

NOVA SCOTIA COURT OF APPEAL

Citation: *Pier 99 Products Ltd. v. Bank of Nova Scotia*, 2004 NSCA 6

Date: 20040113

Docket: CA 292464

Registry: Halifax

Between:

Pier 99 Products Limited

Appellant

v.

The Bank of Nova Scotia

Respondent

JUDGE: Cromwell, J.A.

APPEAL HEARD: January 13, 2004

JUDGMENT DELIVERED: January 13, 2004

WRITTEN RELEASE OF ORAL: January 14, 2004

SUBJECT: Priorities - exigible interest in the mortgagor between Sheriff's sale and completion of sale

SUMMARY: Pier 99 registered a Certificate of Judgment after an order of foreclosure, sale and possession and the Sheriff's sale but prior to the completion of the sale. It claimed priority over previously perfected PPSA security held by the respondent Bank. A judge of the Supreme Court held that where, as in this case, the Certificate of Judgment was registered after both the order of foreclosure, sale and possession and the Sheriff's sale and where the buyer at the

Sheriff's sale subsequently completed the transaction according to the terms of sale, there was no exigible interest in land remaining in the mortgagor at the time of registration of Pier 99's Certificate of Judgment. Pier 99 appealed.

ISSUE: Did the mortgagor have an exigible interest in land at the time Pier 99 registered its Certificate of Judgment?

RESULT: Appeal dismissed. The Certificate of Judgment was registered after both the order of foreclosure, sale and possession and the Sheriff's sale and the Sheriff's sale was subsequently completed according to its terms. The Supreme Court judge did not err in holding, in these circumstances, and on the basis of **Pew v. Zinck**, [1953] 1 S.C.R. 285, that the mortgagor had no exigible interest in land at the time Pier 99 registered its Certificate of Judgment.

<p>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 1 page.</p>
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