

KING'S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 75

Date: 2025 06 09
Docket: QBG-PA-00116-2022
Judicial Centre: Prince Albert

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

TERENCE JOHNSON

Defendant

Counsel:

Andrew M. Kroczyński
no one appearing

for the plaintiff
for the defendant

FIAT
June 9, 2025

ZERR J.

Introduction

[1] The plaintiff, Canadian Imperial Bank of Commerce [CIBC], applies for a deficiency judgment against the defendant, Terence Johnson [Mr. Johnson].

[2] On February 25, 2025, I heard the application in chambers. Counsel for

CIBC appeared via telephone. Mr. Johnson did not appear, nor did anyone on his behalf.

[3] At the end of the hearing, I reserved my decision.

[4] On March 3, 2025, I wrote a short fiat, alerting counsel for CIBC that I had some additional questions.

[5] On May 15, 2025, I reconvened the hearing and heard further submissions. Because Mr. Johnson had not attended the initial hearing, I did not require CIBC to provide him notice the hearing was being re-convened.

Issues

[6] There are two issues to be determined:

1. Is CIBC entitled to claim property management charges incurred at the pre-leave stage?
2. Are the property management charges appropriate?

Analysis

1. Is CIBC entitled to claim property management charges incurred at the pre-leave stage?

Chronology of Events

[7] The subject property is located at 117 Anson Street in Air Ronge, Saskatchewan. By March 16, 2022, it was unoccupied.

[8] On March 16, 2022, Veranova Properties Ltd. secured the property. The propane forced-air furnace was not working. The water was turned on, but frozen, meaning the property could not be winterized.

[9] On August 30, 2022, CIBC filed a without notice application seeking an

order dispensing with the necessity of serving Mr. Johnson with an application for leave to commence, supporting materials, and all future process.

[10] The same day, Zuk J. dismissed the without notice application, stating in part:

Further, Air Ronge and La Ronge are small communities. Just about everyone knows everyone else in the community.

If Ms. Berg, or any other reasonably competent skip tracer or process server went to a local coffee shop or grocery store and asked someone if they knew Eileen Johnson or her son, Terence Johnson, it is highly likely that someone would be able to point out if Eileen Johnson still resided in the community or would maybe even know where to locate Terence Johnson.

Of, course, not every person can be located by a “boots on the ground” search. But the failure to conduct even the most rudimentary search in the community is also fatal to this application.

[Canadian Imperial Bank of Commerce v Johnson
(14 September 2022) Prince Albert,
QBG-PA-00116-2022 (Sask KB)]

[11] On March 3, 2023, Mr. Johnson was personally served and completed an acknowledgment of service.

[12] On May 1, 2023, Mr. Johnson did not attend chambers. Zuk J. granted leave to commence foreclosure proceedings in relation to the subject property. (*Canadian Imperial Bank of Commerce v Johnson* (1 May 2023) Prince Albert, QBG-PA-00116-2022 (Sask KB).)

[13] On June 3, 2023, the statement of claim was personally served.

[14] On June 30, 2023, Mr. Johnson was noted for default of defence.

[15] On September 6, 2023, Keene J. granted CIBC's without notice application for an Order Nisi for Sale by Real Estate listing. It provided for a 30-day redemption period, after which the selling officer was authorized to list the property for a period not exceeding 120 days. (*Canadian Imperial Bank of Commerce v Johnson* (6 September 2023) Prince Albert, QBG-PA-00116-2022 (Sask KB).)

[16] The property was listed for sale from December 12, 2023, to April 11, 2024. On April 11, 2024, the selling officer accepted an offer to purchase the property for \$165,000.

[17] On June 11, 2024, Turcotte J. granted an order confirming sale (*Canadian Imperial Bank of Commerce v Johnson* (11 June 2024) Prince Albert, QBG-PA-00116-2022 (Sask KB)).

[18] On July 15, 2024, the purchaser took possession.

[19] Between March 16, 2022, and July 15, 2024, CIBC incurred property management charges they now seek to recover.

