

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beem Credit Union v. Bruchet*,
2025 BCSC 1475

Date: 20250731
Docket: H230637
Registry: Vancouver

Between:

Beem Credit Union

Petitioner

And

**Melvin Robert Bruchet also known as Melvin Bruchet
Merne Bertelle Bruchet also known as Merne Bruchet
His Majesty the King in Ruth of British Columbia
John Doe**

Respondents

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Petitioner:

D. Moriarty

Counsel for The Bank of Nova Scotia

A. Redford

Counsel for the TD Bank:

S. Lun

No other appearances.

Place and Date of Hearing:

Vancouver, B.C.
June 26, 2025

Written Submission: July 10, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 31, 2025

Introduction

[1] This is a residential foreclosure proceeding. The petitioner Beem Credit Union seeks an order for full indemnity costs as against one of the respondents only, Melvin Robert Bruchet (“Dr. Bruchet”). It also seeks leave to deduct those costs, after assessment, from certain funds it is currently holding in trust, representing net proceeds from the sale of the property which is the subject of this proceeding. Various other directions regarding payout of the net sale proceeds are also sought.

[2] Dr. Bruchet did not respond to the application and did not attend the hearing.

Background

History of Proceedings

[3] Blueshore Financial Credit Union (formerly North Shore Credit Union) was the original named petitioner. It started this proceeding on August 24, 2023.

[4] The proceeding concerns a residential property at 3825 St. Georges Avenue, North Vancouver, BC (the “Property”). The respondents Melvin Bruchet and Merne Bruchet were the registered owners, as joint tenants. They were husband and wife.

[5] The petitioner says the Dr. Bruchet and Ms. Bruchet entered into three agreements with Blueshore:

- a) a Residential Term Loan Agreement dated September 17, 2020 (the “Loan Agreement”);
- b) a Personal Account Operating Agreement dated August 20, 2020 (the “Overdraft Agreement”). The petitioner says this required them to repay the petitioner overdraft monies plus interest and costs as set out in the agreement;
- c) an All Indebtedness Mortgage dated August 20 and 24, 2010 (the “Mortgage”), which was registered on title to the Property.

[6] Dr. Bruchet is about 84-85 years of age and is a retired physician. The Property was his and Ms. Bruchet’s long-time family home. At some point, Dr. Bruchet and Ms. Bruchet separated. On July 29, 2024, Ms. Bruchet passed away.

Their daughter, Erin Bruchet, is apparently named as Executrix or Administratrix of her Estate, and Ron Argue is the Estate's solicitor.

Procedural Overview

[7] On December 14, 2023, Associate Judge Harper issued an order nisi of foreclosure. It set the redemption amount at \$1,049,402.44 as of November 30, 2023, ordered that the redemption period would end on May 30, 2024, personal judgment against Dr. Bruchet and Ms. Bruchet jointly and severally, and a costs clause as follows:

K. The petitioner recovers its costs of the proceeding at Scale A, and that the scale of any further costs shall be determined by the Court, and the costs of the proceedings to date and any further costs so ordered shall be added to the amount required to redeem the [Property].

[8] On May 30, 2024, I granted an order that the petitioner have conduct of sale of the Property, with the order taking effect on September 3, 2024. The delay was intended to provide Dr. Bruchet what was essentially an informal extension to the redemption period. It included a costs provision, as follows:

4. The petitioner, BLUESHORE FINANCIAL CREDIT UNION (formerly NORTH SHORE CREDIT UNION), is awarded its costs of this application.

[9] As this order does not specify a particular scale of costs, the default is presumed to be Scale B.

[10] On August 9, 2024, Dr. Bruchet filed a Jurisdictional Response and Notice of Stated Case. In the Jurisdictional Response he disputed that this court had jurisdiction over him. Alternatively, he asked that it not exercise its jurisdiction over him. In the Notice of Stated Case he requested additional time, amongst other things.

[11] On August 30, 2024, Dr. Bruchet filed a without notice application which was heard the same day. It is not entirely clear what relief he was seeking. In it he states he had been denied discovery, due process, had suffered irreparable harm and would potentially become homeless, without equity or inclusiveness. He said he

needed at least 6-8 months before he could list the Property for sale, in order to clarify details of Ms. Bruchet's will and to determine whether there had been insurance on the petitioner's mortgage. The application came before Harper A.J., who dismissed it.

