

NOVA SCOTIA COURT OF APPEAL

Citation: *Courtney v. Bank of Montreal*, 2005 NSCA 153

Date: 20051129

Docket: CA 237229

Registry: Halifax

Between:

Holly Courtney

Appellant

v.

Bank of Montreal

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: September 26, 2005

Subject: *Banking - undue influence by spouse - independent legal advice - duty of inquiry by lender*

Summary: Appellant signed three promissory notes - one as co-borrower with her husband, and two as principal borrower with him as guarantor. The monies were used to purchase a Knowledge House limited partnership unit and Knowledge House and ITI shares in her husband's name, and Knowledge House shares in her own name. The appellant had resisted but was persuaded to sign by her husband, a director and a senior vice-president of Knowledge House, whose shares secured the bank loans. The bank's loans officers who had met with the couple when each note was signed had not met her previously. Neither recalled any reluctance or concern about signing. Each was of the opinion that the appellant understood the security documents and signed willingly. No independent legal advice was provided to her. Before the third loan was authorized, a senior Bank employee had expressed concern about the risk. The appellant was not told of this. She had been employed for many years but had left the workforce before these loans were taken out. The value of the shares collapsed. The trial judge allowed the bank's claim pursuant to the notes.

Issue: Whether the trial judge had made a palpable and overriding error in finding that the appellant stood to benefit from the bank loans, or in ignoring or misunderstanding the evidence of undue influence exerted by her husband over her. Whether he erred in law in failing to apply or consider the presumption of undue influence. Whether he erred in finding that the bank had met its obligations to the appellant. Whether he erred in failing to find that the bank had constructive notice of undue influence.

Result: Appeal dismissed with costs. The loan proceeds were used to purchase investments which were expected to reduce income tax liability and to appreciate in value. While the couple had disagreed about the loans, the appellant had had considerable work experience, knew she was signing loan documents and was obliged to repay the loans, and had an appreciation of financial and business matters. The trial judge made no palpable and overriding error in finding that the appellant stood to benefit from the loans or by ignoring or misunderstanding the evidence of undue influence allegedly exerted by her husband on the appellant. While the trial judge had not explicitly referred to the presumption of undue influence, it is apparent from his decision that he directed his mind to the matters that give rise to it and to the evidence in support and in rebuttal.

Where the appellant was found to have understood the obligation she entered into with the bank and to have done so freely and voluntarily, independent legal advice was not essential. The trial judge did not err by not determining that the bank should have insisted on a private meeting to advise her of the risks and potential liability. Nor did he err in failing to find that the bank had constructive notice of undue influence based on her having left the workforce and her being married to her husband, in whose name most of the investments were registered.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.