

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT**

Civil Division

[Unreported]

Suit No: CV1949 of 2003

BETWEEN

SHARON DIANNE KINCH - PLAINTIFF

AND

BANK OF NOVA SCOTIA - DEFENDANT

Before The Honourable Madam Justice Maureen Crane-Scott,

Judge of the High Court

2010: March 10, 11,

2011: May 6; July 15;

2012: February 29.

**Miss. Debra Gooding in association with Miss. Doreen Johnson for the
Plaintiff and Mrs. Alicia Richards-Hill for the Defendant**

DECISION

- [1] **Crane-Scott J:** On October 24, 2003, the Plaintiff instituted proceedings against the Defendant seeking damages in negligence for alleged negligent representations and omissions of its servant and/or agent, Erwin Bowen which, she claims, resulted in her being denied the mortgage which he promised her, causing her loss and damage.
- [2] Details of the alleged representations were set out at paragraphs 4 and 6 of the Plaintiff's Statement of Claim as follows:

"4. The Defendant by its servant and/or agent, Erwin Bowen represented to and advised the Plaintiff that it would be financially wise to build her own house rather than purchase a house for the following reasons, namely:

- (i) The Plaintiff's land was situate in a prime location;*
- (ii) The Plaintiff might end up spending money on what would be a poor quality house."*

"6. The Defendant acting by the said Erwin Bowen represented to the Plaintiff that a pre-condition for the approval of a mortgage was the erection of wall structure on the land and that a three-stage method would be employed, namely:

- (i) First stage - a loan of money to start the foundation;*
- (ii) Second stage - a loan of additional money to take the building to ring beam level; and*
- (iii) Third stage - convert to a mortgage with a loan of additional money to complete the house."*

- [3] The Plaintiff also alleged that at the time the said representations were made, the Defendant acting by its servant and/or agent, Erwin Bowen intended and well knew or ought to have known that the Plaintiff would rely on the representations and would be induced to accept a mortgage from and on the Defendant's terms.
- [4] She further alleged that acting on the said representations, the Plaintiff accepted the Defendant's three-stage method as described by Erwin Bowen and received from the Defendant by way of loan, installments in the total sum of \$94,000.00 at 14% interest.
- [5] The Plaintiff alleged at paragraphs 8 and 10 of the Statement of Claim that the Defendant was under a duty of care in making the said representations and in breach of said duty, the Defendant was negligent in making those representations.
- [6] The Plaintiff also gave particulars of the alleged negligent omissions of the Defendant bank as follows:
- (i) *Failing to properly assess the Plaintiff's eligibility for a mortgage;*
 - (ii) *Failing to follow the guidelines of the 3-stage method discussed with the Plaintiff;*
 - (iii) *Failing to request in a timely manner a quantity surveyor's report from the Plaintiff;*
 - (iv) *Failing to ensure that the relevant builder's estimate forms were completed;*
 - (v) *Failing to conduct proper research as to the amount needed to complete the Plaintiff's dwelling house.*
- [7] The Plaintiff also claimed that in the premises the Plaintiff was denied the mortgage promised and has suffered loss and damage.

- [8] **The Defence:** The Defendant filed a formal Defence on December 15th, 2003. It denied having made any of the alleged representations or that it was guilty of negligence or breach of duty as alleged.
- [9] **The Applicable law:** The law is that where a man who has, or professes to have special knowledge or skill, makes a representation (be it advice, information or opinion) to another person, he is under a duty of care to use reasonable care to see that the representation is correct and that the information or opinion is reliable. If he fails in that duty and gives unsound advice or misleading information or expresses an erroneous opinion and thereby induces the other person to contract with him and that other person in reliance upon the representation suffers economic loss, he will be liable for damages for negligence. See *Halsbury's Law of England, Fourth Edition, Volume 31 @ para 708; Hedley Byrne v. Heller & Partners [1964] AC 465; Esso Petroleum Co v. Mardon [1976] 2 All ER 5.*
- [10] The duty of care applies to bankers as it does to other professionals, and a banker may be held liable for giving negligent advice to its customers or potential customers where the Court is satisfied firstly, that the giving of advice falls within the scope of the bank's business and secondly, that the bank has fallen short of its duty to advise with reasonable care and skill.
- [11] The application of the foregoing well established principles is exemplified in the English case of *Woods v. Martins Bank [1958] 1 W.L.R. 1018* where a Plaintiff successfully recovered as damages, capital lost in investments made upon the negligent advice of the bank's branch manager. The Plaintiff also recovered as damages, money paid under a guarantee of a small private company's overdraft, where the branch manager had also negligently advised the Plaintiff to enter into the guarantee.

[12] Notwithstanding the broad principles, it ought not to be assumed that the scope of a banker's business is the same in each case. The nature of banking business is such that every bank will conduct its business differently and in accordance with its own internal policies and guidelines. Accordingly, the issue of what falls within or outside the scope of a particular defendant's business has not been laid down as a matter of law but must in each case be determined as a matter of fact. In *Woods* (cited above) Salmon J. explained the matter thus:

“In my judgment, the limits of a banker's business cannot be laid down as a matter of law. The nature of such a business must in each case be a matter of fact and, accordingly, cannot be treated as if it were a matter of pure law.”

[13] **The Issues:** Based on the pleadings and in the light of the applicable law, the Court considers that the issues for its determination in this case are as follows:

The allegations of Negligent Representations/Omissions

- 1) Was it an ordinary part of the Defendant's business for its authorized employees to make representations and give advice to its customers regarding their eligibility for financing and generally about how the bank's various products might assist them in achieving their objectives?
- 2) Did the Defendant owe a duty of care to the Plaintiff when making such representations and rendering such advice?
- 3) What representations and advice (if any) were made to the Plaintiff?

- 4) Has the Plaintiff established that the Defendant is guilty of the negligent omissions as particularized in paragraph 10 of the Statement of Claim and has thereby fallen short of its duty of care?
- 5) If so, what damage (if any) did the Plaintiff sustain?

[14] The issues just identified will now be addressed under the italicized headings which follow.

[15] **Issue 1- What is the nature of the Defendant's business and what was the scope of Mr. Bowen's authority?:** The Defendant did not, as part of its case, formally adduce evidence as to the nature of its business or as to the scope of Erwin Bowen's authority to make representations to or render opinions or advice to the bank's customers or potential customers.

