

FORECLOSURE PRACTICE IN NOVA SCOTIA

PRACTICAL COMMENTS

CLE Lecture – February 20, 2008

Presenter: Stephen Kingston
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P. O. Box 730
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I. RECEIPT OF FILE

- * Ensure that you are familiar with **C.P.R. 47** and **Practice Memorandum No. 13**

- * Review materials – what do you need at this stage?
 1. Name of Mortgagor(s)
 2. Property Address/PID Number
 3. Amount of outstanding debt
 4. Amount of arrears and number of months in arrears
 5. Copy of Mortgage (or obtain copy from Registry of Deeds)
 6. Where enforcing a **Collateral Mortgage**, you will need a copy of the Promissory Note or Credit Agreement giving rise to the debt which is collaterally secured.

1. Demand Letter

Who should receive the demand?

- o Mortgagor(s)
- o Guarantor(s) – essential if the Guarantee clause is part of the Mortgage
- o Trustee in Bankruptcy – obtain bankruptcy search before sending demand

Form (see attached)

- o Identify who you are and who you represent
- o Identify the Mortgage and the property which is encumbered
- o Identify the default
- o Identify the amount outstanding and the amount of the arrears
- o Demand payment by a set date (10 days) and threaten to commence action if payment is not received

- **Collateral Mortgage** – the form of demand is somewhat different (see attached), and needs to reference the Promissory Note or other Credit Agreement giving rise to the debt which is collaterally secured.
- **Matured Mortgage** - The full outstanding balance is due and owing and needs to be paid in order to reinstate the Mortgage

2. Property Search

Search back to the Deed into the Mortgagors. Note: A Quit Claim Deed or Trustee's Deed is not good enough – your searcher should go back to a Warranty Deed to the Mortgagors or their predecessor in title;

- Has there been a conveyance to a **Third Party**? If so, write to them advising that the Mortgage is in default and of your client's intention to foreclose if it is not paid. You should enclose a copy of your demand letter to the Mortgagors;
- **Title Issue?** Better to know early – allows time to contact the certifying lawyer to clarify and repair;
- Where Mortgagors are bankrupt, you may be able to proceed by way of Trustee's Deed depending upon the results of the title search. This will expedite the process and save costs, if it is available.

3. Occupancy Check

Does your client want you to arrange for an occupancy check? If so, you should retain a property manager to conduct the check and to secure the property if vacant. The power to secure is generally stated in the mortgage - but check first to be sure! If the property is occupied – consider periodic inspections.

Pros: Allows Mortgagee to preserve and protect property value pending foreclosure;

Cons: Mortgagee responsible for the property – potential liability where negligent or if commits waste;

NOTE – Potential Liability under the *Environment Act*

- An owner/occupier of property may be responsible for remediation of environmental contamination on the mortgaged property. If, accordingly, the foreclosing creditor becomes an “occupier”, it may be responsible for the cleanup – which may significantly exceed the value of the property - leaving a net loss and an unhappy client.

If there is any reason to suspect an environmental problem DO NOT SECURE.

- If you suspect an environmental problem, recommend that your client obtain a Phase I Environmental Site Assessment. This will determine whether there is an identifiable risk of contamination which needs to be investigated further. Cost: approx. \$2,000.00 plus HST. If further investigation is required, a Phase II ESA should be commissioned, which involves testing, delineation, and a plan and budget for remediation. Costs: approx. \$10,000 - \$15,000.00 plus HST.
- The good news is that s. 165(2)(f) of the *Environment Act* allows a secured creditor to conduct inspections upon a property without that creditor being deemed to be an occupant of the property. In other words, your client would not become committed or obliged to remediate the property just by testing.
- Authority to conduct testing and inspections is generally stated in the mortgage - but check first!

- The Court may allow the costs of environmental testing as a protective disbursement if it is provided for in the mortgage (**Royal Trust v. Pentagon Investments Ltd.** (2000), 184 N.S.R. (2d) 287).

After Demand – what next?

If Mortgagor wants to pay up – require payment of arrears and solicitor-client costs (generally provided for in the mortgage). If no payment, prepare Statement of Claim.

II. COMMENCING ACTION

After the demand expires without payment, the foreclosing creditor commences action by way of Originating Notice (Action) and Statement of Claim. The good news is that Practice Memorandum 13 has a **standard form Statement of Claim** for guidance (see attached). Note: Remember to attach a copy of the property description from the Mortgage as Schedule “A”.

- Who should be named as Defendants?
 - **Mortgagor(s)**
 - **Guarantor** – essential if Guarantee is clause in mortgage rather than a “stand alone” Guarantee;
 - **Trustee in Bankruptcy** – if the mortgagor currently bankrupt or was bankrupt at any time since the date of the mortgage (even if currently discharged);
 - **Bankrupt mortgagors?** - If mortgagors are discharged bankrupts but have made payments on the mortgage after discharge, they should be included in their personal capacity as they may be liable for a deficiency (**CIBC v. Coleski** (1999), 180 N.S.R.(2d) 2). If not, just name the Trustee;
 - **Anyone** to whom property conveyed since the date of the mortgage;

- You do **not** need to include subsequent encumbrancers or tenants (Civil Procedure Rule 5.13(4)).
- **Deceased Mortgagor** - Where there is an executor or administrator, name them as Defendants in their capacity as such. If not:
 - Commence action against the deceased;
 - Apply under Civil Procedure Rule 5.04(2)(b) and 5.13 for an Order appointing a Personal Representative of the deceased mortgagor for the purposes of the action. I generally tend to favour a relative of the deceased. The application is made *inter partes* on notice to the person who you wish to have appointed;
 - Once the personal representative is appointed, amend the style of cause and have the amended pleading issued and served on the Personal Representative.

Collateral Mortgage - The standard form Statement of Claim requires modification where the mortgage being foreclosed is a Collateral Mortgage. You need to reference the debt instrument or credit agreement giving rise to the debt separate and apart from the mortgage. You should also reference demand having been made thereunder.

Relief from Forfeiture – Section 42 of the *Judicature Act* provides for relief from forfeiture in foreclosure proceedings. This means that the mortgagor has the right to a discontinuance of a foreclosure action - upon payment of costs and arrears. This right only arises once per mortgage;

- Note:**
- * This is a statutory right of the mortgagor and is not dependent on the wishes of the foreclosing creditor;
 - * The right to relief from forfeiture evaporates once the Foreclosure Order has been issued.

Defence - If a Defence is filed, review carefully to determine whether an application for summary judgment is warranted. Where no Defence is filed, you should draft pleadings to make an *ex parte* application for a default Foreclosure Order.

II. **APPLICATION FOR A FORECLOSURE ORDER**

What do you need?

1. Interlocutory Notice (Application Ex Parte);
2. Affidavit of Bank Officer;
3. Affidavit of Solicitor;
4. Draft Order; and
5. Pre-Hearing Memorandum.

Once again, **Practice Memorandum 13** is very helpful as it provides precedents for each, apart from the Pre-Hearing Memorandum.

