

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 2

Date: 2026 01 06
Docket: KBG-ES-00039-2023
Judicial Centre: Estevan

BETWEEN:

AFFINITY CREDIT UNION 2013

PLAINTIFF

- and -

CHARLES MURRAY WILSON, DANIEL STAPLES AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF
NELLIE ADAMS, THOMAS JAY JOHNSON, HEATHER
SHARON JOHNSON and TERESA MAY JOHNSON

DEFENDANTS

Counsel:

No one appearing

FIAT
January 6, 2026

CROOKS J.

[1] This matter was brought to me for direction based on the following circumstances.

Background

[2] Charles Murray Wilson [Wilson] had a mortgage registered against a

number of parcels of land. The mortgage was dated July 10, 2020 in favour of Affinity Credit Union 2013 [Affinity]. He defaulted on his obligations under the mortgage. Affinity sought to foreclose on the land.

[3] On July 19, 2023, the Court determined that s. 9(1)(d) of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1, did not apply.

[4] Affinity issued a Statement of Claim against Wilson along with a number of additional defendants as parties with an interest registered against the land: Daniel Staples as Personal Representative of the Estate of Nellie Adams, Thomas Jay Johnson, Heather Sharon Johnson, and Teresa May Johnson [Additional Defendants]. The titles to the land being foreclosed upon confirm the Additional Defendants had registered judgments they had received against Wilson.

[5] On January 30, 2024, an Order Nisi for Sale by Real Estate Listing [Order Nisi] was granted. Wilson did not redeem the land. An offer was received that complied with the terms of the Order Nisi.

[6] Affinity brought an application for an order confirming the sale. When that application was heard, Wilson requested an adjournment to permit an opportunity to pursue a claim in relation to the Estate of Nellie Adams, although he filed no affidavit evidence on the application. As this was a distinct issue from the application to confirm the sale of the land and as the terms of the Order Nisi had been met, the application was granted and an order confirming the sale was issued on November 27, 2024 [Order Confirming Sale].

[7] The Order Confirming Sale directed that the proceeds of sale were to be applied as follows:

1. In payment of the expenses of the sale, including an allowance for the officer conducting the sale;

2. In payment of taxes and arrears due and payable to the date of confirmation of sale;
3. In payment of the amounts due to the Plaintiff under the subject mortgage together with interest at the rate specified in the mortgage to the date of payment to the Plaintiff;
4. In payment of the amounts due to the Plaintiff under the mortgage registered against title to Parcels H and I as Interest Register Number 107647511; and
5. The balance, if any, to be paid into Court to the credit of this cause.

[8] On January 23, 2025, \$2,298,803.58 was paid into Court to the credit of this cause. Affinity has not yet filed an application for a final assessment of costs.

[9] On May 28, 2025, the Sheriff executed a Notice of Seizure of Account in the amount of \$341,838.45 [Notice of Seizure]. The Notice of Seizure was provided to the Court of King's Bench, Judicial Centre of Estevan as the "account debtor" and includes the following:

Notice to Court of King's Bench – Judicial Center of Estevan
ATTN: Local Registrar, account debtor:

TAKE NOTICE that pursuant to *The Enforcement of Money Judgments Act*, all accounts or monetary obligations owed by the account debtor to **Charles Murray Wilson** the judgment debtor(s) are SEIZED effective immediately upon the service of this notice upon the account debtor. The seizure is pursuant to the enforcement of all amounts remaining owing under the above-mentioned judgment as follows:

TOTAL ESTIMATED AMOUNT OWING \$341,838.45

...

YOU ARE HEREBY REQUIRED to pay over to the sheriff, at the address below, all accounts, monies, cash or other monetary

obligations owing to the judgment debtor, including those held to the credit of the judgment debtor jointly with another, to the limit of the amounts remaining owing under the above noted judgment.

...

[10] It appears from the Notice of Seizure that the Sheriff is seeking to enforce a number of judgments against Wilson, all of which total \$341,838.45 and reflect the following judgments:

- *Cynthia Miller and Kirk Miller v Charles Murray Wilson*, Judgment #302666269;
- *Daniel Peter Staples in his capacity as the Executor of the Estate of Nellie Elizabeth Adams and the Salvation Army v Charles Wilson*, Judgment # 302184805;
- *Daniel Peter Staples in his capacity as the Executor of the Estate of Nellie Elizabeth Adams, Daniel Peter Staples and Adams' Acres Limited and Paul Elash, Q.C. v Charles Murray Wilson*, Judgment #302184800; and
- *Daniel Peter Staples, in his capacity as the Executor of the Estate of Nellie Elizabeth Adams v Charles Murray Wilson*, Judgment #302184803.

Issue

[11] The issue is whether the Sheriff can simply seize the funds which are “paid into Court to the credit of this cause”.

