2025 SKCA 119 (CanLII)

Court of Appeal for Saskatchewan
Docket: CACV4406

Citation: *Monastyrski v Affinity Credit Union 2013*, 2025 SKCA 119
Date: 2025-11-26

Between:

Donald Monastyrski and Sandra Monastyrski

Appellants
(Defendants)

And

Affinity Credit Union 2013

Respondent
(Plaintiff)

Before:	Schwann, Kalmakoff and McCreary JJ.A.
Disposition:	Appeal dismissed
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:	2024 SKKB 128, Yorkton
Appeal heard:	September 17, 2025
Counsel:	Donald Monastyrski and Sandra Monastyrski on their own behalf Avery Layh for the Respondent

Kalmakoff J.A.

I. INTRODUCTION

[1] Donald Monastyrski and Sandra Monastyrski appeal from a decision in which a Court of King's Bench judge dismissed their application to set aside an order *nisi* for sale by real estate listing, and granted an application brought by Affinity Credit Union 2013 [Affinity] for an order confirming a sale made under the order *nisi* (*Affinity Credit Union 2013 v Monastyrski*, 2024 SKKB 128 [*Decision*]). The central issue in this appeal is the correct interpretation of s. 44(12.3) of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1 [*SFSA*].

[2] The property that was the subject of the order *nisi* is a quarter section of land on which the Monastyrskis reside. It is a "homestead" as defined by s. 2(1)(h) of the *SFSA*. Section 44(10) of the *SFSA* prohibits judges from ordering the sale of mortgaged homesteads in foreclosure proceedings. However, s. 44(12.3) creates an exemption from the operation of that prohibition. It states that s. 44(10) does not apply where the mortgage is made: (a) solely for the purpose of purchasing a homestead; (b) solely for the purpose of new construction or improvements on a homestead; or (c) for both of those purposes.

[3] The judge in this case interpreted the words "mortgage that is made … solely for the purpose" in s. 44(12.3) as referring to "the purpose that is agreed between the lender and the farmer, at the time of making the mortgage", and not to "how the mortgage funds are ultimately used" (*Decision* at para 39). The Monastyrskis contend that the judge was wrong to interpret s. 44(12.3) in that way. They assert that, in light of the protective purpose underlying the *SFSA*, the exemption established by s. 44(12.3) operates only where the funds provided under the mortgage are *actually used* for a purpose specified in subsections (a), (b) or (c).

[4] In my view, the judge did not err; he interpreted s. 44(12.3) correctly. Accordingly, I would dismiss the appeal. My reasons follow.

2025 SKCA 119 (CanLII)

II. BACKGROUND

[5] In July of 2016, the Monastyrskis obtained loan financing from Affinity in the principal sum of $281,250.00. In order to secure the loan, the Monastyrskis granted Affinity a mortgage over their property. The mortgage agreement specified that the purpose of the loan was for the Monastyrskis to "Build [a] new log cabin on property that they own". Schedule "B" to the mortgage agreement also contained the following statement:

> It is agreed an order [of the Farm Land Security Board excluding the mortgage from the homestead protection provisions of s. 44] of the *Saskatchewan Farm Security Act* is not required because this mortgage is made solely for the purpose of purchasing a homestead, new construction on a homestead or making improvements on a homestead.

[6] According to the evidence led on the applications that were before the judge, the Monastyrskis had contracted with a company called Pioneer Log Homes [Pioneer] for the construction of a log home which would be built in British Columbia, delivered to Saskatchewan, and erected on a foundation on the Monastyrskis' property. The contract between Pioneer and the Monastyrskis stated that the total purchase price for the log structure, inclusive of GST, was $168,745.40, and that the Monastyrskis were to pay this sum to Pioneer in three equal instalments: one-third upon execution of the contract, one-third upon half completion of construction, and one-third upon completion of construction but prior to delivery.

[7] Affinity paid out two instalments to the Monastyrskis, through their lawyer, which were in turn forwarded to Pioneer under the terms of the contract: $75,000.00 in August of 2016; and $56,540.00 in January of 2017. Pioneer began construction of the log home. Affinity also advanced additional funds directly to the Monastyrskis for the construction of the home's foundation, which was not part of the Monastyrskis' contract with Pioneer.

[8] Unfortunately, Pioneer never delivered the log home. In the summer of 2017, Pioneer advised the Monastyrskis that the log home it had built for them had been destroyed in a fire. The Monastyrskis made Affinity aware of the situation.

[9] After receiving that information, Affinity made no further payments to the Monastyrskis even though, by that point, it had advanced only approximately one-half of the principal loan funds to them. Affinity relied on a clause in the mortgage agreement that read as follows:

2025 SKCA 119 (CanLII)

> Advances:
>
> All advances on the Mortgage are at Our discretion and neither the signing or the registrations of the Mortgage or the advance of a portion of the Principal Sum will require Us to advance or readvance any money on the Mortgage.

