

KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 70**

Date: **2025 05 29**
File No.: KBG-RG-01052-2024
Judicial Centre: Regina

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

- and -

YUVON APPIAH ASARE

DEFENDANT

Appearing:

James Kroczyński
Yuvon Appiah Asare

for the plaintiff
self-represented defendant

FIAT
May 29, 2025

ROBERTSON J.

I. INTRODUCTION

[1] This decision addresses an application for assessment of costs following sale of the mortgaged property by the owner during foreclosure proceedings.

[2] For the reasons which follow, the costs claimed are reduced.

II. BACKGROUND

[3] The court file records the following events:

2019

- July 11 Mortgage Agreement executed between Yuvon Appiah Asare as mortgagor (borrower), and Royal Bank of Canada [RBC] as mortgagee (lender) for purchase of residential property at 5528 Tutor Way, Regina, Saskatchewan [Property]
- July 15 Certificate of Title issued for Lot 25, Block 76, Plan No. 102177503 (5528 Tutor Way, Regina) with Yuvon Appiah Asare as registered owner [Owner] and subject to mortgage loan by RBC for \$283,308.48

2024

- January 15 Dustin Cross, CRA, P. App. inspects Property (exterior and interior) for appraisal for RBC
- January 16 Dustin Cross appraisal of Property estimating value as \$291,000 as of January 15, 2024
- April 30 RBC filed notice of application for leave to commence action for foreclosure of Property. Supporting affidavit on mortgage account states mortgage matured on July 11, 2023, last payment received on October 30, 2023, \$10,979.14 owing for property taxes as of January 29, 2024, and mortgage balance as at January 25, 2024, including arrears of \$3,989.04, was \$264,166.56.
- June 12 RBC filed Supplementary Affidavit of Default
- June 20 Robertson J. grants leave to commence action on first appearance (Owner appearing, but not opposed)

June 27	RBC files Statement of Claim
August 14	File noted for default of defence
September 17	RBC files application for order <i>nisi</i> for foreclosure with 90-day redemption period
October 17	RBC filed Supplementary Affidavit of Default
October 24	Wildeman J. adjourns application for order <i>nisi</i> to November 14, 2024, and sets deadline of November 8, 2024, for Owner to file affidavit evidence
November 1	Owner files Affidavit about property values in support of her proposal there be a judicial sale, rather than foreclosure
November 24	Tomka J. adjourns application to November 28, 2024, to allow Owner to seek advice as to what avenue she should take, after explaining difference between extended redemption period and judicial sale and some of the costs involved
November 28	Wildeman J. adjourns application to January 2, 2025, with consent of both parties
<u>2025</u>	
January 2	Klatt J. adjourns application to January 23, 2025, to allow Owner to provide evidence of real estate listing
January 10	Application adjourned to January 30, 2025, by letter with consent of both parties
January 28	Owner files affidavit stating Property currently listed for sale

with list price of \$369,900 as of January 24, 2025

- January 29 RBC files draft order *nisi* for Sale by Real Estate Listing with 120-day redemption period and minimum sale price of \$295,920. The draft order would allow the selling officer to determine the list price.
- January 30 Danyiuk J. issues fiat adjourning application to February 20, 2025, because there is conditional sale of Property for \$360,000, subject to passing inspection, set to occur February 5, 2025
- February 18 Owner files *Notice to Remove Conditions on Residential Contract of Purchase and Sale* of Property showing home inspection completed and mortgage approval obtained to allow sale to proceed
- February 20 Robertson J. adjourns application to March 27, 2025, to allow for completion of sale transaction. RBC's counsel given leave to appear by telephone on March 27, 2025
- March 24 Owner files affidavit disputing inclusion of RBC's legal fees of \$9,134.25 and appraisal fees of \$315 from the mortgage outstanding balance pay-out
- March 27 Robertson J. grants draft order filed by RBC authorizing disbursement of \$313,857.41 from sale proceeds paid into court, with \$287,240.23 towards the mortgage indebtedness, \$17,482.93 towards the property taxes paid by RBC, and \$332.50 towards the mortgage discharge fee. Assessment of costs adjourned to April 24, 2025. Order issued same day

April 22	RBC files affidavit of solicitor explaining its claim for payment of fees
April 24	Robertson J. hears RBC's application for assessment of costs, seeking payment of \$9,449.25, from \$9,134.25 remaining paid into court. Decision reserved

III. ISSUES

[4] The issue is what costs should be awarded and in what amount?