[16] Nevertheless, under a careful cross-examination by Counsel for the Plaintiff, Mr. Jefferson Lashley agreed that as the Defendant's Assistant Manager (Consumer Credit) Mr. Bowen was authorized to make representations to customers on the bank's behalf and specifically to advise whether or not they qualified for mortgage financing.

[17] He also agreed that officers of the bank were under a duty of care to the bank's customers when they make recommendations to such customers and that it would be reasonable to expect that customers would rely on and act on recommendations made to them by the bank's officers.

[18] He agreed further that if an officer of the bank made a recommendation to a customer that turned out to be wrong, the officer would be in breach of his duty of care. He however admitted that "*officers of the bank do make mistakes as well.*"

[19] Re-examined by Counsel for the Defendant, Mr. Lashley clarified that his admission under cross-examination that officers of the bank made mistakes

had merely intended to convey that as human beings they could also make mistakes. He however stressed that he was not aware that Mr. Bowen had made a mistake and stated that based on what Mr. Bowen had done, he had seen no mistake and instead, had only seen an effort to assist someone. Mr. Bowen had made, he said, a reasonable attempt to assess the Plaintiff's eligibility and was correct based on the information supplied.

[20] Elsewhere in his testimony, Mr. Lashley explained that *"the bank would always look for ways to make recommendations to customers since there were always times when something can be tailored to suit the situation."*

[21] He further stated that *"the bank would look to see what would be the best recommendation to suit the customer if it can be done at all."* There were, however, times, when with the best will in the world, *"the money which the customer qualified for would be far too short when one considered the funds required for construction."*

[22] Based on Mr. Lashley's testimony and having regard to the evidence as a whole, the Court is satisfied and finds that it was completely within the scope of the Defendant's commercial lending business for its authorized employees and agents (and in this case, for Mr. Bowen) to make representations to the bank's customers and potential customers and to render opinions and advice about their eligibility for financing and generally about the bank's various products with a view to assisting them in finding the best financing option available to them within the limitations of the bank's overall lending policies.

[23] Given the foregoing, the Court is satisfied and also finds that both Mr. Bowen and the Defendant bank ought to have known, intended or ought to have reasonably expected that the Plaintiff would rely on and act on any recommendations or advice made to her.

- [24] **Issue 2- Did the Defendant owe a duty of care to the Plaintiff?:** The Defendant's own view as to whether a duty of care was owed to its customers was skillfully elicited during the course of Miss. Gooding's very clever cross-examination of Defence witness, Mr. Jefferson Lashley.
- [25] Having first gotten Mr. Lashley to agree that as the Assistant Manager (Consumer Credit) Mr. Bowen was authorized to make representations to customers on the bank's behalf and specifically to advise whether or not they qualified for mortgage financing, Miss. Gooding succeeded in getting Mr. Lashley to further agree that that officers of the bank were under a duty of care to the bank's customers when they make recommendations to such customers.
- [26] Mr. Lashley also accepted that it would be reasonable to expect that customers would rely on and act on recommendations made to them by the bank's officers, and further agreed that if an officer of the bank made a recommendation to a customer that turned out to be wrong, the officer would be in breach of his duty of care.
- [27] Having ascertained as a matter of fact that the giving of advice and the making of representations to its customers (and potential customers) fell within the ordinary scope of the Defendant's business and further, that it would be reasonable to expect that customers would rely on and act on recommendations made to them by the bank's officers, the Court had little difficulty in finding that as a matter of law, the Defendant bank was under a duty of care to advise the Plaintiff with reasonable care and skill.
- [28] **Issue 3 - What representations (if any) were made to the Plaintiff and what advice was rendered? and Issue 4- Has the Plaintiff established that the Defendant is guilty of the negligent omissions as alleged in the Statement of Claim and has thereby fallen short of its duty of care?** A detailed review

of the evidence will be undertaken below, and for convenience, Issues 3 and 4 will be considered together. At the trial, the Plaintiff gave evidence on her own behalf and called no other witnesses. The Defense called two witnesses, Mr. Erwin Bowen, Assistant Manager (Consumer Credit) who met with the Plaintiff in connection with her request for loan financing, and Mr. Jefferson Lashley, Mortgage Sales Officer attached to the office of the bank's Managing Director, who was subsequently tasked with investigating the Plaintiff's complaints in an effort to see how, if at all, the bank could assist.

[29] Mr. Lashley was not present at the meetings between the Plaintiff and Mr. Bowen and therefore could obviously neither confirm nor deny what had been discussed at meetings at which he was not present.

[30] In the circumstances, the Plaintiff's case rested almost entirely on the view which the Court took of the evidence as a whole and of the credibility of the Plaintiff's testimony *vis-à-vis* that of the Defendant's principal witness, Erwin Bowen. The competing accounts of what both sides say transpired are now set out hereunder in some detail.

[31] Both parties are agreed that prior to her initial meeting with Mr. Bowen at the Defendant's Haggatt Hall branch, the Plaintiff had been a longstanding customer of the Defendant bank and had operated an account at its Wildey branch for many years.

[32] Evidence for the Plaintiff: In her evidence in chief, the Plaintiff testified as follows:

"I banked with BNS from the time I was 19 years. I never had a problem up to that time and was a good customer. Given the years I banked with them I felt that they would be in a position to advise me."

[33] The Plaintiff further testified that in or about the month of April, 2000, she approached the Haggatt Hall branch of the Bank of Nova Scotia to seek

mortgage financing. The date of the initial meeting is, however, in dispute as Mr. Bowen later testified that he had first met the Plaintiff in the month of May 2000, which was the same month in which she had signed the Scotia Plan loan Application for Credit form “*EBI*”.

[34] The Plaintiff testified that she wanted to have her own home and house and was seeking information, she said, on how the Defendant could assist her in obtaining a mortgage. However, at the time she just had a piece of land which had been used as security for a Barclays Bank plc loan which she was still paying for and no other collateral.

[35] The Plaintiff saw and spoke with the Assistant Manager (Consumer Credit), Mr. Erwin Bowen and discussed with him her goal of owning her own home and the different financing options available to her. According to the Plaintiff, at their first meeting she had discussed with Mr. Bowen the advantages and disadvantages of her buying an already completed house as opposed to building her own house on her land.

[36] The Plaintiff said that in her discussions with the bank, she had also considered buying an already completed house as an option and Mr. Bowen had advised her that it would be better to construct her house on her own land which was in a good location and that she would be assured of a better construction if she built her own house. She however, conceded under cross-examination that when she first went to see Mr. Bowen she had already had it in her mind to build a house.

