

Cite as: Australia and New Zealand Banking Group Ltd. v. Chengappa,  
1992 NSCO 28

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

C.H. NO. 76116

**I N T H E C O U N T Y C O U R T  
O F D I S T R I C T N U M B E R O N E**

BETWEEN:

**AUSTRALIA AND NEW ZEALAND BANKING  
GROUP LIMITED**

**Plaintiff**

- and -

**DR. VINNIE CHENGAPPA**

**Defendant**

Tim Hill, Esq., Counsel for the Plaintiff.  
A. L. Caldwell, Q.C., Counsel for the Defendant.

1992, April 3rd, Bateman, J.C.C.:- This is  
an application for Summary Judgment.

The Bank in Australia was instructed by a  
depositor to transfer \$98,000.00 Indian Rupees to the  
credit of the Defendant. By mistake the Bank made the  
transfer twice and seeks return of the overpayment.  
After the transfer the Defendant moved to Nova Scotia.

The Defendant acknowledges receipt of the money. She says the money was properly due her from the depositor and thus refuses to reimburse the Bank.

The Plaintiff has brought action for Summary Judgment, filing an affidavit from an officer of the Bank attesting to the mistake.

The Defendant filed no material in response but was represented by counsel at the application. Defendant's counsel raised a number of technical objections including a concern that the Bank did not have status to sue in this jurisdiction as it was not registered under the **Corporations Registration Act** not the federal Bank Act. He could cite no authority for the proposition that a Plaintiff must be so registered in these circumstances. This is not a suit in relation to a transaction made in Nova Scotia.

In an application for Summary Judgment, the initial onus is on the Plaintiff to present a **prima facie** case. If successful the burden then shifts to the Defendant to demonstrate why judgment should not be granted. To forestall judgment, once a **prima facie** case is made out, the Defendant must satisfy the court that

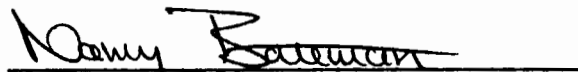
there is a fairly arguable point to be put forth on behalf of the Defendant. (Carl B. Potter v. Antil Canada et al (1976), 15 N.S.R. (2d) 408 (A.D.)).

The Plaintiff has made a **prima facie** case. It is the Defendant's position that as between her and the Bank's depositor, the money is due. That position, however, begs the question of her liability to return the money to the Bank as payer.

The Defendant referred me to Royal Bank v. The King [1931] 2 D.L.R. 685 (Man. K.B.). That case supports return of the funds to the Bank.

The Plaintiff by Affidavit has proved all necessary facts. (The exchange rate to be applied was agreed by the parties at the hearing). The Defendant has failed to demonstrate that there remains a point to be argued.

Judgment of \$7,245.19 is granted. The Plaintiff shall have costs of \$400.00 together with disbursements.

  
A Judge of the County Court  
of District Number One