

NOVA SCOTIA COURT OF APPEAL

Citation: *Bank of Nova Scotia v. A. MacKenzie's Auto Mart Inc.*,
2010 NSCA 81

Date: 20101021

Docket: CA 324501

Registry: Halifax

Between:

The Bank of Nova Scotia

Appellant

v.

A. MacKenzie's Auto Mart Incorporated, W.
Keith MacKenzie, Aaron MacKenzie, Donna
Blount, Steve Oldford, and Allan Kennedy

Respondents

Revised library sheet: The word “appellant” has been replaced with the word “respondent” on lines 1 and 3 in the Summary section and line 4 of the Held section. This library sheet has been revised on November 23, 2010 and replaces the previously released library sheet.

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: October 7, 2010

Subject: **Test for Summary Judgment. CPR 13.04 (2009). Guarantor's Liability. Pre-requisites for Summary Judgment. Standard of Review. Limiting Issues for Trial. CPR 13.07.**

Summary: The respondent guaranteed the indebtedness of a car dealership to the Bank. The dealership defaulted and the Bank sought summary judgment on the guarantee. The respondent defended the action on the basis that, among other things, the Bank was aware of the fraudulent activity of a principal of the car dealership and failed to inform the guarantor. He also argued

he should be released from his guarantee as a result of a novation of the contract between the Bank and the car dealership. The Chambers judge dismissed the Bank's application for summary judgment. The Bank also argued that the trial judge, even if she was correct in failing to grant summary judgment, erred in failing to limit the issues for trial. The Bank appealed.

Held:

Appeal dismissed. The Chambers judge committed no error when she determined that factual issues would have to be determined before the contractual rights and obligations of the respondent under his guarantee could be addressed. Further, the Chambers judge committed no error when she refused to limit the issues for trial.

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 9 pages.