

# IN THE SUPREME COURT OF NOVA SCOTIA

[Cite as: Credit Union Atlantic Ltd. v. Roy, 2002 NSSC 36]

Credit Union Atlantic Limited

Plaintiff

- and -

Wendy Roy

Defendant

Justice Gerald R.P. Moir

Halifax, NS

S.H. -98-151898

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## LIBRARY HEADING

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Date of Decision: 7 February 2002

Subjects: Sureties; Collateral Security: Undue Influence, Independent Legal Advice, Errors in Mortgage Instrument, Material Alteration, Expiry of Collateral Agreement, Contracting out of Suretyship defences.

Summary: Without being urged to take independent legal advice, a spouse executed a mortgage of her home as security for a revolving line of credit respecting her spouse's business. The business failed and the creditor sued for foreclosure and sale. The mortgagor set up defences of undue influence and material alteration. She also argued that defects in the mortgage instrument made it ineffective and that loan agreement secured by the mortgage had expired.

Conclusions: Undue influence had not been established, although independent legal advice was not suggested. Errors in drafting the mortgage did not render it ineffective. However, the terms of the mortgage and of the loan agreement were such that the mortgage secured no advances made after the first year.

After the first year, the account revolved totally, and the secured obligation extinguished. Also, if the obligation had not extinguished, a subsequent change in the rate of interest without consent of the mortgagor would have founded the defence of material alteration, and a term in the mortgage was not effective to contract out of this defence.

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