

# KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 181**

Date: **2025 10 27**  
Docket: KBG-BF-00094-2024  
Judicial Centre: Battleford

---

BETWEEN:

BERNIER MILLWORK LTD.

PLAINTIFF

- and -

HVR CONSTRUCTION LTD., PETERSON ACRES INC.,  
SHARON TAYLOR and CANADIAN IMPERIAL BANK OF  
COMMERCE

DEFENDANTS

**Counsel:**

Jaylyn E. Lawrence  
Misty S. Alexandre  
Ltd. Marek S. Coutu

for the plaintiff, Bernier Millwork Ltd.  
for the defendant HVR Construction  
for the defendant Sharon Taylor

---

FIAT  
October 27, 2025

TURCOTTE J.

---

## Introduction

[1] The defendant, Sharon Taylor [Ms. Taylor], applies pursuant to Rules 10-13 and 3-21 of *The King's Bench Rules* to set aside the default judgment obtained against her on October 31, 2024 by the plaintiff, Bernier Millwork Ltd. [Bernier

Millwork], and permit her to file a statement of defence in this action [Bernier Millwork Action]. She has attached a draft of her proposed statement of defence to her affidavit filed in support of her application. Ms. Taylor also seeks an order directing Bernier Millwork to discharge the registration of the default judgment in the judgment registry and from her real and personal property. She also seeks costs.

[2] Bernier Millwork opposes the application. It argues Ms. Taylor has not presented an arguable defence and that setting aside the noting for default would be contrary to the principles of fundamental justice and equity. The defendant, HVR Construction Ltd. [HVR], takes no position on the application. HVR is also referred to as “HRV” Construction Ltd. in the parties’ pleadings. The parties should take steps to correct the corporate name of HVR in the pleadings with an appropriate amendment.

### **Background Facts**

[3] The claims underlying the dispute between these parties relate to the construction of a new home by HVR for Ms. Taylor on land owned by Peterson Acres Inc. in the RM of Round Hill, Saskatchewan. Peterson Acres Inc. is a privately held corporation whose sole shareholder and director is Ms. Taylor’s mother.

[4] In or about January 2021, Ms. Taylor and her then spouse David Taylor began discussions with HVR to build the home. Subsequently, Ms. Taylor and Mr. Taylor separated. Ms. Taylor continued the planning for the construction of the home with HVR and eventually agreed on the terms of construction of the home under a “Spec. Sheet Based on estimate dated 8/30/2021”.

[5] HVR built the home. It engaged Bernier Millwork to supply certain cabinetry, custom countertops, millwork and some plumbing fixtures to the project in the fall of 2022 which HVR installed in the home. Bernier Millwork invoiced HVR for the materials and finished cabinetry supplied in the total amount of \$114,046.65,

inclusive of GST. Ms. Taylor was not a party to the subcontract between HVR and Bernier Millwork.

[6] Progress payments were made during construction by Ms. Taylor to HVR including out of a construction mortgage registered against the home in favour of CIBC Mortgage Corporation. However, in or about November 2022, prior to the home being ready for Ms. Taylor to move into, she identified deficiencies in the construction, including with HVR's installation of the millwork and cabinetry supplied by Bernier Millwork.

[7] As of November 24, 2022, \$253,724.82 remained owing to HVR. HVR stopped working on the home. Other than a \$20,000 progress payment paid to it by HVR, Bernier Millwork had not been paid by HVR for the supply of cabinetry, custom countertops, millwork and plumbing fixtures. Ms. Taylor refused to pay the balance of HVR's invoices. On November 29, 2022 HVR registered a claim of lien under *The Builders' Lien Act*, SS 1984-85-86, c B-7.1, against the land upon which the home was built.