[37] This latter concession by the Plaintiff, coupled with the fact that she was already in possession of plans approved by the Town Planning Department for the house she intended to build, together with the Plaintiff’s insistence that she had approached the bank for a mortgage and not a loan, has convinced the Court that even if (which is denied) Mr. Bowen had made

such a representation, it did not operate as an inducement to the Plaintiff to enter into a contract with the Defendant, but merely reinforced a decision which the Plaintiff had already made.

[38] The Plaintiff said that at their first meeting, Mr. Bowen had also told her that she would need to bring an approved plan, a job letter and an estimate from the builder who would be doing the construction. According to her, once she had gotten all the documents together, she went back to see him. Her evidence conflicts with Mr. Bowen's testimony to the effect that the Plaintiff had brought the approved plan, the job letter and the builder's estimate with her to the initial meeting and that the only document which he had requested and which had been outstanding following their first meeting had been a current valuation of the land.

[39] Notwithstanding her evidence-in-chief, under cross-examination by Counsel for the Defendant, the Plaintiff somewhat surprisingly said she was unable to recall whether she had taken the approved construction plans with her at her first meeting with Mr. Bowen. Her response has caused the Court to question whether the Plaintiff's initial recollection of events which took place at the initial meeting was really as reliable as it had appeared in her evidence-in-chief.

[40] The Plaintiff also testified that she had had a series of meetings with Mr. Bowen. However, it was at their initial meeting, she said, that he had advised her among, other things, that she would need to go through a 3-step process at the end of which, her loan would be converted to a mortgage. Astoundingly, the Plaintiff then said that although she could not recall Mr. Bowen's exact words, she thought that he had said that she first had to start with the foundation. The second stage would bring the building to ring-beam

and at the third or ring beam stage, her understanding was that the loan would be converted to a mortgage.

[41] The Plaintiff also said Mr. Bowen's oral advice to her was never reduced to writing but that based on Mr. Bowen's advice, she understood that the bank would give her a loan and that that at ring beam stage it would be converted to a mortgage.

[42] The Plaintiff said she had been a bit concerned by Mr. Bowen's advice to her to take out a loan, because she had not approached the Defendant bank for a loan but for a mortgage. Additionally, she said the loan carried a high rate of interest and she wanted an assurance that she could achieve her objective of getting a mortgage when the building reached ring beam stage as he had advised. According to the Plaintiff, Mr. Bowen had assured her that it would happen.

[43] This aspect of the Plaintiff's testimony is once again in direct conflict with that of Mr. Bowen who denied ever making any of the alleged representations and further, said he was not familiar with the 3-stage methodology mentioned in paragraph 6 of the Statement of Claim.

[44] The Plaintiff also said that Mr. Bowen had advised her that the Defendant would take over the land loan which she had at Barclays Bank and take a charge against the land as collateral for the intended mortgage. He also arranged for her to visit Mr. Simeon Reid, the Defendant's attorney-at-law, to sign the necessary documents. Mr. Bowen also advised her to move her account from the Defendant's Wildey branch to its branch at Haggatt Hall.

[45] According to the Plaintiff, Mr. Bowen put the necessary arrangements in place for her outstanding land loan with Barclays Bank to be transferred to the Defendant's Haggatt Hall branch. When the formalities were in place, the Plaintiff signed a Promissory Note in July 2000 to receive the first set of

funds and a second Note in December 2000 to carry the house to ring-beam stage. She could not, however, recall the amount of either loan.

[46] The Plaintiff complains that as the house was nearing the ring-beam stage, Mr. Bowen informed her that she could not qualify for a mortgage because the cost of the house exceeded the amount for which she could qualify for mortgage financing.

[47] The Plaintiff then complained to, and was seen by various senior officials in the Defendant bank about the situation. She was seen by a Jefferson Lashley who, after obtaining three estimates of the amount required to bring the house to completion and a Quantity Surveyor's report, advised her that the bank could offer her a mortgage for a partially complete, but habitable house, which she refused.

[48] The Plaintiff also approached a credit union and another bank for financing to complete the house, but said she had been unable to get anywhere with them given the existing debt. She said that she had approached the Defendant bank to secure a mortgage for a house and would like to know that she could have a completed house.

[49] Under cross-examination, the Plaintiff was asked whether she knew how much money she had wanted to borrow and indicated that she had a general idea and thought that the construction cost of the house was in the vicinity of \$200,000.00. She stated that she would have arrived at this figure after discussing the matter with the contractor. This aspect of the Plaintiff's testimony conflicted with the figure given by Mr. Bowen in his evidence who said that he could not recall the exact amount of the construction estimate, but believed it had been around \$300,000.00.

[50] The Plaintiff admitted that she could not remember exactly what was discussed at the meeting, but recalled that they had talked about different

options. She denied that she had been told that she did not qualify for mortgage financing at the initial meeting. She admitted that Mr. Bowen had advised her about the possibility of building a house in stages, but said that it had been against the background of her ultimately securing a mortgage.

[51] Once again, the Plaintiff's testimony is in direct conflict with the evidence given by Mr. Bowen who expressly denied ever having discussed any three-step method with the Plaintiff. Mr. Bowen testified that when he first met the Plaintiff in May, 2000, she had been seeking financing to build a home. According to Mr. Bowen, the Plaintiff had brought with her an approved drawing, an estimated cost of construction and a job letter. Based on her income and the building estimate, he calculated what mortgage she would qualify for and advised her that she did not qualify for mortgage financing based on her income which was around \$3,500 per month.

[52] He explained that the bank applies a method called the 'total debt/service ratio' which is calculated by using a percentage of a customer's total monthly commitments against his gross income. The set guideline for qualification is 40%. He could not recall what the Plaintiff's exact percentage was, but said that it was in excess of the 40% ratio.

[53] After doing the calculation, Mr. Bowen said he told the Plaintiff that she would not qualify for the mortgage she was seeking. Having ascertained that she had been married and that her spouse's income was around \$3,000.00 per month, he did a debt/service calculation based on both incomes and indicated to her that if her husband co-signed, they would jointly qualify. According to Mr. Bowen, the Plaintiff indicated that she did not wish her spouse to co-sign.

