

KING’S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 128

Date: 2025 08 15
File No.: KBG-RG-02190-2024
Judicial Centre: Regina

BETWEEN:

B2B BANK

PLAINTIFF

- and -

JASON SHORT and CARA SHORT

DEFENDANTS

Appearing:

James Kroczyński
Jason Short
No one appearing

for the plaintiff
self-represented defendant
for the defendant, Cara Short

FIAT
August 15, 2025

ROBERTSON J.

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INTRODUCTION

[1] This decision addresses an application by the homeowner challenging foreclosure proceedings of which he did not receive actual notice. Substitutional service was authorized at the outset of the proceedings. The homeowner became aware of the proceedings after the Order *Nisi* for Foreclosure was issued.

[2] For the reasons which follow, the application is dismissed with no award of costs. Given my finding that the Order *Nisi* for Foreclosure has not been properly served, the Bank must personally serve it on the defendants before taking any further step in the foreclosure proceedings. This will have the effect of extending the 90 day

redemption period in the Order *Nisi*, since it begins to run only after service of the order.

[3] The Bank must personally serve any further applications. If an application is made, that will afford the defendants the opportunity to appear in Court and address the Court before any further decision is made.

BACKGROUND

Parties, Property and Mortgage

[4] Jason Short and Cara Short [Owners] are the registered owners of a residential property with a civic address of 222 Albert Street, Regina, Saskatchewan and legally described as Lot 35, Block 63, Plan No. AP5716, Extension 0 and Lot 48, Block 63, Plan No 101216269, Extension 29 [Property]. According to the second Drive-by Residential Report filed by the plaintiff, B2B Bank [Bank] in 2025, the Owners purchased the Property on October 23, 2018 for \$265,000.

[5] The Owners obtained a mortgage loan of \$261,820 from the Bank in 2018. This mortgage was registered against the Property on November 5, 2018. This mortgage loan was for the purchase of the Property by the Owners. The mortgage term ended on November 30, 2023 and was not renewed.

[6] On September 19, 2023, Duncan Cross, Canadian Residential Appraiser [CRA], completed a Drive-by Residential Report of the Property. Although the January 1, 2019 assessed value of the Property was listed as \$368,400, the appraisal estimated the value at between \$235,000 and \$265,000.

Litigation history

[7] The court file records the following events relevant to the foreclosure action:

2024

- September 19 Klatt J. dismisses the Bank's without notice application to validate service on Owners
- September 20 Klatt J. grants the Bank's without notice application for substitutional service on Owners by posting on the front door of the Property
- September 23 Klatt J. Order authorizing substitutional service issued [Klatt Order]
- September 30 The Bank serves Provincial Mediation Board with Notice of Application for leave to commence action
- October 1 The Bank serves the Owners by posting Notice of Application for leave to commence action on the front door of the Property
- October 10 The Bank files Notice of Application for leave to commence action with affidavits of service

2025

- January 31 The Bank serves the Owners with Supplementary Affidavit of Default and Klatt Order by posting on the Property
- February 6 McMurtry J., in chambers, grants the Bank's with notice application for leave to commence action; no one appearing for the Owners
- February 10 The Bank files Statement of Claim
- February 19 The Bank serves Statement of Claim on the Owners by posting

on the Property

- March 14 Court file noted for default of defence
- April 11 The Bank serves Notice of Application for Order *Nisi* for Foreclosure and supporting affidavit by posting on the Property
- April 24 Notice of Application for Order *Nisi* for Foreclosure [Order *Nisi*] filed at Court
- May 8 The Bank files second Drive-by Residential Report by Duncan Cross, CRA, estimating value of the Property as of April 10, 2025 at \$260,000 to \$285,000, although the report states January 1, 2023 assessed value as \$373,000
- May 8 Robertson J., in chambers, grants the Bank's with notice application for Order *Nisi*, but with revision to require personal service on the Owners; no one appearing for the Owners
- May 8 Robertson Order, as amended, issued [Robertson Order]
- May 13 Robertson Order served on the Owners by posting on the Property
- June 23 Jason Short files Notice of Application challenging foreclosure proceedings, supported by affidavits [Application]
- July 17 Jason Short files Brief of Law
- July 24 Robertson J. hears the Application, reserving decision

Relief sought in Application

[8] The relief sought in the Application is reproduced below:

Remedy claimed or sought:

1. An order staying the foreclosure proceedings commenced by the Respondent, pending further order of the Court.
 - a) An order setting aside the Order Nisi [*sic*] dated May 9, 2025, on the grounds of improper service and the Applicant's incapacity to respond.
 - b) A declaration that substitutional service was not authorized by the Court, and that taping documents to the door does not comply with the King's Bench Rules [*sic*].
 - c) An order granting the Applicant leave to defend the foreclosure proceedings.
 - d) Costs of this application.
 - e) Such further and other relief as this Honourable Court may deem just [*sic*]

Affidavit Evidence filed for Application

[9] The applicant, Jason Short, filed three affidavits in support of this Application:

- (a) Affidavit of Jason Short sworn June 23, 2025 [Short Affidavit];
- (b) Affidavit of Danial Daley sworn June 23, 2025; and
- (c) Affidavit of Matthew Vandeven sworn June 23, 2025.