[8] On January 16, 2023, HVR commenced a related proceeding in this Court styled as KBG-BF-00011-2023 against Ms. Taylor, David Taylor, Peterson Acres Inc. and Canadian Imperial Bank of Commerce, seeking payment for the balance owing for the construction of the home, including claims pursuant to the trust provisions under *The Builders' Lien Act* [HVR Action]. Bernier Millwork is not a named party in the HVR Action. Ms. Taylor has filed a statement of defence and counterclaim in that action. The HVR Action is ongoing and has not been resolved.

[9] At about the same time that HVR commenced its proceedings, Ms. Taylor approached Bernier Millwork directly to remediate the deficiencies she identified in HVR's installation of the millwork in the home so that she could move into the home.

Bernier Millwork initially declined but subsequently agreed to remediate the deficiencies. Here the parties are at odds as to what the agreement between them was in respect of the same. Although it is not for me to resolve that dispute on this application, some further background is necessary for context.

[10] Ms. Taylor acknowledges she agreed to pay Bernier Millwork for the remediation work to be done. She says she did not agree to pay the original invoiced amounts to HVR by Bernier Millwork for the supply of the cabinetry, custom countertops, millwork and some plumbing fixtures to the project. She says this was the responsibility of HVR and should be paid out of the advances she made to HVR prior to it stopping work on the project.

[11] Bernier Millwork alleges Ms. Taylor agreed to pay the balance owing on the original invoiced amounts to HVR along with the additional cost of the remediation work to be completed by Bernier Millwork. To that end, Bernier Millwork says it re-issued the original invoices to Ms. Taylor, adjusting the same only for PST payable, and forwarded them to Ms. Taylor by email on January 19, 2023.

[12] Ms. Taylor acknowledges receiving the emailed invoices and reviewing the same prior to making an advance payment of \$25,000 to Bernier Millwork on February 3, 2023. She says that payment was made as a good faith gesture, with the intention of claiming the payment from HVR who she maintains is responsible for paying Bernier Millwork's invoices.

[13] Between January 31, 2023 and March 15, 2023, Bernier Millwork completed the remediation work. On April 21, 2023, it emailed Ms. Taylor an invoice in the amount of \$7,871.20 for the remediation work. Ms. Taylor did not immediately pay that invoice, nor did she make any additional payments on the invoices re-issued to her in January 2023 by Bernier Millwork. On May 9, 2024, Bernier Millwork registered

a claim of lien under *The Builders' Lien Act* against the land upon which the home was built. It commenced the Bernier Millwork Action by statement of claim issued on May 24, 2024. In addition to Ms. Taylor, HVR, Peterson Acres Ltd. and Canadian Imperial Bank of Commerce were also named as party defendants.

[14] Ms. Taylor was being represented at that time in the HVR Action by a different lawyer than her current counsel. Her former lawyer was provided with a copy of the statement of claim by Bernier Millwork's lawyer on June 3, 2024, and she sought to coordinate service of the same. Her former lawyer indicated he did not have instructions to accept service of the statement of claim. Ms. Taylor acknowledges her former lawyer brought the claim to her attention, but she did not retain him on the matter.

[15] A copy of the statement of claim was served on Ms. Taylor by a process server on June 25, 2024. Ms. Taylor acknowledges that she picked up some documents on that date, but did not realize or appreciate she was being served with a statement of claim. She avers that at that time she was struggling personally and thought the documents were in relation to the divorce proceedings between her and her former spouse. She did not serve and file a statement of defence to the Bernier Millwork Action.

[16] On August 21, 2024, the lawyer representing HVR in the HVR Action sent an email to Bernier Millwork's lawyer and Ms. Taylor's former lawyer to coordinate service of HVR's statement of defence to the Bernier Millwork Action. She also sought to coordinate a meeting between counsel to discuss procedural steps going forward in the related matters. Her email read in part as follows:

We'd like to schedule a meeting with all counsel involved in this matter, as there are a few procedural matters to discuss going forward. Specifically, (the Bernier Millwork Action) is closely related to the (HVR Action) against Ms. Taylor, and as such, it

would appear that the two matters should likely be consolidated to avoid duplication.