[54] After that, Mr. Bowen said the Plaintiff expressed an interest in obtaining any other kind of financing. According to Mr. Bowen, she informed him that

she resided in a house on a Plantation where her spouse was employed and had very few expenses as they were all taken care of by her husband's employers. The Plaintiff then indicated her willingness to construct the dwelling house over a protracted period of time as, according to her, there was no sense of urgency for accommodation because of where she was living. Mr. Bowen stressed that the suggestion about building over a protracted period of time had come from the Plaintiff.

[55] Mr. Bowen said he then told her that the bank could look at it and indicated that they could assist her along the way. According to him, he explained to the Plaintiff that the bank's assistance would take the form of an advance of funds based on her equity in the property and also within the total debt/service ratio. He said he further advised her that as she repaid the loan and the loan balances were reduced, the bank could do some re-financing within the parameters of the debt/service ratio.

[56] He explained that this is a pretty common place method of financing because the normal Bajan way is to 'take a side-out' which means, to build parts of the house over a period of time, until the dream house is completed. The customer would borrow and build, repay and borrow again over a protracted period of time. Using this method, he said, the customer would have built a home after a period of time, but would not have entered into a big mortgage.

[57] The Plaintiff admitted that she had filled out a loan application on May 24th, 2000 in the amount of \$67,000.00 and that the loan had been to settle the outstanding balance of \$24,113.81 due on her Barclays Bank plc land loan and to start construction of the house. She agreed that the balance of the loan proceeds of \$42,149.44 had been credited to her account and had been used to commence construction of her house.

- [58] She accepted that that the loan she had taken out was a Scotia Plan loan but disagreed with the suggestion that it was not a bridging loan and said that that had not been her understanding.
- [59] Under cross-examination, she disagreed with Mrs. Richards-Hill's suggestion that prior to signing the loan documents, her discussions with Mr. Bowen had centered around an alternative which he had presented to her for building her house over a protracted period of time.
- [60] She denied the suggestion that Mr. Bowen had explained that it was a cultural thing in Barbados for persons to build piece by piece if they don't have all the money and insisted that the conversation detailed in paragraph 4 of the Statement of Claim did take place as alleged. She however conceded that when she first went to see Mr. Bowen she had already had it in her mind to build a house.
- [61] The Plaintiff agreed that she had applied for another Scotia Plan loan in December, 2000 and that \$66,745.48 of the loan proceeds had been applied to settle the outstanding balance on the first Scotia Plan loan. She could not recall whether the actual cash amount she had received was \$27,335.18 but agreed that the purpose of the second loan had been, as stated on the application form, to re-finance and assist in construction of the house.
- [62] Although she recalled signing and reading both application forms prior to signing them, she stated that she honestly could not say whether at the time she applied for the first loan in May, 2000 her debt/service ratio had been 25.78%. Nor could she say whether her debt/service ratio at the time of her second loan had been 37.51%.
- [63] Under cross-examination by Counsel for the Defendant, the Plaintiff admitted that when she first consulted Mr. Bowen she had been living with her husband at Windsor Plantation in St. George. It was a house which came

- with her husband's job and she didn't think that he was paying rent. After moving from Windsor Plantation sometime in April, 2000, she went to live with her sister where she remained for a year or more until she finally moved to rented accommodation in Bayville, St. Michael sometime in 2001.
- [64] She agreed that when she moved to Bayville she had been in a more difficult financial situation than she had been in the year 2000, but denied Mrs. Richards-Hill's suggestion that she had been motivated by her personal circumstances to sue the bank.
- [65] She reiterated that it had not been her understanding that both loans were Scotia Plan loans and not bridging loans. She denied that she had applied for a loan and insisted that she had approached the Defendant bank for a mortgage.
- [66] Asked whether she had ever received a commitment letter from the bank she replied in the negative and said that when it came to the stage when she expected the loan to be converted to a mortgage, she had been told that that she did not qualify.
- [67] Although she could not recall the exact date when she signed the Deed of Charge, the Plaintiff agreed that she had given the Defendant bank security for the loans in the form of a charge over her land at Lot 1 Welches, St. Thomas.
- [68] She was also unable to recall the exact date of a valuation of her property which had been conducted by Cooper Kaufman. Nor could she recall what the value of her land had been prior to the commencement of construction of the house. After she was shown a copy of a valuation report prepared by Cooper Kaufman in February, 2001, she agreed that the document was the report which she would have received from Cooper Kaufman in 2001.

- [69] After Counsel for the Defendant had read excerpts from the report to her, the Plaintiff agreed that going by those figures, she was in a better off position than she had been in before she got the loan.
- [70] The Plaintiff accepted that her loan payments due on the first loan had been \$892.27 per month, while her loan payments following the second loan had increased to \$1,298.45 per month. She could not recollect when she had paid the installments, but said that the payments had since been stopped through her attorney. She recalled receiving a letter of demand on February 28, 2005 from the bank's attorneys regarding the outstanding amounts due on the loan. She also recalled receiving a letter dated May 10th, 2004 and confirmed that she had been in default under her Scotia Plan loan since she stopped making payments.
- [71] Despite having earlier identified a Report dated February 14th, 2001 prepared by Cooper Kaufman and addressed to Mr. Larry Kinch as a report which she had received in 2001, under further cross-examination by Counsel for the Defendant, the Plaintiff was unable to recall having had sight of the Report.
- [72] She also denied that the report had been prepared shortly after she had approached the Defendant bank for mortgage financing and had been refused. She recalled meeting with Mr. Kinch, but said she honestly did not recall that earlier Cooper Kaufman report. She also recalled having written a letter to a Mr. Van Shie at the Defendant bank, but did not recall having made reference to the Cooper Kaufman report of February 14th, 2001.
- [73] Under further cross-examination by Counsel for the Defendant, the Plaintiff testified that she believed that the cost of taking the building from foundation stage to ring beam was \$75,000.00. It could have been less, she said, but she could not recall the exact amount. She however, admitted that she had not taken the building to ring beam.

