

SUPREME COURT OF NOVA SCOTIA
Citation: Jaskolka v. Penney, 2014 NSSC 400

Date: 20141105
Docket: Hfx No. 425042
Registry: Halifax

Between:

Alan Jaskolka, Bonnie Jaskolka
Bryan Jaskolka and Klee Rogers

Applicants/Plaintiffs

v.

Brian Penney and Small Fortunes Inc., a body corporate

Respondents/Defendants

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Judge: The Honourable Justice Suzanne M. Hood

Heard: October 22, 2014, in Halifax, Nova Scotia

Oral Decision: November 5, 2014

Written Decision: November 12, 2014

Subject: Summary judgment on evidence; *res judicata*; abuse of process; foreclosure and sale.

Summary: The plaintiffs seek summary judgment on the evidence and an Order for Foreclosure, Sale and Possession.

Issues:

- (1) Whether a dispute over quantum is reason to deny summary judgment in a foreclosure action.
- (2) Whether a mortgagee must complete a deficiency judgment motion on a foreclosure before commencing action on another mortgage securing the same debt.
- (3) Whether both foreclosure and sale actions must be

brought at the same time where there are two separate mortgages securing the same debt.

(4) Whether cause of action or issue estoppel applies or there is an abuse of the court's process.

Result:

Summary Judgment granted with the amount to be assessed pursuant to Rule 13.05.

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