[12] On October 24, 2024, the petitioner filed an application for vacant possession of the Property. This was necessary because Dr. Bruchet had refused to allow the petitioner's realtor and others access to the Property. It was initially set for hearing on November 8, 2024, but did not get on due to lack available of court time.

[13] On November 21, 2024, Associate Judge Robinson granted an order for vacant possession of the Property. It provided that Dr. Bruchet and all occupants of the Property were to vacate it on or before January 10, 2025. With regard to costs, it states:

4. The respondent, Melvin Robert Bruchet, shall pay the Petitioner's costs of this application, in a lump sum amount of \$7,500.

[14] Also on November 21, 2024, Dr. Bruchet filed a "without notice" application seeking an order for stay of execution on the listing and sale of the Property and leave to file a notice of claim so he could have proper discovery and due to his inability to cross-examine, so as to prevent irreparable harm and undue hardship and to prevent a miscarriage of justice, amongst other relief.

[15] On November 27, 2024, Justice Masuhara granted the petitioner's request for an adjournment of Dr. Bruchet's application filed November 21, 2024. The hearing was adjourned by consent to December 17, 2024. Counsel for the petitioner indicated that Dr. Bruchet had not given him notice of this application until counsel received a phone call while he was at lunch on November 27, 2024. He arranged to have another lawyer in his office attend to speak to an adjournment.

[16] On December 17, 2024, counsel for the petitioner attended chambers intending to oppose Dr. Bruchet's application filed November 21, 2024. They learned

he had filed a requisition adjourning the application to January 6, 2025, without consulting counsel for the petitioner or notifying them he had done so.

[17] On January 6, 2025, two individuals appeared on Dr. Bruchet's behalf to speak to his application dated November 21, 2024. Justice Kirchner dismissed the application. With regard to costs, the order provides:

2. The petitioner, Blueshore Financial Credit Union (formerly North Shore Credit Union) is entitled to its costs of the application at Scale B.

[18] On or about January 9, 2025, Dr. Bruchet filed a Notice of Appeal of Kirchner J.'s order of January 6, 2025, and made an urgent application to the Court of Appeal for a stay of proceedings. On January 10, 2025, Registrar Outerbridge dismissed his application.

[19] The petitioner says that by January 11, 2025, Dr. Bruchet had not complied with the order that he vacate the Property. The petitioner's realtor attended the Property that day to access it and begin preparing it to be listed for sale. Dr. Bruchet refused to leave. On January 15, 2025, the petitioner filed a Writ of Possession for the Property. Dr. Bruchet did eventually leave, after a bailiff became involved.

[20] The petitioner says that between January 17 - 22, 2025, the bailiff, Accurate Court Bailiff Services, executed the Writ of Possession. Total costs incurred were \$28,199.67. This included field time (88.5 hours), mileage (238 km), locksmith (\$712.53) and movers/rubbish removal (\$20,534.50), with contents being stored at two locations for at least one month.

[21] On March 27, 2025, Robinson A.J. granted orders:

- a) Substituting Beem Credit Union for the petitioner in place of Blueshore Financial Credit Union. This arose because on January 1, 2025, Beem Credit Union had acquired the assets and assumed the liabilities of Blueshore Financial Credit Union;
- b) Making a minor correction to an interest rate set out in the Order Nisi of Foreclosure; and

- c) Approving sale of the Property to Kerry M. Sprong for the sum of \$2,291,000. The completion date was 14 days after court approval.

[22] None of the three foregoing orders included a term addressing costs of the applications. The petitioner says Dr. Bruchet attended the hearing to oppose approval of the sale of the Property.

[23] The sale of the Property completed successfully. Counsel for the petitioner received net sale proceeds of \$2,225,959.23, which was paid to Owen Bird Law Corporation, in trust. From this it paid out the following:

- a) \$1,146,822.98 paid to the petitioner, representing the outstanding balance on its Mortgage plus interest;
- b) \$62,737.28 paid to the Minister of Finance for the outstanding balance on the Province of BC's lien registered under #BB4096324; and
- c) \$1,791.66 paid to the District of North Vancouver for outstanding utilities.