Amounts Claimed

[20] The recoverable property management charges incurred at the pre-leave stage total **\$11,836.95**. They can be broken down as follows:

Property management (locks, snow removal, mowing)	\$1,548.65
Utilities	\$4,300.43
Appraisals	\$866.25
Repairs and expenses	\$5,121.62

[21] I recognize that my total differs from that contained in Jennifer Howson's February 19, 2025, affidavit. Ms. Howson, an Operations Manager for Veranova, deposes to total pre-leave property management charges of \$12,288.55. However, by

examining the documents attached as Exhibit “B” to her affidavit, I can see Ms. Howson has included six attendances for snow removal between February 10 and March 22, 2023 ($\$78.75 \times 6 = \472.50). Of this amount, it appears CIBC was invoiced for only \$20.90, meaning Ms. Howson’s total is \$451.60 too high.

[22] The property management charges incurred at the post-leave stage total \$6,517.70, comprised entirely of utility costs. Again, my total differs from Ms. Howson’s. By examining the documents attached as Exhibit “C” to her affidavit, I can see Ms. Howson has included six attendances for grass cutting ($\$94.50 \times 6$), six attendances for snow removal ($\$78.75 \times 6$), one “glycol top up” ($\57.75) and one additional attendance ($\$31.50$), bringing her total to \$7,646.45. However, I am again unable to conclude that CIBC was invoiced for these additional costs. Rather, the documents suggest that, as of February 15, 2023, property management charges (other than utilities) had been “capped” and did not continue to accrue.

[23] On the evidence before me, I am prepared to consider only \$18,354.65, not the \$19,935.00 claimed by CIBC. CIBC bears the onus of proving the amounts claimed. The document upon which Ms. Howson relies is marked, “This is NOT an invoice. Do Not Pay.” Without further explanation, I am not satisfied this document should prevail over the invoice.

Analysis

[24] Section 8(3) of *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001 [LCCA] states:

8(3) The judge may order any party to an application for leave to commence an action to pay all or any portion of the costs of the application.

[25] In *BTB Mortgage Investment Corporation v Harpham*, 2025 SKKB 16 [Harpham], Danyliuk J. had occasion to consider a claim for property management

charges.

[26] At paragraph 19, he states, “disbursements prior to the granting of leave ought to have been raised at the leave stage”. Similarly, at paragraph 20, he states, “the law in Saskatchewan is that pre-leave costs are to be dealt with at the leave stage”. Finally, paragraph 21:

[21] At the leave to commence stage of court proceedings it would be easy for a lender to include in its affidavit material a summary of these additional costs or disbursements to that date. This was not done here. The chambers judge who granted leave in this matter granted no pre-leave costs; therefore, the plaintiff cannot expect to recoup them at a later date.

[27] Before me, CIBC submits that property management charges are not “the costs of the application” within the meaning of s. 8(3) of the *LCCA*. CIBC draws a distinction between legal costs and disbursements incidental to the leave application (“the costs of the application”) and property management charges, which flow from the mortgagor’s breach of their covenants under the mortgage.

[28] In support of its position, CIBC refers me to *Saskatoon Credit Union v MacKay*, [1989] 1 WWR 178 (Sask QB), wherein pre-leave costs are conceptualized as “the costs occasioned by the mortgagee in having to comply with consumer protection legislations” (page 182). To CIBC, property management charges are of an entirely different character – not connected to the *LCAA* or its purpose.

[29] CIBC also refers me to *CIBC Mortgages Inc. v Whitesell*, 2016 SKQB 131 [*Whitesell*]. In large part, *Whitesell* focuses upon the appropriateness of awarding pre-leave legal costs where there has been no misconduct on the part of the mortgagor. However, there was also a claim for property management charges incurred at the pre-leave stage. Keene J. dealt with that claim as follows:

[10] The evidence does not show any misconduct on behalf

of the proposed defendant such as being in a chronic state of arrears. There does not appear to have been any difficulty in serving the mortgagor. The mortgagor chose not to attend, and the matter proceeded uneventfully in chambers. The only unusual thing here is that the property has been abandoned. A property management agency has been retained that has cost the proposed plaintiff \$2,831.63.

