

SUPREME COURT OF NOVA SCOTIA

Citation: Toronto-Dominion Bank v. Stevens, 2011 NSSC 343

Date: 20110914

Docket: Hfx. No. 313164

Registry: Halifax

Between:

The Toronto-Dominion Bank

Plaintiff

v.

Gerald Leonard Stevens and Veronica Mary Stevens

Defendants

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Judge: The Honourable Justice Peter P. Rosinski

Heard: August 11, 2011, in Halifax, Nova Scotia

Subject: Foreclosures and deficiency judgments involving multiple parties - *Civil Procedure Rule 72* - interpretation of the Rules.

Summary: Property was sold pursuant to foreclosure to mortgagee which proceeded to deficiency judgment having only served the husband mortgagor [unable to serve wife]. Deficiency judgement ordered against husband mortgagor. Shortly thereafter, property sold to third-party for lower price than mortgagee "paid" at Sheriff Sale. Much later, Bank obtained Order for Substituted Service and effected service on wife for purpose of a second motion for deficiency judgment for a greater amount against wife only.

Issue: As against joint tenant/spouse, jointly and severally liable for deficiency under the mortgage, can Bank obtain second deficiency judgment against wife mortgagor in an

amount different [greater] than as against husband?

Result:

As a matter of contract the Bank is restricted to one deficiency judgment calculation only in this case. Moreover, the Rules properly interpreted only allow for one deficiency judgment per foreclosure. Even if Bank could proceed to second deficiency judgment as against wife for a different amount than as against the husband, Court would invoke its equitable jurisdiction under the doctrine of issue estoppel or abuse of process to prevent such outcome.

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QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***