Court of Appeal for Saskatchewan
Docket: CACV4507

Citation: *Innovation Federal Credit Union v MacVicar*, 2025 SKCA 96
Date: 2025-10-01

Between:

Innovation Federal Credit Union

Appellant
(Plaintiff/Applicant)

And

Kenneth MacVicar and Teri Ouellette

Respondents
(Defendants/Respondents)

Before:	Schwann, Kalmakoff and McCreary JJ.A.
Disposition:	Appeal allowed
Written reasons by:	The Honourable Justice Jeffery D. Kalmakoff
In concurrence:	The Honourable Justice Lian M. Schwann The Honourable Justice Meghan R. McCreary
On appeal from:	KBG-BF-00168-2024 (Sask), Battleford
Appeal heard:	September 18, 2025
Counsel:	Michael Marschal for the Appellant No one appearing for the Respondents

Kalmakoff J.A.

I. INTRODUCTION

[1] Innovation Federal Credit Union Limited [Innovation] appeals from a decision in which a Court of King's Bench judge, sitting in Chambers, determined that Innovation could not claim property insurance expenses as part of the amount owing under a mortgage in a foreclosure action (*Innovation Federal Credit Union v MacVicar and Ouellette* (6 February 2025) Battleford, KBG-BF-00168-2024 (Sask KB) [*Decision*]). Innovation contends that the Chambers judge erred by interpreting s. 10-11 of *The King's Bench Act*, SS 2023, c 28 [*KB Act*], and s. 11 of *The Limitation of Civil Rights Act*, RSS 1978, c L-16 [*LCRA*], as precluding the inclusion of that sort of expense in a mortgage claim.

[2] I agree that the Chambers judge erred as Innovation alleges and that the appeal must be allowed. My reasons follow.

II. BACKGROUND

[3] On December 18, 2018, Kenneth MacVicar and Teri Ouellette [together, Respondents] entered into a mortgage agreement with Innovation. Under that agreement, Innovation provided loan financing to the Respondents in the principal sum of $296,449.48, and the Respondents granted a mortgage over their property to Innovation to secure repayment of the loan.

[4] Among other terms, the mortgage agreement contained the following provisions:

> **4. MORTGAGOR TO PAY MORTGAGEE'S COSTS**
>
> All solicitors, inspectors, valuators, and surveyors fees and expenses for drawing and registering this mortgage or for examining the mortgaged premises together with all expenses incurred by the Mortgagee for preservation or protection of the security, or to remedy any default of the Mortgagor hereunder, including advances or payments made for principal, insurance premiums, taxes or rates, or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the mortgaged premises and in maintaining, repairing, restoring or completing the mortgaged premises, and in inspecting, leasing, managing, or improving the mortgaged premises, and in exercising any right, power, remedy or purpose of the mortgagee and legal costs, as between solicitor and client, and an allowance for the time, work, and expenses of the Mortgagee, whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise, are secured hereby and shall be a charge on the mortgaged premises, and shall be added to the principal sum hereby secured and bear interest at the

said rate, and all such monies shall be payable to the Mortgagee on demand, or if not demanded then with the next ensuing instalment. In the event The Saskatchewan Farm Security Act or The Cost of Credit Disclosure Act, 2002 shall apply to this mortgage, the costs and expenses and fees chargeable to the Mortgagor shall be limited to those allowed under *The Saskatchewan Farm Security Act* or *The Cost of Credit Disclosure Act, 2002*.

…

8. INSURANCE

The Mortgagor will insure and during the continuance of this mortgage keep insured with an insurance company not disapproved by the Mortgagee each and every building on the said lands to the extent of their full insurable value for extended coverage and against loss or damage by fire, and as the Mortgagee may require from time to time against such additional perils, risks or event, and if a sprinkler system shall be operated on the mortgaged premises, against loss or damage caused by such sprinkler system; and the Mortgagor will forthwith assign, transfer and deliver over unto the Mortgagee the policy of insurance and receipts thereto appertaining; and if the Mortgagor neglects to keep the said buildings of any of them insured as aforesaid, or to deliver such policies and receipts or to produce to the Mortgagee at least five days before the termination of any insurance evidence of renewal thereof, the Mortgagor shall forthwith on the happening of any loss or damage furnish at his own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies; and any insurance money may at the option of the Mortgagee be applied in rebuilding, reinstalling or repairing the premises, or to be paid to the Mortgagor, or be applied or paid partly in one way and partly in another, or it may be applied in the sole discretion of the Mortgagee in whole or in part on the mortgage debt or any part thereof, whether or not then due, and the Mortgagee shall have a lien for the mortgage debt on all insurance on the said buildings, whether effected under the foregoing covenants or not; and provisions as to insurance shall apply to all buildings and all the fixtures and appurtenances whether now or hereafter on the said lands.