[17] In response, Ms. Taylor's former lawyer indicated they were not representing Ms. Taylor on the Bernier Action and would be withdrawing as her lawyer on the HVR Action. They subsequently served a Notice of Withdrawal of Lawyer dated August 22, 2024 on all parties in the HVR Action.

[18] Bernier Millwork obtained default judgment against Ms. Taylor on October 31, 2024. After the default judgment was granted, Bernier Millwork registered the default judgment in the judgment registry and caused the same to be registered against the real and personal property of Ms. Taylor.

[19] There is no evidence of any communication between Bernier Millwork's lawyer or HVR's lawyer and Ms. Taylor between August 22, 2024 and October 31, 2024 regarding the proposal made by HVR's lawyer to consolidate the two related matters. There is no evidence of any steps taken by Ms. Taylor between June 25, 2024 and October 31, 2024 to address the Bernier Millwork Action. The default judgment was not served on Ms. Taylor.

[20] In January 2025 HVR brought an application under *The Builders' Lien Act* to extend the time for setting the HVR Action down for trial. At that time, Ms. Taylor retained her current lawyer. On January 27, 2025 they sent an email to Bernier Millwork's lawyer advising of their retainer and requesting information and copies of the pleadings in the Bernier Millwork Action. They also sought an undertaking that Ms. Taylor not be noted in default by Bernier Millwork. Bernier Millwork's lawyer responded back that Ms. Taylor had already been noted for default and a default judgment had been taken out, attaching a copy of the same to her response email.

[21] After January 27, 2025 and prior to bringing this application, Ms. Taylor sought to negotiate the setting aside of the default judgment with Bernier Millwork. She made a further payment of \$10,000 through a third party to Bernier Millwork, the effect of which she understood would be to have the default judgment set aside. Bernier Millwork disputes her understanding of that payment and says it was received as a partial payment on the default judgment. Her lawyer also proposed the parties enter into a “Standstill Agreement” against further enforcement proceedings by Bernier Millwork pending the resolution of the outstanding matters between the related parties. Bernier Millwork rejected that proposal, resulting in this application served on the parties on April 10, 2025 and which came before me in chambers on June 26, 2025. HVR takes no position on the application.

### **Analysis**

[22] The legal principles to be applied to an application to set aside a noting for default or a default judgment and permit a defendant to subsequently serve and file a statement of defence under Rules 3-21 and 10-13 of *The King’s Bench Rules* have been considered and applied in numerous decisions of our Court of Appeal and this Court, including *Klein v Schile*, [1921] 2 WWR 78 (Sask CA) [*Klein Schile*]; *Hamel v Chelle* (1964), 48 WWR (NS) 115 (Sask CA); *First City Capital Ltd. v Abramson Enterprises Limited and Abramson* (1988), 68 Sask R 281 (CA); *Bank of Montreal v Pauls* (1984), 35 Sask R 204 (CA); *Willrun Payroll Services Inc. v Prairie Land & Investment Services Ltd.*, 2010 SKCA 42, 350 Sask R 126; *Ballentyne v Benard*, 2012 SKCA 23, 385 Sask R 280 [*Ballentyne*]; *Browne Building Services Ltd. v North Country Homes Ltd.*, 2010 SKQB 20, 349 Sask R 72; *Mutual Equity, Trade and Investment Services Inc. v Graham*, 2016 SKQB 27; and *Czerwonka v Williams*, 2022 SKKB 204. Those principles may be summarized as follows:

1. The principles applicable to opening up a noting for default pursuant

to Rule 3-21 and setting aside a default judgment pursuant to Rule 10-13 are substantially the same.