IV. POSITION OF PARTIES

(a) Royal Bank of Canada

[5] RBC argued it should receive full indemnity for its legal fees and disbursements, which amount to \$9,134.25, and for the cost of its appraisal of the Property, which cost \$315 (The legal fees charged were \$7,750).

[6] The good news is that the Owner sold the Property, and the mortgage debt was fully repaid. But there was what RBC's lawyer described as a lot of unnecessary "fiddle and diddle" on the way to that resolution. This is a classic case of the Court driving up RBC's costs by granting adjournment after adjournment. There would have been no prejudice to anyone if the Court had granted the order *nisi* in the first place, given the redemption period.

[7] There were seven appearances by RBC's lawyer on the order *nisi* application. It is reasonable to be paid \$1,000 for each Court attendance.

[8] RBC disputed the Owner's argument that RBC had undervalued the Property. The estimate of value of \$291,000 was by an accredited appraiser. Although the Property sold for \$360,000, that sale was a year later. The difference likely reflected

a market increase in property values between the date of appraisal (January 15, 2024) and the date of sale (February 2025).

(b) Owner

[9] The Owner agreed that RBC was entitled to payment of costs but disagreed with the amount claimed.

[10] The Owner argued that RBC had undervalued the Property, based on its appraisal for \$291,000. It first sought to foreclose on the Property when there was equity in the Property. RBC only changed its application to judicial sale after the Owner provided evidence of the incorrect valuation. RBC then sought to sell the Property for less than it was worth, proposing a minimum price of \$295,920. The Owner's successful sale for a higher amount proves this. The Property sold quickly, for only \$900 less than the list price of \$360,900.

[11] The Owner said she acted responsibly. She cooperated throughout the foreclosure process, including allowing RBC's appraiser to inspect her home interior, and not opposing the leave application or defending the statement of claim. She kept RBC and the Court informed of her concerns and her steps to protect her equity in the Property.

V. LAW

(a) General Principles

[12] Foreclosure actions are governed by *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001, *The Limitation of Civil Rights Act*, RSS 1978, c L-16, *The King's Bench Act*, SS 2023, c 28, and Divisions 5 and 6 of Part 10 of *The King's Bench Rules*. The public policy behind this legislation is to provide consumer protection, as recognized in *Walker v Bank of Montreal*, 2017 SKCA 42 at paras 7-10, 415 DLR (4th)

277.

[13] Mortgage agreements typically contain provisions requiring the mortgagor (borrower) to pay all costs incurred by the mortgagee (lender) in the enforcement of the agreement. Sections 4 and 14 of the *The Land Contracts (Actions) Act, 2018*, and ss. 16 and 40(1) of the *The Limitation of Civil Rights Act* provide that any agreement to waive or deviate from the terms or authority of those statutes is void. In other words, borrowers cannot contract away their statutory rights. These limitations reflect the legislative policy which seeks to mitigate the power imbalance between borrowers and lenders.

(b) Mortgagor’s Right to Remedy Default of Mortgage Agreement

[14] *The King’s Bench Act* in s. 10-11 allows a mortgagor in default, whether of payment or other condition of the mortgage agreement, to stop the mortgage action by either remedying the default or paying the arrears. This may be done at any time before sale or grant of final order of foreclosure. If the default is remedied, the mortgagor remains liable to an award of costs for the mortgagee’s actions to that point:

Relief of mortgagor in default

10-11 Where default is made in the payment of money due under a mortgage or in the observance of a covenant contained in a mortgage and, under the terms of the mortgage, the payment of other portions of the principal money is accelerated by reason of the default and those portions become due and payable:

(a) the mortgagor may, notwithstanding any provision of the mortgage to the contrary and at any time before sale or before the grant of a final order of foreclosure, perform the covenant or pay the arrears that are in default, with costs to be taxed; and

(b) on performing a covenant or paying arrears pursuant to clause (a), the mortgagor is relieved from immediate payment of the portion of the money secured by the mortgage that has not become payable by lapse of time.