[10] The Bank did not file any affidavits on this Application.

[11] The three affidavits provide uncontradicted evidence that Jason Short was suffering from addictions and left the Property to try to get well, which he succeeded

in doing. After his recovery, he returned to the Property. He had no knowledge and received no notice of the foreclosure proceedings until after the posting of the Order *Nisi* on the Property on May 13, 2025. On learning of the Order *Nisi*, he took prompt action to prepare and bring this Application.

[12] There is no evidence about the status of Cara Short.

ISSUES

[13] The Application challenges the foreclosure proceedings on the basis of improper service resulting in no notice to the Owners. The issues to be determined are:

- (a) Does the Court have jurisdiction to set aside or stay foreclosure proceedings?
- (b) Whether there was proper service on the Owners?
- (c) If there was an irregularity in service or proceedings, what relief should be granted?

ANALYSIS

[14] I will address the three issues below. In addressing the first question, I conclude that the Court has jurisdiction to grant the relief sought. In addressing the second question, I conclude that although Jason Short did not receive actual notice of the Bank's applications at the time they were granted, his Application for various relief should be dismissed. However, I also find that the Order *Nisi* was not properly served on either of the Owners.

[15] In addressing the third question, I conclude that the failure to personally serve the Order *Nisi* means that it is not yet effective. The Bank has, by its negligence, delayed the foreclosure proceeding. After it is served, the Bank may continue

foreclosure proceedings, with personal service on the Owners of any applications. That proper service will allow the Owners to appear in Court and make submissions on any future order.

(a) Does the Court have jurisdiction to set aside or stay foreclosure proceedings?

[16] I will review the Court’s jurisdiction to set aside or stay foreclosure proceedings. In doing so, I will address some of the relief sought by the applicant.

Court’s jurisdiction in foreclosure proceedings

[17] The Court exercises both statutory and equitable jurisdiction in foreclosure proceedings. In doing so, the Court exercises a supervisory jurisdiction over all aspects of foreclosure. These concepts are reviewed in *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133 at paras 12–34, 62 RPR (6th) 313. The legislative policy behind the legislation governing foreclosure proceedings is consumer protection.

[18] These concepts are relevant to the Court’s exercise of its powers. I will review the Court’s powers as they may relate to the relief sought.

Setting aside default judgment

[19] The Application in para. 1(c) seeks “An order granting the Applicant leave to defend the foreclosure proceedings.” The Owners are currently entitled to oppose future relief sought by the Bank. In the event this part of the Application was intended to seek setting aside of the default judgment, I will address it on that basis.

[20] *The King’s Bench Rules* in Rule 10-13 allows the Court to set aside a default judgment, including where the Statement of Claim was not served on the defendant.

Setting aside default judgment

10-13 Subject to rule 9-13, in the case of any judgment by default, whether by reason of non-delivery of defence or non-compliance with any of these rules or with any order of the Court, the Court may set aside or vary the judgment on those terms as to costs or otherwise that the Court considers fit.

[21] On an application to set aside default judgment, the applicant must satisfy the Court that:

- (1) The application was brought expeditiously upon becoming aware of the claim;
- (2) There is a satisfactory explanation for the failure to respond to the claim;
- (3) A defence is disclosed which raises arguable issues; and
- (4) The setting aside of default judgment will not seriously prejudice the plaintiff.

[22] I am satisfied that the first two criteria are met. Jason Short, in his uncontradicted affidavit, says he was not served with the Statement of Claim and had no knowledge of it, until after posting of the Order *Nisi*. The Order *Nisi* was posted on May 13, 2025. The Application was filed June 23, 2025.

[23] I am not satisfied that a defence has been disclosed that raises an arguable issue. Viable defences are rare in foreclosure proceedings. The facts are usually clear that the mortgagor has defaulted or the mortgage has not been renewed and the mortgage balance is owing, which is the case here. The Short Affidavit and his Brief of Law do not dispute that the mortgage balance is owing. Instead, Mr. Short seeks an opportunity to resolve the matter, including by negotiation with the Bank.

