

SUPREME COURT OF NOVA SCOTIA

Citation: Matheson v. CIBC Wood Gundy., 2014 NSSC 18

Date: 20140121

Docket: Syd. No. 317830

Registry: Sydney

Between:

Donald Matheson and Carolyn Matheson

Applicants

v.

CIBC World Markets Inc./Marches Mondiaux CIBC Inc. carrying on business as
CIBC Wood Gundy

Respondent

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Judge: The Honourable Justice Arthur W.D. Pickup

Heard: September 10, 11, 12 and 16, 2013, in Sydney, Nova Scotia

Final Written

Submissions: Applicants' Brief, September 25, 2013
Respondent's Brief, September 30, 2013
Applicants' Reply Brief, October 7, 2013

Subject: Fiduciary duty; contract; negligence; negligent
misrepresentation.

Summary: The applicants were investors who lost substantial parts of their investments between July and November 2008. During that time, they were receiving incorrect information about the available margin in their investment accounts as a result of a calculation error by CIBC. The applicants alleged that the error

prevented them and their investment advisor from making sound investment decisions during that time period. CIBC admitted responsibility for the error. Upon discovering the miscalculation, CIBC reversed certain trades in the applicants' accounts, and reimbursed the margin-based trades in the amount of \$643,000.00. The applicants, however, sought to reverse all the investment decisions they made during the error period, not only the margin decisions, arguing that their investment advisor would have given different advice had he known the true state of their margin accounts.

Issue: Were the applicants entitled to reversal of all transactions on the basis of either breach of fiduciary duty, negligence, breach of contract, or negligent misrepresentation?

Result: CIBC did not owe the applicants a fiduciary duty, but if it did, there was no evidence of disloyalty or dishonesty that would support finding a breach. The claim of breach of contract was not seriously argued or supported by evidence. There was no basis for a cause of action on the basis of negligent performance of a service. As to negligent misrepresentation, the evidence did not establish reliance. The theory of "informed consent" suggested by the applicants' expert had no basis in the field of investment finance and did not assist the applicants in proving reliance. Even if reliance had been proven, the court was not satisfied that the evidence connected such reliance to any resulting losses. Further, the evidence did not establish that the applicants would have handled the non-margin portion of their portfolios differently but for the error. As such, the applicants were not entitled to damages for negligent misrepresentation. They were, however, entitled to recover certain pre-error amounts that CIBC had wrongly deducted from their reimbursement. The court declined to order 10% compound interest on the amounts recovered, finding that only 5% simple interest was justified.