<u>SUPREME COURT OF NOVA SCOTIA</u>

Citation: *Ferguson v. Amiro*, 2011 NSSC 416

Date: (20111117)
Docket: Hfx. No. 342741
Registry: Halifax

Between:

Gregory Ferguson

Plaintiff

v.

Shane Andrew Amiro and Nadine Arzina Amiro

Defendants

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Judge:	The Honourable Justice Pierre L. Muise
Motion Heard:	September 8, 2011
Final Written Submissions Received:	September 27, 2011

Summary: The mortgagors made all payments required during the term of the mortgage. They continued to make payments thereafter under a verbal arrangement with the mortgagee. They stopped making the payments when a $5,000 mortgage renewal fee was requested. They did not pay the amount demanded on the discharge statement because they contested some of the charges. The mortgagee commenced a foreclosure action. The mortgagors moved for: an order, under the *Money*-

lenders Act, disallowing some of the charges as being unauthorized and/or excessive; and, an order, under s. 42 of the *Judicature Act*, discontinuing the foreclosure action. Both parties asked that the Court determine which of the contested charges were properly chargeable under the mortgage.

Issues:

1. What is the proper interpretation of s. 4 of the *Money-lenders Act*?

2. Should the foreclosure action be discontinued under s. 42 of the *Judicature Act*?

3. Which, if any, of the contested charges should be allowed?

Result:

S. 4 of the *Money-lenders Act* does not create a separate category of pre-requisites to relief for loan charges which, together with interest, are excessive, considering the risk and circumstances involved. The loan charges and interest must constitute a criminal interest rate (i.e. a rate exceeding 60%) for relief to be available.

S. 42 of the *Judicature Act* did not apply because the term of the mortgage had expired.

The following charges were disallowed: the late payment charges, because they were not provided for in the mortgage agreement between the parties; the default proceedings fee, because it was found to be a penalty, rather than a genuine pre-estimate of damages; the mortgage renewal fee, because it was not agreed upon and there was no renewal; the statement preparation fee, because it was not specifically provided for and not a cost proven to have been incurred; the pre-payment interest penalty, because the term of the mortgage had expired and the mortgagee had initiated a foreclosure action; and, solicitor and client costs, because the mortgagee’s unfounded claims and unjustified charges caused unnecessary costs and were sufficiently oppressive to constitute special circumstances warranting disallowing the solicitor and client costs provided for in the mortgage.