(c) Court’s Jurisdiction and Authority to Award Costs

[15] This Court exercises a supervisory jurisdiction over foreclosure proceedings, including any award of costs. See: *Royal Bank of Canada v Vilorio*, 2014 SKQB 110, 443 Sask R 121 [*Vilorio*]; *Toronto-Dominion Bank v Schell*, 2014 SKQB 344 at para 18, 461 Sask R 257; *Royal Bank of Canada v Hollmann*, 2017 SKQB 299 at para 17; *Royal Bank of Canada v Gaudet*, 2019 SKQB 87 at para 30; and *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133 at paras 30-33, 62 RPR (6th) 313 [*Keep*]. The Court usually declines to award any pre-leave costs and may, on assessment of costs, award a lesser amount of post-leave costs than those claimed.

[16] Subsection 10(3) of the *The Land Contracts (Actions) Act, 2018* expressly authorizes the Court to order payment of costs in a foreclosure action:

Actions

10(3) The judge may order any party to an action to pay all or any portion of the costs of the action.

(d) Mortgagee’s Right to Recover Costs of Action

[17] Subsection 10-11(a) of *The King’s Bench Act* contemplates an award of costs in these circumstances (“with costs to be taxed”). In *Central Mortgage and Housing Corporation v Johnson* (1971), 20 DLR (3d) 622 (Sask CA), the Court of Appeal for Saskatchewan held that the costs that are recoverable by the mortgagee include solicitor-client costs if the obligation to pay those costs is included as a term of the mortgage. In *CIBC Mortgages Inc. v Roberts*, 2006 SKQB 44 at para 7 [*Roberts*], Rothery J. wrote that “Section 61 of the Act requires costs to be taxed at the time the mortgagor redeems the property.”

(e) Factors to Consider in Determining Reasonable Costs

[18] Although the mortgagor agreed in the mortgage agreement to pay full

solicitor-client costs, the Court retains jurisdiction to decide the reasonableness of cost claims. In *Viloria* at paras 23-24, Danyiuk J. discussed the Court's role in awarding costs:

[23] Finally, an equitable reason behind the court's continued supervision of these matters relates to the mortgagees' claims for costs. Most often, a clause in the mortgage provides a *prima facie* entitlement to seek costs on a solicitor-client basis. Those claims, however, are not unfettered. The court determines the reasonableness of such cost claims, considering all the circumstances of the action. The court does not allow those costs to be excessive. Those costs must be assessed by the court. Rule 11-20 of *The Queen's Bench Rules*, (Rule 565 of the former *Queen's Bench Rules*) alerts mortgagees and their counsel that a claim for solicitor-client costs under a mortgage is subject to judicial discretion.

[24] In determining the propriety of solicitor-client costs, the case law directs a court to consider a wide range of factors. ...

[19] In *First Nations Bank of Canada v Ledoux*, 2005 SKQB 262 at para 19, [2006] 1 WWR 190, Wilkinson J. discussed the Court's discretion over any award of costs in a foreclosure action:

[19] Thus, the mortgagee's argument that the Court is rewriting contracts when it fails to award solicitor-client costs for reasons other than abuse or unreasonable conduct cannot be endorsed. Notwithstanding the mortgagee's contractual right to costs as between solicitor and client, the Court has the right to exercise its discretion as to costs in a manner contrary to the agreement. Admittedly that discretion must be exercised judicially and for good reason. But the parameters are not nearly as circumscribed as the mortgagee would prefer. The Court possesses that right where the costs claimed are unfair, or excessive, or unduly onerous in all the circumstances, and as Wright J. noted in *MacKay [Saskatoon Credit Union Ltd. v MacKay (1988), 73 Sask R 31 (QB)]*, *supra*, one such circumstance is the consideration that the *Act* is consumer protection legislation. Additionally, or alternatively, the Court can justify an abatement of the amount claimed on the grounds that the appropriate interpretation of the contractual term "costs as between solicitor and client" involves applying a less liberal

scale of costs.