[10] By August of 2021, the Monastyrskis defaulted on repayment of the mortgage. Affinity then took the steps necessary to begin foreclosure proceedings, including providing the requisite notice to the Farm Land Security Board [Board], and complying with the process set out in Part II of the *SFSA*.

[11] On February 26, 2023, Affinity obtained an order under s. 11(1)(a) of the *SFSA*, stating that s. 9(1)(d) did not apply, and granting leave to commence foreclosure proceedings. On May 26, 2023, Affinity issued its statement of claim.

[12] The parties were unable to resolve the matter at mediation, and, on October 31, 2023, Affinity was granted an order *nisi* for sale by real estate listing in relation to the property. The property was listed, offers were received from two purchasers, and the selling officer appointed under the order accepted one of them.

[13] Affinity then applied for an order confirming the judicial sale of the land. The Monastyrskis responded with an application to set aside the order *nisi*. The judge heard the applications together.

[14] In their application, the Monastyrskis argued that, because the mortgaged property was their homestead, s. 44(10) of the *SFSA* prohibited the making of an order *nisi* for sale, which meant that the order made on October 31, 2023, was unenforceable and should be set aside or, at least, that the sale should not be confirmed.

[15] Affinity argued that the judge should not entertain the Monastyrskis' application to set aside the order *nisi*. It took the position that it would be inappropriate for the judge to set aside an order made by another judge of the same court, and that the proper time for the Monastyrskis to have argued that s. 44(10) precluded the making of an order *nisi* for sale would have been before the order *nisi* was made. Moreover, Affinity asserted that s. 44(12.3) of the *SFSA* provided a complete answer to the Monastryskis' application, because the mortgage was made for a purpose that exempted it from the operation of s. 44(10).

2025 SKCA 119 (CanLII)

[16] The judge determined that the Monastyrskis' application was properly before him. In that regard, he held that, if the Monastryskis' position was correct, it would mean the order *nisi* had been made in contravention of a statute, which would constitute an exceptional circumstance to justify setting it aside (*Decision* at paras 22–26). However, he ultimately dismissed the Monastyrskis' application, granted Affinity's application, and confirmed the judicial sale. He stated his bottom-line conclusion as follows:

> [40] There is no dispute that, at the time of making the mortgage, the Monastyrskis and [Affinity] agreed that the mortgage was being made solely for the purpose of new construction on the homestead. For this reason, s. 44(12.3) applies to render s. 44(10) inapplicable to the mortgage.
>
> [41] Consequently, I reject the Monastyrskis' argument that the order *nisi* ought not to have been granted and that it is unenforceable. No exceptional circumstance exists to justify setting aside the order *nisi*.

[17] Even though the judge confirmed the order *nisi* for judicial sale, the sale of the mortgaged property ultimately did not proceed, as the prospective purchaser withdrew the offer that had been accepted.

III. ISSUES AND STANDARD OF REVIEW

[18] The order *nisi* at issue is no longer in effect, which means there is no longer a live controversy regarding its validity. While that renders the appeal moot, it is nevertheless appropriate for this Court to hear the appeal and determine whether the judge erred in his interpretation of s. 44(12.3) of the *SFSA*. This is because answering that question will have the effect of resolving the parties' rights with respect to a critical issue in their ongoing adversarial relationship (see, generally: *Borowski v Canada*, [1989] 1 SCR 342 at 353; *Dearborn v Saskatchewan (Financial and Consumer Affairs Authority)*, 2017 SKCA 63 at para 16; and *Cimmer v Neissner*, 2022 SKCA 60 at para 45, [2023] 2 WWR 153).

[19] The same cannot be said, however, with respect to the Monastyrskis' arguments concerning exceptional hardship, or their allegations that Affinity failed to comply with the *SFSA* or otherwise acted improperly by not advancing the full amount of principal funds. Those arguments need not be addressed in this appeal; in the circumstances, they are most appropriately raised in the Court of King's Bench if Affinity applies for a new order *nisi*.

2025 SKCA 119 (CanLII)

[20] Section 106 of the *SFSA* provides a right to appeal to this Court, from orders made under that Act, on questions of law. A question of statutory interpretation is a question of law, reviewable on the standard of correctness (*Saskatchewan Government Insurance v Giesbrecht*, 2025 SKCA 10 at para 34, [2025] 6 WWR 525 [*Giesbrecht*]; *Saskatchewan Human Rights Commission v Saskatchewan Power Corporation*, 2024 SKCA 13 at para 18; *Regina Bypass Design Builders v Supreme Steel LP*, 2021 SKCA 82 at para 22 [*Regina Bypass*]).

IV. ANALYSIS

A. The relevant legislative provisions

[21] The full title of the *SFSA* states that it is "An Act to provide security for Saskatchewan Family Farms". Several of its provisions are directly relevant to the interpretive exercise required in this appeal and, for both context and ease of reference, I will discuss and reproduce some of them here.