[24] In as much as the Application seeks to set aside the noting for default,

this part of the Application is dismissed.

Re-hearing before issuance of formal order

[25] The Court may re-hear an application for order *nisi* before issuance of the formal order. See: *Royal Bank of Canada v Vilorio*, 2014 SKQB 424 at para 12, [2015] 4 WWR 189; and *Scotia Mortgage Corporation v McNaughton*, 2021 SKQB 159 at para 7. Generally, the judge who approves an order is *functus officio* after the order is formally issued.

[26] In this case, a formal Order *Nisi* was issued May 8, 2025. This ended my ability to re-hear an application for Order *Nisi* after granting of the order but before issuance of a formal order. But there are other avenues for redress.

Jurisdiction to set aside orders

[27] The applicant relies upon the Court's equitable jurisdiction over foreclosure proceedings, citing the Supreme Court of Canada's decision in *Petranik v Dale*, [1977] 2 SCR 959 [*Petranik*]. *Petranik* allowed an appeal from the Ontario Court of Appeal. Although there were three judgments, including a dissent on a 3-2 split, all judgments recognized a superior court's equitable jurisdiction to grant relief to the mortgagor after order *nisi* for foreclosure.

[28] In *Petranik* at 969, Chief Justice Laskin in the plurality judgment wrote:

What emerges from the *DeBeck* [*DeBeck v Canada Permanent Loan and Savings Co.* (1907), 12 BCR 409] case is a reassertion of the well-established proposition that the equitable right to redeem is more than a mere equity but is, indeed, an interest in the mortgaged land which is not lightly to be put aside and which is enforceable by courts of equity: see *Falcon-bridge, Law of Mortgages* (3rd. ed. 1942), pp. 50-53. I question, therefore, whether it can be put aside by a rule of practice that would preclude a Court from considering all the circumstances that may support a discretion to allow redemption, albeit on terms.

In his reasons in the Court of Appeal, Arnup J.A. emphasized the view that the reason for the suspension of the power of sale under a judgment *nisi* for foreclosure, unless leave of the Court is obtained, is that the mortgagor is given certain rights under the foreclosure judgment (for example, the right to a reconveyance on paying what is owing, as ascertained on a reference), and a sale without leave would deprive him of those rights. I think that this overlooks the fact that a mortgagor under a judgment *nisi* for foreclosure has not yet been deprived of his pre-existing equitable right to redeem; the judgment *nisi* cannot be said to have conferred new rights but rather to have prescribed a procedure by which the existing right could be pursued and the property reclaimed, so long as the foreclosure did not become absolute.

[29] Judson J., in a dissenting judgment in *Petranik* at 983-984, wrote:

It is a well-established principle, embodied in the Rules of Practice, that where a mortgagor desires an opportunity to redeem his property after default, a court of equity will exercise its discretion to enable him to do so, unless his conduct has been such that it would be inequitable to grant the relief he claims. In exercising its equitable jurisdiction a court will protect a mortgagor from harsh or oppressive action by a mortgagee, and when a court has ordered that a mortgagor be given an opportunity to redeem, a mortgagee will not be allowed to circumvent this relief by selling the property under power of sale in the mortgage. Even where there has been no judgment conferring the right to redeem, a court will prevent a sale where the mortgagor genuinely desires to redeem: *Marshall et al. v. Miles* [(1970), 13 DLR (3d) 158 (Ont H Ct J)], *supra*. ...

[30] Dickson J., in a concurring judgment in *Petranik* at 995, wrote:

Whatever may be the reach of the *Stevens* [*Stevens v Theatres, Ltd.*, [1903] 1 Ch 857] decision, I am in no doubt that when a mortgagee seeks the aid of the court in the enforcement of a remedy against a mortgagor and engages the court system to the extent of obtaining a judgment of the nature of that obtained by Mrs. Dale, the mortgagee must carry out that judgment or obtain leave of the court to do otherwise. Having resorted to the Queen's justice, he can not resort to his own.

I conclude by reiterating that an equity of redemption is an interest in land, which the mortgagor can convey, devise, settle,

lease or mortgage like any other interest in land (Megarry and Wade, *The Law of Real Property* (3rd ed.) at p. 885, and Cheshire's *Modern Real Property* (10th ed.) at p. 568) and that equity has always jealously guarded the mortgagor's right to redeem.

[31] Saskatchewan courts have applied their jurisdiction to grant relief to mortgagors in foreclosure actions, including setting aside orders.

[32] In *Bank of Nova Scotia v Comeault* (1998), 166 Sask R 219 (QB), Pritchard J. set aside an order made in chambers allowing commencement of foreclosure proceedings where leave was granted under the wrong statute, having regard to the status of the real property as both farmland and homestead.

