

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Bank of Montreal v. Scotia Capital Inc., 2002 NSSC 252

Date: 20021125

Docket: SH 171558

Registry: Halifax

Between:

Bank of Montreal

Plaintiff

v.

Scotia Capital Inc./Scotia Capitaux Inc.

Defendant

Third Party Plaintiff

Third Party Counterclaim Defendant

v.

Cathy Lewis

Third Party Defendant

Third Party Counterclaim Plaintiff

Justice Walter R. E. Goodfellow

Halifax, NS

SH 171558

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Judge: The Honourable Justice Walter R. E. Goodfellow

Heard: October 28, 2002 in Halifax (Chambers)

Subject: SUMMARY JUDGMENT - *CPR 13*

Summary: Cathy Lewis' husband requested she sign guarantees and hypothecations to support Bank of Montreal loans to his company. Hypothecations required Ms. Lewis to pledge her holdings with Scotia and Scotia gave letters of undertaking to ensure holdings continued at a level required by pledges. Ms. Lewis unhappy with lack of appreciation of her holdings, etc. on February the 8th, 2001 while acknowledging pledge covered her holdings/account directed that no funds were to be removed to honour pledges or otherwise and there followed correspondence, etc. Reviewed NS Court of Appeal pronouncements on prerequisites of summary judgment; namely,

Oceanus Marine Inc. v. Saunders (1996), 153 N.S.R. (2d) 267

MacNeil v. Black (1998), 166 N.S.R. (2d) 127 (N.S.C.A.)

Campbell v. Lienaux et al (1998), 167 N.S.R. (2d) 196 (N.S.C.A.)

Royal Trust Corp. v. Begg, [1999] N.S.J. No. 45

Plastics Maritime Ltd. v. Dixon's Boatbuilders' Ltd., [1999] N.S.J. No. 12

Also referred Supreme Court of Canada decision in *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423.

Commended counsel for referring only to recent Court of Appeal decisions and not inundating the court with a huge volume of additional trial court decisions. Suggested applications for summary judgment are adequately supported by recent Court of Appeal pronouncements.

Reviewed and listed all facts not in dispute. Addressed arguments advanced by Ms. Lewis as to what she says are arguable issues and concluded prerequisites of case law met by Bank of Montreal giving them entitlement to summary judgment against Scotia and Scotia's entitlement to summary judgment against Ms. Lewis. Directions given for counsel to be heard on the issue of costs with stay on liquidation of Ms. Lewis' portfolio subject to immediate application by any party. This was done to give Ms. Lewis an opportunity to deal with her portfolio, provided no prejudice to summary judgments.

Court determined the mere allegation that an arguable issue exists does not meet the low threshold of establishing an arguable issue, otherwise *CPR 13* would be rendered a nullity in all claims where a denial of defence is filed.

Issue: Requirements of Summary Judgment

Result:

1. Summary judgment Bank of Montreal against Scotia.
2. Summary judgment Scotia against Cathy Lewis.
3. Deadlines for representations with respect to entitlement and taxation of costs and disbursements.
4. Stay of liquidation of portfolio on terms.

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