

NOVA SCOTIA COURT OF APPEAL

Cite as: 2047545 Nova Scotia Ltd. v. The Toronto-Dominion Bank, 1996 NSCA 31

Freeman, Matthews and Pugsley, J.A.

BETWEEN:

2047545 NOVA SCOTIA LIMITED
and DAVID LEWIS BRACE

Appellants

- and -

THE TORONTO-DOMINION BANK, one
of Canada's Chartered Banks

Respondent

) David L. Brace
) appeared in person
)

) Dufferin Harper
) for the Respondent
)

) Appeal Heard:
) February 14, 1996
)

) Judgment Delivered:
) February 14, 1996
)
)
)
)
)
)
)
)

THE COURT: Appeal dismissed with costs to the respondent in the amount of \$1500.00 plus disbursements per oral reasons for judgment of Matthews, J.A.; Freeman and Pugsley, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

MATTHEWS, J.A.:

On purchasing an apartment building in Halifax the appellant numbered company assumed a mortgage later assigned to the respondent, as mortgagee, with the appellant, Brace, as guarantor. The numbered company defaulted on the mortgage and demand was made on the guarantee. Payment was not made. Pursuant to an order of foreclosure and sale, the sheriff sold the property to the respondent. An agent of the respondent, after advertising, received offers to purchase. The respondent finally accepted the highest offer. The respondent claimed a deficiency. After a four day trial, involving several issues including the validity of the guarantee and consideration of **Civil Procedure Rule 47.10(2)**, Mr. Justice Nunn of the Supreme Court found for the respondent on all issues, holding that the respondent was entitled to the deficiency as claimed. The appeal is from that decision.

The grounds of appeal are similar to the issues raised at trial. The trial judge in a detailed 23 page, well reasoned, decision dealt with each. Some of the issues involve pure questions of fact. In finding against the appellants on these questions, the trial judge, at times, commented that he was unable to accept Mr. Brace's version.

It is not for this Court to retry a case or interfere with findings of fact by a trial judge absent manifest error, ignoring conclusive or relevant evidence, misunderstanding the evidence or drawing erroneous conclusions from it. See among others, **P.(D.) v. S.(C.)**, [1993] 4 S.C.R. 141 at pp. 188-9 and **Toneguzzo - Norvell v. Burnaby Hospital**, [1994] 1 S.C.R. 114 at p. 121 and the many cases cited therein.

This Court, in **R. England's Warehouse Ltd. and Richard H. England v. Canadian Imperial Bank of Commerce**, C.A. No. 117835, judgment delivered January 18, 1996 considered some of the issues raised on this appeal.

We have studied the material filed, including the factums and have heard Mr. Brace on behalf of the appellants and counsel for the respondent.

It is our unanimous opinion that the trial judge made no error in fact or in law

which would cause this Court to interfere with his conclusions.

The appeal is dismissed with costs to the respondent in the amount of \$1500.00 plus disbursements.

J.A.

Concurred in:

Freeman, J.A.

Pugsley, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

2047545 NOVA SCOTIA LIMITED and
DAVID LEWIS BRACE

Appellants

- and -

THE TORONTO-DOMINION BANK,
one of Canada's Chartered Banks

Respondent

REASONS FOR
JUDGMENT BY:

MATTHEWS,
J.A.