[24] The amount remaining in trust is \$1,014,607.31. The petitioner seeks directions allowing it to deduct from this its costs on a full indemnity basis, after assessment. It also seeks to pay to Ms. Bruchet's Estate its share of the remaining amount, after paying from its share the Bank of Nova Scotia's judgment against her which had been registered on title to the Property as #CB1461854. The remaining balance (presumably what remains due to Dr. Bruchet) would then be paid into court.

[25] Counsel for the Petitioner informally estimated that the amount of costs it is seeking is roughly \$75,000 - \$80,000. This was not supported by any affidavit evidence, so it is not clear what is and what is not included in this sum.

Applicable Law

[26] Section 20 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 provides that in foreclosure proceedings, the court has discretion to order that costs be assessed as party and party costs or as special costs, despite any covenant or term of a mortgage addressing costs.

Cost in foreclosure proceedings

20 (1) In this section:

"foreclosure", in respect of an agreement for sale, as defined in section 16 (1), means a foreclosure as defined in that section;

"mortgage" includes an agreement for sale as defined in section 16 (1).

(2) In a foreclosure in which costs are awarded, the court may,

(a) despite any covenant or term of a mortgage respecting the payment and calculation or manner of determining costs and expenses in, arising out of, or in connection with a foreclosure, and

(b) instead of making an order in accordance with that covenant or term,

order that costs be assessed as party and party costs or as special costs under the Supreme Court Civil Rules, and the court may make no order for costs if it would otherwise make no order but for the covenant or term referred to in this subsection.

(3) This section applies to all proceedings commenced before April 14, 1986 other than a proceeding in which a court has made an order for costs.

[27] In *CIBC Mortgage Corp. v. Lalji*, [1986] B.C.J. No. 979 (C.A.) at paras. 8-10, Justice Hinkson (as he then was) described s. 20's predecessor (s. 18.2 of the *Law and Equity Act*, R.S.B.C. 1979, c. 224) as follows:

8 In my opinion, the plain meaning of s. 18.1 [now s. 20] of The Law and Equity Act is to confer upon the court in a foreclosure proceeding where costs are awarded a discretion to order costs on a party and party or solicitor and client basis. The effect of the amendment to The Law and Equity Act is to provide that the contract between the mortgagor and mortgagee is no longer to govern the awarding of costs in foreclosure proceedings and to leave it to the court to award costs upon an appropriate scale, depending upon the circumstances in the particular case.

9 In these proceedings, the chambers judge was of the view that the starting point in considering an award of costs was the party and party scale. That is a lower scale than the scale for solicitor and client costs. I share that view.

10 In civil proceedings generally where costs are awarded to a successful party, such costs are awarded on a party and party basis. It is only where the successful party has been put to unnecessary legal expense by the unfounded allegations or procedural misconduct of the unsuccessful party, or where the conduct of the unsuccessful party which is the subject matter of the claim shows an extraordinary disregard for the standard to be expected of him, that costs are awarded on the higher scale. The discretion conferred upon the court by s. 18.2 of The Law and Equity Act to award costs on a solicitor and client basis rather than on a party and party basis is not limited to such conduct by the unsuccessful party. There may be other

considerations which will lead a chambers judge in foreclosure proceedings to grant or refuse costs on a solicitor and client basis. The discretion conferred by the Act is not limited to the considerations which are applied in civil proceedings generally.

[28] In *Dietterle v. Vanguard Mortgage Investment Corporation*, 2023 BCCA 425 [*Vanguard*] at paras. 42-43:

42 In this case, the mortgage contained the standard provision that required Mr. Dietterle to pay the mortgagee's solicitor-and-client costs. In ordering special costs, the judge was guided, correctly, by the analytical framework set out in *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2022 BCSC 1314 at para. 66 [*Forjay*]. It is clear that an award of special costs under s. 20 does not require that a mortgagee show reprehensible conduct by the party against whom special costs are to be awarded (*Forjay* at para. 66, citing *CIBC Mtge. Corp. v. Lalji* (1986), 8 B.C.L.R. (2d) 310 at 312-313, 1986 CanLII 819 (C.A.)).

