

MATTHEWS, J.A.:

By judgment rendered March 12, 1991 and the order based thereon, this Court allowed the appeal of the respondent herein ABN (AMRO) Bank Canada, reinstated an order of foreclosure of the property of NsC Diesel Power Inc. and dismissed the application of NsC Diesel Power Inc. to set aside the foreclosure order. That judgment is reported in (1991), 101 N.S.R. (2d) 361.

The applicant herein, NsC Corporation Limited, as the sole shareholder of NsC Diesel Power Inc., now in bankruptcy, applied before Chief Justice Clarke in chambers to have the judgment and order of March 12, 1991 either amended or dismissed "on the ground that it had been improperly procured on the basis of affidavit evidence which ought not to have been before the Court". The Chief Justice by order dated March 18, 1993 dismissed the application "on the ground that upon the rendering of its decision dated March 12, 1991, and the issuing of the order based thereon, this Court ceased to have jurisdiction to deal with or consider the issues now raised by the appellant in the present application".

A motion for extension of time to serve and file an application for leave to appeal from the judgment of this Court dated March 12, 1991, was dismissed by Iacobucci, J. of the Supreme Court of Canada on April 16, 1992.

The applicant, pursuant to s. 37 of the **Supreme Court Act**, R.S.C. 1985, c. S-26 now seeks leave to appeal the judgment of March 12, 1991 to the Supreme Court of Canada.

The applicant did not appear before this Court with counsel. However, it did file a memorandum.

The respondent ABN (AMRO) Bank opposes the application.

The applicant sought the same relief, that is, the right to appeal the March 12, 1991 decision, by way of simultaneous application to the Supreme Court of Canada. On September 16, 1993, the Supreme Court of Canada dismissed the application for leave to appeal with costs to the respondent.

Upon a review of the record, it is our unanimous opinion, that this is not a matter which should be forwarded to the Supreme Court of Canada for its consideration. Furthermore, the application is well out of time and has not been brought by a party before the Court in March of 1991.

We refuse leave to appeal. We order costs to be paid by the applicant in the amount of \$3000.00 plus disbursements payable forthwith.

J.A.

Concurred in:

Hart, J.A.

Chipman, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

NsC CORPORATION LIMITED

Appellant

- and -
FOR

BY:
ABN AMRO BANK CANADA

Respondent

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) REASONS
) JUDGMENT
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) MATTHEWS,
) J.A.
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