2. The order to set aside a noting for default or a default judgment and permit a defendant to subsequently serve and file a statement of defence is discretionary.
3. The application should be brought as soon as possible after the judgment comes to the knowledge of the defendant. If there is delay in bringing the application, that delay must be satisfactorily explained.
4. Mere delay will not, in and of itself, defeat the application, unless the delay is wilful or the plaintiff will suffer irreparable harm.
5. The applicant's affidavit must disclose an arguable defence or that there is a *bona fide* question to be decided. It is insufficient to simply swear that there is a defence on the merits. Ordinarily a copy of the proposed statement of defence should be exhibited to the applicant's affidavit.
6. These principles are shaped by the notion that a defendant who has failed or neglected to do something comes before the Court seeking its indulgence on the basis of equitable considerations. The Court is required to consider all of the circumstances, and whether there is a strong reason to deny a defendant his or her day in court when he or she can demonstrate an arguable defence to the claim and the delay has not caused the plaintiff irreparable harm.

### **Assessing delay in bringing the application**

[23] Ms. Taylor was served with the statement of claim on June 25, 2024. The plaintiff argues that Ms. Taylor is a sophisticated businesswoman and should have been aware that she needed to take steps to address the plaintiff's claim in a timely manner. It argues that this was not a question of "mere delay" in the context of the ongoing HVR Action in which Ms. Taylor had filed a statement of defence and counterclaim and given her acknowledgement that her former lawyer had advised her of the statement of claim and her instruction to her former lawyer not to accept service of the same.

[24] In her affidavit, Ms. Taylor swears to the following circumstances in relation to the delay in responding to the statement of claim and the eventual issuance of a default judgment:

1. The location referenced in the affidavit of service of the statement of claim upon her is a strip mall. She recalls picking up documents from the location on or about June 25, 2024, but did not realize or appreciate that she was being served with a statement of claim of Bernier Millwork.
2. She was going through a divorce with her former spouse at that time, and she was struggling personally. She believed the documents she picked up were related to her divorce.
3. She did not appreciate nor understand that she was under any deadline to deliver a defence to the statement of claim of Bernier Millwork. She had received no communication or correspondence from Bernier Millwork or Bernier Millwork's legal counsel between June 25, 2024 and October 31, 2024.
4. In January 2025 Ms. Taylor retained her current lawyer. She was

made aware of the default judgment issuing against her when her current lawyer communicated with Bernier Millwork’s lawyer on January 27, 2025. Thereafter she took immediate steps to address the default judgment, including reaching out to the principal of Bernier Millwork through a third party to try to resolve the matter without the involvement of lawyers, including authorizing a payment of \$10,000 to Bernier Millwork and subsequently offering through her lawyer for the parties to enter into a “standstill agreement” in regard to Bernier Millwork’s enforcement of the default judgment. When those efforts did not result in Bernier Millwork consenting to the removal and discharge of the default judgment or alternatively suspending enforcement of the same, she instructed her lawyer to bring the application to open the noting for default and set aside the default judgment against her in this matter.

[25] There is some validity to the argument of counsel for Bernier Millwork that Ms. Taylor, as a sophisticated businesswoman who had already instructed counsel with respect to the filing of a statement of defence and counterclaim in the related HVR Action, should have had a greater appreciation that not responding in a legal way to a statement of claim could result in a legally enforceable judgment against her by default. However, there is nothing in the evidence to suggest she “wilfully” ignored the claim, particularly considering the ongoing HVR Action where she served and filed a statement of defence and counterclaim. I accept Ms. Taylor’s explanation that in the circumstances she did not fully appreciate that she was under an obligation to respond to the statement of claim as Bernier Millwork’s lawyer took no steps to follow up with her, especially after the email communication from counsel for HVR looking to discuss consolidation of the two proceedings. Let me explain.

