

CASE NO.

VOL. NO.

BETWEEN:

THE TORONTO-DOMINION BANK

PLAINTIFF

- and -

J.F. FENNELL ENTERPRISES LIMITED

DEFENDANT

Justice Robert W. Wright

Halifax, Nova Scotia

File No. S.H. No. 167373

LIBRARY HEADING

[Cite as: Toronto-Dominion Bank v. J.F. Fennell Enterprises Ltd., 2001 NSSC 194]

HEARD: Before the Honourable Justice Robert W. Wright at Halifax, Nova Scotia on December 6, 7 and 12, 2001.

WRITTEN

RELEASE OF

DECISION: January 7, 2002

SUBJECT: Liability for bank loan indebtedness - validity of Promissory Note - duress.

SUMMARY: The defendant was a long time customer of the plaintiff Bank with whom it had arranged several loan facilities, chief amongst which was an Operating Loan to finance its receivables. After selling its main business venture in 1995, the principal of the defendant company pursued a new business opportunity in the prepaid cellular telephone industry. He established, with two others, a new company whose startup development costs were funded by draws made against the defendant's Operating Loan account which was still in place. The Bank condoned such use of the loan advances in light of the security it held from the defendant company.

A loan application was eventually made by the new company as a result of which certain security documents were provided to the Bank to facilitate a new Operating Loan. Before it was ever activated, however, the new business venture soured, leaving all of the loan indebtedness under the name of the defendant company. The defendant's Operating Loan was later converted to a Demand Promissory Note at the request of the Bank.

The defendant contended that the Promissory Note was unenforceable because of certain defects on its face and because it was obtained by duress in any event. The defendant further contended that it was responsible for only a specified part of the underlying debt because some of the loan advances ought to have been made or transferred to the new company's Operating Loan account in order to correspondingly reduce the amount of the defendant's Operating Loan which, with the knowledge of the Bank, had been utilized to fund the new company's startup expenses.

HELD: The defendant company was fully responsible for the entire amount of the Bank indebtedness. There was no evidence of duress in the taking of the Promissory Note and even if there was a possible defect on the face of the Note otherwise, there was ample evidence of the underlying debt owed by the defendant company to the Bank directly as between borrower and lender. The bank records clearly established such indebtedness and there was no merit in any of the defences raised by the defendant. The Bank was entitled to judgment accordingly.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**
