SUPREME COURT OF NOVA SCOTIA
Citation: *Canadian Imperial Bank of Commerce* v. *Hurlburt*, 2008 NSSC 408

Date: 20081218
Docket: Ken No. 273779
Registry: Kentville

Between:

Canadian Imperial Bank of Commerce
Plaintiff

v.

Janet Marie Hurlburt
Defendant

LIBRARY HEADING

Judge: The Honourable Justice Gregory M. Warner

Heard and oral decision: December 18, 2008, in Kentville, Nova Scotia

Written Decision: February 10, 2009

Subject: Foreclosure - Section 42 **Judicature Act**

Issue: Does Section 42, the "second chance" rule, apply to stop a foreclosure when a bank makes demand on a revolving personal line of credit secured by a collateral mortgage?

Summary: The bank made demand for payment of a revolving personal line of credit, secured by a collateral mortgage. The customer did not pay. The bank commenced foreclosure. The customer applied under s. 42 to pay the interest arrears and thereby stop the foreclosure, claiming that the bank was obilgated to continue the PLC so long as the customer made the minimum monthly interest payments. The history of s. 42 in the context of foreclosure practice was reviewed.

Result: Section 42 originated as an equitable remedy to balance the harshness of situations where any default, no matter how minor, could lead to loss of the equity of redemption in a conventional (that is, "term")

mortgage. There is no policy reason why it should not apply to other loan agreements secured by collateral mortgages. However, the Courts should exercise care in applying Section 42 to loan payable on demand. In the case at bar, there was no evidence that the Bank's exercise of its right to demand payment was for an improper purpose, harsh or unconscionable. The request for an Order of discontinuance of the foreclosure was denied.

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