…

11. DEFAULT

(a) a default on the part of the Mortgagor in the payment of any instalment of principal or interest in any other sums due under this Mortgage or any mortgage or other charge ranking in priority to the charge of this Mortgage; and

(b) a breach of any of the Mortgagor's covenants or other obligations contained in this Mortgage.

12. REMEDIES AVAILABLE TO MORTGAGEE ON DEFAULT

(a) Perform Mortgagor's Covenants

The Mortgagee may at the Mortgagor's expense and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenant, agreement, proviso or stipulation;

…

(d) Right of Foreclosure and Sale

The Mortgagee may take such proceedings to realize on this mortgage by foreclosure or otherwise as entitled to by law and may sell and dispose of the mortgage premises with or without entering into possession of the same and with or without notice to the Mortgagor or any party interested in the mortgaged premises.

> **(e) Acceleration**
>
> The whole of the principal sum and all other monies hereby secured shall, at the option of the Mortgagee, become immediately due and payable, notwithstanding anything to the contrary herein contained.

[5] In mid-2024, the Respondents defaulted on the mortgage and Innovation began foreclosure proceedings. Innovation obtained leave to commence an action under *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001, on October 24, 2024, and filed its statement of claim six days later. In the claim, Innovation sought judgment against the Respondents, foreclosure of the equity of redemption, foreclosure of the mortgage, possession and sale of the mortgaged property, and recovery of any money payable under the mortgage. Innovation asserted that the money payable under the mortgage included the unpaid principal balance of the loan, interest arrears, taxes it had paid on the Respondents' behalf, and amounts it had spent to secure and maintain fire insurance for the mortgaged property.

[6] The Respondents did not defend the action.

[7] On December 23, 2024, Innovation applied for an order *nisi* for sale by real estate listing. As part of its application, Innovation filed an affidavit from one of its employees, Kimberley Hebert, who deposed that the mortgage was in default and had matured on November 30, 2024, and that the Respondents had made no payments since May 31, 2024. Ms. Hebert also averred that, as of December 17, 2024, the amount due and owing under the mortgage was $307,726.53, which was comprised of the following:

(a)	Principal Balance:	$279,356.96
(b)	Interest:	$16,126.44
(c)	Taxes paid by Innovation:	$8,737.71
(d)	Fire Insurance:	$3,505.42

[8] Although the Chambers judge agreed that an order *nisi* for sale by real estate listing should issue, she raised a concern about whether the order could properly include the amount Innovation claimed for payment of fire insurance as part of the money owing under the mortgage. Citing s. 10-11 of the *KB Act* and *Home Equity Mortgage Corporation v Matycio*, 2018 SKQB 283 [*Matycio*],

she suggested that the fire insurance amount was a "cost or fee" that Innovation was seeking "to collect as incidental to the mortgage default" and, thus, something that should "not … be included in the amount outstanding at this juncture" (*Innovation Federal Credit Union v MacVicar and Ouellette* (30 December 2024) Battleford, KBG-BF-00168-2024 (Sask KB) at paras 3–4). The Chambers judge granted leave to Innovation to file a new draft order *nisi* with the fire insurance amount deleted or, in the alternative, to file a brief supporting its argument in favour of the inclusion of the fire insurance expenses in its claim.

