

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Shane v. Allen, 2010 NSSC 484

**Date:** 20100720

**Docket:** Hfx No. 316695

Pic No. 300385

Pic No. 306313

**Registry:** Halifax  
Pictou

**Between:**

Ruth Shane and Wilma Lee Shane

Plaintiffs

v.

John Allen, Toronto-Dominion Bank, The Canada Trust Company, Keybase  
Financial Group Inc., B2B Trust, Global Maxfin Investments Inc., AGF Trust  
Company, and Dundee Private Investors Inc.

Defendants

**And Between:**

John Cameron and Linda Cameron

Plaintiffs

v.

Keybase Financial Group Inc., AGF Trust Company, and John Allen

Defendants

**And Between:**

Jeffrey H. Phillips and Denise Kowalski-Phillips

Plaintiffs

v.

John Allen, Keybase Financial Group Inc., B2B Trust, Global Maxfin Investments  
Inc., AGF Trust Company, and Dundee Private Investors Inc.

Defendants

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** July 19, 2010, in Halifax, Nova Scotia

**Written Decision:** May 31, 2011  
{Oral decision rendered July 20, 2010}

**Subject:** Civil procedure - Summary judgment on pleadings; Claim by borrower against lending institution in negligence

**Summary:** Plaintiffs claimed against individual securities advisor, mutual fund dealers which employed him, and lending institutions including AGF, which provided loans to plaintiffs. Securities advisor completed applications on plaintiffs' behalf to secure investment loans from AGF, and advisor then used the loan proceeds to purchase mutual funds which he recommended to the plaintiffs. Claimants allege the advisor misrepresented their net worth and assets in completing the loan applications and in some instances forged their signatures. Plaintiffs say they incurred losses as a result of negligent action or inaction by AGF and other defendants.

**Issue:** Whether plaintiffs' negligence claims against AGF should be dismissed for disclosing no cause of action.

**Result:** AGF's motion for summary judgment granted pursuant to *Rule 13.03*. Plaintiffs' claims are absolutely unsustainable. Plaintiffs do not have claims in negligence against AGF on the basis that it failed to verify information on loan applications. Barring a special relationship or exceptional circumstances, the relationship between a bank and its customer is that of a debtor and creditor, and no duty of care arises. None of the plaintiffs' pleadings offered material facts to establish that there were exceptional circumstances, or that they had special relationships with AGF. Absent a duty of care, no cause of action in negligence was made out in the pleadings.

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