[11] The only evidence of misconduct is that the proposed defendant has abandoned the premises. Therefore I am not going to allow pre-leave costs based on the solicitor-client bill, but I will consider the increased cost to the proposed plaintiff for the property management of the premises occasioned by the abandonment. Accordingly I will give the proposed plaintiff until May 30, 2016 to file with this Court more particularized evidence of the management fees leading up to the granting of leave.

[30] As it relates to CIBC's submission, *Whitesell* cuts both ways. Consistent with CIBC's submission, Keene J. appears willing to apply a different analytical lens to pre-leave property management charges than pre-leave legal costs. On the other hand, in *Whitesell*, property management charges were clearly claimed at the pre-leave stage.

[31] I have also considered *Royal Bank of Canada v Wolff*, 2017 SKQB 318, 178 CPC (8th) 395; *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133, 62 RPR (6th) 313; and *Scotia Mortgage Corporation v Schneikart*, 2025 SKKB 6. In each decision, judges of this Court awarded a portion of the property management charges claimed, drawing no apparent distinction between those incurred pre-leave and those claimed post-leave.

[32] At its core, *Harpham* is a decision about insufficient evidence – onus and standard of proof. When the above-noted passages are read in context of the entire decision, I conclude that Justice Danyliuk's use of the phrases “ought to be raised” and “are to be dealt with” mean something less than an absolute prohibition against recovery of pre-leave property management charges at a later stage of proceedings. Similarly,

I read “cannot expect to recoup” as putting mortgagees on notice that an award for pre-leave property management charges will not automatically flow and that notice to the mortgagor may be an important consideration. As he states at paragraph 23, “The plaintiff cannot lurk in the weeds on such significant amounts.”

[33] Accordingly, I agree with CIBC that s. 8(3) of the *LCCA* is not an absolute bar to recovery of property management charges incurred at the pre-leave stage.

2. Are the property management charges appropriate?

[34] By March 16, 2022, Veranova had secured the property. However, leave was not granted until May 2023, some fourteen months later. To get a sense of the property management charges incurred over that interval, I note the following:

- On April 6, 2022, an electrical assessment was conducted and electric heaters installed. That cost \$1,302.97.
- In May 2022, another electrical assessment was required because the heaters were tripping the breakers. It cost \$756.00.
- In June 2022, the yard was cleaned up and a plumbing assessment done. That cost about \$1,500.
- In August 2022, there was a break-in, requiring new locks. New locks cost \$623.50.
- During the break-in, the heaters were stolen. New heaters cost \$708.75.
- Between April and December 2022, hydro costs totalled \$1,108.27.

- During the coldest months, hydro charges rose precipitously. In January, February, March and April 2023, they totalled around \$2,200.
- Water costs were \$82.40 per month.
- There were charges for snow removal and grass cutting.

[35] Unoccupied, this property was clearly vulnerable. Because the furnace did not work, hydro costs were high and continuing to accrue. It was incumbent on CIBC to advance its claim with despatch.

[36] Although I am satisfied that, after leave was granted, CIBC advanced its claim efficiently, I remain concerned about the March 2022 to May 2023 (pre-leave) interval. In my opinion, at least some of those fourteen months were the product of CIBC's ill-fated application to dispense with service upon Mr. Johnson.

[37] The application to dispense with service rested upon the affidavit of Michelle Berg, a self-described skip tracer from New Westminster, British Columbia. It was filed August 30, 2022. As noted, Zuk J. found the failure to conduct a "boots on the ground" search fatal to the application.

[38] Curiously, it now appears CIBC was doing more to locate Mr. Johnson than they shared with Justice Zuk. I say this because of the email correspondence exhibited to Mr. Kroczyński's February 20, 2025, affidavit. It reveals that as early as October 14, 2021, CIBC was attempting to serve Mr. Johnson with an application for leave to commence. On November 7, 2021, process server Mark Anderson spoke with Mr. Johnson by telephone. In an email the same date, Mr. Anderson reported to counsel's firm as follows:

Mr. Johnson called me indicating he read my email. Mr. Johnson

indicated he does not live in Air Ronge and his home is not occupied anymore. I asked if there was a location where I could meet and deliver the documents. Mr. Johnson immediately became irate and told me that I should never attempt to find him. He was very aggressive and profane. I worked in the CSC for 35 years and my skin is thick. However, if there is the occasion to serve this client I will have an associate accompany me.

