KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 104**

Date: **2025 07 15**
File No.: KBG-SA-00575-2024
Judicial Centre: Saskatoon

BETWEEN:

CIBC MORTGAGES INC.

PLAINTIFF

- and -

GEORGE TYLER FRANSON and THE BANK OF NOVA SCOTIA

DEFENDANTS

Counsel:

Ljilijana Zerajic	for the plaintiff
George Tyler Franson	on his own behalf

FIAT
July 15, 2025

DANYLIUK J.

I. INTRODUCTION

[1] This fiat deals with the Court's jurisdiction to deal with acceptance or rejection of a sale obtained (on conditions) under an order nisi for sale by real estate listing, where subsequent to the sale order and sale process the mortgagor provides evidence as to value.

[2] For the reasons set out below, in these somewhat unique circumstances I must refuse to confirm this sale and I must set a new order nisi for sale by real estate listing.

II. BACKGROUND

[3] In May of 2008 the defendant Mr. Franson granted a mortgage to the plaintiff CIBC. The mortgage secured two extensions of credit: a loan, and a line of credit. Under the mortgage the loan balance fell due in full in May 2025 and the line of credit was payable on demand.

[4] Mr. Franson fell into arrears in the spring of 2024 and CIBC began realization proceedings. Mr. Franson was also behind on his property taxes owed to the City of Saskatoon. Leave to commence this action was granted on September 5, 2024. Mr. Franson did not show up for that hearing. A statement of claim was issued thereafter and Mr. Franson and the Bank of Nova Scotia (a judgment creditor with an interest in the equity of redemption in this property) were noted for default.

[5] CIBC applied for an order nisi for sale by real estate listing. That application was returnable on November 28, 2024. On that date the sale order was granted with a 90-day period of redemption. The property was not redeemed and the judicial sale proceeded by way of real estate listing under the direction of an independent lawyer as the selling officer. Notably, on its order nisi application CIBC continued to rely upon its initial assessment of value as filed on the application for leave to commence. This is explored in more detail later.

[6] There was no redemption by Mr. Franson and the property was listed for sale. In due course a suitable offer was received and accepted conditionally, the condition being that this Court approve the sale. That application first came before the Court on June 17, 2025. The chambers judge adjourned the matter to June 26 to allow Mr. Franson to file material on valuation.

[7] On June 26, 2025 I heard argument on this application and reserved my decision. CIBC opposed any leeway being granted and asked for the confirmation order

to be granted. Mr. Franson had complied, to a significant degree, with the June 17, 2025 fiat of the chambers judge insofar as he served and filed material relating to value of the property. Some of his material was not in the best format in terms of affidavits and their construction, but there was substantial effort and compliance by him. Mr. Franson was at all times self-represented. I reserved my decision.

III. ISSUES

[8] The issues in this application are:

1. Is there jurisdiction to refuse to confirm the judicial sale, and which legal principles apply to this matter?
2. What is the proper order to make in this case?

IV. ANALYSIS

1. Is there jurisdiction to refuse to confirm the judicial sale, and which legal principles apply to this matter?

[9] Rule 10-49 of *The King's Bench Rules* recognizes the common law requirement for court approval of an ordered sale of land:

> **10-49**(1) Unless the Court orders otherwise, if a judgment is given or an order made, whether in Court or in chambers, directing any property be sold, the property must be sold to the best purchaser.
>
> (2) For the purposes of this rule, the best purchaser is the person so approved by the Court.
>
> (3) All proper parties shall join in the sale and conveyance in accordance with any direction of the Court.