Interlocutory Notice (Ex Parte Application)

Bank Officer Affidavit - (see attached)

Note: A full account history should be attached to the Summary Statement of Account (either from the date of mortgage or from date of latest renewal). Copies of Renewal Agreements or other subsequent relevant agreements should be attached, as well as invoices regarding any claimed protective disbursements.

- The Bank Officer Affidavit states that he/she has reviewed the Statement of Claim and that its contents are correct. You should accordingly ensure that a copy of the Statement of Claim is provided to the Bank Officer for review.

Solicitor's Affidavit - (see attached)

- Attach a copy of the demand letter - where you are enforcing a **Collateral Mortgage**.

Draft Order – (see attached).

- * Schedule "A" should contain a summarized description of the property, including PID Number, and confirmation as to whether the property has been migrated.

Pre-Hearing Memorandum – (see attached).

- * Set out the calculation of the mortgage debt as claimed.

III. AFTER FORECLOSURE ORDER ISSUED

- Call the Sheriff with jurisdiction in the County in which the mortgaged property is situate, and schedule the time and date of the foreclosure sale.
- Prepare **Notice of Public Auction** (A precedent is available in Practice Memorandum 13)
- Write to the **Sheriff** confirming the scheduling of the foreclosure sale and enclosing:
 - A certified copy of the Foreclosure Order;
 - A copy of the Notice of Public Auction;
 - 6 copies of the property description;
 - HST Affidavit (see attached);
 - Tax account number.
- Write to the **mortgagors** advising that a Foreclosure Order has been issued, and of the time, date and place of the foreclosure sale. Enclose a copy of the Order and the Notice of Public Auction.

- Write to each **subsequent encumbrancer** shown on the Certificate of Title – advising of the issuance of the Foreclosure Order, identifying the mortgagors and the property, and advising as to the date, time and place of the foreclosure sale. Enclose a copy of the Order and the Notice of Public Auction;
- Write to the **newspaper** referenced in the Order, providing a copy of the Notice of Public Auction to be published on specified dates – the first being at least 20 days in advance of the sale, and the second within 10 days of the date of the sale.

Preparation for the Sale - Obtain an **appraisal**. Compare the appraised value with the mortgage debt plus interest plus costs, protective disbursements, etc. If the debt exceeds the appraised value, your client should stop bidding once the appraised value is reached. If not, your client should bid to the full amount of the debt plus interest plus costs. **Confirm bidding instructions with your client before the sale!**

- **Minimum Bid** - The “minimum bid” is Sheriff’s fees plus outstanding taxes. Contact the Sheriff in advance of the sale to determine the amount. Bring a cheque payable to the Sheriff with you to the sale. **Note:** The foreclosing creditor is able to bid up to the full amount of the mortgage debt plus interest and costs, and still only pay the “minimum bid” to the Sheriff. If, however, it bids higher, it will need to provide a cheque for 10% to the Sheriff and the balance within 20 days – like any other bidder.

IV. **FORECLOSURE SALE**

- The Sheriff is in charge of the foreclosure sale, and he/she runs the show. Introduce yourself to the Sheriff before the sale as representing the foreclosing creditor.
- The Sheriff will read the Notice of Public Auction to those assembled and deal with any questions. He/she will then call for bids. The foreclosing creditor traditionally opens the bidding with the minimum bid, increasing as necessary. You should **not** open up with your maximum bid as deed transfer tax is assessed on the amount of the bid (which must

be stated in the Sheriff's Deed), and the amount of the bid will be taken as the sale proceeds for the purpose of the deficiency even if your client subsequently sells the property for less.

- The lawyer for the foreclosing creditor prepares the **Sheriff's Deed** no matter who buys in – accordingly, if you are “bought out” you should give your card to the successful bidder asking that his/her solicitor contact you to advise as to how they wish to take title.
- There are occasions where the successful bidder does not complete the purchase by paying the balance of the purchase price within 20 days. In those cases, the bid is forfeited and applied firstly as against Sheriff's fees, second to outstanding taxes, and thirdly to the Plaintiff's claim. The sale is a nullity and the foreclosing creditor can schedule a new foreclosure sale.

V. AFTER FORECLOSURE

- Prepare **Sheriff's Deed** and send to Sheriff
- **Tax costss** (Small Claims Court)
- Prepare **Sheriff's Report** (see attached)
- Apply for a **Confirmatory Order**. This requires:
 1. Interlocutory Notice (Ex Parte Application);
 2. Solicitor's Affidavit - (see attached);
 3. Draft Order - (see attached);
- The application can be made to the Prothonotary pursuant to Civil Procedure Rule 51. If there is anything unusual about the foreclosure, this should be drawn to the Prothonotary's attention in a cover letter and referenced in your Affidavit. If there is an irregularity (e.g., advertising), set the application down for Chambers.

VI. DEFICIENCY APPLICATIONS

When the proceeds of a foreclosure sale are not sufficient to payout the mortgage debt plus interest plus costs, the foreclosing creditor may apply to enter deficiency judgment as against the mortgagors.

NOTE: Any application for deficiency judgment must be filed within six months of the date of the foreclosure sale - the application can be heard after that date, but it must be filed before.

- Order a new bankruptcy search before drafting your deficiency pleadings.

- The necessary pleadings are:
 1. Interlocutory Notice (Application Inter Partes);
 2. Affidavit of Property Manager;
 3. Affidavit of Solicitor;
 4. Draft Order;
 5. Pre-Hearing Memorandum

Solicitor's Affidavit - (see attached)

Property Manager Affidavit - (see attached)

- Attachments should include an Occupancy Report, photos, invoices for disbursements paid by the Property Manager, and a detailed statement of services and charged.

- Courts are very vigilant in reviewing claims for “protective disbursements”. They will seek confirmation that such charges are recoverable under the mortgage and that they were “necessarily expended for the purpose of preserving and protecting the property and are demonstrated by evidence to have been necessary and reasonable”.

Pre-Hearing Memorandum - (see attached)

- Should provide a brief chronology of the foreclosure proceeding, with references to relevant Exhibits. It should include a detailed listing of property management charges and reference the specific mortgage provision which allows such charges to be recovered. Any unusual expenses should be referenced and explained.
- If the property is sold, full particulars should be provided in the Affidavit of the foreclosing creditor and in the Pre-Hearing Memorandum. This would include information as regards the sale price, and costs of sale including real estate commission.
- If the property is unsold, there is an issue as to whether protective disbursements will be recoverable for the period following the foreclosure sale. In **Bank of Montreal v. Kennedy** (2006), 243 N.S.R. (2d) 126 the Court disallowed claimed protective disbursements where the property was unsold as of the date of the deficiency application. In that case the protective disbursements included significant capital costs for substantial repairs. The Court concluded that the value of the property had been increased as a result, and the costs would accordingly be recuperated by the foreclosing creditor on eventual resale. If, accordingly, the cost of such repairs was included in the deficiency, there would be “double recovery” - which the Court wished to avoid.
- In my respectful submission it would be unfair to deny a foreclosing creditor from recovering “ordinary” protective disbursements even where the property is unsold – as these are directed towards preservation and protection of the value of the property (rather than its enhancement). This argument has sometimes (but not always) found favour with the Chambers Judge. **BMO v. Kennedy** has not been tested on appeal.
- A deficiency application is always an interesting experience. It requires a good knowledge of your file and a thick skin!