[22] I begin with the pertinent definitions, contained in s. 2:

> **2**(1) In this Act:
>
> …
>
> (f) "**farm land**" means other than in Part VI, real property in Saskatchewan that is situated outside a city, town, village, hamlet or resort village and that is used for the purposes of farming …
>
> …
>
> (h) "**homestead**" means:
>
> (i) the house and buildings occupied by a farmer as his or her bona fide farm residence; and
>
> (ii) the farm land on which the house and buildings mentioned in subclause (i) are situated, not exceeding 160 acres or one quarter section, whichever is greater;

[23] Part II of the *SFSA* bears the heading "Farm Land Security". It contains provisions that govern foreclosure actions and other actions brought by mortgagees in relation to farm land. The purpose of Part II, as stated in s. 4, is "to afford protection to farmers against loss of their farm land".

2025 SKCA 119 (CanLII)

[24] Part II confirms that all foreclosure actions with respect to mortgaged farm land are subject to the *SFSA*, and that no action can be commenced in relation to farm land without a court order. In that respect, the relevant portions of s. 9 and s. 11 read as follows:

> **9**(1) Notwithstanding any other Act or law or any agreement entered into before, on or after the coming into force of this Act:
>
> (a) *The Land Contracts (Actions), 2018 Act* does not apply to farm land and any existing actions with respect to farm land pursuant to that Act are deemed to be discontinued;
>
> …
>
> (d) subject to sections 11 to 21, no person shall commence an action with respect to farm land;
>
> …
>
> **11**(1) Where a mortgagee makes an application with respect to a mortgage on farm land, the court may, on any terms and conditions that it considers just and equitable:
>
> (a) order that clause 9(1)(d) or section 10 does not apply; or
>
> (b) make an order for the purposes of clause 9(1)(f).
>
> (2) Where an order is made pursuant to subsection (1), the mortgagee may commence or continue an action with respect to that mortgage.
>
> (3) Any action that is commenced without an order pursuant to this section is a nullity, and any order made with respect to an action or a proposed action without an order pursuant to this section is void.

[25] In addition to the judicial oversight mandated by the foregoing sections, Part II implements other measures that must be complied with before a mortgagee can apply for an order under s. 11. They include:

(a) the provision of a minimum of 150 days' notice to the farmer and the Board (s. 12(1));

(b) mandatory mediation (s. 12(5));

(c) a requirement that the Board complete a review of the farmer's financial affairs, prepare a written report, and provide it to the farmer, the mortgagee and the mediator (s. 12(4)); and

(d) a requirement that, if the matter is not resolved through mediation, the Board must prepare a written report containing a wide range of information relevant to determining an application under s. 11 (s. 12(12)).

2025 SKCA 119 (CanLII)

[26] Where a mortgagee applies under s. 11 for an order permitting it to commence an action, s. 15 imposes a further requirement for court supervised mandatory mediation, in which the mortgagee must participate in good faith before the application can proceed.

[27] Section 19 directs courts to focus on justice, equity, and the purpose and spirit of the *SFSA* when deciding an application under s. 11. It reads as follows:

> **19** The court shall dismiss an application for an order pursuant to section 11 if it is satisfied that it is not just and equitable according to the purpose and spirit of this Act to make the order.

[28] Part III of the *SFSA* - entitled "Home Quarter Protection" – limits the remedies that lenders can obtain in foreclosure proceedings involving mortgaged homesteads, including by creating a general prohibition against the court-ordered sale of such properties. In that regard, s. 44 reads, in relevant part, as follows:

> **44**(1) The operation of:
>
> (a) a final order of foreclosure; and
>
> (b) an order for possession contained in an order mentioned in clause (a);
>
> insofar as it affects a homestead, is stayed for as long as the homestead continues to be a homestead.
>
> …
>
> (9) Notwithstanding any Act or law:
>
> (a) no order for possession; or
>
> (b) no authority to enter into possession;
>
> of a mortgaged homestead shall be made or given to the mortgagee, except in a final order of foreclosure issued with respect to an action for foreclosure of the mortgage.
>
> (10) Notwithstanding any Act or law:
>
> (a) no order for sale of a mortgaged homestead shall be made in an action for:
>
> (i) foreclosure of the mortgage; or
>
> (ii) any relief other than foreclosure that may be granted to the mortgagee; and
>
> (b) no power of sale contained in a mortgage of a homestead shall be exercised and no directions for sale shall be given.

[29] The homestead protections contained in Part III are not absolute. There are two ways in which a mortgaged homestead may be excluded from the protection of s. 44. The first is under s. 44(12), which permits the Board to "make orders excluding any mortgage or class of mortgages

2025 SKCA 119 (CanLII)

from the operation of this section where, in the opinion of the [Board], it is in the best interests of the farmer".

