

**CASE NO.**

**VOL. NO.**

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ROBERT SILVER and  
DEANNA SILVER

- and - FEDERAL BUSINESS  
DEVELOPMENT BANK

Appellants

Respondent

CA 164128

Halifax

ROSCOE, J.A.

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[Cite as: Silver v. Federal Business Development Bank. 2000 NSCA 138]

**APPEAL HEARD:**

November 24, 2000

**JUDGMENT DELIVERED:**

December 5, 2000

**SUBJECT:**

**Procedure, Civil Procedure Rule 15.08, application to reopen foreclosure proceeding**

**SUMMARY:**

The appellants applied to reopen a foreclosure action, which resulted in a deficiency judgment against them, five years after it had concluded on the basis of new evidence. The Chambers judge dismissed the application on the basis that the new evidence would not have been an important influence on the previous decisions. On appeal, the appellants sought to introduce additional new evidence respecting the value of the property.

**ISSUES:**

What is the proper test applicable to applications to reopen proceedings pursuant to **Rule 15.08**? Did the new evidence meet the test?

**RESULT:**

The appeal was dismissed. In order to succeed on an application to reopen an action that has been completed, pursuant to **Rule 15.08**, the applicant must prove that:

1. the matter or evidence arising or discovered subsequent to the original order, is such that it was not previously capable of being obtained or discovered by the exercise of reasonable diligence;
2. the new evidence is apparently credible; and
3. when examined with the complete record of the previous proceeding, the new evidence is such that it would be practically conclusive of the issue in favour of the applicant,

provided that, in a case of obvious and substantial injustice, if the second and third requirements are met, the necessity to prove due diligence, should not be applied as strictly.

Here, neither the evidence before the Chambers judge nor the new evidence submitted on the appeal, met the third prerequisite.

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