#1149814

Our File: FILE NUMBER
DATE

Registered and Regular Mail

ADDRESS OF DEBTOR

Dear SALUTATION:

Re: SCOTIA MORTGAGE CORPORATION – Outstanding Account

We are the solicitors for Scotia Mortgage Corporation in connection with this matter.

We understand that on or about DATE OF MORTGAGE you executed a Mortgage to Scotia Mortgage Corporation, a copy of which was recorded at the Registry of Deeds for Annapolis County in Book BOOK at Page PAGE. The Mortgage by its terms secures a principal debt of \$AMOUNT OF DEBT as against your property at PROPERTY ADDRESS, Annapolis County, NS. It has not been released.

In executing the Mortgage you agreed to make monthly payments of principal and interest to be applied against the Mortgage debt. We understand, however, that your Mortgage account will be MONTHS IN ARREARS months in arrears as of DATE, at which time arrears will total \$AMOUNT OF ARREARS. The outstanding balance secured by your Mortgage was \$OUTSTANDING BALANCE OF MORTGAGE as of DATE. These figures do not include Scotia Mortgage's costs on enforcement which are separate charges.

Scotia Mortgage is not prepared to allow the situation to continue indefinitely. Accordingly, please be advised that in the event that your Mortgage account is not brought fully up-to-date (including legal fees and disbursements) by way of cash or certified cheque received in our office on or before 5:00 o'clock p.m. on DATE, legal action may be undertaken to enforce the Mortgage debt.

Scotia Mortgage also requires that you provide proof that the mortgaged property is currently insured as required by the terms of the mortgage. If this proof is not provided on or before DATE, Scotia Mortgage will place its own insurance at your cost.

In the event legal action becomes necessary, our client's claim will be for the full principal balance, all accrued interest and all available legal costs.

We take this opportunity to enclose a Notice of Intention to Enforce Security issued pursuant to the *Bankruptcy and Insolvency Act*.

We urge you to seek legal advice regarding this matter and hope you will take this opportunity to resolve this matter at this stage.

Yours very truly,

MCINNES COOPER

Stephen Kingston

SK/Initials

Enclosure

**NOTICE OF INTENTION TO ENFORCE SECURITY (SEC. 244(1)) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3**

TO: NAME OF INSOLVENT PERSON (S)

INSOLVENT PERSON

TAKE NOTICE THAT:

1. The Bank of Nova Scotia, a secured creditor, intends to enforce its security on the property of the insolvent persons located at LOCATION OF SECURITY, Annapolis County, Nova Scotia.
2. The security that is to be enforced is in the form of:
 - (a) A Mortgage executed by the insolvent INSOLVENT PERSON, in favour of The Bank of Nova Scotia on DATE and recorded in Annapolis County Registry of Deeds in Book BOOK NUMBER at Page PAGE NUMBER.
3. The total amount of the indebtedness secured was \$AMOUNT OF INDEBTEDNESS as of DATE.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this Notice, unless the insolvent person consents to an earlier enforcement.

_____ DATED at Halifax, Halifax Regional Municipality, Province of Nova Scotia, this
_____ day of January, 2008.

STEPHEN KINGSTON
MCINNES COOPER
1601 Lower Water Street
P.O. Box 730
Halifax, NS B3J 2V1

Solicitor for The Bank of Nova Scotia

FILE NUMBER
(843339)

Our File: FILE NUMBER
DATE

Registered and Regular Mail

ADDRESS OF DEBTOR

Dear SALUTATION:

Re: THE BANK OF NOVA SCOTIA – Outstanding Account

We are the solicitors for The Bank of Nova Scotia in connection with this matter, which concerns a mortgage upon property at PROPERTY ADDRESS.

We understand that on or about DATE, you executed a Personal Credit Agreement pursuant to which the Bank agreed to lend you \$AMOUNT OF CREDIT and you agreed to repay this amount by way of monthly instalments of principal plus interest calculated at the annual rate of INTEREST RATE%.

Your obligations pursuant to the Agreement are collaterally secured by way of a mortgage executed by you in favour of the Bank on DATE, a copy of which was recorded at the Registry of Deeds in Annapolis on that same date in Book BOOK NUMBER at Page PAGE NUMBER. The mortgage by its terms secures all debts and liabilities at any time owing by you to the Bank as against your property at ADDRESS OF PROPERTY.

We understand that your payments pursuant to the Agreement are currently AMOUNT IN MONTHS months in arrears, which totalled \$AMOUNT IN ARREARS as of DATE. The outstanding balance secured by your mortgage was \$OUTSTANDING MORTGAGE as of DATE. These figures do not include the Bank's costs on enforcement, which are separate charges.

The Bank is not prepared to allow the situation to continue indefinitely. Accordingly, please be advised that in the event your account is not brought fully up-to-date (including enforcement costs) by way of certified cheque, bank draft or money order received in our office on or before DATE at 5:00 o'clock p.m., the Bank will take action to enforce its remedies under the Mortgage.

The Bank also requires that you provide proof that the mortgaged property is currently insured as required by the terms of the mortgage. If this proof is not provided on or before DATE, the Bank will place its own insurance at your cost.

In the event that legal action becomes necessary, the Bank will claim the full principal debt plus all accrued interest and all available legal costs. It will also seek to enforce its remedies pursuant to the mortgage, including foreclosure, sale and possession.

We enclose a Notice of Intention to Enforce Security issued pursuant to the *Bankruptcy and Insolvency Act*.

We hope that this matter can be resolved at this stage.

Yours very truly,

McINNES COOPER

Stephen Kingston

SK/INITIALS
Enclosure
(843333)

2008

S. H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

DEFENDANTS

DEFENDANTS

- and -

DEFENDANTS-GUARANTOR

DEFENDANT-GUARANTOR

STATEMENT OF CLAIM

1. In this proceeding, Plaintiff includes all individual plaintiffs, and is the mortgagee, and Defendant includes all individual defendants, and is the mortgagor of the lands located at ADDRESS OF PROPERTY, Annapolis County, Nova Scotia.

2. The particulars of the mortgage are as follows:

- | | |
|--------------------------|--|
| (a) Date: | DATE OF MORTGAGE |
| (b) Name of Mortgagors: | NAME OF MORTGAGORS |
| (c) Name of Mortgagee: | The Bank of Nova Scotia |
| (d) Amount secured: | \$AMOUNT SECURED |
| (e) Description: | See Schedule "A" |
| (f) Interest chargeable: | INTEREST% per annum, calculated half-yearly not in advance |
| (g) Recorded at | Registry of Deeds, Annapolis County, |

NUMBER in Book BOOK NUMBER, at Page PAGE
 OR Land Registration Office Annapolis
 County, identified by PID PID,
 Document Number DOCUMENT
 NUMBER

3. Particulars of the mortgage have been changed by the following subsequent relevant agreements:

AGREEMENT DATE AMENDMENT EFFECTED

(a) Nil Nil Nil
 (b)

4. Default in payment has been made under the terms of the mortgage and consequently the following amounts are due as of DATE.