[20] Earlier, in *Saskatoon Credit Union Ltd. v MacKay* (1988), 73 Sask R 31 (QB) at para 10 [*MacKay*], Wright J. explained the rationale against routine awarding of full indemnity of solicitor-client costs in the context of the purpose of *The Land Contracts (Actions) Act*, RSS 1978, c L-3, as consumer protection legislation. Wright J. also stated that the mortgagors should not be penalized through costs awards for the legitimate exercise of their rights to avoid foreclosure or judicial sale:

[10] The argument that a mortgagor ought to pay all the costs occasioned by the mortgagee in having to comply with consumer protection legislations such as the *Land Contracts (Actions) Act* is, with respect, a pernicious one. The whole purpose of the legislation is to give a defaulting mortgagor time to order his or her affairs before being caught up in the extremely costly and potentially disastrous process of actual foreclosure. Most respondents in proceedings under the *Land Contracts (Actions) Act* are individual homeowners who have gotten into financial difficulty. The suggestion that they must pay for the protection assured them as of right fails to recognize the philosophy behind the legislation. After all, if the mortgagor could pay, he or she would not be in default. To cast upon the financially troubled mortgagor the additional burden of solicitor and client costs would do violence to this statute and would constitute a bizarre misapplication of the principles set down in cases such as *Mayhew v. Adams* (supra) [[1930] 3 WWR 539 (Sask CA)].

[Emphasis in original]

[21] Costs may be reduced or disallowed for vexatious or oppressive conduct on the part of the mortgagee or its lawyers. See: *Mayhew v Adams* (1930), 25 Sask LR 204 (CA) (CanLII) at para 17; *Roberts* at para 5; and *Kokanee Mortgage M.I.C. Ltd. v Rozdilsky*, 2020 SKQB 52 at paras 10-11; and *Keep* at para 51.

[22] Costs may be disallowed or reduced for failure to follow the Court's rules or conventions, including attempting to recover ineligible costs. See: *Scotia Mortgage Corporation v Yamniuk*, 2024 SKKB 48 at para 28; and *Scotia Mortgage Corporation*

v Scheikart, 2025 SKKB 6.

(f) Standard Legal Fees

[23] This Court, in the exercise of its supervisory jurisdiction, has long controlled the amount of solicitor-client costs awarded on foreclosure/judicial sale actions by setting and applying a standard amount for legal fees for normal foreclosure actions. The amount of the standard fee is periodically reviewed and increased by decisions of the Court. The current standard amount for legal fees is \$5,500.

[24] This Court may, in the exercise of its discretion, depart from the standard fee by awarding more or less, but will only do so where the action falls outside the typical or routine foreclosure. Even then, the Court may award a lesser amount than actual legal fees.

(g) Proportionate Award Where Default Remedied During Action

[25] This question of whether to reduce the standard award of costs when the borrowers had rectified the breach after issuance of order *nisi* for judicial sale was considered in *Homequity Bank v Lindemann*, 2022 SKQB 149 [*Lindemann*]; *Royal Bank of Canada v Leschinski*, 2012 SKQB 286, 401 Sask R 242 [*Leschinski*]; and *Royal Bank of Canada v Millsap*, 2006 SKQB 464 at paras 15-17, 296 Sask R 144 [*Millsap*]

[26] In *Lindemann*, Robertson J. referred to *Leschinski* and *Millsap* at paras. 38-46, with respect to the division of a standard foreclosure into four stages, with each roughly taking the same amount of legal time to achieve. The four phases are: application for leave; action; application for order *nisi*; and application for final order. In *Lindemann*, the Court reduced the standard legal costs proportionate to the stage of proceedings.

[27] In *Leschinski* at para 7, Konkin J. referred to *Millsap* in stating that “a

standard foreclosure can be divided into four parts, with each roughly taking the same amount of legal time to achieve.”

[28] In *Millsap*, Konkin J. separated the legal work in a foreclosure action into four phases: application for leave; commencement of action; application for order *nisi*; and application for final order. In doing so, he suggested at para. 16 that where the action was resolved before a final order, the award of costs might be reduced proportionately:

[16] As the Bank proceeded through the leave phase, the commencement phase and the order nisi phase, they might be entitled to three quarters of that standard amount but for the fact that they made no application for costs at the leave phase which disentitles them to those fees.