[10] Generally speaking, unless there is some irregularity confirmation orders pertaining to judicial sales (however structured) should be granted. This line of authority goes back for about a century. See, for example, *Baker Lumber Company v*

Lee, [1921] 2 WWR 142 (Sask Dist Ct) (QL) at para 7:

> [7] … The Court will always strive in sales under its direction to obtain the highest possible price. That can be obtained only if the proposed bidder can feel that, should he be the highest bidder and declared by the auctioneer to be the purchaser, he is secure in his purchase. How otherwise would a purchaser care to sign an agreement to purchase and pay his purchase price? He is bidding for the property, not for a chance to buy the property, and while this is probably a hard case, yet to hold that the Court would refuse to confirm a sale held under judicial process or its direction where sale proceedings were regularly and properly conducted in accordance with the orders of the Court, would be liable to work hardship to a great number in other cases, and jeopardise all sales by auction under judicial process

[11] Further, it is well established not only that any judicial sale is discretionary, but it is an equitable remedy and it must be granted and supervised in accordance with the rules of equity. In determining whether to grant a sale, the court must balance the competing interests of mortgagor and mortgagee. See, for example, *Royal Bank of Canada v Schnedar*, 2004 SKQB 146, 248 Sask R 123. As with most aspects of foreclosure practice, judicial sales are subject to this court's supervision: *Co-operative Trust Company of Canada v O'Grady*, [1986] 1 WWR 731 (Sask CA); *Co-operative Trust Company of Canada v Target 21 Industries Ltd.*, [1988] 3 WWR 97 (Sask CA); *Royal Bank of Canada v Viloria*, 2014 SKQB 110 at paras 14 and 15, 443 Sask R 121; and *Royal Bank of Canada v Hollmann*, 2017 SKQB 299 at paras 16 and 17.

[12] This remains true when a mortgagee seeks sale of a mortgaged property **and** confirmation thereof. The court supervises that sale. That type of sale process, indeed the sale itself, is subject to court approval. A judge should not lightly interfere with that process as ordered, but there exists judicial discretion not to confirm such a sale where a good reason exists to take that course.

[13] The authorities are supportive of this statement but it is not absolute in scope. There are exceptional situations that will call for a re-examination of a judicial sale. I have reviewed numerous authorities on point, including the following:

- *D & H Farms Ltd. v Farm Credit Canada*, 2002 SKCA 88, 214 DLR (4th) 589. There, Justice Jackson confirmed that there is a judicial discretion to confirm a sale or refuse to do so (para. 17), otherwise it would not be necessary for the Court to confirm a judicial sale (para. 39) – but that discretion is not unlimited (para. 18) especially in a commercial case.

- *Cameron v Bank of Nova Scotia, Thompson and Sutherland Ltd.* (1981), 45 NSR (2d) 303 (NS CA) (CanLII). In that case a receiver-manager had accepted an offer but another offer came in. The trial judge opened the offering process. On appeal it was held that on those facts the trial judge had properly exercised his discretion. Factors included the bid in the context of an appraisal of the property's value and that the late bidder had been misled. As well, at para. 31 this was said: "From the very beginning the appellant knew that his contract was subject to the approval of the court and must have known that this meant such approval could be refused".

- *Royal Bank of Canada v Pearl Boutique Ltd.*, 2020 SKQB 106, 14 RPR (6th) 227. There, Justice Robertson expressly recognized this Court's discretion to confirm or refuse to confirm a judicial sale. In the end, and on the facts before him, he refused to confirm the sale (para. 105).

- *Manulife Bank of Canada v Holmes*, 2023 SKKB 105. Again, Justice Robertson affirmed the Court's discretion on confirmation applications. At para. 52 he makes an important point: these are orders nisi, not final

orders. Orders nisi are conditional orders that may only come to fruition after an event or date set in the future. Such orders are, by their very nature, easier to amend. As well, earlier in his judgment Justice Robertson noted and affirmed earlier authority that under the judicial sale process it is important for all parties that the best possible sale price be obtained.

- *SSC Security Services Corporation v Thomas*, 2024 SKKB 29. A request for the Court to not confirm the sale was dismissed. Tochor A.C.J. noted at paras. 8-10:

> [8] First, the case law establishes that, absent some irregularity or impropriety in the conduct of the sale, a court is usually obliged to confirm an order for sale.
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> [9] Here, Mr. Thomas does not allege a breach of any term of the amended order *nisi* of December 19, 2023. Nor does he suggest any irregularity or impropriety occurred in the sale process. Inherent in his position is a recognition that the selling officer has complied with the terms of the order *nisi* and the amended order *nisi*.
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> [10] Danyliuk J. provides a helpful articulation of the court's obligation in *Kokanee Mortgage M.I.C. Ltd. v Rozdilsky*, 2020 SKQB 52 at para 40 [*Kokanee*]:
>
> > [40] … confirmation orders should issue unless there is cogent proof of some compelling reason not to do so. …