- a. Principal balance: PRINCIPAL
- b. Interest: INTEREST
- c. Taxes (debit or credit) TAXES
- d. Protective disbursements: PROTECTIVE DISB
- e. Other: Nil

TOTAL OUTSTANDING: \$TOTAL OUTSTANDING

Particulars of the above amounts are available at the address of the Plaintiff and the office of the Plaintiff's solicitor.

5. The Plaintiff claims against the Defendants:

- a. Payment of the total outstanding, together with interest at the rate set out in the mortgage, as amended, on the sum of \$AMOUNT from DATE until the date of default judgment;

- b. Charges and expenses incurred in connection with the lands and the Mortgage, together with interest on these amounts at the rate set out in the Mortgage, as amended, until the date of default judgment;
- c. Interest on the amounts of any arrears from the date the payment or payments are due until the date of default judgment;
- d. Costs;
- e. In default of payment of the foregoing amounts, an Order for Foreclosure, Sale and Possession; and
- f. An Order for the deficiency, if any, between the amount realized after sale pursuant to the Order for Foreclosure, Sale and Possession and the aggregate due, as claimed above.

6. The Plaintiff claims against each Defendant who has any interest or equity of redemption in the lands an Order for Foreclosure, Sale and Possession.

DATED at Halifax, Nova Scotia, this _____ day of January, 2008.

STEPHEN KINGSTON
McInnes Cooper
Purdy's Wharf Tower II
1300-1959 Upper Water Street
P.O. Box 730
Halifax, Nova Scotia
B3J 2V1

Solicitor for the Plaintiff

TO: The Prothonotary
Halifax, NS

AND TO: The Defendant, their
solicitor or agent

(843346)

2008

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

DEFENDANTS

DEFENDANTS

- and -

DEFENDANTS-GUARANTOR

DEFENDANT-GUARANTOR

STATEMENT OF CLAIM

1. In this proceeding, Plaintiff includes all individual plaintiffs, and is the mortgagee, and Defendant includes all individual defendants, and is the mortgagor of the lands located at ADDRESS OF PROPERTY, Annapolis County, Nova Scotia.

2. The Plaintiff says that on or about DATE, the Defendants executed a Personal Credit Agreement (the "Agreement") pursuant to which the Plaintiff agreed to lend the Defendants \$AMOUNT and the Defendants agreed to repay that amount by way of monthly instalments of principal plus interest calculated at the annual rate of INTEREST RATE%.

3. The Plaintiff says that the Defendants' obligations pursuant to the Agreement are collaterally secured by way of a mortgage, the particulars of which are:

(a) Date:

DATE

- (b) Name of Mortgagors: DEFENDANTS
- (c) Name of Mortgagee: The Bank of Nova Scotia
- (d) Amount secured: \$AMOUNT SECURED
- (e) Description: See Schedule "A"
- (f) Interest chargeable: The Plaintiff's prime lending rate from time to time plus 2% per annum, calculated daily and payable monthly

(g) Recorded: Recorded at Registry of Deeds, Annapolis County, in Book BOOK NUMBER,

OR

at Page PAGE NUMBER
Land Registration Office
Annapolis County, identified by
PID PID, Document Number

DOCUMENT NUMBER

3. Particulars of the mortgage have been changed by the following subsequent relevant agreements:

<u>AGREEMENT</u>	<u>DATE</u>	<u>AMENDMENT EFFECTED</u>
(a) Nil	Nil	Nil
(b)		

4. Default in payment has been made under the terms of the mortgage and consequently the following amounts are due as of DATE.

- a. Principal balance: PRINCIPAL
 - b. Interest: INTEREST
 - c. Taxes (debit or credit) TAXES
 - d. Protective disbursements: PROTECTIVE DISB
 - e. Other: Nil
- TOTAL OUTSTANDING: \$TOTAL OUTSTANDING**

Particulars of the above amounts are available at the address of the Plaintiff and the office of the Plaintiff's solicitor.

5. The Plaintiff claims against the Defendants:
- a. Payment of the total outstanding, together with interest at the rate set out in the mortgage, as amended, on the sum of \$AMOUNT from DATE until the date of default judgment;
 - b. Charges and expenses incurred in connection with the lands and the Mortgage, together with interest on these amounts at the rate set out in the Mortgage, as amended, until the date of default judgment;
 - c. Interest on the amounts of any arrears from the date the payment or payments are due until the date of default judgment;
 - d. Costs;
 - e. In default of payment of the foregoing amounts, an Order for Foreclosure, Sale and Possession; and
 - f. An Order for the deficiency, if any, between the amount realized after sale pursuant to the Order for Foreclosure, Sale and Possession and the aggregate due, as claimed above.
6. The Plaintiff claims against each Defendant who has any interest or equity of redemption in the lands an Order for Foreclosure, Sale and Possession.

DATED at Halifax, Nova Scotia, this _____ day of January, 2008.

STEPHEN KINGSTON
McInnes Cooper
Purdy's Wharf Tower II
1300-1959 Upper Water Street
P.O. Box 730
Halifax, Nova Scotia
B3J 2V1

Solicitor for the Plaintiff

TO: The Prothonotary

Halifax, NS

**AND TO: The Defendants, their
solicitors or agents**

(843534)

2008

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

DEFENDANTS

DEFENDANTS

- and -

DEFENDANTS-GUARANTOR

DEFENDANT-GUARANTOR

AFFIDAVIT

I, **NAME**, of _____, in the County of _____, Province of Nova Scotia, make oath and say as follows:

1. **THAT** I am the Manager of the _____ Branch of the Mortgagee, and am familiar with this matter, and say that all statements herein are correct.
2. **THAT** I have read over the Statement of Claim in this proceeding and say that the contents are true.
3. **THAT** by Mortgage dated **DATE** and recorded in the Registry of Deeds for Annapolis County, Nova Scotia, in Book **BOOK NUMBER** at Page **PAGE NUMBER OR** as Document # **DOCUMENT NUMBER**, in the original principal amount of **\$PRINCIPAL AMOUNT**, a certified copy of which Mortgage is attached as Exhibit "A", the Defendant mortgaged lands which are situate at **ADDRESS OF PROPERTY**, Annapolis County, Nova Scotia.

4. THAT Exhibit "B" contains a statement detailing the dates and amounts of all charges and payments made on account of the Mortgage since DATE OF MORTGAGE, and a Summary Statement of Account. I have reviewed all entries and calculations, and they are correct.

5. THAT as of the date of this affidavit, the mortgage is AMOUNT OF MONTHS months in arrears.

6. THAT the following payments and/or other arrangements have been made since this foreclosure action was commenced:

7. THAT Exhibit "C" contains a listing, together with true copies, of all relevant agreements subsequent to the Mortgage changing the particulars of the Mortgage.

8. THAT Exhibit "D" contains a listing and particulars of all charges including protective disbursements made on account of the Mortgage and shown on the Summary Statement of Account in Exhibit "B". The originals or true copies of the invoices or receipts will be disclosed to the Court upon filing of this application and, upon request, to the Defendants.