[30] The second way is set out in s. 44(12.3), the provision in question. It creates an automatic exemption, as long as the mortgage is made for a specified purpose. It reads as follows:

> **44**(12.3) This Part does not apply to a mortgage that is made:
>
> (a) solely for the purpose of purchasing a homestead;
>
> (b) solely for the purpose of new construction or improvements on the homestead; or
>
> (c) for the purposes described in both clauses (a) and (b).

[31] As mentioned above, the interpretation of the words "mortgage is made … solely for the purpose" is at issue in this appeal.

B. The parties' positions

[32] The Monastyrskis contend that the protective purpose of the *SFSA* – which is to keep farmers on their land even when they face financial struggles – requires that the homestead protection provisions in Part III be given full force and effect, and that they not be interpreted narrowly. The Monastyrskis assert that, considering the *SFSA*'s protective purpose, the use of the word "solely" in s. 44(12.3) must be read as encompassing not only the intention of the parties at the time of making the mortgage, but also the *actual use of the funds* advanced by the mortgagee. They argue that the *SFSA* implicitly obliges lenders to monitor the use of funds advanced in relation to homesteads and that, if any of the loan proceeds are not used as intended, the exemption in s. 44(12.3) cannot operate, as articulated in their written submissions:

> The inclusion of "solely" suggests exclusivity - the mortgage must be entirely dedicated to the stated purpose. This wording implies that any deviation in fund undermines the exemption. For example, if a mortgage is "made solely for the purpose" of home construction, but the funds are diverted, the mortgage no longer meets the statutory criteria. If the Legislature had intended for the exemption to apply regardless of actual use, it could have omitted the word "solely." By including "solely," the Legislature signaled that both parties - lender and borrower - must ensure the funds remain tied to the agreed-upon purpose.
>
> …
>
> If construction or improvements did not happen, or if loan proceeds were not used as intended, Affinity as the lender, must lose the benefit of the exemption in s. 44(12.3). The Legislature carved out these exceptions to ensure that a lender, who finances the creation or enhancement of the homestead, has a path to recover their money - but only when that

2025 SKCA 119 (CanLII)

> purpose is fulfilled. A lender cannot circumvent homestead protections simply by stating the loan is for construction or improvements - they must be able to prove the loan was used for that sole purpose.

[33] Affinity takes the contrary view. While it agrees that the purpose of the *SFSA* is to protect farmers against the loss of their farm land, it asserts that purpose cannot be permitted to override the clear and unambiguous wording of the legislative text. Affinity also submits that, in considering the protective purpose of the *SFSA*, one must be mindful of the risk that lenders may balk at providing financing to farmers if their rights of enforcement are not sufficiently defined. As Affinity states in its written submissions:

> When considering the extent of protection afforded to farmers under section 44(12.3), the interests of both the mortgagee and the farmers must be contemplated. Mortgagees require certainty and predictably at the time of advancing funds under a mortgage. Accordingly, the determination of the parties' rights and obligations must be at the time of making the mortgage, not after the advance of funds. Without this certainty, mortgagees would not take homestead mortgages, limiting a farmer's ability to obtain financing.

[34] In short, Affinity argues that proper application of the modern approach to statutory interpretation leads to the conclusion that the operability of the exemption in s. 44(12.3) is contingent upon the purpose agreed to between the farmer and the lender at the time of making the mortgage, and not upon how the mortgage funds are ultimately used.

C. Statutory interpretation – the governing principles

[35] The proper approach to any issue of statutory interpretation is the so-called modern principle articulated in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 [*Rizzo*], and codified in s. 2-10(1) of *The Legislation Act*, SS 2019, c L-10.2, which provides as follows:

> **2-10**(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

[36] In s. 2-10(2), *The Legislation Act* also requires every enactment to be interpreted in a remedial fashion and to be given a "fair, large and liberal interpretation that best ensures the attainment of its objects".

2025 SKCA 119 (CanLII)

[37] The modern approach requires judges interpreting legislative provisions to read the statutory text in harmony with the scheme and object of the Act. While ordinary meaning is the starting point of the interpretive exercise, it is not the end point; statutory interpretation is incomplete without considering context, purpose and relevant legal norms (*R v Wolfe*, 2024 SCC 34 at para 32; *Giesbrecht* at paras 36–37). Even where the ordinary meaning is plain, courts must take into account the full range of contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, and the rule that absurdities are to be avoided (*Ballantyne v Saskatchewan Government Insurance*, 2015 SKCA 38 at para 20, 457 Sask R 254 [*Ballantyne*], citing Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, Ontario: LexisNexis, 2014) [*Sullivan*]).