Analysis

[12] Under *The Enforcement of Money Judgments Act*, SS 2010, c E-9.22, the Sheriff has the following authority to seize funds held by the Court:

71(1) The sheriff may seize money in court:

(a) that is due to the judgment debtor at the date of seizure; or

(b) to which the judgment debtor becomes entitled within 30 days after seizure.

(2) The sheriff may effect seizure pursuant to subsection (1) by personally serving notice of seizure on the local registrar of the court.

(3) Unless the court orders otherwise, a local registrar of the court who is served with a notice of seizure pursuant to subsection (2) shall pay the amount mentioned in subsection (1) to the sheriff when it is or becomes payable to the judgment debtor.

(4) Sections 58, 62, 67 and 69 do not apply to the local registrar of the court.

(5) A sheriff may seize money in a sheriff's possession or control:

(a) that is payable to a judgment creditor pursuant to this Act, if:

(i) the judgment creditor is also a judgment debtor; and

(ii) the sheriff effecting the seizure is in possession of an enforcement instruction relating to a judgment against that judgment creditor; or

(b) that is received by the sheriff pursuant to a preservation order made against a defendant, judgment debtor or transferee if the sheriff effecting the seizure is in possession of an enforcement instruction relating to a judgment against the person who, apart from the preservation order, is entitled to the money.

(6) The sheriff may effect seizure pursuant to subsection (5):

(a) in the circumstances mentioned in clause (5)(a), by serving notice on the judgment debtor who is also a judgment creditor; and

(b) in the circumstances mentioned in clause (5)(b), by serving notice on the person who, apart from the preservation order, is entitled to the money.

(7) If a person other than the sheriff effects a seizure, a copy of the notice of seizure mentioned in subsection (6) shall be served on the sheriff.

[13] The issue here is that the money held by the Court is not due to Wilson

as the “judgment debtor”. For example, Wilson could not simply walk into the courthouse and have these funds paid directly to him. In fact, at this point, entitlement to the funds has not been determined and no party has the right to demand the payment of these funds absent a Court order.

[14] I recognize that there has been a change in the legislated process following the repeal of *The Executions Act*, RSS 1978, c E-12 (rep) and *The Creditors’ Relief Act*, RSS 1978, c C-46 (rep), which specifically required an application prior to the payment of funds to the Sheriff. The Saskatchewan Court of Appeal considered this now repealed legislation in *Saskatchewan (Sheriff, Judicial Centre of Saskatoon) v Gadzella*, 2005 SKCA 115, stating:

6 The sheriff took the position that s. 5 of *The Executions Act* entitled him to seizure in the circumstances, as conceded, where the fund held in court was to the credit of the execution debtor and not subject to any further adjudication. This, in our view, is correct, as far as it goes, in relation to the substantive right of the sheriff to the funds at issue. However, that right is subject to the procedural requirement of s. 31 of *The Creditors’ Relief Act* that application must be made for payment out of funds paid into court. This interpretation is supported by the observation that while s. 5 of *The Executions Act* speaks generally to the right of the sheriff to seize “money ... belonging to the debtor,” s. 31 of *The Creditors’ Relief Act* specifically addresses the sheriff’s entitlement to funds paid into court. It is also supported by the general principle that when funds are paid into court by order of the court, as was the case in this instance, it is to be presumed that the purpose of such an order is to prevent dispersal of the funds without the supervision of the court, to protect legitimate competing claims to the funds. That was clearly the intent in this case, for the original order that the proceeds of sale be paid into court was accompanied by an instruction that the sheriff be notified of the order, presumably to insure that the proceeds were available for execution creditors.

7 Accordingly, we are of the view that the sheriff’s original seizure was unlawful.

[Emphasis added]

[15] While the legislation may have changed, the general principle remains the same – when funds are paid into court by order of the Court, it is presumed that the purpose of such an order is to prevent dispersal of the funds without the supervision of the Court in order to protect legitimate competing claims to the funds.

[16] Rule 10-47(2) of *The King's Bench Rules* makes it clear that the proceeds resulting from the sale are to be paid into court to the credit of the cause to be applied as directed by the Court. Rule 10-47 is directly relevant to foreclosure actions and provides clear direction for the moneys resulting from the sale of land:

10-47(1) If a sale, mortgage, partition or exchange of real property is ordered, the Court may, in addition to any other power it has, authorize the sale, mortgage, partition or exchange to be carried out:

- (a) by laying proposals before the judge in chambers for his or her sanction; or
- (b) subject to subrule (3), by proceedings out of Court.

(2) Any moneys resulting from the sale, mortgage, partition or exchange must be paid into Court or to trustees, or otherwise dealt with as the judge in chambers may order.

...

