

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** Agirman v. Bank of Nova Scotia, 2003 NSCA 70

**Date:** 20030619

**Docket:** CA 191591

**Registry:** Halifax

Between:

Bercin Halef Agirman

Appellant (Intervenor)

and

The Bank of Nova Scotia

Respondent (Plaintiff)

and

Edward Adver Halef

Respondent (Defendant)

and

Stephen Piggott

Intervenor

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Judge: Roscoe, J.A.

Appeal Heard: June 10, 2003

Subject: **Matrimonial Property Act**, affidavit of marital status

Summary: A husband mortgaged a residential property without his wife's consent. In the affidavit of marital status he said he was a spouse and his spouse had "... released all rights to the property covered by this mortgage by separation agreement". In fact there was no written separation agreement. In the divorce proceedings the husband swore an affidavit saying that they had an oral separation agreement. The wife made an application to set aside the mortgage pursuant to the

Matrimonial Property Act which was dismissed by the Chambers judge.

Issue: Should the mortgage be set aside?

Result: Appeal allowed on the basis that the affidavit upon which the solicitor for the Bank relied was not an affidavit made in accordance with the provisions of s. 8(3) the **Matrimonial Property Act**. The affidavit did not verify that the spouses entered into a written separation agreement or a separation agreement made pursuant to the **Act**.

**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 7 pages.**