- *F.M.I. Developments Ltd. v 1269917 Alberta Ltd.*, 2011 SKQB 240, 380 Sask R 13, Smith J.:

> [32] The lesson I draw from *D & H* is that although a chambers judge has discretion on the issue of confirming a judicial sale, such discretion must be exercised cautiously. The Court and the administration of justice have an abiding interest in maintaining commercial probity and reasonableness in any sale directed by the Court.
> …
>
> [34] Thus, if the selling officer has *prima facie* complied with the terms of the order nisi for judicial sale, then the order confirming such sale should be granted unless there has been manifest and substantial departure by the selling

> officer and/or the listing agent from commercial best practices **or if the subject matter of the judicial sale was sold at an unfairly low price**.
>
> [Emphasis added]

- *Smith Street Lands Ltd. v KEB Hana Bank of Canada*, 2020 SKCA 41 at paras 37 to 40, 446 DLR (4th) 605:

> [37] The principal objective of a court-ordered sale of an asset pursuant to an order *nisi* is to secure the best economic return to those interested in the equity of redemption. Generally, the measure of this is price, although other terms may impact the net economic value to be obtained from a sale.
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> [38] The decision of this Court in ***D & H*** **ties the goal of obtaining the best economic return to the maintenance of the integrity of the judicially-approved and supervised sales processes**. In *D & H,* the order *nisi* provided for a sale by tender with the sale to be subject to court approval. This Court held that the approving court had erred in principle when it accepted a late, second, bid from a prospective purchaser whose first tender was lower than the one that was presented to the court for approval. The principal concern this Court had was that the acceptance of the late bid would damage the integrity of court-mandated sales processes and this would have an impact on the ability to secure the highest possible price in other cases. Justice Jackson explained this point as follows:
>
> > [37] If we come back to the appeal before us, the *order nisi* for sale set in motion a detailed process which required the sale to be conducted by sealed tenders within a specific time frame. The *order nisi* was by consent. From this, I conclude that the parties agreed that this was the best means by which "the best purchaser can be got" within the wording of Queen's Bench Rule 431. The *order nisi* conferred a discretion on a selling officer to set the sale rules. That selling officer prescribed as one rule that "[t]ender bids received after the close of the tenders ... shall not be accepted and shall be returned unopened to the bidder." No one has taken issue with the selling officer's discretion to stipulate in this manner.
> >
> > [38] There is nothing in the facts up to the point at which the second offer is received which gives rise to a concern

> that would demand an exercise of a discretion which is broader than that described in the case authorities pertaining to judicial auction sales. While the chamber judge made reference to other creditors and the guarantor, as was mentioned in *Sparling* [*v 10 Nelson Street Ltd.* (1980), 118 DLR (3d) 182], there is no evidence of either. In essence, the chamber judge exercised her discretion to recognize or give effect to 101029873 Saskatchewan Ltd.'s second bid for no other reason than that it is approximately 3% greater than the prior bid made by D & H Farms Ltd. which had complied with the terms of the *order nisi*.
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> [39] I recognize that s. 70 of *The Queen's Bench Act, 1998* and Rules 428 and 431 confer a discretion on the chamber judge, otherwise it would not be necessary to have the sale confirmed by the Court. Nonetheless, in my view, there have to be some limits on the exercise of that discretion, particularly in a commercial case where certainty of terms plays a greater role.
>
> [40] If the law were otherwise, over the long term, persons bidding at judicial sales could play a waiting game to determine what offers had been made and make subsequent bids. As Cory J. mentioned in *Sparling*, persons would lose faith in the process and may very well decline to bid. There must be something more than a late offer with this amount of increase to permit the confirming court to set aside the process agreed to by the parties and reject the highest compliant bid.
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> [Footnotes omitted]