[9] Innovation took up the Chambers judge's invitation and filed a brief in support of its assertion that the fire insurance fees were amounts owing under the mortgage. After it had done so, on February 6, 2025, the Chambers judge issued the *Decision.* In the *Decision*, the Chambers judge relied upon and adopted the reasoning in *Innovation Federal Credit Union v Panteluk*, 2025 SKKB 3 [*Panteluk*], to reject Innovation's argument, and to hold that the fire insurance payments could not be included in the amount claimed under the mortgage. She granted leave to Innovation to file a new draft order *nisi* with the fire insurance fees deleted.

[10] Innovation appeals from the *Decision*.

III. ANALYSIS

A. A preliminary matter – is leave to appeal required?

[11] An appeal may be pursued only where a statutory right of appeal exists. Section 7(2)(b) of *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, provides that an appeal to this Court lies from a decision of a judge of the Court of King's Bench. However, s. 7(2)(b) is subject to s. 8(1), which provides that, with certain exceptions that do not apply here, no appeal lies from an interlocutory decision unless leave to appeal is granted. The question of whether the *Decision* was final or interlocutory arises here, as Innovation did not seek leave to appeal.

[12] Issues concerning the determination of whether a decision is final or interlocutory have been discussed at length by this Court in a number of decisions, including *Aecon Mining Construction Services, a division of Aecon Construction Group Inc. v K+S Potash Canada GP*, 2023 SKCA 102 at para 26, 485 DLR (4th) 685 [*Aecon*]; *Poffenroth Agri Ltd. v Brown*, 2020

SKCA 68 at paras 18–22, [2021] 2 WWR 302 [*Poffenroth*]; and *Saskatchewan Medical Association v Anstead*, 2016 SKCA 143 at para 56. Those decisions thoroughly canvass the applicable principles, so I see no need to summarize or repeat them here.

[13] Innovation asserts that it did not need leave to appeal in this case. It points to s. 12(1) of *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001 [*LCAA*], which provides that an order of the sort made in the *Decision* "may be appealed to the Court of Appeal". Innovation contends that this means it has a right of appeal, without leave of this Court, regardless of whether the *Decision* was final or interlocutory.

[14] Innovation also says that, even if s. 12(1) of the *LCAA* does not provide a direct right of appeal, the *Decision* was final, because it granted an order *nisi* that fixed the amount owing under the mortgage, set a redemption period, and provided for the sale of the mortgaged property if the mortgage was not redeemed. In other words, Innovation argues, the order made in the *Decision* disposed of the rights of the parties in a final and binding way with regard to substantive aspects of the action (see *Aecon* at para 26; and *Poffenroth* at para 18). Innovation's position in this respect finds support in the Supreme Court's reasoning in *Halbert v Netherlands Investment Company of Canada Ltd.*, [1945] SCR 329.

[15] However, there are also several reported decisions in which judges of this Court, sitting in Chambers, have treated orders *nisi* in foreclosure proceedings as interlocutory, holding that leave to appeal is required (see, for example: *R v Investors Group Trust Co. Ltd*., 2007 SKCA 132, 302 Sask R 303; *SaskAlta Base Oils Corporation v Petrogas Marketing Ltd.*, 2010 SKCA 142, 362 Sask R 316; and *CIC Asset Management v Townsgate Development Corporation*, 2022 SKCA 31).

[16] In light of that divide in the jurisprudence, the questions of whether an order *nisi* in a foreclosure proceeding is final or interlocutory, and whether s. 12(1) of the *LCAA* provides a direct right of appeal regardless of the character of the order *nisi*, remain open. But they are not questions that need to be answered definitively to dispose of this appeal because, even if leave to appeal were required in this case, I would grant it *nunc pro tunc*. I say this for several reasons.

[17] First, the appeal is sufficiently meritorious and of sufficient importance to meet the criteria for a grant of leave under the *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119,

227 Sask R 121, framework this Court generally applies when assessing applications for leave to appeal. Second, I do not view Innovation as having acted unreasonably in not seeking leave, because the answer to the question of whether the *Decision* was final or interlocutory is not obvious. Third, Innovation filed its appeal in a timely fashion and delaying the matter further to require it to bring applications to extend time and to formally seek leave would only work to the prejudice of the Respondents as interest continues to accrue under the mortgage. Accordingly, even though I recognize that leave should be granted *nunc pro tunc* sparingly, so as to not defeat the purpose of the leave requirement, I am satisfied that it would be appropriate to do so in this case (see, for example: *Cowessess First Nation v Phillips Legal Professional Corporation*, 2018 SKCA 101 at paras 33–34, 43 CPC (8th) 237; *Poffenroth* at paras 44–54; *PCL Construction Management Inc. v Saskatoon (City)*, 2020 SKCA 12 at para 65, 444 DLR (4th) 433; and *Saskatoon (City) v The Canadian Nationalist Party Inc.*, 2021 SKCA 22 at para 26, 456 DLR (4th) 654).