SWORN TO at)
County of Annapolis, Province of)
Nova Scotia this _____ day of)
January, 2008)
before me:)
)
)
)
_____)
A Barrister of the Supreme Court)
of Nova Scotia)

NAME

SUMMARY STATEMENT OF ACCOUNT

DATED: _____ **As of** _____

MORTGAGED PROPERTY:

As of the above date, the mortgage being foreclosed was three (3) months in arrears and the following is a summary of the mortgage account:

1.	Principal amount (as of date of Mortgage)	\$78,850.00
2.	Subsequent interest accrued	1,406.98
3.	Subsequent other charges	Nil
4.	Subsequent principal payments made	(6,700.32)
5.	Principal, interest and other charges outstanding	73,556.66
6.	Taxes	(83.15)
	AMOUNT CLAIMED	\$73,473.51

JOHN DOE
Manager, The Bank of Nova Scotia

**AGREEMENTS SUBSEQUENT TO THE MORTGAGE
CHANGING THE PARTICULARS OF THE MORTGAGE**

<u>AGREEMENT</u>	<u>DATE</u>	<u>AMENDMENT EFFECTED</u>
Nil	Nil	Nil

SK-2816 (1150006)

LIST OF PROTECTIVE DISBURSEMENTS

<u>CHARGE</u>	<u>AMOUNT</u>
Insurance	\$ 265.00
TOTAL	\$ 265.00

SK-2736 (1106223.1)

2008

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

DEFENDANTS

DEFENDANTS

- and -

DEFENDANTS-GUARANTOR

DEFENDANT-GUARANTOR

A F F I D A V I T

I, **Stephen Kingston**, Barrister, of Halifax, in the County of Halifax, Province of Nova Scotia, make oath and say as follows:

1. **THAT** as solicitor for the Plaintiff, I am familiar with this matter and say that the following statements herein are true and correct.
2. **THAT** this is an application for foreclosure, sale and possession.
3. **THAT** the lands being foreclosed ARE OR ARE NOT registered pursuant to the *Land Registration Act*. The lands being foreclosed are identified by PID No. PID NUMBER.
4. **THAT** Exhibit "A" is the Certificate of Stephen Kingston, a Solicitor of the Supreme Court of Nova Scotia, dated DATE OF CERTIFICATE, containing a list

of all recorded instruments affecting the title of the lands being foreclosed since the date of the Deed or conveyance to the original Mortgagor.

OR

4. **THAT** Exhibit "A" is a copy of the parcel register for the lands being foreclosed, which contains a list of all recorded instruments affecting the lands being foreclosed as of DATE and Exhibit "B" is the Certificate of Stephen Kingston, a Solicitor of the Supreme Court of Nova Scotia, dated DATE OF CERTIFICATE, containing particulars of all recorded instruments shown on Exhibit "A".

5. **THAT** the Originating Notice (Action) and Statement of Claim in this proceeding were served upon the Defendants, NAME OF DEFENDANTS on DATE as appears by the endorsement on the Affidavit of Service endorsed thereon, and the time for filing a Defence has expired.

6. **THAT** I have reviewed the Summary Statement of Account in Exhibit "C" to the Affidavit of NAME OF BANK OFFICER and verily believe the Plaintiff is entitled, pursuant to the Mortgage, to claim the items listed.

SWORN TO at Halifax Regional)
Municipality, Province of)
Nova Scotia, this day of)
January, 2008, before me:)
)
)
)

A Barrister of the Supreme)
Court of Nova Scotia)

STEPHEN KINGSTON

CERTIFICATE

I CERTIFY that listed below are the particulars of all Instruments affecting the title of the lands described in Schedule "A", recorded in the Registry of Deeds for the County where the lands are located subsequent to the date of the Deed to the original Mortgagors.

OR

I CERTIFY that listed below are the particulars of all recorded instruments shown on the parcel register attached to my accompanying affidavit as Exhibit "A"

DATED as of this day of January, 2008 at Halifax, Nova Scotia.

STEPHEN KINGSTON
McInnes Cooper
Purdy's Wharf Tower II
1300-1969 Upper Water Street
P.O. Box 730
Halifax, NS B3J 2V1

PARTICULARS

- | | | |
|-----------|---------------------------------|-------------------------|
| 1. | WARRANTY DEED | GRANTOR |
| | Dated: DATE | |
| | Recorded: RECORDING DATE | - and - |
| | Book and Page: BOOK/PAGE | |
| | | GRANTEE |
|
 | | |
| 2. | MORTGAGE | MORTGAGOR |
| | Dated: DATE | |
| | Recorded: RECORDING DATE | - and - |
| | Book and Page: BOOK/PAGE | |
| | Amount: \$PRINCIPAL AMOUNT | The Bank of Nova Scotia |

NOT MARKED RELEASED

3.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

**CATHERINE ELIZABETH ROSS AND SALYZYN & ASSOCIATES
LIMITED, in its capacity as Trustee in Bankruptcy for Sylvain Luc Eric Dore**

DEFENDANTS

**ORDER FOR FORECLOSURE
SALE AND POSSESSION**

BEFORE THE HONOURABLE

IN CHAMBERS:

UPON MOTION on behalf of the Plaintiff, The Bank of Nova Scotia;

1. **IT IS ORDERED** that the amount due to the Plaintiff on the Mortgage being foreclosed, is settled at the sum of \$78,363.06 with interest on \$75,304.44 at the rate of 6.20% per annum from January 28, 2008 to the earlier of the date of payment by the Sheriff to the Plaintiff or 20 days following the date of the sale of the lands by the Sheriff, together with any other charges and protective disbursements as approved by the Court, and costs to be taxed.

2. **AND IT IS ORDERED** that the Plaintiff shall have judgment, subject to later quantification, against the Defendants, and possession of the lands as against the Defendants, effective the earlier of the date of payment by the Sheriff to the Plaintiff of the amounts due to the Plaintiff or twenty (20) days following the date of the sale of the lands by the Sheriff.

3. **AND IT IS ORDERED** that all the interest and equity of redemption of the Defendants and of all persons claiming through the Defendants in the lands described in the mortgage are forever barred and foreclosed, and shall be sold by the Sheriff at a public auction conducted in accordance with the standard procedure for Sheriff's sales authorized by the Civil Procedure Rules,

which is incorporated by reference except only to the extent varied by this or further order of the Court, unless before the time of sale the amount due, together with costs, are paid to the Plaintiff.

4. **AND IT IS ORDERED** that the Plaintiff shall give at least twenty (20) days notice of public auction to the Defendants by ordinary mail and to each recorded subsequent encumbrancer by registered mail or certified mail, and advertise the public auction by two (2) insertions, the first in The Advertiser, at least twenty (20) days prior to the date of sale and the second in The Advertiser, not more than ten (10) days prior to the date of sale, and the abbreviated description of the lands contained in Schedule "A" is approved for use in all notices and advertisements.
5. **AND IT IS ORDERED** that the Plaintiff shall record a true copy of this Order in the Parcel Register for the lands described in the mortgage.
6. **AND IT IS ORDERED** that on or after application for confirmation of the Sheriff's sale, the Plaintiff may apply to assess the amount of any deficiency.

