IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Genesis Mortgage Investment Corp. v. Blais,* 2026 BCSC 178

Date: 20260204
Docket: H142798
Registry: Kelowna

Between:

Genesis Mortgage Investment Corp.

Petitioner

And

Sebastien Joseph Blais, Christine Jill De Vries also known as Christine Jill Devries, FLR Construction Corp., SSK Construction Ltd., Advance Drywall Ltd., Tiara Door & Moulding Ltd. also known as Tiara Doors & Moulding Ltd. and Tiara Doors and Moulding Ltd., and All Tenants or Occupiers of the Subject Lands and Premises

Respondents

Before: The Honourable Justice Hardwick

On appeal from: An order of the British Columbia Supreme Court, dated October 1, 2025 (*Genesis Mortgage Investment Corp. v. Blais*, Oral 25645, H142798).

Reasons for Judgment

Counsel for the Petitioner:	S. Stephens
Counsel for the Respondents Sebastien Joseph Blais and Christine Jill De Vries:	S. B. Coen
No other appearances	
Place and Date of Hearing:	Kelowna, B.C. December 12, 2025 January 16, 2026
Place and Date of Judgment:	Kelowna, B.C. February 4, 2026

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Introduction

[1] These reasons for judgment address the appeal of an order made on October 1, 2025, in the context of a foreclosure petition.

[2] The primary issue is whether a mortgagee who obtains an order for costs on an indemnity basis at the order *nisi* stage is required to provide copies of otherwise privileged legal accounts to the mortgagor for the purposes of determining the redemption amount (inclusive of said costs) before the redemption period expires and while the litigation is still ongoing. This specific issue does not appear, based upon the submissions of counsel and the independent research of this Court, to have been judicially considered in this province.

[3] The corollary issue, namely whether the court should halt interest pursuant to s. 19 of the *Law and Equity Act*, R.S.B.C. 1196, c. 253, from the date that the mortgagees requested copies of the invoices supporting the indemnity costs (or such other date as the court may deem appropriate) has received limited judicial consideration.

Overview

[4] The appellant/petitioner, Genesis Mortgage Investment Corp. (“Genesis”) is a company registered pursuant to the laws of the Province of British Columbia. It

is in the financial services industry and makes loans to individuals and/or other legal entities in the normal course of business.

[5] The respondents, Sebastien Blais and Christine de Vries (the "respondents"), were formerly the joint owners of the real property known municipally as 943 Fuller Avenue, Kelowna, BC (the "Fuller Property"). The Fuller Property is in the North End region of downtown Kelowna.

[6] The respondent, Christine de Vries, is the sole owner of the real property municipally known as 1018 Wilson Avenue, Kelowna, BC (the "Wilson Property"). The Wilson Property is an older residential property that has been in her family for years and is where she and the respondent, Sebastien Blais, continue to reside as their family home. It is in the same North End region of downtown Kelowna as the Fuller Property. The appraised value of the Wilson Property, as at January 6, 2025, was between $675,000 and $725,000.

[7] In or about 2021, the respondents decided to develop the Fuller Property by building a fourplex (the "Project").

[8] To fund the Project, the respondents required significant financing as the anticipated cost of the Project exceeded $2,000,000.

[9] Financing was ultimately secured from Genesis. Specifically, on October 18, 2022, a mortgage was registered by Genesis for the principal amount of $2,400,000.00 to finance the Project (the "Mortgage"). The Mortgage was secured as a first charge on both the Fuller Property and the Wilson Property.

[10] The terms negotiated required $24,000 interest to be paid monthly and deducted from the principal amount available for the various draws. The loan was renewed twice, resulting in additional renewal charges.

[11] There were issues that arose as between the respondents and the builder they contracted with to build the Project, FLR Construction Corp. ("FLR"), resulting in the filing of builder's liens and subsequent litigation. Those issues are not before me for determination and these reasons for judgment do not make any findings of fact in relation to those competing claims. However, in my view, it is necessary to reference this dispute to understand the factual matrix underlying this appeal.

[12] Specifically, in or about September 2024 the dispute between the respondents and FLR escalated to the point that work on the Project ceased. The Project was only partially complete at that time. The evidence suggests that it was approximately 68% to 71% complete.

[13] The respondents admit that they subsequently defaulted upon the Mortgage. Genesis responded accordingly.