VI. ANALYSIS

[29] RBC asks for payment of \$7,750 in legal fees (\$9,134.25 with taxes and disbursements) and \$315 for the cost of the appraisal. Before turning to the claimed costs, I will review some concerns with RBC’s conduct during the foreclosure proceedings.

(a) Appraisal Value

[30] I accept that RBC reasonably relied upon its appraisal. The fact that the sale in February 2025 was for significantly more than the estimate of value in January 2024 does not demonstrate that RBC did anything wrong. Real estate market values fluctuate. Appraisals are best estimates of value. The best evidence of market value remains a sale between a willing seller and a buyer in an open market.

(b) Claims in Leave Application for Personal Judgment

[31] RBC on April 30, 2024, filed an *Affidavit Regarding State of Respondent’s Account Under the Mortgage* in support of the application for leave to

commence action. That affidavit in para. 11 stated RBC intended to include a claim based on the Owner's "personal covenant to pay the amount owing under the Mortgage":

11. The Applicant intends to include a claim based on the Respondent's personal covenant to pay the amount owing under the Mortgage, for that portion of the Mortgage amount owing for which a claim is not precluded pursuant to *The Limitation of Civil Rights Act*.

[32] At the hearing for assessment of costs, RBC's lawyer conceded that no deficiency judgment was possible because this was a purchase mortgage loan (monies loaned for the purchase of a residential property). As such, a personal or deficiency judgment would be barred by s. 2 of *The Limitation of Civil Rights Act*. The lenders remedy is limited to foreclosure or sale of the property.

[33] I do not suggest that RBC intended to mislead, but that is its likely effect. It may be that this paragraph is a standard paragraph inserted into all affidavits. The point is that an ordinary homeowner reading this paragraph would reasonably understand that they were at risk of a deficiency or personal judgment, even if the property was foreclosed or sold by judicial sale.

[34] The requirements for the forms and affidavits used in foreclosure proceedings is to impart accurate information, not carefully couched statements to cover all eventualities. Even if the intent is not to mislead, the likely effect of misinformation may be uncertainty and confusion on the part of owners and sometimes the Court.

(c) Application for Foreclosure

[35] RBC in its application for order *nisi* filed September 17, 2024, sought as remedy "an Order *Nisi* for Foreclosure". The Affidavit of Doris Demello filed in support of the application stated at para. 3 the mortgage debt as \$274,569.42 and at

para. 7 her opinion of the value of the Property as \$291,000.

[36] So even on RBC's own valuation, there appeared to be equity in the Property. The Court is reluctant to grant an order of foreclosure when it will result in a windfall profit for the mortgagee (lender) at the expense of the mortgagor (borrower) or other creditors.

[37] RBC never applied to amend its application for foreclosure. However, on January 29, 2025, RBC filed a draft *Order Nisi for Sale by Real Estate Listing* in apparent substitution. I agree with the Owner that this switch appears to have been prompted by the Owner's argument and evidence disputing RBC's valuation of the Property. I note as well that the draft order *nisi* for sale did not include a list price, leaving that for the selling officer to determine.

(d) Initial Claim for Property Management/Inspection Fees

[38] Although the Owner was always in occupancy and possession of the Property, RBC included "property management fees" of \$1,192.80 (Affidavit of Andrew Kroczyński sworn April 21, 2025, para. 5 and Exhibit "B" *Statement of Property Management Fees*). RBC accepted these fees were actually for property inspections and therefore, not eligible for payment under s. 7 of *The Limitation of Civil Rights Act*. See *Keep* at paras 105-106.

(e) Appraisal Fees

[39] The appraisal was done in January 2024, before the action was commenced. The Court distinguishes between pre-leave costs and post-leave costs. Pre-leave costs are only awarded at the time of granting leave. See *Keep* at paras 105-106. No claim was made, and no pre-leave costs were awarded when leave was granted. This claim is therefore rejected.

(f) Legal Fees

[40] I do not accept the argument of RBC’s lawyer that it would be reasonable to charge \$1,000 for each of the seven appearances on the application for order *nisi*. There are a few reasons to reject this “rule of thumb” argument.