[38] Nevertheless, the ordinary meaning of the legislative text carries significant weight; where there is no ambiguity in the language of the provision in question, "the text of the provision usually dominates the interpretive exercise" (*Wolfe* at para 61). A court may adopt an interpretation that modifies or departs from the ordinary meaning of the statutory text in some circumstances, but the ordinary meaning should prevail unless there is a reason to reject it based on contextual considerations that are sufficient to justify such a departure (*Oladipo v The College of Physicians and Surgeons for Saskatchewan*, 2024 SKCA 94 at para 36; *Hess v Thomas Estate*, 2019 SKCA 26 at para 51, 433 DLR (4th) 60; *Ballantyne* at para 20).

[39] The modern principle also emphasizes the importance of purposive analysis in statutory interpretation. All legislation is presumed to have a purpose which courts should strive to discover and give effect to through the interpretive process. Interpretations that are consistent with legislative purpose should be adopted, while those that defeat or undermine legislative purpose should be avoided (*Regina Bypass* at para 27, citing *Sullivan* at §9.3; see also *Farm Credit Canada v Gustafson*, 2021 SKCA 38 at para 58; and s. 2-10(2) of *The Legislation Act*). The search for purpose, however, must not overwhelm the interpretive exercise; a court cannot "ignore the words of the statute to achieve what it considers to be a more sensible result" (*Kennedy v Carry the Kettle First Nation*, 2020 SKCA 32 at para 27). The goal of statutory interpretation is to "find harmony between the words of the statute and the intended objective, not to achieve the objective at all costs" (*R v Breault*, 2023 SCC 9 at para 26, citing *MediaQMI inc. v Kamel*, 2021 SCC 23 at para

2025 SKCA 119 (CanLII)

39, [2021] 1 SCR 899, and *Sun Indalex Finance, LLC v United Steelworkers*, 2023 SCC 6 at para 174, [2013] 1 SCR 271).

D. The principles applied

1. The grammatical and ordinary sense of the words

[40] The ordinary meaning of a statutory provision is "the natural meaning which appears when the provision is simply read through as a whole" (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 89, citing *Canadian Pacific Air Lines Ltd. v Canadian Air Lines Pilots Assn.*, [1993] 3 SCR 724 at 735). In the context of this appeal, the crucial portion of s. 44(12.3) contains the words "a mortgage that is made … solely for the purpose of". In my view, the grammatical and ordinary meaning of those words supports the judge's interpretation of the provision. Let me explain why that is so.

[41] Black's Law Dictionary (12th ed 2024) contains the following in its definition of the word "mortgage":

> **1.** A conveyance or retention of an interest in real property as security for performance of an obligation; esp., a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms. — Also termed (archaically) *dead pledge*.
>
> **2.** A lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms.
>
> **3.** An instrument (such as a deed or contract) specifying the terms of such a transaction.

[42] A mortgage is "made" when the parties execute the agreement under which the mortgagor conveys an interest in the real property to the mortgagee in order to secure repayment of the debt created by the loan.

[43] The *Oxford English Dictionary Online*, defines "purpose" as meaning "the reason for which something is done or made or for which it exists; the result or effect intended or sought; the end to which an object or action is directed; aim" (Oxford University Press, December 2024). The use of the word "solely" as a modifier suggests exclusivity of purpose.

2025 SKCA 119 (CanLII)

[44] The statutory text of s. 44(12.3) contains no explicit reference to time, makes no mention of the ultimate *use* of the funds advanced under the mortgage, and has no wording that would suggest its operability is contingent on whether the intended purpose is fully realized. It refers only to the purpose for which the mortgage is made and limits the operability of the exemption to certain enumerated purposes.

[45] Considering the foregoing, in my view, the grammatical and ordinary sense of the words used in s. 44(12.3) speaks to the purpose the parties have in mind at the time of executing the mortgage agreement, and nothing more.

2025 SKCA 119 (CanLII)

2. Context and purpose

[46] Although the grammatical and ordinary meaning of the words used in s. 44(12.3) is clear and unambiguous, the interpretive exercise does not end there. Statutory provisions cannot be interpreted in isolation. Context always has a role to play, as the words of a statute "take their colour from their surroundings" (*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 27, [2002] 2 SCR 559). The modern principle requires a court to "harmonize the grammatical meaning of the text with the other indicators of legislative intent gleaned from reading the text in its entire context" (*Acton v Rural Municipality of Britannia No. 502*, 2012 SKCA 127 at para 17, leave to appeal to SCC refused 2013 CanLII 33922 [*Acton*]). Legislative intention "is discovered by looking at the words of the provision, informed by its history, context and purpose" (*R v Mabior*, 2012 SCC 47 at para 20, [2012] 2 SCR 584; see also *R v Alex*, 2017 SCC 37 at paras 31–32, [2017] 1 SCR 967).

