

COASTAL FINANCIAL CREDIT UNION LIMITED

Plaintiff

- and -

LUKE DANIEL MULLEN and TAMMY CHURCHILL

Defendants

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HEARD: Before the Honourable Justice Charles E. Haliburton
at Annapolis Royal, Nova Scotia, on the 5th day
of June, A.D. 2003

DECISION: The 5th day of June, A.D. 2003

SUBJECT: Foreclosure; Sheriff's obligations/report; Business
Occupancy Tax

SUMMARY: On foreclosure sale, Sheriff received from the Municipality a
certificate for taxes outstanding including Business Occupancy
Tax on commercial property being foreclosed. Mortgagee
objected to the payment of occupancy tax in priority to its
mortgage/judgment.

ISSUE: Is Business Occupancy Tax a lien on real property?

RESULT: A review of the specific sections of the *Municipal Government
Act* NSS Statutes 1998 ch. 18 relating the creation of lien, that
is, Sections 128 (a), 129 (a) and 133 make it clear that Business
Occupancy tax does not create a lien on real estate and the
interest foreclosed by the mortgagee. This is consistent with
the historical context in which the Business Occupancy Tax
provisions were created. The mortgage has priority over the
municipality's claim for Business Occupancy Tax.