[41] First, these appearances all resulted in adjournments, so would normally take a few minutes. The Court granted all of the requested adjournments, some of which were by consent.

[42] Second, the first four appearances were for the application for order *nisi* for foreclosure, which RBC then abandoned in favour of application for order *nisi* for sale by real estate listing. The Owner reasonably resisted foreclosure, given the equity in the Property. The Owner’s sale of the property in the month following the substitution of a draft order for judicial sale avoided the time and expense of judicial sale.

[43] Third, a claim of \$1,000 for an appearance would be out of line with the Court’s Tariff of Costs found in *The King’s Bench Rules*. Schedule I-B lists fees payable to lawyers in the Court of King’s Bench. There are three columns, based upon complexity of the matter. Column 1 would be appropriate in this case, given it is intended for the least complex matters. By comparison, Item 26 provides a fee of \$375 for uncontested matters and \$650 for contested matters. Item 27 provides a fee of \$250 for Appearance Day Applications. Item 29 provides a fee of \$1,250 for Application for summary Judgment, including preparation of affidavits and attendance on Application. All of these items would involve more legal work than an adjournment.

[44] Fourth, the Court encourages lawyers engaged in foreclosure work to structure their work so as to reduce costs. In this case, RBC’s lawyer structures his work such that he usually appears on multiple foreclosure applications on the same date. For

example, when counsel appeared before me on: June 20, 2024, he had six foreclosure files; February 20, 2025, he had twelve foreclosure files; and April 24, 2025, he had eleven foreclosure files. This kind of efficient practice should keep costs low.

[45] Fifth, as stated in *MacKay* at para 10 reproduced above, mortgagors are not to be penalized for the legitimate exercise of their rights to avoid foreclosure or judicial sale. It would be perverse to expect the homeowner to pay increased costs, especially where, as here, their resistance to foreclosure resulted in successful sale and full payment of the mortgage debt.

[46] In deciding on an appropriate award for legal fees, I also consider that:

- (1) The current standard award for legal fees after final order is \$5,500.
- (2) There was nothing unusual about this foreclosure proceeding.
- (3) The Owner did not oppose granting of leave to commence action.
- (4) The Owner did not defend the action.
- (5) The Owner attended Court and cooperated in the process.
- (6) RBC switched from its initial request for an order *nisi* for foreclosure to an order *nisi* for judicial sale.
- (7) The Owner was successful in selling the Property in the following month, during the third stage of the foreclosure action and before order *nisi* was granted.
- (8) The sale of the Property by the Owner ensured that the mortgage debt was paid in full.
- (9) Some of the fees initially claimed by RBC were not eligible for

payment from the sale proceeds.

[47] Given that the default was remedied before the grant of order *nisi*, I find that an award of a lesser amount than the standard \$5,500 is appropriate. While I might have chosen half of the standard fee, on the basis that the third stage of order *nisi* was not complete, I took into account that the order *nisi* stage had continued over five months before sale of the property ended the proceeding.

[48] I reduce legal fees from the claimed \$7,750 to \$4,125, representing $\frac{3}{4}$ of the current standard fee of \$5,500 ($\$5,500 \times \frac{3}{4} = \$4,125$). I add 11% for taxes to that amount ($\$4,125 + 11\% = \$4,578.75$) and add actual disbursements of \$531.75 ($\$522.50 + 9.25$ for GST on taxable disbursements = \$531.75). The total costs allowed are \$5,110.50 ($\$4,578.75 + \$531.75 = \$5,110.50$).

VII. CONCLUSION AND AWARD OF COSTS

[49] Having regard to the law reviewed above and to the particular circumstances of this case, I find RBC's request for an award of costs to provide full indemnity of \$9,134.25 for legal fees and disbursements to be excessive. I conclude that a costs award of \$5,110.50 is appropriate and award that amount to RBC.

[50] The Local Registrar is directed to pay from the monies paid into Court:

- (a) \$5,110.50 to Duchin Bayda Kroczyński in trust for Royal Bank of Canada in full payment of its claim for costs; and
- (b) Any remaining balance to Yuvon Appiah Asare.

J.
D.N. ROBERTSON