- [74] In answer to a question by the Court, the Plaintiff clarified that at Mr. Bowen's request she had obtained an estimate from the contractor, Mr. Ronald Moore in the amount of \$75,000.00 being the cost of construction to take the building to ring beam stage. She said that she had a copy of the estimate but had never provided it to her attorney.
- [75] Asked whether she had at anytime been asked to provide the Defendant bank with additional estimates of the cost of construction, the Plaintiff agreed that she had obtained estimates in July and November 2001 and that the estimates ranged from \$145,000 to \$266,800.00.
- [76] Questioned about her debt/service ratio and whether she qualified for a mortgage, the Plaintiff testified that the first time she heard about a debt/service ratio was when she took the matter to Mr. Kinch and Mr. Van Shie at the Defendant bank.
- [77] Although her debt/service ratio could have been disclosed in both Scotia Plan loan applications which she had signed and acknowledged, the Plaintiff said that she had never been given a copy of them. She however, conceded that she had not qualified for a mortgage at Barclays Bank, or at Barbados National Bank, nor at Scotia Bank.
- [78] She continued to insist that Mr. Bowen had made each of the representations identified in the Statement of Claim and, in particular, had represented to her that a pre-condition for the approval of a mortgage was the erection of a wall structure on the land utilizing a three-stage process.
- [79] Evidence of Mr. Bowen for the Defence:The main Defence witness was Mr. Erwin Bowen who at the relevant time had been the Assistant Manager (Consumer Credit) for approximately 4 years.

- [80] According to Mr. Bowen, after he had informed the Plaintiff at their initial meeting that she was ineligible for a mortgage, the Plaintiff then expressed an interest in obtaining any kind of financing and Mr. Bowen then explained to her how the bank could assist her with loan financing to construct her dwelling house over a protracted period.
- [81] Mr. Bowen said that he had explained this to the Plaintiff and as far as he could determine, she had understood what he had explained to her. Mr. Bowen stated that his discussions with the Plaintiff had formed the basis of the bank's contract with the Plaintiff. He denied ever making any of the alleged representations to the Plaintiff and said he was not familiar with the three-stage methodology mentioned in the Statement of Claim.
- [82] In order to arrive at the amount of the loan which could be advanced, Mr. Bowen said he had requested the Plaintiff to obtain a current valuation of the property. He explained that the valuation report was produced at his second meeting with the Plaintiff at which the Plaintiff signed the application for credit in respect of a Scotia Plan loan. He explained that he had filled out the details before she signed and that he had also counter-signed the credit application. He identified the relevant Scotia Plan Loan –Credit Application Form which was dated May 22, 2000. The credit application form was duly admitted into evidence as “***EBI***”.
- [83] Mr. Bowen explained that a Scotia Plan loan was one of the bank's products whereby the bank entered into a loan arrangement with a customer. It was supported by a signed Promissory Note which was also taken from the customer. The Promissory Note would state the borrower's name and address, the branch lending the funds, the total principal and interest due on the loan, the monthly payments and the dates they fall due as well as the interest rate on the loan. He explained that the Promissory Note is signed by

the borrower and his or her signature is witnessed by the person disbursing the loan. He explained that the customer's signature on the Promissory Note means that the customer has accepted a loan from the bank on the terms outlined in the Promissory Note.

[84] Mr. Bowen identified the relevant Promissory Note which was dated July 11, 2000 and admitted into evidence as "**EB2**". He explained that the amount loaned was \$67,000.00 amortized over 180 months (15 years) at the rate of 14% per annum. The Bank, he said, had also taken a Deed of Charge over the Plaintiff's land. He identified the Deed of Charge (Sharon Kinch to Bank Nova Scotia) dated December 14, 2000 which was admitted into evidence as "**EB3**".

[85] He stated that when the first Scotia Plan loan was disbursed, the bank credited the Plaintiff's account with \$42,149.44. The Plaintiff had full control of the funds and, based on their checks and receipts which she provided, the bank was satisfied that she did in fact use the money to assist with the construction.

[86] According to Mr. Bowen, the Plaintiff returned to the bank in December 2000 to seek additional funds to continue construction. The bank obtained an updated valuation of the property and the bank re-financed the loan on its books and advanced the additional monies within the parameters of the Plaintiff's debt/service ratio. Mr. Bowen identified the second Scotia Plan Loan-Credit Application Form which was dated December 22, 2000. The credit application form was duly admitted into evidence as "**EB4**".

[87] Mr. Bowen drew the Court's attention to the fact that the second loan was for \$97,500.00 and had been approved for the purpose of re-financing and to assist with the construction of the house. At the time of the second loan, the Plaintiff's debt/service ratio had increased to 37.51%. Additionally, since

part of the loan proceeds was applied towards paying off the balance due under the first loan, the Plaintiff only received an additional sum of \$27,335.18 to continue construction of the house.

[88] Mr. Bowen also identified the Promissory Note also dated December 22, 2000 which accompanied the second Scotia Plan loan and observed that the loan was also amortized over 180 months (15 years) on the same terms as had been applicable to the first loan. The Note was duly admitted into evidence as “**EB5**”. He also identified a Further Charge dated December 14th, 2000 which had been taken over the Plaintiff’s land to secure the loan. The Further Charge was also admitted into evidence as “**EB6**”.

[89] Mr. Bowen said that the last meeting he had with the Plaintiff was on December 22, 2000. According to him, he explained to the Plaintiff that she was nearing her debt/service ratio limit and that she would have to stop borrowing for a while and try to reduce her debt/service ratio. According to him, she acknowledged what he had said and agreed to do so. Mr. Bowen said that based on his advice to her during their meetings, the Plaintiff understood that this meant that she would have had to reduce the loan amount and increase her income, or arrange to have someone co-sign with her on the next loan.

[90] Mr. Bowen denied that he had ever asked the Plaintiff to supply building estimates up to ring beam level for either loan and stated that the Plaintiff had never supplied him with such estimates.

[91] Asked to explain the banks use of the Builders Estimate form, Mr. Bowen said that the form was used in connection with a mortgage application. He did not use such a form with the Plaintiff because the bank was not processing a mortgage application. He reiterated that at his initial

consultation with the Plaintiff, she had brought with her an approved house plan, a builder's estimate and a job letter.

[92] Asked to explain why he had not obtained a Quantity Surveyor's report, Mr. Bowen stressed that the bank had not entered into a mortgage arrangement with the Plaintiff which would have necessitated obtaining such a report.

[93] He stressed that he had known from his initial meeting with the Plaintiff that she had been seeking a loan of \$300,000.00 to construct the house and that she would not qualify for a mortgage. He reiterated that the Scotia Plan loan had been extended to the Plaintiff to enable her to build a house over a protracted period of time. He denied ever holding out to the Plaintiff that the loan would be converted to a mortgage and stated that he had not made any representation to the Plaintiff which he had not honoured.

[94] Mr. Bowen stated that during the course of her dealings with him the Plaintiff had never asked him about converting to a mortgage.

[95] In answer to a specific question by the Court Mr. Bowen testified that if someone had come forward to co-sign with the Plaintiff, there was a possibility that the Plaintiff could have been eligible to have the loan converted to a mortgage based on the increased income and the total debt/service ratio.