[39] It bears mentioning that the second bid in *D & H* – which Jackson J.A. held the approving court should not have entertained – was only three percent higher than the successful tender. A third bid was later submitted that was much higher than the previous two. Justice Jackson found it would have been improper to consider this third offer, as well:

> [47] The final matter which must be canvassed is the fact of a third offer from 101029873 Saskatchewan Ltd. in the amount of $700,000. While this offer, on anyone's scale, is significantly higher than the first bid of D & H Farms Ltd., it must be remembered that it is the product of the very activity which earlier authorities have said will have a deleterious effect upon the judicial sale

> process. The Court, by calling for further bids, embarked upon the conduct of a judicial auction, which was precisely the problem to be avoided by giving effect to a more limited discretion. In addition, by permitting both parties to submit further bids, the chamber judge, in purported reliance upon [*Sparling v 10 Nelson Street Ltd.* (1980), 118 DLR (3d) 182] did what was not done in that case, which was to permit the late tenderer to bid yet again.
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> [40] Although the Order *Nisi* in this case did not involve tenders or bids, it did prescribe a specific process by which the Land would be sold. One aspect of this was that the process must, by necessity, have a conclusion. While the Order *Nisi* did not fix a date by which the Selling Officer had to submit an offer to the court for approval – an ambiguity that might, in some cases cause problems or difficulties – there was no question that the prescribed process called for a recommendation to the approving court. This fixed, at least until court approval was either granted or refused, an end point to the prescribed process.
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> [Emphasis added]

- *Swift River Farms Ltd. v Pillar Capital Corp.,* 2022 SKCA 89 at paras 51, 54 and 55:

> [51] The fact that the best economic return and the integrity of the process are tied together in this fashion does not mean that conducting the sale in accordance with an order nisi is necessarily a trump card. The sale process is subject to court supervision and any sale agreement also requires court approval. The court hearing such an application has discretion. *D & H* makes it clear that this discretion is not unfettered and must be exercised cautiously. However, markets and other circumstances that impact price or other material terms of sale can change. The particulars of the offer presented and the particulars and likelihood of competing offers are relevant. For good reason, orders nisi for sale by real estate listing are not written in stone. They can be extended and otherwise amended – including as to the upset price or terms of listing – on the application of a party. Further, a sale by tender, such as that at issue in *D & H*, and a sale by auction, differ from a sale by real estate listing in a manner that may be relevant on such an application.

[52] In *F.M.I. Developments Ltd. v 1269917 Alberta Ltd.*, 2011 SKQB 240, 380 Sask R 13 [*F.M.I.*], Smith J. offered the following summary of the discretion of a judge hearing an application of this kind, portions of which were cited by both Swift River and Pillar:

> [32] The lesson I draw from *D & H* is that although a chambers judge has discretion on the issue of confirming a judicial sale, such discretion must be exercised cautiously. The Court and the administration of justice have an abiding interest in maintaining commercial probity and reasonableness in any sale directed by the Court.
>
> [33] Any act or judicial fiat that detracts from commercial certainty may negatively affect the integrity of the judicial sale process.
>
> [34] Thus, if the selling officer has prima facie complied with the terms of the order nisi for judicial sale, then the order confirming such sale should be granted unless there has been manifest and substantial departure by the selling officer and/or the listing agent from commercial best practices or if the subject matter of the judicial sale was sold at an unfairly low price.

[53] In *Kokanee Mortgage M.I.C. Ltd. v Rozdilsky*, 2020 SKQB 52 [*Kokanee*], Danyliuk J. suggested that the following guidance should be taken from Smith J.'s summary in *F.M.I.* and from the jurisprudence in this Court:

> [40] This "cherry picking" of the quotes from *FMI* results in a misleading application of that case. In fact, what Justice Smith is saying in that case is that confirmation orders should issue unless there is cogent proof of some compelling reason not to do so. Andrew's [the defendant's] counsel seems to have intentionally left out paragraphs 33 and 36, as well as the review of earlier Court of Appeal authority included at paragraph 31. Reading this entire selection brings clarity and diminishes Andrew's argument. The "discretion" discussed is the discretion to refuse a confirmation order. The Court of Appeal authority cautions against liberal use of that discretion because it could denigrate the judicial sale process. …

