the acquittals - The Alberta Court of Appeal allowed the Crown's appeal and remitted the matter back to the trial court for sentencing - In her review of the individual counts, the trial judge held that evidence of mortgage documents was not sufficient to draw an inference of reliance on their contents; rather, additional evidence of the lenders' actual policies was required - The court held that this was an error in law - The mortgage documents were in themselves direct evidence that the financial institutions would rely on the conditions contained therein, and sufficient to permit an inference of reliance to be drawn - The trial judge also erred in concluding that evidence of discretion in the mortgage approval process foreclosed the possibility of inferring reliance - See paragraphs 1 to 19.

Cases Noticed:

R. v. Park (S.J.) (2010), 482 A.R. 153; 490 W.A.C. 153; 2010 ABCA 248, appld. [para. 12].

Counsel:

M.J. McGuire, for the appellant Crown (acquittal appeal hearing);
J.G. Pickard, for the respondent Crown (conviction appeal hearing);
James K. Steinhubl, appeared in person.

This appeal was heard on September 5, 2012, by Costigan, Paperny and Belzil, J.J.A., of the Alberta Court of Appeal, who delivered the following memorandum of judgment on September 12, 2012.

Crown's appeal allowed;
accused's appeal dismissed.

Editor: Jana A. Andersen