[96] Under cross-examination by Counsel for the Plaintiff, Mr. Bowen stuck to his guns and continued to deny having made any of the representations detailed in the Statement of Claim. He also denied having said anything to the Plaintiff which would have led her to believe that she was, or would at some later date have been eligible for a mortgage.

[97] Evidence of Mr. Lashley for the Defence: Although Jefferson Lashley's evidence could not assist the Court in determining what representations, if any, had been made to the Plaintiff by Mr. Erwin Bowen during their

interactions in 2000 at the Defendant's Haggatt Hall branch, he was able to speak from personal knowledge about her situation as well as give the Court some insight into the bank's home financing policies and procedures due to the fact that he met with the Plaintiff shortly afterwards in 2001. He had also investigated her financial circumstances and was able to confirm his findings as to the Plaintiff's ability to qualify for the mortgage which she claims the bank had denied her.

[98] Jefferson Lashley said that between May 2000 and December 2001, he was a Mortgage Sales Officer attached to the office of the bank's Managing Director. He explained that as his duties entailed interacting with all the bank's branches, the Plaintiff had been referred to him by one of the bank's branch managers for an opinion, as well as to see how the bank could assist her. He recalled that she had applied to the bank for assistance in constructing a house and that there had been some challenges with the application.

[99] Mr. Lashley explained that when a customer comes in for a mortgage loan, the first thing the bank would want to know would be how much was required. The next thing the bank does is to look at the customer's income to see that he or she can comfortably repay the commitment from the income they are receiving. The bank also requests a Quantity Surveyor's professional analysis of the approved construction drawings and a builder's estimate. Additionally, the bank seeks to ascertain what the customer's other commitments are and tries to do a budget based on the customer's income.

[100] According to Mr. Lashley, when he looked at the Plaintiff's situation, she would not have qualified for the funding she was seeking. He explained that the bank would always look for ways to make recommendations since there were always times when something can be tailored to suit the situation. The

bank would look at to see what would be the best recommendation to suit the customer if it can be done at all. There were times, he said, when the money which the customer qualified for would be far too short when one considered the funds allocated for construction.

[101] Mr. Lashley confirmed that he had met with the Plaintiff to get some information and would have requested a Quantity Surveyor's report and the builder's estimate along with proof of her income. He identified a report from Cooper Kaufman dated June 12, 2001 as a copy of the report which he would have received. The report which was admitted into evidence as "*JL1*", showed the total cost to bring the house to a habitable state as \$100,000.00. He also identified copies of three builders' estimates ranging from \$145,000.00 to \$266,800.00 to \$180,000.00 which were admitted into evidence as "*JL2*", "*JL3*" and "*JL4*" respectively.

[102] Mr. Lashley recalled that based on the Quantity Surveyor's report, he had recommended to the bank that an offer of mortgage financing in the further sum of \$100,000.00 be extended to the Plaintiff. He pointed out to the Plaintiff that the offer of \$100,000.00 would not have completed the house, but would have brought the house to a habitable state, this meant that she could have lived in it but it would not have been complete in that the house would not have been painted and would not have had the garage and the laundry.

[103] Mr. Lashley said that if the customer had agreed with this recommendation, the usual process would have been for the bank to have sent a formal letter of offer to the Plaintiff indicating the amount offered. According to Mr. Lashley, to the best of his knowledge, the offer was not accepted.

[104] Mr. Lashley stated that he had subsequently reviewed the application for credit which the Plaintiff had made to Mr. Bowen. He was shown exhibit

“EB1” and stated that based on the first credit application, although her husband’s income had been declared, the Plaintiff’s income alone had been used to calculate her debt/service ratio which was shown as 25.78%.

[105] Commenting on the Plaintiff’s second credit application exhibit *“EB4”*, Mr. Lashley observed that in December 2000, her debt/service ratio had been 37.51%. He corroborated Mr. Bowen’s evidence to the effect that it was bank policy that the total permissible debt/service ratio was 40% which meant that the total repayment amount should not exceed 40% of the customer’s gross income.

[106] Mr. Lashley explained that a Scotia Plan Loan was a multi-faceted loan which the bank would grant to a customer for various reasons such as to purchase a car, to travel or to assist with construction. It was, he said, completely different from a bridging loan or a construction loan which was granted for construction of a specific house and which was drawn down in stages.

[107] Under a bridging loan, the bank, he said, makes a commitment to lend a specific amount and as the construction is going on, based on the stages of construction, the funds are drawn out of the bridging loan. Mr. Lashley explained that where a bridging loan is put in place, the total amount would have been agreed at the outset. The bank would then make a formal offer to the customer in writing. The offer letter, also called a facility letter or offer letter would be signed by the manager responsible for the loan and the offer is then accepted by the client.

[108] Mr. Lashley explained that if the customer requests more funds then the bridging loan would be reviewed and changed, but if not it does not change. The funds under the bridging loan are disbursed according to the stage of construction which is usually laid out in the estimate. As the building

progresses, funds are disbursed until completion. The customer would make a request for a stage payment, the contractor would usually give the customer a letter to facilitate the customer's request to the bank.

[109] Continuing, Mr. Lashley explained that a Quantity Surveyor's report would be requested at intervals to support the customer's request for draw down of the next stage payment under the bridging loan. According to Mr. Lashley, the life of a bridging loan is terminated by a mortgage. When construction was complete, a certificate of compliance is then requested from the Town Planning Department. When the certificate is obtained, the Quantity Surveyor's final report is requested confirming the completion of the project and the final payout is made.

[110] Mr. Lashley stressed that a Scotia Plan loan was a completely different kind of loan and cannot be converted into a mortgage. He confirmed that the Plaintiff had been granted a Scotia Plan loan and stated that a Scotia Plan loan would not be granted for construction of a house but only to assist in construction.

[111] Asked what his approach would be if a customer did not qualify for a mortgage, Mr. Lashley stated that he would explain why they did not qualify and let them know what other types of products (whether loans or savings plans) were available to assist them to accumulate more money until they reach the stage of qualifying. He explained that a customer may want to take out a loan to assist with some part of the construction and without any mortgage commitment the customer could still get a loan to assist with construction within the limits of what they qualify for. Such a loan may fit into a Scotia Plan loan where the land is used to secure that particular Scotia Plan loan.