[47] As I will discuss, contextual considerations provide no basis to depart from the grammatical and ordinary meaning of the statutory text when interpreting s. 44(12.3). The scheme and object of the *SFSA*, the relevant legislative history, the jurisprudential treatment of the section, and the application of other relevant interpretive principles all reinforce that the grammatical and ordinary meaning of the statutory text aligns with the legislative purpose behind it.

a. The scheme and object of the *SFSA*

[48] The overall scheme and object of the *SFSA* were succinctly described by Ryan-Froslie J.A. in *Naber v John Deere Financial Inc.*, 2020 SKCA 94, 454 DLR (4th) 81, where she wrote as follows:

> [22] The *SFSA* is farm debt legislation enacted for the benefit of farmers. Its full title suggests its object: an Act to provide for security for Saskatchewan family farms. The purpose of the *SFSA* is to assist farmers to retain their farming operations in the face of financial instability, generated by the vagaries of the farming industry such as weather, blight, transportation and market upheavals. It provides farmers with protection against seizure of their land and equipment and provides additional tools to enable them to work out accommodations with their creditors.

[49] The legislative objective underlying the *SFSA* requires that its protective provisions be given a liberal interpretation consistent with that objective (see: *Strelioff v Farm Credit Corp.*, [1990] 6 WWR 742 at para 21 (Sask CA); and *Bank of Montreal v Nevin*, [1996] 7 WWR 317, 144 Sask R 178 (CA)). That approach does not mean, however, that the interests of the farmer will always prevail, or that the interests of lenders can be ignored. As Jackson J.A. observed in *Royal Bank of Canada v Lockhart* (1996), 136 DLR (4th) 318 (Sask CA) [*Lockhart*], to interpret the *SFSA* as protecting only the interests of farmers would be "an obvious oversimplification", and proper application of its provisions in foreclosure proceedings "require[s] a constant balancing between creditors and farmers" (at para 19). Writing for the Court in *MFI Ag Services Ltd. v Farm Credit Canada*, 2023 SKCA 30, Tholl J.A. made a similar point, stating as follows:

> [34] The purpose of the relevant part of the *SFSA*, Part II: Farm Land Security, is set out in s. 4: "The purpose of this Part is to afford protection to farmers against loss of their farm land". However, as was noted by Jackson J.A. in *Royal Bank of Canada v Lockhart* (1996), 136 DLR (4th) 318 (Sask CA) at para 19, this statement from s. 4 does not fully capture the intricacies underlying Part II. This protection is not absolute. It is not the purpose of the *SFSA* to thwart the enforcement efforts of lenders as against farmers who are in default of their obligations that are secured by mortgages on farm land. At some point, a lender must be able to realize on the mortgage if the farmer is unable to pay the underlying debt that it secures. Were it otherwise, credit to farmers would grind to a halt. Accordingly, a proper interpretation of the *SFSA* involves some balancing of the interests of farmers with those of their creditors. The *SFSA* ensures that enforcement involving foreclosure or judicial sale of farm land is done in a way that gives farmers an opportunity to work through the periodic hardships that often accompany the agriculture industry and to assist them in meeting their financial obligations. It does this through the erection of safeguards and the establishment of a process that assists the parties to resolve the issues arising out of a default on a loan that is secured by a mortgage on farm land.
>
> (Emphasis added)

2025 SKCA 119 (CanLII)

[50] I recognize that Tholl J.A.'s comments in the foregoing extract were made in relation to Part II, which deals with the security of farm land in general, and not in relation to the homestead protection provided under Part III, where s. 44(12.3) resides. I also acknowledge that Parts II and III "differ in purpose", in that Part II gives farmers the time to arrange their financial affairs in order to stave off foreclosure, while Part III, in some instances, effectively "takes away security and … leaves the lender with no remedy to collect even part of the debt as long as the farmer and his or her family remain on the land" (*Lockhart* at para 40; see also *Glute v Agricultural Credit Corp. of Saskatchewan* (1994), 121 Sask R 110 (QB)). Nevertheless, in my view, Tholl J.A.'s comments apply to Part III, because its legislative history evinces a recognition by the Legislature of the need to balance the interests of farmers with those of their creditors, to ensure that lending institutions do not turn their backs on providing loan financing to farmers. I will explore that next.

2025 SKCA 119 (CanLII)

b. The relevant legislative history

[51] In *A Legacy of Protection: The Saskatchewan Farm Security Act: History, Commentary & Case Law* (Langenburg, Sask: Twin Valley Books, 2009) [*Layh*], Donald H. Layh discussed the history and objectives of Part III of the *SFSA*, which is derived from s. 7 of *The Farm Security Act 1944*, SS 1944 (2d Sess), c 30.

[52] Section 7 of *The Farm Security Act* provided that a final order of foreclosure made in relation to a homestead mortgage would be stayed so long as the homestead continued to be a homestead, except where the mortgage was granted for the purpose of securing the purchase price, or part of the purchase price of the land, and the mortgage was granted to the Canadian Farm Loan Board or the Farm Credit Corporation. The Provincial Mediation Board could make an order excluding a mortgage or a class of mortgages from the operation of s. 7. As *Layh* notes, the purpose of this section was to shield farmers from alienating their homestead property by executing a mortgage that was not in their best interests, through "inadvertence, foolishness or duress" (at 278).