B. The issue and the standard of review

[18] Innovation contends that the Chambers judge erred by determining that it was precluded from including its out-of-pocket fire insurance expenses as part of its claim under the mortgage. It argues that a misinterpretation of s. 10-11 of the *KB Act* and s. 11 of the *LCRA* led to this error. An allegation that a judge has erred in the interpretation of statutory provisions raises a question of law, reviewable for correctness.

C. The Chambers judge erred by concluding that Innovation was precluded from claiming for recovery of fire insurance costs it paid under the terms of the mortgage

[19] As mentioned, the Chambers judge determined that Innovation could not claim its insurance expenses as money owing under the mortgage because she saw those expenses as being a "fee or cost" that Innovation was seeking to collect "as incidental to the mortgage default". In that regard, she relied on the following reasoning in *Panteluk* to explain why she viewed s. 10-11 of the *KB Act* and s. 11 of the *LCRA* as precluding recovery of such amounts:

> [6] By s.10-11, redemption requires only payment of "the arrears that are in default" and "default" is nonpayment "of money due under a mortgage". As such, the inclusion of the cost of the fire/property insurance, which was apparently paid by the Credit Union, is

> not to be included in the calculation of the amount outstanding at this juncture. Obtaining insurance coverage appears to relate to the performance of a covenant, in which the mortgagor may have failed. While the Credit Union may well have an interest in purchasing insurance to protect its interest, and potentially that of the mortgagor, the purchase amount therefor does not become part of the amount due and owing under the mortgage.
>
> [7] There is a distinction between the quantification of the mortgage account and the calculation of costs for which the mortgagee may seek reimbursement upon review by the court at the conclusion of the foreclosure process. At that point, the insurance may be considered, taking into account such matters as the term for which it was purchased and any refund received by the mortgagee in light of, for example, an earlier than expected sale of the property in the judicial sale context.
>
> [8] In *Home Equity Mortgage Corporation v Matycio*, 2018 SKQB 283 [*Matycio*], while not addressing fire insurance particularly, Elson J. commented, at para. 16, on how mortgagees are prohibited from adding "any costs or fees that a mortgagee seeks to collect as incidental to the mortgage default" when quantifying the mortgage account.
>
> [9] Further support for this view may be garnered from s. 11 of *The Limitation of Civil Rights Act*, RSS 1978, c L-16, which states:
>
> > **11** Notwithstanding anything contained in any mortgage of land whether heretofore or hereafter given or in any agreement renewing or extending the same, no taxes, rates or assessments, other than taxes, rates or assessments levied or charged against the land and paid by the mortgagee, shall be charged by the mortgagee to the mortgagor or added to the mortgage account; and an agreement, stipulation or covenant to the contrary is null, void and of no effect.
>
> [10] This section permits only property taxes, and not other rates or assessments paid by the mortgagee, to be added to the mortgage account, "notwithstanding anything contained in the mortgage".
>
> [11] I am mindful that Lawton J. in *Indian Head Credit Union Limited v R & D Hardware Ltd.* (1986), 54 Sask R 161 (CanLII) (Sask QB) at para 30, appears to have included insurance premiums along with principal, interest, and taxes, in the amount owing. However, this insurance issue does not appear to have been subject to argument or analysis. On appeal, how the amount owing by the mortgagor was calculated was indeed raised but "too late in the day", according to the Saskatchewan Court of Appeal in (1988), 66 Sask R 90 (CanLII) (Sask CA) at para 28. While the age of a decision is not the sole determinant of its utility, the passage of time and additional jurisprudence does give opportunity for clarification of the law. Accordingly, given the legislative provisions noted above, and the principle expressed in *Matycio*, property/fire insurance purchased by the mortgagee is not to be included in the calculation of the mortgage account.