[33] In *General Accident Assurance Co. of Canada v Walton*, 2000 SKCA 125 at para 18, 194 DLR (4th) 315 [*Walton*], the Court of Appeal rejected the claim that an insurable interest in the real property survived a final order for foreclosure and transfer of title to the mortgagee. In doing so, Vancise J.A. writing for the Court of Appeal cited *Petranik* in support of the right of the court to reopen after a final order for foreclosure and extend the redemption period.

[18] It may be useful at this juncture to examine the nature of the right the Waltons have after the final order for foreclosure. The appellant contends foreclosure proceedings under the Torrens system are different from that at common law with the result that the interest of the mortgagor must be determined in accordance with the statute or statutes and not the common law. Mortgages are creatures of statute and mortgage law is governed by the provisions of the statute and is no longer found primarily in the common law. See *Farm Credit Corporation v. Nelson et al.* [(1993), 110 Sask R 287 at page 291 (QB) [hereinafter *Farm Credit Corp.*]] In *Farm Credit Corp.* Baynton J. relied on *Colonial Investment & Loan Co. v. King et al.* [[1902] 5 Terr LR 371] and the comments of McGuire C.J. which described the operation of the statutory regime in these terms:

But under our Land Titles Act the mortgage does not operate as a transfer of title, but only as security. The

mortgagor remains the owner of the legal estate. The mortgagee merely has a lien until payment, and the case of default he can proceed to get an order either to sell the land or to have the title thereto vested in himself. Upon getting a final order vesting the title in him he can obtain from the registrar of land titles a certificate which gives him an absolute title freed from all claim by the mortgagor. [*Ibid.* at pp. 379-80]

The right to redeem under the statutory mortgage is not an equitable right but rather a statutory right. Baynton J., with whom I agree, made this clear in *Farm Credit Corp.* wherein he stated “[t]he right to redeem a statutory mortgage arises by statute, not the mortgage document itself. As well, it only arises when the mortgage is in default and foreclosure or sale proceedings have been commenced to enforce it”. [*Farm Credit Corp.* at p. 296] See also *Merit Mortgage Group v. Sicoli* [(1982), 128 DLR (3d) 291 (Alta QB)]. Generally speaking, under existing Saskatchewan legislation, a mortgagor is given the legal right to redeem as and from the commencement of the proceedings by the mortgagee to the end of the period for redemption fixed by the court in the order for nisi. If the mortgagor has not paid the amount owing under the mortgage, the mortgagee can apply to the court for a final order for foreclosure in which the mortgagor’s statutory right to redeem (although it is called the equity of redemption in the order) is foreclosed. The court does have discretion to reopen a final order for foreclosure even after the mortgagee has obtained title and possession and extend the time within which the mortgage can be redeemed. See *Petranik v Dale; Moose Jaw Credit Union Ltd. v. Kjarsgaard* [(1982), 18 Sask R 259 (Sask QB)]; *CIBC v. Young* [[unreported, 12 December 1978, Yorkton, Sask. Q.B.]; and *Co-operative Trust Co. of Canada v. Craney* [(1983), 27 Sask R 254 (Sask. Q.B.)].

[Footnotes omitted]

[34] In *101236168 Saskatchewan Ltd. v Harmon International Industries Inc.*, 2017 SKQB 349 at paras 19 and 24, Allbright J. cited *Walton* and *Petranik* as authority in setting aside a final order for foreclosure. In doing so, the Court referred to significant equity in the property and changed circumstances, including additional advances and lack of notice. The mortgagor was granted 180 days to redeem the property by paying the recalculated mortgage amount, reflecting the actual purchase price of the mortgage.

Allbright J. wrote at paras. 20 and 24:

[20] The statutory provision and the Court of Appeal's commentary lead me to conclude that the Court of Queen's Bench continues to have the authority to use its discretion to reopen a Final Order for Foreclosure even after the mortgagee has obtained title and extend the time within which the mortgage can be redeemed. What is in reality the issue before me is whether the circumstances of this mortgage and Final Order for Foreclosure are such that the discretion should be exercised to do so or whether that discretion should be declined as being inappropriate under all of the germane circumstances.

...

[24] In considering whether to exercise this Court's discretion as contended for by the applicant and opposed by the respondent, in addition to the Saskatchewan Court of Appeal's commentary in *Walton*, I am mindful of the Supreme Court of Canada's pronouncement in 1972 on the breadth of the equity of redemption. In *Petranik v Dale*, [1977] 2 SCR 959 at 991, the Court opined:

An equity of redemption is so intense that even after an order absolute the court on occasion has given the mortgagor the right to redeem: *Campbell v. Holyland* [[1877] 7 Ch. D. 166.].