[26] It is clear from the evidence that other than the invoices in relation to the remediation work done by Bernier Millwork for Ms. Taylor, the amounts claimed by Bernier Millwork against Ms. Taylor relate to outstanding claims in the HVR Action. Ms. Taylor avers that she intended to claim the amounts paid to Bernier Millwork against the claims of HVR in the HVR Action. The HVR Action includes claims with respect to the Part II trust provisions under *The Builders' Lien Act*. It is a reasonable inference that Ms. Taylor's lack of understanding or appreciation for the necessity of responding to the Bernier Millwork statement of claim may arise out of the fact that she had filed a statement of defence and counterclaim in the HVR Action. Although she is a sophisticated businessman, her sophistication with respect to addressing the claims of Bernier Millwork regarding the supply of materials to the project to HVR is not apparent from all the evidence.

[27] As noted by Justice Caldwell in *Ballentyne* at para 14, "Such conduct may well be negligent; but, if it falls short of a deliberate decision to allow a default judgment to issue, such conduct, in and of itself, does not justify denial of an application to set aside a default judgment brought in a timely way where the applicant has shown an arguable defence and no irreparable prejudice to the plaintiff if the default judgment is set aside." There is no evidence here that Ms. Taylor understood the importance of the statement of claim and deliberately decided to let the matter go to default judgment, whether to vex Bernier Millwork with the cost, delay and inconvenience of defending an application to set it aside or otherwise.

[28] As underscored by counsel for Ms. Taylor, although the circumstances here are not on all fours with those in *Ballentyne*, where the defendant had taken at least one step to indicate an intention to respond to the statement of claim by identifying on the acknowledgement of service his lawyer's address as the address for service of further court documents (para. 15), the affidavit evidence here is clear that the principal

of Bernier Millwork was familiar with Ms. Taylor and had her personal contact information including her cell phone number. It would have been possible for Bernier Millwork or its lawyer to follow up with Ms. Taylor to inquire whether she intended to file a statement of defence to its claim prior to noting her for default and taking out default judgment upon her.

[29] This is particularly important having regard for the communication from HVR's lawyer to the opposing lawyers in the HVR Action on August 21, 2024 looking to serve a copy of HVR's defence to the Bernier Millwork Action and coordinating a meeting to discuss procedural matters between the two closely related actions against Ms. Taylor, including the possibility of consolidation of those two proceedings. From that exchange of correspondence, it is apparent that Bernier Millwork's lawyer was aware that Ms. Taylor's former lawyer did not have instructions to represent her in the Bernier Millwork Action and was intending on withdrawing from the HVR Action.

[30] Upon the withdrawal of her former lawyer, Ms. Taylor became a self-representing litigant in the HVR Action and up until the retainer of her current lawyer, remained a self-representing litigant in the Bernier Millwork Action. As in *Ballentyne*, I find that in such circumstances, as a professional courtesy at the very least, Bernier Millwork's lawyer could have attempted to contact Ms. Taylor to notify her of its intention to proceed to note the matter for default of defence between August 22, 2024 and October 31, 2024 before taking the significant step of noting Ms. Taylor in default and taking out the default judgment.

[31] Here, Ms. Taylor's conduct does not reach the level of wilful default as described in *Ballentyne*. I find that Ms. Taylor has provided a satisfactory explanation to support the setting aside of the noting for default.

**Does the evidence support that Ms. Taylor has an arguable defence to the statement of claim?**

[32] As noted by Justice Caldwell in *Ballentyne* at para 17, “*Klein Schile* and the cases which followed require the applicant to state that the applicant has a good defence upon the merits and to show the nature of that defence *in affidavit form*.” [Emphasis in original]. In its brief of law, Bernier Millwork invites the Court to weigh the affidavit evidence of Ms. Taylor with a focus on assessing the potential success of Ms. Taylor’s proposed defence to the Bernier Millwork Action. It is not for the Court on this application to weigh the evidence. Rather, the focus is whether the pleadings and the applicant’s affidavits (including the exhibited draft statement of defence) contain sufficient facts to support a determination that a defence is at least arguable or presents a *bona fide* question to be decided (*Ballentyne* at para 19).

[33] Having regard for the totality of the affidavit evidence I find Ms. Taylor has provided affidavit evidence which supports the existence of a defence on the merits or presents a *bona fide* question to be decided.