[54] Justice Danyliuk made an important point. The Judgment, *F.M.I.* and *Kokanee* offer helpful insights in

> relation to this Court's direction as to the principles that apply in these circumstances. Each uses somewhat different language to describe the bar that must be cleared before an application for an order confirming a sale by real estate listing which has been conducted in accordance with an order nisi and is at a price in excess of the upset price can be denied; that is, "good reason to not approve" in the Judgment (at para 24), "manifest and substantial departure … from commercial best practices or if the subject matter of the judicial sale was sold at an unfairly low price" in *F.M.I.* (at para 34), and "cogent proof of some compelling reason not to do so" in *Kokanee* (at para 40).
>
> [55] However, applications to approve a sale are fact specific, and, for that reason and given the vagaries of language, I do not consider it prudent to attempt to precisely codify the limits of an approving court's discretion in a brief phrase: *D & H* at para 44. The language of *F.M.I.* is too strong and specific to be applied in every case. "Good reason" and "compelling reason" better capture the wide variety of circumstances that justify denying such an application, while implicitly recognizing the importance of an order nisi and of the integrity of the judicial sale process both in the particular case and in general. All of these cases reflect the fact that a judge hearing an application to approve a sale by real estate listing that has been carried out in accordance with an order nisi, including being at a price in excess of the upset price, should approve the sale unless they are convinced, based on evidence rather than speculation, that the factors that favour approval – including the principal objective of securing the best economic return – are clearly outweighed by those that do not.

[14] The principles that emerge are that while a judicial discretion to refuse to confirm a sale exists, that discretion will be employed sparingly. It should only be used where there is a "good" or "compelling" reason to do so. Balance must be struck between preserving the integrity of the process of court-ordered sales and fairness to the parties involved.

[15] I take those principles and apply them to the evidence and to the situation now before me.

[16] The evidence of Mr. Franson includes an appraisal of the subject home prepared as of February 4, 2025 by Brian Lucyshyn of Dream Home Appraisal Co. Ltd. of Saskatoon. This was a full appraisal, with the appraiser having access to the entire property. Photographs are part of the appraisal. While it appears to have been commissioned to assist Mr. Franson in obtaining financing, that does not matter to the issue at hand. The final estimate of value on the appraisal (page 5 of 6) is $345,000.00.

[17] Mr. Franson also filed an affidavit of a local realtor, Rajandip Singh, sworn June 25, 2025. His conclusion is that the subject property is worth $342,000.00. A further realtor's affidavit was filed from Inesh Rai, who says this property was worth $345,000.00 to $350,000.00, and whose affidavit further provides this realtor's opinion that the sale price of the subject property at $305,000.00 was under market value.

[18] Granted, this was evidence that should have been provided by Mr. Franson at the time of the making of the order nisi. Through due diligence he could have done this. However, he has pointed out to me that he is self-represented and really did not understand what was required of him to meet this application.

[19] Against this backdrop of the mortgagor's evidence I must examine the mortgagee's evidence. CIBC filed the affidavit of Rosana Salama, a "relationship officer" for CIBC. Paragraph 9 of her affidavit sworn October 31, 2024 states as follows:

> 9. THAT the Plaintiff's opinion of value for the Mortgaged premises has changed from that stated in the Affidavit sworn herein on April 4, 2024. The Plaintiff's opinion of value is now between $275,000.00-$300,000.00, as disclosed in the Drive-by Appraisal dated October 18, 2024, a copy of which is attached hereto and marked as Exhibit "A" to this my Affidavit.

[20] This drive-by appraisal is dated October 18, 2024 and was conducted by David McEachern of Associated Appraisal Company of Saskatoon. I have some

concerns with this appraisal and the methodology used, especially in light of the newer appraisal filed:

- I note that in this appraisal under the heading “extraordinary assumptions & extraordinary limiting conditions” the appraiser makes the assumption that the property is “in average +/- condition”. It is not stated how this assumption was reached.

- Among the sources of information relied upon a previous appraisal from 2008 and a listing from January 2006 were used. The degree to which this somewhat dated information influenced this drive-by appraisal is not stated.