43 The judge recognized that foreclosure procedures are intended to be summary. As the judge apprehended the matter:

[18] The issue for determination in this case is whether Mr. Dietterle's challenge to the mortgage, on the basis that it was unconscionable at common law, and violated the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, resulted in this dispute being outside what would be a usual foreclosure dispute, warranting special costs.

[19] The starting point under s. 20 of the *LEA* for an award of costs in foreclosure proceedings is the party-and-party scale: *Lalji* at 312; *Kokanee v. Family Auto et al & Reamsbottom et al*, 2000 BCSC 1773 at paras. 43-44. However, as set out by Fitzpatrick J. in *Forjay*, British Columbia courts have considered a wide variety of factors in determining whether to award special costs, or a percentage thereof, in foreclosure matters. She wrote:

[102] ... Those factors include:

- a) the mortgage provided for the mortgagor's payment of solicitor-client costs incurred by the mortgagee;
- b) the mortgagor had substantial equity in the subject property;
- c) the transaction at issue was a commercial one with sophisticated business entit[i]es;
- d) the proceedings were complex;
- e) the conduct of the unsuccessful party delayed or unnecessarily lengthened the proceedings; and
- f) party-and-party costs are inadequate to provide a reasonable recovery against actual expenses incurred to enforce the mortgage.

[Citations omitted.]

Analysis

[29] The petitioner notes that the Loan Agreement, Overdraft Agreement and Mortgage each contain terms or covenants for costs to be paid on an indemnity basis.

- a) The Loan Agreement, at clause 1, defines “Costs and Expenses” as including all legal fees and disbursements in connection with the loan agreement on a full indemnity or solicitor and own client basis (as applicable). At clause 10.1 the respondents covenanted to pay all “Costs and Expenses” forthwith upon demand and that, until paid, all “Costs and Expenses” together with interest thereon shall be added to the loan;
- b) the Overdraft Agreement, at clause 9(d), authorizes the petitioner to charge for financial costs and service charges for which the costs recoverable include, but are not limited to, any and all costs, fees and expenses incurred relating to disputes about the agreement, more any other agreements with the petitioner, disputes about or arising out of the services, or arising out of the respondent’s dealings with the petitioner, the accounts or the services, and include investigation costs, search fees, court filing or registration fees, costs of responding to third-party demands, and include actual legal fees and expenses incurred by the petitioner in respect of such matters; and
- c) the Mortgage, at clause 11.3, provides that for any court proceedings taken to enforce the Mortgage, the petitioner is entitled to special costs.

[30] The petitioner argues that the costs provisions in these agreements govern the appropriate level of costs recovery and refer to *Eisler Estate v. GWR Resources Inc.*, 2020 BCSC 562 and *Cardero Coal Ltd. v. Carbon Creek Partnership*, 2023 BCCA 351. The former case involved a wrongful dismissal claim which involved an agreement which had a provision for full indemnity costs. The latter involved an appeal of a trial decision involving a lease which included terms providing for indemnity costs. Both of those authorities are distinguishable on the basis that neither of those cases involved foreclosure proceedings. The present action is a foreclosure proceeding and thus is governed by s. 20 of the *LEA* and the case authorities I have cited above which interpret it.

[31] The petitioner says Dr. Bruchet caused considerable delay in the prosecution of this matter, as well as considerable unnecessary expense. He has had the benefit of extended use of the borrowed funds after default. Listing the Property for sale was delayed until January 31, 2025. But for the delays he caused, it could have been listed as early as June 30, 2024 and the sale theoretically could have occurred six to seven months earlier.

[32] The petitioner emphasizes Dr. Bruchet’s failure to comply with the terms of the order for conduct of sale, which made it necessary for it to apply for vacant possession of the Property. Then he failed to comply with the order for vacant possession, which made it necessary for it to obtain a Writ of Possession and retain a bailiff. He made his own applications, without success. His conduct made the proceeding significantly more complex and expensive than a typical residential foreclosure.

[33] The petitioner notes that it is seeking full indemnity costs for post-Order Nisi costs as against Dr. Bruchet only, not Ms. Bruchet’s Estate. Dr. Bruchet and Ms. Bruchet were jointly and severally liable under the terms of the various agreements noted above, however, only Dr. Bruchet caused the delay, additional steps and unnecessary expense.