[20] Innovation contends that the Chambers judge erred in law by following *Panteluk* and by interpreting s. 10-11 of the *KB Act* as a statutory bar to the inclusion of insurance expenses as amounts owing under a mortgage. It says that, while s. 10-11 is meant to alleviate the harshness of acceleration clauses that appear in many mortgages, it does not limit or define the type of expenses that a mortgagee can claim. I agree.

[21] Section 10-11 of the *KB Act* reads as follows:

> **10-11** If default is made in the payment of money due under a mortgage or in the observance of a covenant contained in a mortgage and, under the terms of the mortgage, the payment of other portions of the principal money is accelerated by reason of the default and those portions become due and payable:
>
> > (a) the mortgagor may, notwithstanding any provision of the mortgage to the contrary and at any time before sale or before the grant of a final order of foreclosure, perform the covenant or pay the arrears that are in default, with costs to be taxed; and
> >
> > (b) on performing a covenant or paying arrears pursuant to clause (a), the mortgagor is relieved from immediate payment of the portion of the money secured by the mortgage that has not become payable by lapse of time.

[22] An acceleration clause allows a mortgagee to demand the *entire* amount owing under a mortgage as soon as a mortgagor misses a payment or otherwise fails to abide by a condition of the mortgage. Because such clauses can be very damaging to even a mortgagor who has defaulted in only a minor way, s. 10-11 and its predecessor (s. 61 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01) were enacted as a legislative response that would provide mortgagors with a fair opportunity to set the scales back to even and provide the ability to reinstitute the mortgage by curing the default, generally by paying arrears or performing the covenant in question (see Ronald C.C. Cumming, *Overview of Saskatchewan Real Property Security Law* (Regina: Queen's Printer, 2016) at 4-6 and 4-7. Similar provisions addressing the effects of acceleration clauses exist in analogous statutes in other provinces (see, for example, *Law of Property Act*, RSA 2000, c L-7, s 38; *Law and Equity Act*, RSBC 1996, c 253, s 25; *The Real Property Act*, RSM 1988, c R30, s 115; *Mortgages Act*, RSO 1990, c M 40, s 22).

[23] In the mortgage agreement in this case, the Respondents had covenanted and agreed to the following terms:

(a) that they would keep the property insured against loss or damage by fire and that, if they did not, Innovation was entitled to do so (clause 8);

(b) a breach of any covenant or other obligations constituted a default under the mortgage (clause 11(b));

(c) upon default, Innovation was entitled to perform or cause to be performed any covenant under which the Respondents were in default (clause 12(a)); and

(d) any amounts paid by Innovation to remedy the Respondents' default, including in relation to securing and maintaining property insurance, would be added to the principal sum owing under the mortgage (clause 4).

[24] As the Respondents had clearly defaulted in their obligation to maintain fire insurance on the property, the terms of the mortgage agreement entitled Innovation to perform that obligation, by arranging for insurance, and to add that cost to the principal amount owing under the mortgage.

[25] The mortgage agreement also contained an acceleration clause, which brought s. 10-11 of the *KB Act* into play. However, while s. 10-11 clearly precludes a mortgagee in Innovation's position from relying on its contractual rights to accelerate the mortgage debt where the mortgagor remedies the default, it cannot be read as a bar against a claim that a particular type of expense is owing under the mortgage. Section 10-11 refers explicitly to defaults "in the payment of money due under a mortgage or in the observance of a covenant contained in a mortgage" that may trigger an acceleration clause, but it contains no words limiting or defining what may comprise the "money due" or what types of covenants may or may not be included. I am unaware of any decision from this province - or any other province with similar legislation that governs acceleration clauses - in which a court has held that such provisions prohibit the inclusion of contractually based property insurance expenses in the calculation of a mortgage account. With respect, I find that the Chambers judge erred by reasoning as though s. 10-11 was determinative of that question.

[26] Innovation also asserts that the Chambers judge erred by reasoning as though s. 11 of the *LCRA* operates as a general prohibition against the recovery of insurance expenses that a mortgagor has covenanted to pay under the mortgage. I agree with this submission as well.