- Like the newer appraisal filed by the mortgagor this appraisal uses comparables. Two of these three comparable sales used in the drive-by are with respect to houses located on busy collector streets, which would be inferior in location to the subject property. Only one of the comparables in the newer Dream Home appraisal involves a collector street but that appraisal makes an adjustment for this factor.

- In the appraisal filed by CIBC the appraiser makes no adjustments to any of the comparables. None. Not for size, location, or condition. It is extremely common in appraisals to see such adjustments. None were made for the CIBC appraisal, nor is this explained.

- There is no explanation as to the lack of any difference in drive-by estimates of value conducted by the same appraiser, between valuation dates of March 17, 2024 (the first valuation for the purposes of obtaining leave) and the October 18, 2024 appraisal for the order nisi. This is a seven-month gap in a very hot Saskatoon housing market. Facially it

seems odd there would not have been any change in value.

- There is also no explanation as to why this is only a drive-by appraisal. There is no indication that the appraiser or CIBC personnel attempted to contact the mortgagor to see if access to the premises would be granted for appraisal purposes.

[21] In addition, the Salana affidavit of October 31, 2024 states at para. 9 that CIBC's estimate of value has changed since the same affiant's affidavit of April 4, 2024. In fact the range of value is identical. This is not explained. As well the initial appraisal uses comparables with no adjustments.

[22] There is also a question as to why CIBC chose to put only drive-by evidence of value at the crucial order nisi for sale stage. The order nisi was sought and granted in November 2024. By then Justice Gerecke's decision in *Bank of Nova Scotia v Lavigne*, 2024 SKKB 83, had been published for over six months. In that decision Justice Gerecke reviewed the existing authorities and emphasized that at the order nisi stage the best evidence on value was required. Drive-by valuations are generally adequate at the leave to commence stage, but not always so at order nisi. At paras. 15 and 16 this was said:

> **Principles governing valuation evidence**
> [15] Following is a non-exhaustive list what the Court expects for valuation evidence on any application for an order *nisi* (including where the remedy sought is foreclosure).
>
> a. The value (whether a specific amount or a range) must be expressed as an opinion. If no opinion is expressed, the purported evidence is nothing more than inadmissible hearsay. Frequently, a CMA prepared by a realtor expresses no opinion at all, simply recommending a list price and then stating an expectation of what the property might sell for.
>
> b. The valuator's credentials must be provided. It is acceptable for those to be contained in the report. The

Court will not google a realtor to ascertain whether he or she is new to the field. Certifications may be sufficient where they are specific to valuation expertise and widely known and accepted. Otherwise, the valuator's experience relevant to the type of property being valued must always be provided. Without the valuator's credentials, the purported evidence is nothing more than inadmissible hearsay.

c. Current sales must be referenced in the valuation report. Housing prices have generally risen in Saskatchewan for decades. Sometimes that is gradual; sometimes the increases are sharper. The Court is not comprised of valuation experts who keep track of current trends. The Court's expectation is therefore that current valuation evidence be filed on any application for order *nisi*. As an example, 12-month-old sales will rarely be considered current, particularly outside the smallest of markets. If older sales are used, a clear explanation must be provided as to why.

d. The valuation report must set out the characteristics of the property being valued. As occurred here, the Court sometimes receives valuation reports that set out no characteristics of the property other than an address and a photograph. For a residence, the report must set out at least the basics of the home, including (but not limited to) square footage, number of bedrooms and bathrooms, whether there is a garage or other notable features, and some indication of condition. If only exterior condition can be observed because it was a drive-by, that must be explained, and the evidence must explain why it was not possible to inspect the interior. Information on characteristics can virtually always be obtained by lenders. Appraisals containing such details are used in lending and frequently are available to the mortgagee when the mortgage goes into foreclosure. All properties are subject to property tax assessment where the assessors collect and maintain such data, which usually is publicly available.

e. Adjustments must be made between the property being valued and the comparable sales. If the valuation report consists merely of a list of sold properties and then a recommended value, it is impossible for the Court to do more than speculate about how that value was arrived at.

f. Any unusual assumptions must be set out in clear fashion.