DATED at Halifax, Nova Scotia, this day of January, 2008.

PROTHONOTARY

SCHEDULE "A"

All those lands and premises known as 672 Victoria Road, Millville, Kings County, Nova Scotia, PID No. 55135065, as more particularly described in the Mortgage recorded at the Kings County Registry of Deeds office in Book 1401 at Page 306. The lands have been registered pursuant to the *Land Registration Act*.

Our File: SK-2709
December 14, 2007

The Hon. Justice Presiding in Chambers
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord/My Lady:

**Re: Scotia Mortgage Corporation v. Kelly Dwayne Spencer and
Tanya Denise Tattrie – S. H. No. 284857**

We are the solicitors for the Plaintiff, Scotia Mortgage Corporation, in connection with this matter, which involves enforcement of a mortgage upon property at 805 Upper River John Road, Middleton, Colchester County, Nova Scotia.

The Plaintiff has scheduled an application to be heard in Chambers in Halifax on **Tuesday, December 18, 2007** at 9:30 a.m. The Plaintiff is seeking an Order for Foreclosure, Sale and Possession.

The pleadings filed in support of the foreclosure application are in the standard form.

The amount of the debt as stated in paragraph 1 of the draft Foreclosure Order has been calculated in accordance with Practice Memorandum No. 13. The relevant calculations are:

1. Total outstanding (from Statement of Claim)	\$116,806.85
2. Less interest	(1,753.45)
3. Net	\$115,053.40
4. Interest on \$115,053.40 at 3.00% from March 16, 2007 to September 21, 2007 (189 days at \$9.46 per day)	1,787.94
5. Plus No. 1 above	116,806.85
Total Amount Claimed	\$118,594.79

MCINNES COOPER

Page 2
SK-2605
September 19, 2007

All of which is respectfully submitted this 19th day of September, 2007.

Yours very truly,

MCINNES COOPER

Stephen Kingston

SK/ems
(1089117)

Our File: SK-2734
January 22, 2008

The Hon. Justice Presiding in Chambers
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord/My Lady:

**Re: The Bank of Nova Scotia v. Catherine Elizabeth Ross and
Salyzyn & Associates Limited, in its capacity as Trustee in
Bankruptcy for Sylvain Luc Eric Dore
(S. H. No. 286655)**

We are the solicitors for the Plaintiff (the "Bank") in connection with this matter, which involves enforcement of a mortgage upon property at 672 Victoria Road, Millville, Kings County.

The Plaintiff has scheduled an application to be heard in Chambers on **Monday, January 28, 2008**, at 9:30 a.m. seeking an Order for Foreclosure, Sale and Possession.

The mortgage being foreclosed is a collateral mortgage and, accordingly, there are certain deviations from the standard form in the pleadings submitted in support of the application. These are:

Bank Officer's Affidavit

Paragraph 3 - attaches a copy of the Personal Credit Agreement as Exhibit "A", which evidences the debt secured by the mortgage being foreclosed.

Paragraph 4 - attaches a copy of the Collateral Mortgage as Exhibit "B". The wording of this paragraph differs from the standard paragraph to reflect the fact that it is a collateral mortgage being foreclosed.

Paragraph 5 - identical to standard paragraph 4 with the exception that the Exhibit referenced therein is Exhibit "C" rather than "B".

Paragraphs 6 and 7 - identical to standard paragraphs 5 and 6.

Paragraphs 8 and 9 - identical to standard paragraphs 7 and 8 with the exception that the Exhibits referenced therein are Exhibits "D" and "E", rather than "C" and "D".

Solicitor's Affidavit

Paragraph 7 - attaches a copy of the Plaintiff's demand letter to the Defendants and a copy of a letter to Salyzyn & Associates Limited as Exhibit "B".

Draft Order

No deviations.

The amount of the debt as stated in paragraph 1 of the draft Foreclosure Order has been calculated in accordance with Practice Memorandum No. 13. The Plaintiff has been unable to produce confirmation of the cancellation of the Mortgagor's insurance and we have accordingly deducted that charge (\$265.00).

The relevant calculations are:

1. Total outstanding (from Statement of Claim)	\$76,926.99
2. Less interest	(1,357.55)
3. Less Insurance	(265.00)
4. Net	\$75,304.44
5. Interest on \$75,304.44 at 6.20% from Sept. 17/07 to Jan. 28/08 (133 days at \$12.79 per day)	1,701.07
6. Plus No. 1 above	76,926.99
7. Less insurance	(265.00)
Total Amount Claimed	\$78,363.06

All of which is respectfully submitted this 22nd day of January, 2008.

Yours very truly,

MCINNES COOPER

Stephen Kingston

2007

S.H. No. 286655

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

**CATHERINE ELIZABETH ROSS AND SALYZYN & ASSOCIATES
LIMITED, in its capacity as Trustee in Bankruptcy for Sylvain Luc Eric Dore**

DEFENDANTS

NOTICE OF PUBLIC AUCTION

TO BE SOLD AT PUBLIC AUCTION pursuant to an Order for Foreclosure, Sale and Possession granted by the Court, unless before the time of sale the amount due to the Plaintiff on the Mortgage foreclosed, plus costs to be taxed, are paid:

PROPERTY:

All those lands and premises known as 672 Victoria Road, Millville, Kings County, Nova Scotia, PID No. 55135065, as more particularly described in the Mortgage recorded at the Kings County Registry of Deeds office in Book 1401 at Page 306. The lands have been registered pursuant to the *Land Registration Act*.

A copy of the description of the property, as contained in the Mortgage foreclosed, is on file at the Sheriff's office and may be inspected during business hours.

DATE OF SALE: Friday, February 29, 2008

TIME OF SALE: 12:00 o'clock noon, local time

PLACE OF SALE: Justice Centre, 87 Cornwallis Street, Kentville, Nova Scotia

TERMS: 10% deposit (payable by cash, certified cheque or solicitor's trust cheque) at the time of sale, remainder within 20 days upon delivery of deed.

DATED at Kentville, Province of Nova Scotia, this 28th day of January, 2008.

J. ANDY MACDONALD
Sheriff in and for the County of Kings,
Province of Nova Scotia

Stephen Kingston
MCINNES COOPER
Purdy's Wharf Tower II
1300-1969 Upper Water Street
PO Box 730
Halifax, NS B3J 2V1

Solicitor for the Plaintiff

SK-2734 (1141300)

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANTS

AFFIDAVIT

I, **Stephen Kingston**, Barrister of Halifax, in the County of Halifax, Province of Nova Scotia, make oath and say as follows:

- 1. **THAT** I am the solicitor for the Plaintiff and have authority to act on its behalf for purposes of the foreclosure and sale involving the property sought to be foreclosed herein.
- 2. **THAT** the Plaintiff is of the belief and understanding that the sale of the foreclosed property herein is not subject to the Harmonized Sales Tax.
- 3. **THAT** if the sale of the land foreclosed herein is subject to the Harmonized Sales Tax, notwithstanding the last paragraph, the Plaintiff undertakes to pay the Harmonized Sales Tax arising from the sale of the said property.