[35] Allbright J. at para. 51 applied the test of "extraordinary circumstances" in setting aside the final order for foreclosure:

[51] Ultimately I am of the view that the circumstances in this matter do amount to extraordinary circumstances such as should attract the equitable discretion of this Court to set aside the Final Order for Foreclosure dated October 30, 2014. Accordingly, the applicant has demonstrated an entitlement to relief towards that end as sought in its Notice of Application, and I order that there is to be a reopening and setting aside of the Final Order for Foreclosure concerning the mortgage in question.

[36] In *Larson Manufacturing Company of South Dakota, Inc. v Jahnke*, 2019 SKQB 11 at paras 40 and 45, 98 RPR (5th) 208, Chow J. cited *Walton* in ruling that a

mortgage assignment under Saskatchewan law requires the right to redeem, which arises only upon default and enforcement proceedings. As no such right existed in this agreement, the assignment was invalid and the mortgage was ordered discharged.

[37] In *Pillar Capital Corp. v Swift River Farms Ltd.*, 2021 SKQB 119 [*Swift River QB*], varied on other grounds in *Swift River Farms Ltd. v Pillar Capital Corp.*, 2022 SKCA 89 [*Swift River CA*], Scherman J. dismissed an application to open up a noting for default of defence, granting leave to file a Statement of Defence and set aside order *nisi* for judicial sale. The defendant’s application was heard at the same time as the plaintiff’s application for an order confirming sale.

[38] Sherman J. at para. 15 of *Swift River QB* found that the application to set aside the order *nisi* was an impermissible collateral attack on that decision. (A representative of the defendant had been present at the hearing when the order *nisi* was granted. The defendant’s representative did not oppose the order *nisi* but wanted a longer redemption period. That request was granted.) Scherman J. at paras. 21-22 dismissed the defendant’s application, finding exceptional circumstances did not exist to justify setting aside the order *nisi*.

[39] The Court of Appeal in *Swift River CA* at para 88 recognized that “a judgment or order may be set aside where equity and fairness so require”:

[88] However, I am not persuaded that this was a material error, regardless of whether the Chambers judge was correct in concluding that there had been a breach of clause 5.2(b) – which I need not decide. A judgment or order may be set aside where equity and fairness so require, as a result of circumstances such as fraud, lack of jurisdiction, irregularity, perjury, new evidence and lack of notice: *Shell Canada [Shell Canada Products Ltd. v L & D Truck Ltd.]*, 2005 SKQB 336, 276 Sask R 315] at para 9; *Toronto Dominion Bank v Tymchak* (1990), 85 Sask R 192 (QB) at para 7; *Royal Trust Company v E.M. Jones*, [1962] SCR 132 (WL) at 143–146; and *Desbiens v Warken*, 2020 SKQB 145 at paras 13–17, 61 CPC (8th) 187. While an error of law may be relevant in determining if there are special circumstances of this

kind, the fact there was an error of law in the course of the analysis does not, in and of itself, justify setting aside a judgment or order. As Tholl J. (as he then was) affirmed in *Montgomery v Jahnke*, 2017 SKQB 374:

[29] The inherent jurisdiction of the court with regard to setting aside judgment, declarations or orders obtained on the merits must be used sparingly and only in exceptional circumstances. The court must be cautious to ensure it avoids overstepping its jurisdiction resulting in effectively sitting in appeal of its own determinations.

...

[40] The Court of Appeal in *Swift River CA* concluded at para 90 that “the Chambers Judge did not err in deciding there were no exceptional circumstances that would justify setting aside the Order Nisi.”

[41] In *Affinity Credit Union 2013 v Monastyrski*, 2024 SKKB 128, Currie J. dismissed an application to set aside order *nisi* for sale of land. In that case, the owner, at the time of application for an order confirming judicial sale, applied to set aside the order *nisi* on the basis that the land was homestead and therefore exempt from an order for foreclosure and sale under s. 44 of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1. Currie J. first considered whether he had jurisdiction to set aside an order made by another judge of the Court, concluding at para. 18 that he did. He set out at para. 17 the test to be applied on a set aside application from *Shell Canada Products Ltd. v L & D Truck Ltd.*, 2005 SKQB 336 at para 10, 276 Sask R 315:

[10] The court has inherent jurisdiction to set aside a judgment. The court will do so in exceptional circumstances, when equity and fairness so dictate. Exceptional circumstances recognized to date include fraud, lack of jurisdiction, irregularity, perjury, new evidence, and lack of notice.