[53] *The Farm Security Act* remained in effect until 1988, when it was repealed and replaced with the *SFSA*. At that point, s. 7 of *The Farm Security Act* was incorporated into Part III of the *SFSA*, placing "slightly altered but essentially same-spirited protection for homesteads into sections 43 and 44 of the SFSA" (*Layh* at 282; see also *Royal Bank v Morin* (1997), 157 Sask R 315 (QB) [*Morin*] at para 5). Upon its enactment in 1988, Part III of the *SFSA* required an

exclusionary order for all foreclosure proceedings involving homesteads, regardless of the mortgage's purpose (s. 44(12)). This was a change from *The Farm Security Act*, under which exclusionary orders were not required where the mortgage secured the purchase price of the homestead (*Layh* at 286–287).

[54] The *SFSA* was amended by *The Saskatchewan Farm Security Amendment Act, 1992*, SS 1992, c 74 effective September 20, 1993. Section 44(12.3) was included in those amendments and, as noted, it provided that Part III of the *SFSA* did not apply where a mortgage was made solely for the purpose of purchasing a homestead and/or solely for the purpose of new construction or improvements on the homestead.

[55] The amendments containing s. 44(12.3) came about as a result of consultation by the Farm Debt Advisory Committee [FDAC]. In January of 1992, the Honourable Bernhard Wiens, then Minister of Agriculture and Food, appointed the FDAC to examine possible solutions to address the farm debt problem in Saskatchewan. After engaging in extensive consultation with farmers, farm organizations, agricultural lenders, educators, and government representatives, the FDAC released its report (Farm Debt Advisory Committee, *Report of the Farm Debt Advisory Committee March 1992* (Chair: Hartley Furtan) [*Report*]). As the *Report* was considered by the Legislature in making the amendments to the *SFSA* that are at issue, it is a contextual factor that helps to shed light on the legislative purpose of s. 44(12.3) and is entitled to weight in the interpretive process (*Acton* at paras 36–42).

[56] As part of the *Report*, the FDAC examined potential ways to fine-tune homestead security legislation, including the treatment of construction and purchase money mortgages on homesteads. Ultimately, it recommended that the Government amend s. 44 of the *SFSA* to exclude "purchase money mortgages for purchase of the home quarter" and "construction mortgages" from the operation of the homestead protection provisions (at 41).

[57] One of the reasons that the FDAC made this recommendation was because the Board had requested amendments to s. 44 of the *SFSA* to "alleviate the heavy burden of reviewing mortgages for which it invariably granted exclusionary orders – mortgages that allowed farmers to purchase homesteads or were used to finance new construction or improvements" (*Layh* at 310). The FDAC also explained that such waivers were generally "in the best interests of farmers" and that requiring

2025 SKCA 119 (CanLII)

an individual waiver from the Board in each case was "an unnecessary and expensive additional burden for farmers, lenders and the [Board] alike" (*Report* at 41).

[58] In other words, the addition of an automatic exemption provision was seen as beneficial to farmers, lenders, and the Board.

[59] The Government acted on the *Report's* recommendations in enacting s. 44(12.3). On second reading of *The Saskatchewan Farm Security Amendment Act, 1992*, the Honourable Bernhard Wiens explained that the changes in the *SFSA* were proposed as a result of the consultation carried out by the FDAC (Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)*, 22nd Leg, 2d Sess (16 July 1992) at 1527 (Mr. Wiens)).

[60] The interpretation of s. 44(12.3) advanced by the Monastyrskis runs counter to the intent disclosed by the foregoing legislative history, as it would require lenders to either seek a s. 44(12) exclusion order in every case where they wish to pursue foreclosure in relation to a homestead, or to monitor the use of the mortgage funds to ensure they are only used for new construction or improvements on the homestead. Neither of those outcomes would be consistent with the purpose of the amendments that produced s. 44(12.3). While it may be fairly observed that lenders already have obligations under mortgages, interpreting s. 44(12.3) as the Monastyrskis say it should be interpreted would add to those obligations, make them more onerous, increase the associated costs in ensuring compliance, and reduce the level of security available, all of which could reasonably be expected to lead lenders to shy away from granting homestead mortgages. That cannot be what the Legislature intended.

[61] Additionally, in *Morin*, Matheson J. explained that the purpose of the changes to s. 7 of *The Farm Security Act* and its incorporation into s. 44 of the new *SFSA* "was to give the [Board] power, in appropriate circumstances, to waive the staying provisions relating to homesteads when foreclosure took place. That was intended to provide an incentive to lending institutions to loan money on the security of home quarters" (at paras 5–6).