SWORN TO at Halifax, Halifax)
 Regional Municipality, Nova Scotia)
 this day of , 2008)
 before me:)

 A Barrister of the Supreme)
 Court of Nova Scotia)

STEPHEN KINGSTON

2007

S.H. No. 285340

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PLAINTIFF

- and -

DEFENDANT

SHERIFF'S REPORT

Pursuant to an Order for Foreclosure and Sale granted herein on the 5th day of December, 2007, I, John Davis, Deputy Sheriff in and for the County of Cumberland, Province of Nova Scotia, proceeded and sold all the estate, right, title, interest, claim, property and demand of the Mortgagor and of all persons claiming or entitled by, through or under the Mortgagor at the time of the making of the mortgage foreclosed herein, in and to the lands and premises described in the mortgage foreclosed herein.

The said lands and premises were sold by me at public auction held on the 4th day of January, 2008 at the hour of 11:00 o'clock am, local time, after having been exposed for sale for some time and knocked down to The Bank of Nova Scotia for the price of Fifty-One Thousand Dollars (\$51,000.00), being the highest bidder at the sale.

I have executed a Deed conveying all estate, right, title, interest, claim, property and demand of the Mortgagor at the time of the making of the mortgage foreclosed in this action, or at any time since, and of all persons claiming or entitled by, from or under the Mortgagor of, in and to the said lands to The Bank of Nova Scotia.

I have obtained from the purchasers at the sale the sum of Two Thousand Six Hundred Seventy-Four Dollars and Ninety-Four Cents (\$2,674.94), being the amount necessary to cover Sheriff's fees, HST, outstanding taxes, water and sewer, and have disbursed the said sum as shown on Schedule "A" attached hereto.

DATED at Amherst, Nova Scotia this _____ day of _____, 2008.

JOHN DAVIS

Deputy Sheriff in and for the County of
Cumberland, Province of Nova Scotia

SCHEDULE "A"

PLAINTIFF'S CLAIM:

Amount fixed by Order for Foreclosure and Sale	\$
Interest from Dec. 5/07 to Jan. 4/07 on \$ _____ at 5.25% (_____ days x \$ _____ per day)	\$
Other - Bill of Costs pursuant to a Certificate of Taxation issued in the Small Claims Court on _____.	\$
TOTAL:	\$

DISBURSEMENTS:

Service	\$73.69
Commission	2,274.84
HST	295.73
Tax Certificate	20.00
Travel	10.68
TOTAL:	\$2,674.94

2007

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SCOTIA MORTGAGE CORPORATION

PLAINTIFF

- and -

DEFENDANT

DEFENDANT

AFFIDAVIT

I, Stephen Kingston, Barrister, of Halifax, Halifax Regional Municipality, Province of Nova Scotia, make oath and say as follows:

1. As solicitor for the Plaintiff, I am familiar with this matter and say the following statements are correct.

2. Pursuant to the Order for Foreclosure and Sale herein dated the DAY day of January, 2007, Notice of Public Auction was sent to the Defendant by ordinary mail on DAY day of January, 2007, a true copy of which is attached as Exhibit "A".

3. Exhibit "B" are true copies of confirmations of delivery to the subsequent encumbrancers of the Notice of Public Auction in accordance with the Order for Foreclosure herein.

4. Exhibit "C" are true copies of the Notice of Pubic Auction which were published in the NEWSPAPER, a newspaper published at LOCATION OF

PUBLICATION, Nova Scotia on DAY day of January, 2007 and DAY day of January, 2007.

5. Exhibit "D" is a true copy of a Certificate of Taxation issued in the Small Claims Court of Nova Scotia on DAY day of January, 2007, in the amount of \$.

6. Exhibit "E" is the Sheriff's Report for the sale of the mortgaged property which was held by the Sheriff in and for Annapolis County on DAY day of January, 2007.

SWORN TO at Halifax, Halifax)
Regional Municipality, Province)
of Nova Scotia, this)
day of January, 2008)
before me:)
)
)
)

A Barrister of the Supreme
Court of Nova Scotia

STEPHEN KINGSTON

SK-

(850149)

2007

S. H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SCOTIA MORTGAGE CORPORATION

PLAINTIFF

- and -

DEFENDANT

DEFENDANT

ORDER

BEFORE ANNETTE BOUCHER, PROTHONOTARY

UPON having read the Affidavit of Stephen Kingston sworn herein on the
DAY day of January, 2007, the Sheriff's Report and other papers on file herein:

IT IS HEREBY ORDERED that the Sheriff's Report and all proceedings
herein are hereby ratified and confirmed.

DATED at Halifax, Nova Scotia, this _____ day of **January**, 2008.

PROTHONOTARY

SK -

(850135)

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SCOTIA MORTGAGE CORPORATION

PLAINTIFF

- and -

MARGARET ROSE SWANSON

DEFENDANT

A F F I D A V I T

I, **STEPHEN KINGSTON**, Barrister, of Halifax, Halifax Regional Municipality, Province of Nova Scotia, make oath and say as follows:

1. **THAT** I am the solicitor for the Plaintiff herein and as such have personal knowledge of the matters hereinafter deposed to except where otherwise stated.
2. **THAT** attached hereto as Exhibit "A" is a true copy of the Order for Foreclosure, Sale and Possession granted by the Honourable Justice M. Heather Robertson herein on June 22, 2007.
3. **THAT** attached hereto as Exhibit "B" is a true copy of the Sheriff's Report issued herein by Laurel Purcell, Sheriff in and for the Halifax Regional Municipality, dated September 18, 2007. As stated in the Report, the property which was the subject matter of this proceeding was sold at public auction on July 24, 2007 to the Plaintiff for \$140,000.00, being the highest bidder at the sale.
4. **THAT** attached hereto as Exhibit "C" is a true copy of the Certificate of Taxation issued in the Small Claims Court of Nova Scotia herein on September 7, 2007 for \$3,472.40.
5. **THAT** attached hereto as Exhibit "D" is a true copy of the Order of Prothonotary of this Honourable Court dated October 5, 2007 ratifying and confirming all of the proceedings herein.
6. **THAT** I have been instructed by the Plaintiff to apply for Deficiency Judgment as against the Defendant.

7. THAT the Plaintiff has resold the Property to Marc and Deborah Gauthier for the purchase price of \$140,000.00 which is scheduled to close on February 1, 2008.

8. THAT the Plaintiff listed the property for sale through Bryant Realty, and attached hereto as Exhibit "E" is a true copy of the Agent's Commission Statement which totals (\$6,300.00) and is dated January 21, 2008.