Conclusion

[42] Although I cannot re-hear the application for Order *Nisi*, the Court still has broad authority to provide relief, if warranted. I will therefore go on to consider

whether there was irregularity in the foreclosure proceedings which would justify granting relief.

(b) Was there proper service on the Owners?

The King's Bench Rules

[43] *The King's Bench Rules in Part 12 Service of Documents* provide rules for service of court process. The Rules governing service and their purpose are discussed in *Tetrad Auto Service Ltd. v Universal Tire & Services Ltd.*, 2023 SKKB 104. Personal service is the normal and required method of service on individuals.

[44] The purpose of service, by whatever authorized means, is to bring notice to the person served so they can respond or appear at any hearing and participate. It is fundamental to justice that persons who may be affected by a decision of the Court have the opportunity to appear and participate. The Court is also better informed when all interested parties participate, so more likely to reach a just result.

[45] In *Stephens v Canadian Imperial Bank of Commerce*, 2021 SKCA 155 at para 42, Kalmakoff J.A. wrote for the Court of Appeal:

[42] ... The purpose of the rules regarding service of documents such as statements of claim is to ensure that a party being sued has notice of the claim being made against them, has notice of the temporal requirements for filing a defence, and has notice that default judgment may be granted against them if they do not respond to the claim. ...

[46] Rule 12-10 of *The King's Bench Rules* authorizes substitutional service where the Court is satisfied by evidence that:

- (a) There have been prior attempts at service by an authorized mode;
- (b) The required method of service (usually personal service) is impractical; and

- (c) The proposed alternate mode of service is likely to bring notice to the person to be served.

[47] The leading case on substitutional service is *Canadian Imperial Bank of Commerce v Star Development Corp.*, 2019 SKQB 149, [2019] 12 WWR 127, a decision of Elson J.

Klatt Order

[48] The Klatt Order authorized substitutional service not only for the application for leave to commence action, but also “all future process required to be served upon the Respondents.” The Klatt Order is reproduced below:

THE COURT ORDERS THAT:

1. B2B Bank shall be entitled to effect service of the Notice of Application for Leave to Commence Action, together with Form B, copy of Mortgage dated October 31, 2018, copy of Appraisal dated September 19, 2023, and Affidavit Regarding State of Respondent’s Account Under the Mortgage dated January 24, 2024, a copy of this Order, any and all future process required to be served upon the Respondents, by posing such documentation to the front door of 222 Angus Street, Regina, Saskatchewan.
2. Service shall be deemed effective 5 days after delivering any such documents in accordance with this Order.

[49] From my review of the file, service of the leave application, Statement of Claim and application for Order *Nisi* were all made in accordance with the Klatt Order. The affidavits of Lisa Lavallee, process server, sworn October 1, 2024; February 4, 2025; March 14, 2025; and April 24, 2025, attest to service in accordance with the Klatt Order by posting to the front door of the house at the Property.

Substitutional service was authorized

[50] I conclude that the Application for a declaration that substitutional service

was not authorized must be dismissed. However, this does not conclude the issue of service. I will go on to consider whether service was effective.

Was the substitutional service effective?

[51] Paragraph 2 of the Klatt Order deemed service effective five days after posting. Deemed service is a rebuttable presumption of actual receipt and notice.

[52] Judges of the same court do not sit in appeal of each other's decisions. My review of the Klatt Order must be limited to considering whether there is new evidence which would likely have resulted in a different decision.

[53] There is no evidence that there was anything improper in the application for substitutional service, which was supported by the affidavit of Lisa Lavallee sworn September 13, 2024.

[54] There is new evidence that one of the defendants, Jason Short, did not receive actual notice of the foreclosure proceedings until after issuance of the Order *Nisi*. The Bank did not dispute this evidence. The presumption of deemed service is therefore rebutted with respect to the defendant, Jason Short. The presumption of receipt and notice remains for the defendant, Cara Short.

Robertson Order

[55] There was not proper service of the Order *Nisi*.

[56] At the chambers hearing, when granting the Bank's application, I told the Bank's counsel that the draft Order must be changed to require personal service on the defendants in accordance with *The King's Bench Rules*. I did so because of my concern that the defendants had not appeared previously and might not have received notice.

[57] The endorsement records that direction. The endorsement from the May

8, 2025 hearing of the Bank's application for Order *Nisi* is reproduced below:

Order *Nisi* for Foreclosure may issue with the exception of paragraph 5 which will be amended to reflect that service will occur in accordance to the King's Bench Rules.

[58] My order superseded the Klatt Order authorizing substitutional service by posting. The Bank made that amendment in the issued Order *Nisi*, but then proceeded to serve it by posting, as if the Klatt Order remained in effect. This was in error and did not constitute proper service.