[62] While s. 44 was ultimately amended by the addition of s. 44(12.3) to automatically exempt mortgages made solely for the purpose of purchasing a homestead and/or solely for the purpose of new construction or improvements on a homestead from the application of Part III, it is apparent

2025 SKCA 119 (CanLII)

that this amendment was similarly geared to achieving the objective of providing lenders with an incentive to loan money on the security of home quarters.

[63] The Monastyrskis' assertion that s. 44(12.3) necessarily imposes additional fund-use-monitoring obligations on lenders does not align with the interpretation of the overall scheme of the *SFSA*, as described by this Court in *Lockhart*, or the objectives of s. 44, as described in *Morin* (at para 6). This is because, as I see it, the Monastryskis' interpretation would not balance the interests of both creditors and farmers. Imposing the type of additional and more onerous obligations on mortgagees implicit in their interpretation would act as a disincentive to mortgagees to loan money on the security of home quarters.

[64] On the other hand, an interpretation that focuses on the parties' purpose in creating the mortgage has the effect of balancing the interests of creditors and farmers by ensuring that farmers are able to secure funding for new construction or improvements to their homesteads, while also considering creditors' need for certainty (see *Layh* at 24).

[65] Pulling all of that together, in my view, the legislative history behind s. 44(12.3) also supports an interpretation that agrees with the ordinary and grammatical sense of the wording.

c. Treatment in the jurisprudence

[66] Section 44(12.3) has received little attention in the reported jurisprudence. However, in those cases where it has been considered, judges have found the operation of s. 44(12.3) to turn on the purpose for which the mortgage was given, and not on whether that purpose was ultimately achieved (see: *Morin*; and *Robert L. Conconi Foundation v Bostock*, 2016 SKQB 399, 99 CPC (7th) 337). While such treatment is not determinative of the proper interpretation, it supports the grammatical and ordinary sense construction of the section.

d. Other relevant principles – absurdities to be avoided

[67] It is a well-established principle of statutory interpretation that the Legislature does not intend to produce absurd consequences (*Rizzo* at para 27; *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 31, [2017] 2 SCR 289). Absurdity occurs if a particular interpretation: (i) leads to ridiculous or frivolous consequences; (ii) is extremely unreasonable or inequitable; (iii) is illogical or incoherent; (iv) is incompatible with other

2025 SKCA 119 (CanLII)

provisions or with the object of the enactment; or (v) defeats the purpose of the statute or renders some aspect of it pointless or futile (*Rizzo* at para 27; *Ballantyne* at para 19; *Ludwig Farms Ltd. v Whitecap Resources Inc.*, 2025 SKCA 37 at para 12).

[68] In my respectful view, this principle also weighs against the interpretation of s. 44(12.3) for which the Monastyrskis advocate. An interpretation that would limit the operability of the exemption in s. 44(12.3) to circumstances in which the lender could prove that all of the funds advanced under a mortgage had been used for the intended purpose would result in an absurdity, as it would effectively require a lender to look over the farmer's shoulder throughout the entire construction process, lest they be left without any security for the loan if a farmer could later establish that even one dollar of the mortgage funds was spent on something other than the construction project. Such an outcome would clearly defeat the legislative purpose of ensuring that farmers continue to be able to obtain homestead financing, because it would deter creditors from providing that type of financing. This also favours an interpretation that does not stray from the plain wording of the section.

E. Conclusion on the proper interpretation of s. 44(12.3)

[69] As a bottom line, I conclude that the judge correctly interpreted s. 44(12.3) of the *SFSA*, when he stated as follows (*Decision* at para 39):

> …in referring to "a mortgage that is made ... solely for the purpose", s. 44(12.3) refers to the purpose that is agreed between the lender and the farmer, at the time of making the mortgage, not to how the mortgage funds ultimately are used. The provision does not impose on the lender an obligation to ensure that the mortgage funds are used for the agreed purpose.

[70] That being so, the appeal must be dismissed.

V. CONCLUSION

[71] I would dismiss the appeal, and affirm the judge's determination that, in the circumstances of this case, s. 44(12.3) applies to render s. 44(10) of the *SFSA* inapplicable to the mortgage.

2025 SKCA 119 (CanLII)

[72] The mortgage agreement provides for the recovery of solicitor-client costs in the event that Affinity is required to take legal action to enforce its terms and realize on its security. However, an agreement between the parties does not supersede the court's discretion over costs, and the court may refuse to enforce a contractual provision regarding recovery of solicitor-client costs where there is good reason for so doing, including where circumstances particular to the case render the imposition of solicitor-client costs excessive or unduly onerous (*Rozdilsky v Kokanee Mortgage M.I.C. Ltd.*, 2020 SKCA 1 at para 10). Such circumstances exist here. Accordingly, I would award the costs of the appeal to Affinity, fixed at $1,500.00.

"Kalmakoff J.A."

Kalmakoff J.A.

I concur.

"Schwann J.A."

Schwann J.A.

I concur.

"McCreary J.A."

McCreary J.A.

2025 SKCA 119 (CanLII)