

SUPREME COURT OF NOVA SCOTIA

Citation: Credit Union Atlantic Ltd. v. Isenor, 2012 NSSC 183

Date: 20120501

Docket: Hfx No. 356884

Registry: Halifax

Between: Credit Union Atlantic Limited

Plaintiff

v.

WBLI Incorporated, Trustee in Bankruptcy on behalf
of Derek Blair Isenor and Mary-Jane Isenor

Defendants

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Judge: The Honourable Justice Gerald R. P. Moir

Heard: May 1, 2012

Subject: Mortgages; Surplus funds, competing claims

Summary: How to distribute surplus funds in light of various claims?

Issues: A sheriff's sale generated a substantial surplus. There were a number of builders' liens and two judgments. Also, one of the defendants claimed to be entitled to funds in place of her *Matrimonial Property Act* interests. Also, a lien claimant did not participate in the hearing of the motion for distribution and there was a question about whether proof of the claim would await a *Builders' Lien Act* trial.

Result: On a foreclosure, surplus funds stand in the stead of the foreclosed equity. Therefore, builders' liens that arose before an order under the *Matrimonial Property Act* take priority over rights under the Act. The motion for surplus funds, not a trial under the *Builders' Lien Act*, is the right forum in which to prove a builder's debt and security because the lien has been foreclosed.

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