[112] In answer to specific questions from Counsel for the Defendant, Mr. Lashley gave the following answers:

“Q. Did the loan which was extended to the Plaintiff conform to the Plaintiff’s Scotia Plan credit applications?”

A. To the best of my knowledge, the loans extended to the Plaintiff conformed to the Scotia Plan applications for credit which the Plaintiff signed.

Q. From your investigations did Mr. Bowen correctly assess the Plaintiff’s eligibility for mortgage financing?”

A. Based on the available information, Mr. Bowen correctly assessed the Plaintiff’s eligibility for a mortgage?”

Q. Did Mr. Bowen properly apply the guidelines for the Plaintiff’s eligibility for a Scotia Plan loan?”

A. Based on the records, Mr. Bowen properly applied the guidelines for the Plaintiff’s eligibility for a Scotia Plan loan.

Q. Was the bank under any obligation to extend a mortgage to the Plaintiff?”

A. Under this facility, there was no obligation to extend a mortgage to the Plaintiff.”

[113] Under cross-examination by Counsel for the Plaintiff, Mr. Lashley confirmed that he had never been attached to the Defendant’s Haggatt Hall branch and that his review of the Plaintiff’s case had been done after the Haggatt Hall branch had exhausted their efforts to look at a comfortable mortgage for the Plaintiff.

[114] He conceded that he had not been present at any meetings which the Plaintiff had had with Mr. Bowen and was in no position to say whether Mr. Bowen

had made the Plaintiff aware that the approval of the Scotia Plan loan was not a promise to convert to mortgage at a later date. Mr. Lashley agreed that he was in no position to say what Mr. Bowen had told the Plaintiff and further agreed that Mr. Bowen was authorized to make representations on behalf of the bank and to say whether or not they qualified for mortgage financing.

[115] Mr. Lashley agreed that officers of the bank were under a duty of care to the bank's customers when they make recommendations to those customers and that it would be reasonable to expect that customers would rely on and act on recommendations made to them by the bank's officers. He agreed that if an officer of the bank made a recommendation to a customer that turned out to be wrong, the officer would be in breach of his duty of care and added that officers of the bank do make mistakes as well.

[116] Under re-examination, Mr. Lashley clarified that his reference to officers of the bank making mistakes was merely intended to convey that as human beings they also make mistakes. However, he stressed that he was not aware that Mr. Bowen had made a mistake. Based on what was done he saw no mistake and only saw an effort to assist someone. Mr. Bowen, he said, made a reasonable attempt to assess her eligibility and was correct based on the information supplied.

[117] The Legal Submissions on Issue 3 and Issue 4: Counsel for the Plaintiff, Ms. Gooding contends that the Defendant, acting by its servant and/or agent Mr. Bowen negligently misrepresented to the Plaintiff that she would be entitled to and would obtain mortgage financing. It is contended that the Plaintiff relied on that negligent misrepresentations and contracted with the Defendant, to her detriment.

[118] Ms. Gooding, outlined that the Plaintiff moved her existing mortgage from Barclays Bank to the Defendant's Haggatt Hall Branch and that she entered into an arrangement at the direction of Mr. Bowen where she accepted a loan of 14% interest based on the belief that she would obtain a mortgage at the end of a 3 stage process. Counsel relied on *Steadman v Steadman [1976] AC 536* and argued that the Plaintiff embarked on certain steps which were sufficient to amount to part performance referable to the contract which she alleges.

[119] Counsel also cited *Woods v Martins Bank [1959] 1 QB 55* and argued that the Defendant Bank had a duty to advise the Plaintiff with reasonable care and skill. Counsel argued that the house the Plaintiff started constructing is uninhabitable so she continues to pay rent and therefore, Ms. Gooding submitted that the Plaintiff should be put in the position she would have been in had the misrepresentations not been made.

[120] Counsel for the Defendant, Mrs. Richards-Hill, contended that the misrepresentations alleged by the Plaintiff were never made and the result of any information given or acted on does not attract liability to the Defendant. Mrs. Richards-Hill submitted that Mr. Bowen, the Defendant's servant and/or agent, provided the Plaintiff with proper advice with respect to her eligibility for mortgage financing and also provided her with information regarding alternatives to mortgage financing. It was submitted that this advice was neither negligent nor given without due care and attention as alleged by the Plaintiff.

[121] Counsel relied on *Doyle v Olby (Ironmongers) [1969] 2 QB 158* and *Smith New Court Securities v Scrimgeour Vickers [1969] 3 WLR 1051* when contending that if the Court is moved to assess damages, the tortious measure of damages is more appropriate in the instant case. Counsel,

however, argued that the Plaintiff has not suffered economic loss and that she is already \$20,000.00 better off than before she commenced construction, as the value of her property has appreciated.

[122] *Discussion:* As will readily be appreciated, the versions of the respective parties as to what was discussed at the meetings between the Plaintiff and Mr. Bowen were so diametrically opposed that ultimately it was left to the Court to assess the credibility of the evidence as a whole, together with the demeanour of the witnesses to determine on the balance of probabilities, where the truth of the matter lay.

[123] The Court found, on the one hand, that although the Plaintiff was an obviously intelligent woman, she nonetheless appeared to be somewhat naïve and lacking in basic common sense. Additionally, on several occasions during her testimony, she was unable to recollect exactly what Mr. Bowen had told her but said that she thought he had told her that she had to start with the foundation and that at the third stage, the loan would be converted to a mortgage.

[124] The Plaintiff's inability to recall with precision what representations were made to her by Mr. Bowen, coupled with the illogic of aspects of her testimony, weakened her credibility in the eyes of the Court. Her demeanour on the witness stand also appeared to the Court to be somewhat confused at times and lacking in confidence. Under cross-examination she also disagreed with Mrs. Richard-Hill's suggestion that the Scotia Plan loan she had taken out was not a bridging loan, and continued to insist that it was her understanding that it was.

[125] In a nutshell, the Plaintiff is essentially asking the Court to accept that having approached the Defendant bank for a mortgage and been advised that she did not qualify, she was negligently misled by Mr. Bowen to take out,

within the space of 5 months, two successive Scotia Plan loans on, she says, Mr. Bowen's verbal assurance to her that she would, when the house had reached the ring beam phase, ultimately qualify for additional financing in the form of a mortgage, to enable her to complete the house. In short, she says, her dream of having a completed house has been derailed and the Defendant should be held responsible for Mr. Bowen's negligent representations and advice.