SWORN TO at Halifax, Halifax)
Regional Municipality, Nova Scotia)
this 23rd day of January, 2008)
before me:)
_____)
A Barrister of the Supreme Court)
of Nova Scotia)

STEPHEN KINGSTON

2007

S. H. No. 280849

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SCOTIA MORTGAGE CORPORATION

PLAINTIFF

- and -

MARGARET ROSE SWANSON

DEFENDANT

A F F I D A V I T

I, **SHAWNA NOEL**, of Dartmouth, Halifax Regional Municipality, Province of Nova Scotia, make oath and say as follows:

1. **THAT** I am employed by Veranova Properties Limited ("Veranova") and have personal knowledge of the matters hereinafter deposed to except where otherwise stated.
2. **THAT** on or about April 27, 2007 Veranova was retained by the Plaintiff to manage the Defendant's property at 50 Karen Crescent, Porter's Lake, Nova Scotia (the "Property").
3. **THAT** attached hereto as Exhibit "A" is a true copy of an Appraisal Report prepared by Kempton Appraisals Limited, which states that the fair market value of the Property was \$150,000.00 as of July 9, 2007.
4. **THAT** Veranova's Inspector secured the property on June 27, 2007 and attached hereto as Exhibit "B" is a true copy of our Securing Report and photos.
5. **THAT** Veranova has negotiated an arrangement with the Plaintiff whereby it receives a "flat fee" of \$1,800.00 (including HST) for certain services in connection with secured properties. A listing of the Veranova's actual "flat fee" charges (to January 22, 2008) is attached hereto as Exhibit "C" and totals \$1,658.20 (including HST). A listing of Veranova's "non flat fee" charges to December 12, 2007 is attached as Exhibit "D" and totals \$3,625.00 (including HST).

SWORN TO at Dartmouth, Halifax
Regional Municipality, Nova Scotia
this _____ day of January, 2008
before me:

A Barrister of the Supreme Court
of Nova Scotia

SHAWNA NOEL

(1137392) SK-2639

Our File: SK-

The Honourable Justice
Presiding in Chambers
The Supreme Court of Nova Scotia
1815 Upper Water St.
Halifax, NS

My Lord/My Lady:

**Re: The Bank of Nova Scotia v.
(S. H. No.)**

We are the solicitors for the Plaintiff ("BNS") in this matter, which involves enforcement of a mortgage upon property at . The Defendant is unrepresented.

BNS has scheduled an application to be heard in Chambers on , 2008 at 9:30 a.m. The Bank is seeking an Order entering Deficiency Judgment against the Defendant pursuant to Civil Procedure Rule 47.10. The Affidavits of Stephen Kingston and Shawna Noel have been filed in support.

Please accept the following as BNS's Pre-hearing Memorandum.

A default Foreclosure Order was issued herein on (Ex. "A", Kingston Affidavit). The Order settled the debt owing under the Mortgage as \$ as of , with interest accruing thereafter at the rate of % per annum.

The foreclosure sale was held on and the mortgaged property was knocked down to BNS for \$. A copy of the Sheriff's Report appears as Exhibit "B" to the Kingston Affidavit.

BNS taxed its costs as \$ (Ex. "C", Kingston Affidavit).

On the Prothonotary issued an Order ratifying and confirming the Sheriff's Report and all proceedings herein (Kingston Affidavit, Ex. "D").

Appraisal

BNS obtained an appraisal (Ex. "A", Noel Affidavit) in advance of the foreclosure sale, which stated that the fair market value of the property was \$ as of .

Property Management Charges

BNS retained Veranova Properties Limited ("Veranova") as its Property Manager on or about . Veranova took possession of the property on , and a copy of its Securing Report and photos appear as Exhibit "B" to the Noel Affidavit.

Veranova has negotiated an arrangement with the Plaintiff whereby it receives a "flat fee" of \$1,800.00 (including HST) for certain services in connection with secured properties. Veranova's actual "flat fee" charges are listed as Exhibit "C" to the Noel Affidavit, and total \$ (including HST). We have used this lower figure for the purposes of calculating the deficiency, which works to the benefit of the Defendant. A listing of the "non flat-fee" Veranova charges appear as Exhibit "D" to the Noel Affidavit and total \$ (including HST). We are not claiming the charges for administration fees (\$) as part of the deficiency.

Veranova's charges may be summarized as follows:

Services Provided	Amount
Occupancy Check	\$39.90
Driveby/Inspections	968.50
Condition Report	51.30
Securing/Lock Change	171.00
Winterizing	85.50
De-winterizing (for purchaser testing)	51.30
Re - winterizing	85.50
Snow Removal	205.20
Minor repairs upon securing	28.50
Attendance - mortgagor removal of belongings	57.00
Grass cutting	456.00
Garbage removal (interior/exterior)	222.30
Cleaning (scrub and shine)	216.60
Removal of enviro. items	74.10
Garbage Removal (shed/garage)	672.60
Minor repairs	57.00
Install spindles on back steps	296.40
Replace two stair treads (back steps)	91.20
Install handrail (basement)	182.40
Install valve protector	136.80
Clean carpets	228.00
Delivery of keys to realtor	28.50
Re-Winterize	85.50
Add antifreeze to toilet	28.50
Appraisal	467.40
Oil	296.20

It is submitted that Veranova's services were directed towards preservation of the value of the property rather than enhancement of that value. It is submitted that, under these circumstances, *Bank of Montreal v. Kennedy* (2006), 243 N.S.R.(2d) 126 should properly be distinguished, and that the full amount of property management charges both before and after foreclosure should be recoverable on this application.

A copy of the Mortgage appears as Exhibit "A" to the Affidavit of BANK OFFICER, which was submitted to the Court in support of BNS's application for a Foreclosure Order. Section 15(b) of the Mortgage states:

"B. Our expenses – You will immediately pay all our expenses of enforcing our rights. Our expenses include our costs of taking or keeping possession of your property, an allowance for the time and services of SMC's and/or the Bank's employees utilized in so doing, our legal fees on a solicitor and own client basis and all other costs related to protecting our interest under this mortgage. All our expenses are immediately payable by you. Until paid our expenses will be added to the loan amount and will be a charge against your property. Interest is payable by you on our expenses at the interest rate payable on the loan amount until our expenses are paid to us in full. These expenses can be deducted from the net proceeds of any sale or lease of your property. If the net proceeds from the sale or lease do not cover our expenses, you must pay us the difference immediately."

It is submitted that Veranova's charges come within the terms of s. 15(b) of the Mortgage and are properly recoverable by BNS as against the Defendant.

Deficiency Claim

The Bank's claim is as follows:

Amount Claimed

Principal Debt (from Foreclosure Order)	\$
Interest from to on \$ (days at \$ per day)	
Taxed Costs	
Total Amount Claimed	\$

Amount Realized

Gross sale proceeds (from Appriasal)	\$
Less Property Management fees	()
Less Sheriff's fees and taxes (from Sheriff's Report)	()
Net amount realized	\$

Deficiency

Total Amount Claimed	\$
Less Total Amount Realized	()
Remainder	\$
Plus interest at % from to (days @ \$ per day)	\$

Plus interest on \$	at 5% from	
to		
(days at \$	per day)	\$
Total		\$
Plus costs		\$500.00
TOTAL DEFICIENCY CLAIM		\$

All of which is respectfully submitted this day of , 2008.

Yours very truly,

MCINNES COOPER

Stephen Kingston

SK/