

IN THE SUPREME COURT OF NOVA SCOTIA

Cite as: Royal Trust Corporation of Canada v. Pentagon Investments Ltd., 2000 NSSC 115

BETWEEN:

Royal Trust Corporation of Canada Plaintiff
- and -
Pentagon Investments Limited and James Chen Defendants

and BETWEEN:

Royal Trust Corporation of Canada Plaintiff
- and -
Pentagon Investments Limited, James Chen and May Yin Chen Defendants

and BETWEEN:

Royal Trust Corporation of Canada Plaintiff
- and -
Pentagon Investments Limited and James Chen Defendants

JUSTICE JOHN M. DAVISON

HALIFAX, NS

S.H. Nos. 146609, 146610, 146611

LIBRARY HEADING

HEARD BEFORE: The Honourable Justice John M. Davison, at Halifax, Nova Scotia
on May 3, 2000.

DECISION DATE: May 3, 2000 (Orally)

WRITTEN RELEASE: May 10, 2000

SUBJECT: PRACTICE

SUMMARY: On an application for a deficiency judgment against mortgagors following foreclosure and sale the mortgagee sought recovery of expenses paid to an engineering company with respect to environmental assessments and remedial work for environmental damage. The total claim for the three properties amounted to \$1,092,631.96. Environmental damage was found and remedied on two properties. On the third property, there was an assessment which allegedly cost \$36,222.12 but no damage was found on that property.

HELD:

- (1) The remedy of the deficiencies found on the two properties was essential to preserve and protect the property with a view to recovery of some of the claim on the covenants.
- (2) Recovery from the mortgagor for the cost of environmental assessments should not occur where it is not reasonable to believe there is contamination.
- (3) In this proceeding the assessment cost of the third property was a reasonable expense when damage was found on the two other properties which were located close to the third property.
- (4) An independent engineering company was appointed under *Civil Procedure Rule 23.01* to advise the court on the account rendered by the engineering company retained by the

mortgagee to see if it was properly and reasonably incurred to realize the best price possible on the sale of the property.

(5) Reference was made to the *Environmental Act*, S.N.S. 1994-95 c.1, s. 165; *Royal Bank of Canada v. Marjen Investments Ltd.* (1998), 164 N.S.R. (2d) 293 (N.S.C.A.); *Nova Scotia Savings and Loan v. MacKay et al.* (1980), 41 N.S.R. (2d) 432; *C.I.B.C. Mortgage Corporation v. Antonsen*, [1999] B.C.J. No. 1385 (B.C.S.C.)