[39] The firm did not reply until February 18, 2022. On that date, Jaspreet Bhullar wrote:

Please find attached a new Notice for service upon Mr. Johnson. It has been confirmed by our property manager that the subject property is occupied. If you are uncomfortable going by yourself, please have an associate accompany you. Please let me know if you have any questions. Thank you.

In a follow-up exchange, Mr. Bhullar wrote, “The property is occupied by Mr. Johnson.”

[40] On March 7, 2022, Mr. Anderson provided another update:

My partner and I spent the day in La Ronge yesterday. We attended Mr. Johnson’s house early in the morning. It snowed a lot lately and there wasn’t any evidence of vehicle or foot traffic at this home. The garbage cans were overflowing to the point were [*sic*] crows eating garbage all over the yard. I spoke with a neighbour, [redacted] who indicated no one has been at the Johnson home for days. I left a note on the front door. The telephone number Mr. Johnson called me from months ago is out of service. He is no longer employed or associated with La Ronge Child Services.

[41] In April 2022, counsel contacted Trax Tracing Services.

[42] On August 30, 2022, counsel filed the without notice application seeking an order dispensing with service upon Mr. Johnson. They filed no evidence from Mr. Anderson, detailing his November 7, 2021, conversation with Mr. Johnson, nor his

March 7, 2022, observations at the property.

[43] On September 28, 2022, Mr. Bhullar wrote to process server John Gabrysh:

Further to the above-noted matter, we have been attempting to locate and serve the Mortgagor, Terence Johnson, with no success. We also applied for application to dispense with service which was dismissed for the reason that further investigation needs to be completed. I have attached Judges' Fiat in this regard.

The last known address which we have is 117 Anson Street, Air Ronge, Saskatchewan which is now secured by our property manager. His email address is [redacted]. We have bunch of phone numbers for him [redacted]. We have also received trax report on this file, a copy of which is attached for your ease of review.

Can you please conduct an investigation into the location of Mr. Johnson or her [*sic*] mother, Eileen Johnson, in La [Ronge] and, Air Ronge to determine how the process will come to the attention of Mr. Johnson?

Please appreciate that this is an urgent matter, and kindly confirm your receipt of this instruction. If you require anything further, please advise. Thank you.

[44] On November 14, 2022, Mr. Gabrysh reported:

Good morning, my agent in La Ronge has located this guy, so this is good news. I will look after the service on this first set of documents, then I will refer you to directly to her for the rest of the documents in this foreclosure.

His address is 343 John Halkett Drive, Lac La Ronge Indian Reserve. thank you.

[45] Service was effected March 3, 2023.

[46] Had CIBC filed all available evidence in support of the without notice application and proposed an alternate mode of service, the without notice application

would have borne a higher likelihood of success. Although the failure to include Mr. Anderson's evidence was likely an oversight, it proved to be a costly one – in terms of delay and expense. It is also noteworthy that Mr. Gabrysh was able to locate Mr. Johnson within about six weeks of having been retained to do so.

[47] I am of the view that had CIBC been more organized and/or diligent, service could have been effected by September 2022. In other words, I am of the view CIBC is responsible for about six months delay. Although the use of electric heaters to heat the property was likely unavoidable, a more expeditious process would have saved utility costs. Accordingly, I am going to reduce the claim for property management charges by \$4,328.03, the utility costs that accumulated in 2024.

[48] Accordingly, the claim for property management charges is \$14,026.62. The claim for legal fees is \$5,000.00 plus \$550.00 taxes, as well as \$2,555.00 in disbursements. In other words, the claim for legal fees, disbursements, and property management charges is \$22,131.62.

[49] Because the non-purchase money portion of the mortgage is 51 percent of the total, the deficiency judgment is restricted to \$11,287.13.

Conclusion

[50] An order may issue in the terms of the draft filed January 15, 2025, provided the figure \$14,270.90 is replaced by \$11,287.13.

“K.L. Zerr”

J.

K.L. ZERR