

2022



Hfx No. 515975

SUPREME COURT OF NOVA SCOTIA

Between:

ASSADI PRIVATE CAPITAL INC.

Plaintiff

- and -

**CHARLES P. STEPHEN HOWATT, MICHAELA NICOLE SMITH,
ANNE ELIZABETH LATHAM, 3292691 NOVA SCOTIA LTD. and
3337285 NOVA SCOTIA LTD.**

Defendants

**Order for Foreclosure, Sale, and Possession
JUSTICE KEVIN COADY**

Before the Honourable Justice _____ in Chambers:

SGD
K.C.
J.



WHEREAS the Plaintiff obtained an order granting summary judgment as against the Defendants Michaela Nicole Smith, Anne Elizabeth Latham, 3292691 Nova Scotia Ltd., and 3337285 Nova Scotia Ltd. on January 18, 2024 in Hfx No. 515975 in the total amount of \$496,283.50 (the **"Summary Judgment Order"**);

AND WHEREAS, as security for obligations of the Defendant 3337285 Nova Scotia Ltd. ("**333 Co.**") to the Plaintiff, the Defendant 333 Co. provided a collateral mortgage (the **"28-47 Clover Mortgage"**) in favour of the Plaintiff charging the real property located at 28 Clover Street, Sandy Point, Nova Scotia (PID 82573643) (the **"28 Clover Street Property"**) and 47 Clover Street, Sandy point, Nova Scotia (PID 82578360) (the **"47 Clover Street Property"**);

AND WHEREAS the Plaintiff has incurred expenses for the payment of property taxes for the 28 Clover Street Property;

AND WHEREAS the Plaintiff seeks to foreclose the 28-47 Clover Mortgage only in respect of the 28 Clover Street Property;

On the motion of the Plaintiff, Assadi Private Capital, Inc., the following is ordered:

1. The amount due to the Plaintiff on the 28-47 Clover Mortgage under foreclosure in respect of the 28 Clover Street Property is settled at \$502,547.22, with interest on \$456,474.50 at the rate of 5% per annum from January 18, 2024 up to:

- (a) fifteen days after the day of sale by public auction, if the mortgagee purchases the 28 Clover Street Property; or
- (b) fifteen days after the day the balance of the purchase price is paid to the sheriff or other person conducting a sale by public auction, if a person other than the mortgagee purchases the 28 Clover Street Property;

together with any other charges and protective disbursements, as approved by the court, and costs to be taxed.

2. The sheriff shall, if requested by the Plaintiff, take possession of the 28 Clover Street Property and deliver possession to the Plaintiff or a person designated by the Plaintiff.
3. All the interest and equity of redemption of the Defendant 333 Co. and of all persons claiming through the Defendant 333 Co. in the 28 Clover Street Property are forever barred and foreclosed, and shall be sold by the sheriff, the sheriff's nominee, or another person appointed by the Court at a public auction conducted in accordance with the Instructions for Conduct of Foreclosure Auction, 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. The sale is to be held at a courthouse in the county in which the lands being foreclosed are located. Conveyance shall be by deed to the purchaser. The proceeds of the sale shall be applied to cover the expenses of the sale, with the balance paid to the Plaintiff to the extent of the 28-47 Clover Mortgage debt and any surplus paid to the prothonotary at the place of this proceeding.
4. The Plaintiff shall give at least fifteen days notice of public auction to the Defendant 333 Co. by ordinary mail and to each recorded subsequent encumbrancer by delivery to Canada Post for transmission by registered mail, and advertise the public auction by two insertions, the first in the Provincial Edition of the Chronicle Herald; at least fifteen days before the day of sale, and the second in the Provincial Edition of the Chronicle Herald, not more than seven days before the day of sale. The abbreviated description of the 28 Clover Street Property contained in Schedule "A" is approved for use in the notices and advertisements.
5. A subsequent encumbrancer is bound by the terms of this Order when the notice to subsequent encumbrancer under Rule 35.12 is delivered to Canada Post in the time provided in paragraph 4. A subsequent encumbrancer may defend or contest this proceeding by making a motion in chambers before the date of the public auction.
6. The Plaintiff shall record a true copy of this Order in the parcel register for the 28 Clover Street Property.
7. The Plaintiff has entered the Summary Judgment Order against the Defendant 333 Co. for the same debt as secured by the 28-47 Clover Mortgage. The Plaintiff shall

give credit to the Defendant 333 Co. as against such judgment debt for the market value of the 28 Clover Street Property less such charges and costs as allowed by Rule 72.13, Practice Memorandum No. 1 and relevant case authority, and it shall bring a motion for the approval of such credit no later than six (6) months following the date that is: (i) fifteen days after the day of sale by public auction, if the mortgagee purchases the 28 Clover Street Property, or (ii) fifteen days after the day the balance of the purchase price is paid to the sheriff or other person conducting a sale by public auction, if a person other than the mortgagee purchases the 28 Clover Street Property.

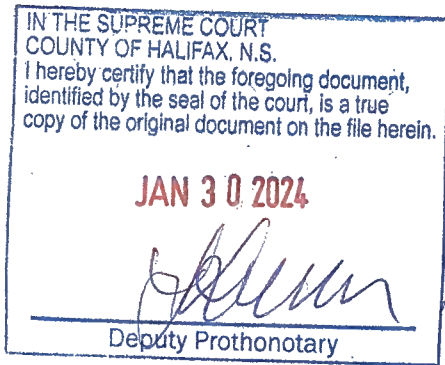
8. For greater certainty, nothing in this Order nor the foreclosure of the interest and equity of redemption of the Defendant 333 Co., and of all persons claiming through the Defendant 333 Co., in the 47 Clover Street Property shall affect, or shall be deemed to discharge, foreclose, or release, the 28-47 Clover Mortgage in respect of the 47 Clover Street Property, and the 28-47 Clover Mortgage shall remain a mortgage of and charge upon the 47 Clover Street Property.

Issued Jan 30th, 2024



Prothonotary

LORRAINE LUNN
Deputy Prothonotary



LORRAINE LUNN
Deputy Prothonotary

SCHEDULE "A"

All those lands and premises known as 28 Clover Street, Sandy Point, Nova Scotia (PID no. 82573643), as more fully described in the collateral mortgage recorded at the Shelburne County Land Registration Office on September 9, 2021 as document no. 119256569. The lands are (i) benefitted by an access easement/right of way, (ii) burdened by a utility service easement, and (iii) burdened by an easement granting Nova Scotia Power Incorporated the right to construct, maintain and run power lines upon and over the property, all as more fully described in the parcel register for the lands. The lands are migrated pursuant to the *Land Registration Act*.