

DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

-and-

Plaintiff  
(Appellant)

LAURA M. TOOGOOD aka LAURA MARIE TOOGOOD aka LAURA MARIE DEGENOVA

Defendant  
(Respondent)

APPLICATION UNDER section 31(a) of the *Court of Justice Act*, R.S.O. 1990, c. C43

**NOTICE OF APPEAL**

THE PLAINTIFF APPEALS to the Divisional Court from the judgment of Deputy Judge Boris G. Freesman dated August 14, 2012 made at Newmarket, Ontario.

THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows:

1. Judgment for the plaintiff in the amount of \$5,536.90 together with pre-judgment interest at the rate of 21.7 percent per year from February 9, 2011 and post-judgment interest at the same rate and costs to the plaintiff fixed in the amount of \$275.00.

THE GROUNDS FOR APPEAL are as follows:

1. The trial judge erred in failing to award judgment for the principal and interest claimed despite (a) the claims being for a debt and interest thereon and (b) the plaintiff providing evidence establishing the amount of the debt and interest claimed in accordance with the

Small Claims Court Rules and the binding decisions of the Supreme Court of Canada in *Bank of America Canada v. Mutual Trust Co.* [2002] 2 S.C.R. 601; 2002 SCC 43, (2002), 211 D.L.R. (4th) 385 and the Divisional Court in *Capital One Bank v. Matovska*, 2007 WL 2602217 (Ont. Div. Ct.), 2007 CarswellOnt 5605, [2007] O.J. No. 3368.

2. The trial judge erred in raising issues of his own accord that were not pleaded or raised by the defendant nor discussed during submissions and to which the plaintiff had no opportunity to respond.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

Section 31(a) of the *Court of Justice Act*, R.S.O. 1990, c. C43. The plaintiff appeals a final order of the court. The Plaintiff's Claim was for an amount that exceeded the prescribed amount. Leave of the court is not required.

The appellant requests that this appeal be heard at Newmarket, Ontario.

DATE: September 14, 2012

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TO: Not served on defendant in accordance with rule 61.04(1.1)(a) as defendant was noted in default

CAPITAL ONE BANK (CANADA BRANCH) v. LAURA M. TOOGOOD aka LAURA MARIE TOOGOOD aka LAURA MARIE DEGENOVA

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**DIVISIONAL COURT, SUPERIOR  
COURT OF JUSTICE**

Proceedings commenced at Newmarket

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