CASE NO. VOLUME PAGE

Cite as: Scotia Mortage Corporation v. Banfield, 1998 NSCA 124

SCOTIA MORTGAGE CORPORATION ROSEMARY KAREN-LYN BANFIELD and SHAWN

PATRICK DELANEY

- and -

(Appellant) (Respondents)

C.A. No. 144260 Halifax, N.S. CROMWELL, J.A.

(orally)

APPEAL HEARD: May 25, 1998

JUDGMENT DELIVERED: May 25, 1998

WRITTEN RELEASE OF ORAL: May 26, 1998

SUBJECT: Deficiency Judgment on Foreclosure - Civil Procedure Rule 47.10

SUMMARY: The appellant mortgagee had purchased the property at the Sheriff's sale

for an amount equal to the Sheriff's fees and outstanding taxes. The property was listed for sale and various maintenance expenses incurred. The property was resold. On the application for a deficiency judgment the appellant's claims with respect to the real estate commission and protective disbursements were disallowed. The Chambers judge's decision in this regard was made prior to the release of this Court's decision in **Royal Bank of Canada v. Marjen** on January 8, 1998.

ISSUE: Did the Chambers judge err?

<u>RESULT</u>: Appeal allowed. The case is governed by the decision of this Court in

Marjen. There was no issue before the Chambers judge or before the Court of Appeal that the amounts claimed with respect to real estate commission or protective disbursements were unreasonable. The

amount of the deficiency judgment was increased accordingly.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET. THE FULL COURT DECISION CONSISTS OF 2 PAGES.