[34] First, there is no written contract between Ms. Taylor and Bernier Millwork. The affidavit evidence puts into issue whether Ms. Taylor contracted with Bernier Millwork only for the remediation work to the home or with respect to payment of the entirety of the Bernier Millwork invoices initially charged out to HVR and subsequently reissued to Ms. Taylor. There is a triable issue as to the nature of the contract between Ms. Taylor and Bernier Millwork. It is not for a judge on this type of application to assess credibility between the parties on that issue. That will be a function of an eventual trial judge.

[35] Second, the evidence establishes that the Bernier Millwork Action is related to the HVR Action. This is evident from the fact that the Bernier Millwork Action names HVR as a party defendant respecting its claim for payment of the

outstanding amounts owing to Bernier Millwork for the supply of cabinetry, custom countertops, millwork and some plumbing fixtures to the project. Each of HVR and Bernier Millwork have registered separate claims of lien under *The Builders' Lien Act* against the land upon which the home was built. Each of HVR and Bernier Millwork are subject to the Part II trust provisions under *The Builders' Lien Act*, including with respect to amounts paid by the owner to the contractor or to a subcontractor. Depending on the outcome of the determination of the nature of the contract between Bernier Millwork and Ms. Taylor, there are triable issues as to whether Bernier Millwork and HVR are in the same class of lien claimants or separate classes of lien claimants but nevertheless with entitlements under ss. 72 and 73 of *The Builders' Lien Act*, including whether the funds paid by Ms. Taylor to Bernier Millwork may be retained by it in priority to other lien claimants, including HVR.

[36] Lastly, although not argued by Ms. Taylor, I note that the statement of claim in the Bernier Millwork Action was issued on May 24, 2025 and served on Ms. Taylor on June 24, 2025. Section 87 of *The Builders' Lien Act* requires that a statement of claim be served within 30 days of issuance. As there are 31 days in May, there may be an argument that service of the statement of claim was improper. The effect of that, if any, in the Bernier Millwork Action may need to be addressed.

[37] In the circumstances, I find that Ms. Taylor has met the requirement of providing affidavit evidence which supports the existence of a defence on the merits or presents a *bona fide* question to be decided.

### **Remedy**

[38] In the circumstances, I determine that the noting for default of Ms. Taylor should be set aside.

[39] As to the setting aside of the default judgment, given the related and overlapping issues in the HVR Action and the Bernier Millwork Action and the competing claims under *The Builders' Lien Act* of HVR and Bernier Millwork with respect to the payments made by Ms. Taylor to them to date, I find this is an appropriate circumstance not to set aside the default judgment. Rather, applying the analysis of Justice Wilkinson in *Duffus v White Estate*, 2005 SKQB 321, 268 Sask R 241 (aff'd at 2006 SKCA 53, 279 Sask R 35) at paras 30-32 and applying the discretion available to the Court under Rules 3-21, 3-87 and 10-13 of *The King's Bench Rules*, it is appropriate here to allow Ms. Taylor to proceed under Rule 3-21, without setting aside the default judgment, but placing the onus on Ms. Taylor to establish that it should be varied, including as to any joint or several obligation of her and HVR to Bernier Millwork, and requiring Ms. Taylor to have the carriage of that proceeding by counterclaim. The execution of the judgment shall be stayed until further order.

[40] Ms. Taylor is to serve and file a statement of defence and counterclaim within 20 days, setting out the particulars of the claim and seeking a variation of the judgment accordingly.

### **Costs**

[41] Although it is oftentimes the respondent who receives costs in relation to this type of application, I determine in these circumstances, including having regard for the related HVR Action, that it is appropriate that costs remain in the cause to be eventually determined by a trial judge in the event the parties are unable to reach a resolution of the outstanding issues otherwise prior to trial.

\_\_\_\_\_  
J.  
F.N. TURCOTTE