[27] The *LCRA* explicitly prohibits mortgagees from recovering certain costs or fees that are incidental to the mortgage default as part of their claim in a foreclosure action. They include inspection fees (s. 7); collection costs (s. 8); late payment charges (s. 10); "taxes, rates or assessments" other than those "levied or charged against the land and paid by the mortgagee" (s. 11); and premiums "in respect of an insurance policy on the life of the purchaser or mortgagor" (s. 12). The cost of insuring the mortgaged property does not fit into any of these categories. The *LCRA* does not expressly bar the recovery of property insurance premiums paid by a mortgagee. In fact, it makes no mention whatsoever of that type of expense, which supports an inference that

the Legislature made a deliberate choice in that respect to *not* prohibit the inclusion of insurance expenses as an amount owing under the mortgage (see *R v Wolfe*, 2024 SCC 34 at para 35, 497 DLR (4th) 62).

[28] In the *Decision*, the Chambers judge adopted the reasoning from *Panteluk* and held that the fire insurance expenses claimed by Innovation could not be included as an amount owing under the mortgage because they were either a "cost or fee" that was "incidental to the mortgage default" or an "other rate or assessment" of the type mentioned in s. 11 of the *LCRA* (see *Panteluk* at paras 8 and 10). She rooted this conclusion in her interpretation of the reasoning of Elson J. in *Matycio*. With respect, the Chambers judge's analysis reflects both an erroneous reading of *Matycio* and an improper interpretation of s. 11 of the *LCRA*.

[29] In *Matycio*, the mortgagee applied for orders *nisi* in three foreclosure actions and claimed various expenses, including insurance costs, prepayment charges, NSF charges, and other types of expenses as amounts owing under the mortgages in issue. Justice Elson declined to grant the applications for orders *nisi*, providing the following explanation for his decision:

> [19] In these three applications, the equity picture presented by the proposed plaintiff is anything but clear. The lack of clarity begins with the terms of the mortgage documents, themselves. The definition of "Total Amount Owing" includes certain costs and charges that, as defined, cannot be added to the mortgage debt. For example, the term "Default Expenses", as defined in the Matycio and Wilson mortgages, includes NSF charges, which are clearly prohibited by s. 8(1) of *The Limitation of Civil Rights Act*. The other component costs, within the definition of "Default Expenses", are so broadly defined that they may well have been intended to include collection charges that cannot be added to the mortgage debt.
>
> [20] The term "Related Expenses" in the Haugen mortgage presents similar questions. While its definition may not include specifically prohibited charges, such as NSF fees, it is so broadly inclusive that it almost certainly includes charges that would run afoul of the statute.
>
> [21] The "Total Amount Owing" in all three mortgages also includes prepayment penalties (described as an "Early Payment Charge" in the Matycio and Wilson mortgages and a "Prepayment Amount" in the Haugen mortgage). On these matters, the *Eldstrom* and *Kjarsgaard* decisions are directly on point. As soon as the proposed plaintiff began its pursuit of the foreclosure remedy, it effectively demanded the entire amount of the debt. As such, it triggered the respective mortgagors' right of redemption. It necessarily followed that any prepayment penalties provided for in the mortgage became unenforceable.
>
> [22] The lack of clarity in the equity picture is compounded by the fact that the statements of arrears exhibited to the affidavits of default identified charges and fees that do not correspond with the component charges identified in the mortgage document. Moreover, the court received no evidence as to the determination or calculation of the

> interest rate differential, the total fee, the total charges or the administration fee. As such, I cannot determine if any of these charges, or portions thereof, are prohibited collection charges or unenforceable prepayment penalties. Perhaps more importantly, it is impossible for any of the proposed defendants in these applications to have an accurate picture of the equity position presented to them.
>
> **Conclusion**
>
> [23] In the result, I am not satisfied that leave on any of these three applications should be granted. Consequently, the applications are adjourned to December 18, 2018, in order to permit the proposed plaintiff to submit revised affidavits that present a clearer and more correct presentation of the equity position in respect of each of the mortgaged properties.