[126] Mr. Bowen, on the other hand, impressed the Court with the sheer logic of what he had to say. Judged also by his demeanour, he answered the questions which were put to him directly and professionally and did not at anytime appear to be evasive or attempting a cover up. His evidence regarding the debt/service ratio and the bank's lending procedures was corroborated in all respects by Jefferson Lashley and the Court is satisfied that the only way the Plaintiff could ever have qualified for a mortgage was if her debt/service ratio had fallen within the permissible maximum limit fixed by the bank.

[127] Both sides accept that at the time of her initial meeting with Mr. Bowen the Plaintiff had failed to qualify for a mortgage. The Plaintiff also accepts that her debt service ratios at the time of her first and second Scotia Plan loan applications were 25.78% and 37.51% respectively as shown on her Scotia Plan credit application forms ("*EB1*") and ("*EB4*").

[128] The Plaintiff further agreed that her loan payments due to the Defendant bank had moved from \$892.27 per month under the first Scotia Plan loan to \$1,298.45 under the second loan and that \$66,745.48 of the second loan amount of \$150,000 had been applied to settle the outstanding balance due under the first loan, leaving her with a mere \$27,335.18 to assist with building the house.

- [129] It appears to the Court on the one hand that if the Plaintiff, as she says, approached the Defendant for a mortgage at her initial meeting with Mr. Bowen, without having had sight of her job letter or a building estimate for the cost of the house, he would have been in no position at their initial meeting to calculate her debt service ratio or to advise her as to her eligibility for a mortgage.
- [130] On the other hand, if as the Plaintiff says, she subsequently obtained the job letter and at Mr. Bowen's request, obtained a building estimate to the ring beam stage, then he would also have been in no position at their subsequent meeting to calculate her debt service ratio or to advise her as to her eligibility for a mortgage since he would not have had sight of a builder's estimate for the complete house.
- [131] Having considered the matter, the Court finds that it is more likely than not that if the Plaintiff approached the Defendant seeking (as she says) a mortgage, she would more likely than not (as Mr. Bowen says) have taken with her to that initial meeting, the approved house plan, her job letter and the builder's estimate for the total cost of constructing the house. This information would have facilitated Mr. Bowen's assessment of her debt/service ratio for a mortgage in line with the Defendant's lending policies described by both Mr. Bowen and Mr. Lashley. The Court also finds that her ineligibility for mortgage financing for the entire cost of the house would have been ascertained and (as Mr. Bowen testified) led to a discussion as to what other financing options were available to her short of a mortgage.
- [132] Even if the Court were to accept, as the Plaintiff alleges, that Mr. Bowen had represented to her that she would be granted additional financing in the form of a mortgage, when the building had reached ring beam stage, the Plaintiff

clearly admitted under cross-examination that following the second Scotia Plan loan, she had not succeeded in taking the building to ring beam.

[133] The Court completely rejects the Plaintiff's testimony that she had, at Mr. Bowen's request, obtained a building estimate for \$75,000.00 being the cost of construction to take the building to ring beam stage. The Plaintiff testified that she had a copy of the estimate but had never provided it to her attorney-at-law. Significantly also, no mention is made of such a document in the List of Documents filed in the proceedings in September 2006. It is for the Plaintiff to prove each and all of the allegations laid out in the Statement of Claim. Had such a document been produced, it would, in the Court's view have lent considerable weight to her story about having been advised by Mr. Bowen and the Defendant to follow a 3-stage process. The Court finds the Plaintiff's version of the facts to be nothing short of incredulous and accordingly, accepts Mr. Bowen's account as to what transpired as the true facts of this case.

[134] Additionally, it would be hard to see how the Plaintiff's debt/service ratio could have improved within the 5 month period between July and December 2000 to have enabled her to qualify for a mortgage when the building reached the ring beam stage, unless her indebtedness under the loan had been significantly reduced and her income substantially increased.

[135] While the Court has accepted the Defendant's version of the facts as more probable than that of the Plaintiff, it must not be assumed that the Court has concluded that the Plaintiff has been untruthful in any part of her testimony to this Court. On the contrary, it has become clear to the Court that the Plaintiff was laboring under the mistaken belief that by bringing the building to ring beam stage utilizing the Scotia Plan loan approach, she would be assured of mortgage financing when the building reached ring beam stage.

[136] Even if the Plaintiff had misunderstood Mr. Bowen's advice to her at the outset with respect to how she could build her house over a protracted period using the Scotia Plan loan approach, she freely signed a second Credit application form for the grant of a second Scotia Plan loan within 5 months after disbursal of the initial loan. In so doing her loan payments increased from \$892.27 per month to \$1,298.45 per month and her debt/service ratio increased to 37.51%. She was free to have requested Mr. Bowen's clarification on any aspect of the arrangement that she did not understand. What she clearly failed to understand was, that by applying for a second loan so soon after the first loan, she was nearing the maximum debt/service ratio permitted by the bank's lending policy. Furthermore, and in order to qualify for additional funds either under a mortgage or by way of a further Scotia Plan loan, she would have had (as Mr. Bowen says told her in December 2000) to have "*stopped borrowing for a while and tried to reduce her debt/service ratio.*"

[137] In the judgment of the Court, the Plaintiff failed to obtain the mortgage she was seeking, simply because she had failed to meet the Defendant's debt/service guidelines. Having opted to receive financing from the Defendant in the form of a 15 year Scotia Plan loan in July 2000 to settle her existing loan with Barclays and assist in the construction of her house, she returned in December and was granted a further Scotia Plan Loan to facilitate refinancing of the first loan and to continue construction.

[138] The allegations of negligent omissions appear to be premised on the Plaintiff's assertions that she would receive mortgage financing based on the verbal representations allegedly made by Mr. Bowen on the Defendant's behalf. However, as the Court found that the Plaintiff's case of negligent representations has not been proved, the allegations of negligence based on

negligent omissions and breaches of the Defendant's duty of care must, of necessity, also fail.

[139] **Issue 5- What damage (if any) did the Plaintiff sustain?** The issue of damages will not arise for the Court's determination since the Court is satisfied that the Plaintiff has failed to establish that the Defendant made the negligent representations complained of or was guilty of any negligent omissions or breached the duty of care which it owed to her to advise her with reasonable skill and care.

[140] **Disposal and Order:** In the result, the Plaintiff's claim is dismissed and judgment is entered for the Defendant with costs certified fit for one attorney-at-law to be assessed if not agreed.

**Maureen Crane-Scott
Judge of the High Court**