[59] I will deal with the failure to comply with the Robertson Order when I address the third issue below.

No actual notice

[60] Lack of actual notice may be grounds for setting aside an order. In *Ernst & Young Inc. v Koroluk*, 2024 SKCA 19, the Court of Appeal, in granting an appeal from this Court, set aside an order validating service of an amended statement of claim. In doing so, Tholl J.A. for the Court of Appeal wrote:

C. Sufficiency of mere notice

[39] EYI [Ernst & Young Inc.] asserts that mere notice of a statement of claim – having it come into a defendant's possession through no effort of the plaintiff – is not a sufficient basis to validate service under Rule 12-1. Mr. Koroluk argues that it is.

[40] Notice is the primary consideration for a Chambers judge when deciding whether to validate or set aside the service of a document: Rule 12-1(2) and *Anstead* [*Anstead v Saskatchewan Medical Association*, 2013 SKQB 185, 420 Sask R 290] at para 19. Unsurprisingly, irregular or unauthorized service will not be validated if the person to be served has not received notice: *Tetrad Auto Services Ltd. v Universal Tire & Services Ltd.*, 2023 SKKB 104 at para 30 [*Tetrad*]; *Bank of Montreal v Thompson*, 2022 SKQB 152 at para 26; *C.D.R. Developments* [*C.D.R. Developments Inc. v ACI Holdings Inc.*, 2017 SKQB 163, 10

CPC (8th) 118] at paras 26–30; and *McAdam* [*McAdam v Grimard*, 2017 SKQB 39, 7 CPC (8th) 123] at para 36. Service may also be set aside under Rule 12-1 where the mode itself was valid but the document was “never brought to the defendant’s attention” (*McAdam* at para 23):

[23] Likewise, the court has the discretion to set aside valid service where the defendant did not actually receive notice of the claim, so long as the application is brought within a reasonable time, the default is satisfactorily explained and a good defence on the merits is disclosed. In *Royal Bank of Canada v Kruchkowski*, [1988] SJ No 491 (QL) QB, the court set aside a default judgment where service by registered mail was contradicted by the defendant’s affidavit denying receipt. Likewise in *Schachtel v Wasmann*, 2004 SKQB 120, although a document was validly served on a third party pursuant to an order for substitutional service, it was never brought to the defendant’s attention and was therefore, set aside.

[61] The applicant, stated in the Short Affidavit that he did not receive notice of the foreclosure proceedings until after issuance of the Order *Nisi*. Although I accept that the applicant did not receive notice of the applications and Statement of Claim, it does not automatically follow that the granting of leave, default judgment and Order *Nisi* should be set aside.

[62] This Court’s inherent jurisdiction to set aside an order or judgment made at a hearing is discussed in *Yashcheshen v Saskatchewan Government Insurance*, 2025 SKKB 127 at paras 31-45 and 48-55. The test to set aside is proof by the applicant of an exceptional circumstance which, having regard to equity, fairness and all other relevant circumstances, dictates that the order be set aside. In applying this test, I am mindful of the caution stated by Tholl J. (as he then was) in *Montgomery v Jahnke*, 2017 SKQB 374 at para 29, which was quoted with approval in *Swift River CA* at para 88:

[88] ...

[29] The inherent jurisdiction of the court with regard to setting aside judgment, declarations or orders obtained on the merits must be used sparingly and only in exceptional circumstances. The court must be cautious to ensure it avoids overstepping its jurisdiction resulting in effectively sitting in appeal of its own determinations.

...

[63] I accept that the lack of actual notice does constitute an exceptional circumstance that might dictate setting aside. However, in this case, there are other circumstances to consider.

[64] First, the public interest is promoted by certainty and finality in judicial decision-making. Further, the statutory scheme is designed to protect both the mortgagee and mortgagor. If mortgage loans are not repaid, the lending system which supports home ownership will break down, to the detriment of both lenders and borrowers.

[65] Second, the interest of the other party must be considered and, if possible, respected. The Bank has, in good faith, followed the procedures mandated by the legislation. If the prior decisions of the Court were set aside, the Bank would be returned to the position it was in 11 months ago.

[66] Third, while Jason Short did not receive actual notice, he should have known that foreclosure proceedings were at least a possibility.

[67] From the information on file, the mortgage balance came due on November 30, 2023. The Bank has received no payment on the mortgage loan since August 30, 2023. A mortgagor would understand that there will be inevitable consequences of failing to make mortgage payments or of failing to renew a mortgage or obtain re-financing.