(5) For the purposes of this rule:

- (a) an order nisi for sale of land subject to a non-matured mortgage is to be in Form 10-47A;
- (b) an order nisi for sale of land subject to a matured or demand mortgage is to be in Form 10-47B;
- (c) an order nisi for sale of land subject to a non-matured mortgage by real estate listing is to be in Form 10-47C;
- (d) an order nisi for sale of land subject to a matured or demand mortgage by real estate listing is to be in Form 10-47D; and
- (e) an order confirming sale is to be in Form 10-47E.

...

(7) An applicant for an order under this rule who seeks solicitor and client costs shall identify in the materials filed in support of the application the contractual provision relied on to claim those costs.

[Emphasis added]

[17] In *Toronto-Dominion Bank v Schell*, 2014 SKQB 344[*Schell*], a decision which addressed deficiencies in a draft order nisi for judicial sale, Rothery J. confirmed what proceeds from the sale of land are to be included at the judicial sale stage of the proceedings absent further application to the Court:

14 Rule 10-47(2) and the corresponding form 10-45A make it clear that the purchase monies are to be paid into court to the credit of the cause to be applied as directed by the court. While it may be permissible to have the outstanding property taxes and real estate commission paid out of the proceeds of sale, the determination of reasonable costs allowed under the mortgage is a matter for the court to determine upon further application.

15 Solicitor-client costs must be assessed by the court, upon application with service upon the defendants. The monies cannot be disbursed to the plaintiff until that assessment has been made. See: *CIBC v Roberts*, 2006 SKQB 44.

16 Monies owed under the mortgage are to be set by the court on further application; the plaintiff does not receive those funds in advance. There may be accounting issues that the defendants may wish to address and the application to confirm the sale allows for this relief. The proper forum to disburse funds is the application to confirm the sale, if the judicial sale process has proved successful.

[Emphasis added]

[18] In *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133 [*Keep*], Robertson J. set out clear and specific guidance on the assessment, payment and recovery of costs at the conclusion of a foreclosure proceeding after an order confirming sale has been granted.

38 Assessment of costs is required where there is judicial sale and either a surplus to be paid to the former owner or the

possibility of a deficiency judgment against that former owner or guarantor of the mortgage debt. In those cases, the allowable costs must be determined so that the amount payable to or owed by the mortgagor or guarantor is accurately calculated.

...

44 Sale proceeds may not be disbursed before the assessment of costs (*CIBC Mortgages Inc. v Roberts*, 2006 SKQB 44 [*Roberts*]; *Schell* at paras 15-18; and *Irvine* at paras 8 and 10).

...

65 All costs must be determined by the court in the assessment of costs (*The Limitation of Civil Rights Act*, ss 8(2) [RSS 1978, c L-16]). This includes legal fees, real estate fees, selling officer fees, taxes, and property management costs. A mortgagee which fails to obtain court approval of costs cannot later include those costs in a deficiency judgment.

66 The court's award of costs - in particular, the amount of costs allowed - determines the net sale proceeds. This necessarily affects the calculation of any deficiency judgment.

[Emphasis in original]

[19] This matter is complicated by there being a number of judgments against Wilson. Some of these judgments were registered upon the foreclosed upon titles, some were obtained subsequent to the foreclosure.

[20] For example, there is a separate matter which appears to give rise to one of the judgments in the Notice of Seizure and which is unrelated to the within foreclosure action – *Kirk Miller and Cynthia Miller v Charles Murray Wilson*, KBG-ES-00026-2023 [Miller Action]. In the Miller Action, the plaintiffs attempted to enforce a mortgage after Wilson defaulted on his obligations. The Miller Action was against different land, not those subject to the within foreclosure proceeding. The endorsement of March 4, 2025 states:

At the request of the plaintiff, with the consent of the defendant, the matter will be adjourned *sine die* returnable on 14 days notice

so that the parties can attempt to resolve the matter by way of other proceeds that have been paid into court.

[21] Subsequently, a Consent Judgment was issued on March 19, 2025 in the Miller Action with Wilson agreeing to pay \$280,457.03 plus costs assessed at \$1,940.96. While there may be a judgment owed to Kirk Miller and Cynthia Miller, that judgment arose after the Order Confirming Sale and was not registered against the land which generated the proceeds held by the Court. Nor were the Millers defendants in the within action as their mortgage was registered against different land. And yet they are attempting to satisfy this Consent Judgment by accessing proceeds paid into court on the within action and in priority to those with an interest registered against the foreclosed upon lands, which gave rise to the surplus.

[22] While it may have been the intention of the parties in the Miller Action to utilize the surplus proceeds paid into court on the within foreclosure action for the purpose of satisfying an unrelated judgment, any payment arising from funds paid into court to the credit of this cause require approval of the Court.

