

NOVA SCOTIA COURT OF APPEAL

Citation: *Bank of Nova Scotia v. Allen*, 2010 NSCA 47

Date: 20100528

Docket: CA 318661

Registry: Halifax

Between:

The Bank of Nova Scotia

Appellant

v.

Terry J. Allen

Respondent

JUDGE: MacDonald, C.J.N.S.

APPEAL HEARD: May 17, 2010

SUBJECT: Mortgages, protective disbursements, morgagee purchasing at Sheriff's sale.

SUMMARY: The appellant mortgagee foreclosed on the respondent mortgagor's property and then "bought in" at the Sheriff's sale. It then applied for deficiency judgment while it still retained the property. The Supreme Court of Nova Scotia denied the mortgagee its protective disbursements because the property had not been resold.

ISSUE: The narrow issue in this appeal involves whether a mortgagee can recover protective disbursements incurred in circumstances where the mortgagee, having purchased the property at the sheriff's sale, still retains title at the time of the deficiency judgment application.

RESULT: Appeal allowed. The Bank was entitled to its protective disbursements, even though it still retained the property at the time of the deficiency judgment application.

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 8 pages.