[34] A concern I have is that several of the post-Order Nisi orders which have been made include costs awards. The costs provisions in these orders do not contemplate a future review of the scale of costs awarded. These include:

Date	Type	Costs
May 30, 2024	Conduct of Sale	Scale B
November 21, 2024	Vacant Possession	\$7,500
January 6, 2025	Stay of Execution	Scale B

[35] I was not directed to any authority indicating I have discretion to change the costs awards set out in entered orders made by other presiders. It is notable that the November 21, 2024 vacant possession order was made for a lump sum and in an

amount which clearly exceeds a “party and party” level of costs for a single application. The lump sum awarded appears to include something approaching special or indemnity costs for that application. I am not satisfied that I have jurisdiction to modify costs provisions made in these entered orders. In the event I am mistaken in that regard, I am not persuaded that this is an appropriate case in which to do so.

[36] Dr. Bruchet made an application without notice on August 30, 2024. That was dismissed, but there is no indication the petitioner was aware of, or participated in that application. He also filed documents styled as a jurisdictional response and notice of stated case, but it is not clear that he ever actually set them down for a hearing. I was also not directed to any materials indicating the petitioner had to file a response to them, beyond perhaps its broader opposition to Dr. Bruchet’s application for a stay of execution, for which they were awarded party and party costs at Scale B.

[37] The petitioner referred to Dr. Bruchet’s Notice of Appeal and his unsuccessful application for a stay of proceedings before the Court of Appeal. Costs arising from any proceedings taken before the Court of Appeal fall within its purview and are not relevant to costs issues in this proceeding.

[38] Orders / steps which did not include express costs provisions include:

Date	Type
November 27, 2024	Stay of Execution – Adjourned to Dec 17
December 17, 2024	Stay of Execution – Adjourned without a hearing to Jan 6
January 15, 2025	Writ of Possession / Bailiff
March 27, 2025	Approval of Sale / Correct Order Nisi / Substitute Beem
June 26, 2025	Indemnity Costs (this application)

[39] The steps which do not already have express costs orders which appear to have caused the petitioner the most significant unnecessary expense are those

which enforcement of the order for vacant possession of the Property, which included the Writ of Possession process / bailiff expenses. There is no indication that the subsequent application for approval of sale of the Property (albeit unsuccessfully opposed by Dr. Bruchet) and the process to complete the sale were out of the ordinary for a residential foreclosure.

[40] Having regard to the factors identified in para. 19 of *Vanguard*, factors (a), (b), (e) and (f) are present. With regard to (e), Dr. Bruchet's failure to comply with the order requiring him to vacate the Property undoubtedly made that portion of the process more complex and expensive than it should have been, including (without limitation) the bailiff expenses.

[41] In all the circumstances, I conclude that it is appropriate that Dr. Bruchet pay the petitioner full indemnity costs of steps taken to enforce the order for vacant possession. This includes process related to applying for, obtaining and executing the Writ of Possession and the bailiff's expenses incurred to secure and clear out the Property to prepare it for sale.

[42] The petitioner is entitled to party and party costs at scale B for steps relating to remaining steps which do not already have an express costs order:

- a) the November 27, 2024 application to adjourn Dr. Bruchet's stay of execution application;
- b) The December 17, 2024 attendance / adjournment;
- c) The March 27, 2025 applications for approval of sale, etc.;
- d) This costs application of June 26, 2025 and written submission I requested;
- e) Process to pay net sales proceeds into court; and
- f) Assessment of costs before the Registrar.

[43] I also direct that:

- a) The petitioner has leave to deduct its costs, after assessment, from net sale proceeds which are currently being held in trust;
- b) The petitioner has leave to pay the remaining net sale proceeds out as follows:
 - i. Firstly, to Fulton & Company in trust for Bank of Nova Scotia, representing the Estate of the respondent Merne Bruchet's share of judgment CB1461854 which was registered on title to the Property;
 - ii. Secondly, to Munro & Crawford in trust for the Estate of Merne Bruchet, deceased, the funds remaining which are owing to the Estate of Merne Bruchet; and
 - iii. Thirdly, the remaining amount be paid into court to the credit of this proceeding, to be held pending further order.

[44] I ask that counsel for the petitioner inform Dr. Bruchet and his daughter Erin that the funds are being paid into court so he can make timely arrangements seek payment out.

“Associate Judge Bilawich”