> The CMA filed on this application states, "This value may change up or down if the assumptions made in this analysis are not accurate", but it identified no assumptions.
>
> g. An opinion from a realtor should be attached to an affidavit sworn by the realtor. Rule 5-46 of *The King's Bench Rules* relates to the use at trial of appraisal reports. There is no corresponding rule for comparative market analyses from realtors.
>
> h. Little is achieved by including unsold listings in a valuation report. Valuation evidence represents an attempt to forecast the price that a willing arm's length seller and buyer would agree to for a property. A list price is indicative of nothing more than what a prospective seller aspires to be paid for his or her property. The seller might be realistic, desperate or engaging in wishful thinking.
>
> [16] At this time, I am not laying down a broad rule that CMAs cannot be relied on as evidence of value, including on an order *nisi* application. I note, however, that mortgage lenders rarely, if ever, lend on the strength of what a realtor suggests a property is worth. They demand appraisals. Foreclosure is a financial transaction of no less import. This Court should not be asked to grant orders based on valuation evidence that makes no attempt to achieve the same level of discipline and detail that is expected of certified appraisers.

[23] While CIBC's opinions of value came from an appraiser rather than a realtor, some of the same flaws identified above pertain. For example, in some ways it is a more egregious error for an appraiser to fail to adjust comparable sales than it is for a realtor to fail to do so.

[24] Did what I perceive to be a mortgagee's deficient valuation adversely affect the sale process? It certainly may have. The order nisi provided for a floor price of $220,000.00, being a percentage of CIBC's estimate of value. The evidence from Mr. Franson suggests a much higher valuation, in the mid-$300,000.00s. Given that there is another creditor interested in the equity of redemption this directly affects that party and Mr. Franson. He might actually salvage some equity from the property and, at least, see his overall net worth improved if the judgment creditor could be paid from

the sale proceeds.

[25] True, all of this ought to have been raised at the order nisi stage. But it must be borne in mind that Mr. Franson was self-represented throughout, as most mortgagors are. It must also be recognized that the affirmation of any judicial sale is discretionary, and that equity applies.

[26] I have not conflated the present opposed application for an order confirming sale with an appeal or even a review of the granting of the order nisi for sale. I do not sit in appeal of that order. However, now presented with evidence casting doubt on the valuation used in granting leave and obtaining the sale order, I do have jurisdiction to determine whether the order presently requested – confirmation of the sale – ought to be granted. To put it succinctly, I am staying in my lane.

2. What is the proper order to make in this case?

[27] CIBC had the right to apply – indeed, was obligated to apply – for confirmation of the sale. But in chambers the position of CIBC was that the confirmation order was a virtual certainty. This is incorrect. The order sought is discretionary. The issue is whether the Court should exercise its discretion to refuse to confirm this sale. While that is an extraordinary remedy which is granted relatively rarely, here there is good and cogent evidence as to why the sale should not be confirmed. For the reasons set out above, I have determined the requested confirmation order should not be granted.

[28] The valuation evidence of CIBC was poor at the order nisi stage. The mortgagor was self-represented and did not identify, at the order nisi stage, the frailties with CIBC's valuation. This resulted in the floor price of the property being deflated to approximately 64% of what now appears to have been its fair market value. The fact that it sold for $305,000,00 when the floor price was $220,000.00 is another indicator.

Generally speaking properties sold through an order nisi regime do not sell for one-third more than the floor price set in that order. Even at a sale price of $305,000.00 there is at least $40,000.00 of equity being left behind by this sale.

[29] The principles set out above are indicative that this Court will rarely intervene in a sale transaction by refusing to confirm a judicial sale. However, this is one of those rare instances where justice demands this be done.

[30] Accordingly, I dismiss the plaintiff's application for an order confirming sale and declare this sale process abortive. A new order nisi for sale by judicial listing shall issue. The floor price shall be $280,000.00. The new period of redemption shall be 14 days from the date of last service. The other terms shall remain intact. Plaintiff's counsel shall provide the Court (to my attention) with a new draft order nisi for sale by real estate listing within 10 days of the date of this fiat. There is no order as to the costs of this application.

J.
R.W. DANYLIUK