[30] It is apparent from the foregoing passage from *Matycio* that Elson J. denied the applications for orders *nisi* not because he held that claims for insurance costs were statute-barred, but because the affidavits of default filed in support of the applications were so imprecise as to make it impossible to separate properly claimed amounts from amounts that were precluded from recovery under the *LCRA*. In his reasons, Elson J. correctly adverted to the requirement that an order *nisi* make precise determinations concerning the amount owing and/or the existing equity in a mortgaged property. He concluded that the evidence before him was not sufficiently clear to delineate between what portions of the amounts claimed were permissible and what portions were prohibited by the *LCRA* and, accordingly, the orders *nisi* could not issue. But nothing he said in his reasons would suggest that the mortgagees would have been prohibited from recovering property insurance expenses they had incurred as a result of the mortgagors' defaults, if those expenses were rooted in the terms of the mortgage agreement and stated with sufficient precision in the evidence. To the extent that the Chambers judge relied on *Matycio* as holding that insurance premium payments for which a mortgagor is responsible under the terms of a mortgage agreement constitute a cost or fee incidental to default, or "other taxes, rates or assessments" mentioned in s. 11 of the *LCRA*, she erred.

[31] It is common for mortgage agreements to contain terms requiring the mortgagor to maintain property insurance for the mortgaged property, as a means of protecting the mortgagee's security interest (see, generally, Walter M. Traub, *Falconbridge on Mortgages*, 5th ed (Toronto: Thomson Reuters, 2019) at §38:1). Mortgage agreements also frequently contain terms that provide for the mortgagee to step in and insure the property at the mortgagor's cost in the event of default. The jurisprudence from this province suggests that insurance premiums - or other expenditures necessary to maintain the property due to a material default on the part of the mortgagor - can

represent a necessary cost incurred by a mortgagee and, thus, become due and owing under the mortgage, especially where such costs are expressly provided for in the mortgage agreement (see, for example: *Royal Bank of Canada v Partridge*, 2018 SKQB 216 at para 11; *First Nation Financial GP Corp. v Churko*, 2024 SKKB 118 at paras 42–44; *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133 at para 59; *Materi v Farness*, 165 Sask R 286 (QB); and *Conexus Credit Union 2006 v Engen*, 2025 SKKB 29 at paras 9–10 and 42–45).

[32] Pulling all of that together, the Chambers judge erred in law by concluding that the insurance costs claimed by Innovation were not recoverable, because those costs were based in the clear language of the mortgage agreement, and their recovery was not barred by statute or by common law.

IV. CONCLUSION

[33] For the foregoing reasons, I would allow the appeal, set aside the *Decision*, and order that the calculation of the amount due and owing to Innovation under the mortgage includes $3,505.42 for fire insurance on the mortgaged property. Because of the passage of time and its implications on the interest component for the order *nisi*, I would remit the balance of the matter to the Court of King's Bench to determine the full amount due and owing to Innovation and any other terms that should be included in the order *nisi*.

[34] As to the question of costs, the mortgage agreement provides that Innovation shall be entitled to costs on a solicitor-client basis where legal action is necessary to enforce the mortgage. I recognize that, where a contractual right to costs exists, a court will generally exercise its discretion to reflect that right. However, that general proposition is not an absolute rule. Where solicitor-client costs are not appropriate in the circumstances of a particular case, the court retains discretion to deprive a party of such costs, even in the face of an express contractual obligation (*Rozdilsky v Kokanee Mortgage M.I.C. Ltd.*, 2020 SKCA 1 at paras 9–10). In this case, the Respondents did not oppose the inclusion of insurance expenses in the Court of King's Bench or contest Innovation's application in any way. Nor did they do so in this Court. Given those circumstances, and considering that the Respondents can be seen to have suffered prejudice in the

form of accruing interest while this matter made its way through the court system, I would make no order as to costs for the appeal.

[35] As the balance of the application for an order *nisi* has been remitted to the Court of King's Bench for determination, the question of costs in that Court is appropriately left to the judge who hears that application.

"Kalmakoff J.A."

Kalmakoff J.A.

I concur.

"Schwann J.A."

Schwann J.A.

I concur.

"McCreary J.A."

McCreary J.A.