[68] The Affidavit of Lisa Lavalée, process server, sworn September 13, 2024 at para. 4 records that on February 17, 2024, Cara Short was personally served with a Notice of Application for Leave to Commence Action. Paragraph 5 records that Cara Short told the process server that Jason Short did not currently live at the Property.

[69] The September 13, 2024 Affidavit of Lisa Lavalée at para. 9 records that on August 22, 2024 the process server spoke on the telephone with Jason Short about serving him with the leave application. In that conversation, he confirmed the Property as his current address. Paragraphs 10-14 record that the process server called again over the next few days leaving messages on his voicemail, before posting the documents at the Property. The Bank's efforts to serve should have alerted Mr. Short to the imminency of foreclosure proceedings.

[70] In making these observations, I do not overlook or reject Mr. Short's argument that he was suffering from addictions at the relevant times. I accept that a person suffering from addictions has an illness that may impair their judgment and make it difficult to deal with other matters. I do consider that as a relevant circumstance. However, it is also a reality that foreclosure proceedings are often precipitated or occur in the context of personal crises for the mortgagors, including illness, job loss, marital break-up or other personal challenge. Mortgagors in these circumstances may feel overwhelmed, making it difficult for them to deal with the foreclosure proceedings. The Court tries to be sensitive to these realities in dealing with mortgagors who appear before them.

Application for relief dismissed

[71] Having regard to all the circumstances, including the lack of actual notice of the Bank's applications, I am not persuaded that equity and fairness dictate that: the foreclosure proceeding should be stayed; the default judgment should be set aside and the mortgagor given leave to file a Statement of Defence; the Klatt Order should be set

aside; or the Order *Nisi* should be set aside. The Application is therefore dismissed.

[72] I will go on to address what relief, if any, should be granted with respect to the failure to properly serve the Order *Nisi*.

(c) If there was an irregularity in service or proceedings, what relief should be granted?

[73] In *Toronto-Dominion Bank v Tellez*, 2018 SKQB 285, 40 CPC (8th) 145 [*Tellez*], Danyliuk J. refused a final order for foreclosure on an Application Without Notice where there was no proof of service of the order *nisi* and no evidence was filed about recent payments. Danyliuk J. began his fiat in *Tellez* with the following statements:

[1] Some people seem to think that foreclosure practice is dry, mechanical, performed by rote, that it does not require attention to detail or a critical eye.

[2] These people are wrong.

[74] The Robertson Order required personal service of the Order *Nisi* on the defendants. The Bank did not comply with the service requirement of the Order *Nisi*. As a result, the Order *Nisi* is not yet effective. For example, para. 3 of the Order *Nisi* provides that the 90-day redemption period begins to run “after the date of service of this Order on the Defendants.” Paragraph 4 similarly provides that the Bank may apply for a Final Order for Foreclosure “90 day(s) after the date of service of this Order on the Defendants” (emphasis in original). The Bank has, by its own negligence, delayed foreclosure proceedings.

[75] Further, this Court in *Royal Bank of Canada v Asare*, 2025 SKKB 70 at para 14 recognized the right of a mortgagor in default to remedy the default or redeem the property at any time before grant of final order of foreclosure. In that case, the Court granted several adjournments to the owner, after issue of order *nisi* for foreclosure and

over the objection of the bank's lawyers. These adjournments were granted to allow the owner the opportunity to sell the property herself, which she succeeded in doing.

[76] Mr. Short, in the conclusion to his Brief of Law at para. 65, wrote:

65. The Respondent is not seeking to evade obligations but asks only for the opportunity to engage meaningfully and protect his rights to redeem and remain in his home, at least until a just resolution through mediation or further hearing.

[77] While I decline to stay further proceedings, Mr. Short may be assured that no further step can occur without prior notice to him and Cara Short and without their opportunity to appear before this Court. This Court supervises each step of foreclosure proceedings. If the Bank, following proper service of the Order *Nisi*, applies for Final Order for Foreclosure, it must do so with notice to the Owners, meaning personal service.

[78] In the meantime, I encourage the Owners to work with the Bank to try to find an acceptable resolution. If they are unable to agree or just unsure about their rights, including the amount owing to the Bank, the Owners can come back to court and ask for the Court's assistance.

[79] At the same time, the Owners should understand that the Bank must be paid. The Bank is not required to negotiate or to renew the mortgage. The usual options for owners in these circumstances are to find alternate financing or to sell the property themselves, so that the mortgage debt is paid. If the Bank is not paid, then foreclosure or judicial sale becomes necessary and inevitable.

[80] I will remain seized of the file only for the purpose of any application to amend the Order *Nisi*. Either party has leave to return to Court for that purpose.

CONCLUSION

[81] The application is dismissed. There is no order as to costs.

J.
D.N. ROBERTSON J.