[23] Further, of those Additional Defendants who had interests registered against the foreclosed upon land, it is only Daniel Staples as Personal Representative of the Estate of Nellie Adams who has provided judgments to the Sheriff for enforcement. However, the remaining defendants who may have a direct interest in the proceeds of the land by virtue of their registered interest – Thomas Jay Johnson, Heather Sharon Johnson, and Teresa May Johnson – have had no notice of the potential disbursement of the sale proceeds despite being a party to the within action.

[24] The Notice of Seizure is predicated on the assumption that the entirety of the proceeds held by the Court are owed to Wilson. However, what portion of the proceeds Wilson is entitled to, if any, is yet to be determined. There remain a number of complications which may impact the payment of the proceeds held by the Court

which speak directly to the need for judicial oversight in the payment of these funds and notice to all parties. Affinity continues to have a claim for their final assessment of costs. There were judgments registered against the land by parties to this action – Thomas Jay Johnson, Heather Sharon Johnson, and Teresa May Johnson – which are not reflected in the Notice of Seizure despite their apparent interests in the proceeds. Further, there are judgments in the Notice of Seizure with no connection to the foreclosure proceedings which may bear different considerations than those which were registered.

[25] While the Sheriff may serve a notice of seizure on the Court, payment to the Sheriff cannot occur until the Court determines what part of the proceeds, if any, are payable to the judgment debtor. It is only once the Court determines whether any surplus proceeds are owed to the judgment debtor that they will be remitted to the Sheriff – and only in relation to those judgments which are not satisfied through the Court-ordered distribution of those proceeds.

[26] It is implicit in an order confirming sale that the funds paid into court to the credit of the cause can only be paid out, dealt with or applied as ordered by the Court. There must be an application, on notice to all parties, of the request for these funds be paid out of court.

[27] This principle is not limited to surplus proceeds in a foreclosure proceeding but also extends to any proceeds paid into court to the credit of a cause where the entitlement to those proceeds has yet to be determined.

[28] The costs incurred by the mortgagee in the foreclosure proceedings are resolved by application on notice to all interested parties. That is the time when parties would first have an opportunity to speak to the distribution of the proceeds which may have been paid into court to the credit of the cause.

[29] To be clear, the payment of proceeds through a judicial sale unfolds as follows:

- a. The application for judicial sale may include a request for the payment of outstanding property taxes and real estate commissions to be paid from the proceeds of sale [*Schell* at para 14];
- b. The application confirming sale may include the calculations and request for payment of the monies owed under the mortgage [*Schell* at para 16];
- c. The application for an assessment of costs may include the request for all remaining costs, such as legal fees, real estate fees, selling officer fees, taxes and property management costs [*Keep* at para 65];
- d. It is only after the assessment of costs that the balance of the deficiency judgment or amount of surplus proceeds can be calculated [*Keep* at para 66];
- e. All remaining proceeds shall remain paid into court to the credit of the cause and disbursed only through an application with notice, heard either concurrent with the application for an assessment of costs or subsequently through an application for the payment of any surplus proceeds, such that any party's entitlement to the proceeds may be determined by the Court.

[30] Simply because there are sufficient funds in this case which are adequate to pay the amount in the Notice of Seizure does not impact the process under which the Court makes its assessment to entitlement to those funds. Nor does the speed by which a judgment creditor remits their judgment to the Sheriff for enforcement dictate the priority to funds held by the Court when they are paid to the credit of a cause.

[31] These funds are not being held to the credit of Wilson as the execution

debtor and remain subject to further adjudication. As provided in Rule 10-47, it is not for the Local Registrar to determine the payment of these proceeds, but rather for the judge in chambers.

[32] The Court has an obligation to ensure the interests of all parties with a claim to the proceeds are protected. It is only through the supervisory authority of the Court that the entitlement to these surplus proceeds will be determined and the Court's duty fulfilled.

Direction to the Parties

[33] As noted in *Keep* at para 44, sale proceeds may not be disbursed before the assessment of costs. As Affinity has not yet brought its application for its final assessment of costs, no payment of the proceeds held by the Court can be ordered until that application is heard and the remaining balance of the proceeds determined.

[34] The next step required to determine entitlement to the proceeds paid into court to the credit of this cause is for Affinity to bring its application for its final assessment of costs, which requires service upon both Wilson and the Additional Defendants. Affinity shall serve all parties with a copy of this Fiat when they serve their application for the final assessment of their costs.

[35] In these specific circumstances, I also direct that the Office of the Sheriff as well as counsel for Kirk Miller and Cynthia Miller be served with any subsequent application in this action.

[36] In response, any party seeking payment of the proceeds paid into court may bring their application for the payment out of court of any remaining surplus proceeds. That application may be brought concurrent with or subsequent to Affinity's application for the assessment of its costs. Interested parties may speak to their interest

in the proceeds held by the Court on the return date and shall file any evidence upon which they intend to seek payment of those proceeds. At that time, the Court will have before it the evidence of the interests of all parties.

J.
N.D. CROOKS