[14] Foreclosure proceedings were commenced by Genesis on February 12, 2025, seeking what I would describe as standard relief in a foreclosure petition of this nature (the “Petition”). Genesis set the Petition for hearing on March 26, 2025.

[15] In the statement of relief filed on March 14, 2025, Genesis, *inter alia*, sought an order for conduct of sale of the Fuller Property. Genesis did not seek an order for conduct of sale of the Wilson Property.

[16] The respondents did not oppose the substantive relief claimed in the Petition, including conduct of sale of the Fuller Property. The respondents did, however, oppose Genesis’s claim for indemnity costs and instead took the position that costs should be awarded to Genesis at Scale A.

[17] FLR also filed a response to the Petition, taking no position on the relief sought subject to the application of the doctrine of marshalling and related equitable principles.

[18] On March 26, 2025, Genesis’s application for order *nisi* and conduct of sale (again just in respect of the Fuller Property) was heard by Associate Judge Schwartz and the orders made (collectively, the “Order *Nisi*”) included:

a) The redemption date was set to March 27, 2025 (namely, a one-day redemption period);

b) The amount of money deemed to be due and owing to redeem was determined to be $1,936,824.57 plus per diem interest of $1,067.56;

c) Conduct of sale of the Fuller Property was granted in favour of Genesis; and

d) Finally, and very importantly, Gensis received its costs on an indemnity basis up to the date of the Order *Nisi*.

[19] The respondents did not attend or participate in the Order *Nisi* hearing.

[20] The Fuller Property was promptly listed for sale following the Order *Nisi* and quite quickly attracted interest on the market. The application for approval of the sale of the Fuller Property was filed on June 6, 2025 (just over two months from the Order *Nisi*). The respondents did not oppose the approval application.

[21] The sale of the Fuller Property was subsequently approved by Associate Judge Schwartz on July 21, 2025. On that same date the marshalling argument raised by FLR (the “Marshalling Application”) was adjourned to August 15, 2025, and it was ordered that interest on a holdback intended to be maintained on account of the marshalling claim was the sole responsibility of the unsuccessful party at the ultimate hearing of the Marshalling Application. Genesis was again awarded costs on an indemnity basis.

[22] The court approved sale of the Fuller Property completed on August 5, 2025. The gross sale proceeds received were $1,605,683.99. In accordance with a term of the approval order, $300,000 of the proceeds were held back pending the determination of the Marshalling Application. After payment of outstanding property taxes and utilities, net proceeds of $1,300,875.99 were paid to Genesis on account of the debt owing under the Mortgage.

[23] Within two business days after the sale of the Fuller Property, namely on August 8, 2025, the respondents’ counsel requested an accounting, including a bill of costs, to ascertain the updated amount necessary to payout the Mortgage and redeem the Wilson Property. I accept this was the first opportunity for the respondents to make this request because while they could make assumptions about the anticipated adjustments based upon the court approved sale, they needed to have specific confirmation that the sale actually completed and what Genesis received before they could fulsomely make inquiries about obtaining alternate financing to redeem the Wilson Property (which, as noted, is the family home).

[24] After some correspondence between counsel in the ensuing days, Genesis made clear its position that it would not be providing a bill of costs at that stage of

the litigation. On August 13, 2025, Genesis did provide a certificate of results of sale (the "Certificate"). According to the Certificate, the total amount required to redeem the Wilson Property was $443,238.88 plus costs.

[25] On August 19, 2025, the respondents filed a notice of application to extend the redemption date for the Wilson Property returnable on August 25, 2025. This coincided with the new date scheduled for the Marshalling Application.

[26] On August 20, 2025, Genesis's counsel sent a letter including a table setting out costs and disbursements claimed in the amount of $104,067.39. Of those amounts there are two entries in the table for legal fees (one being for $5,619.83 and the other for $60,289.44) and a "standby fee" of $31,962.12. The other claimed costs are for insurance, an appraisal fee and a small administration fee.

[27] There was correspondence between counsel exchanged in anticipation of the court appearance on August 25, 2025, and the respondents did receive a further summary of the costs claimed by Genesis. The amount contained in the summary was approximately $98,000. Apart from the "admin' fee of $275.00 and the "standby fee" of $31,692.12, the balance of the amount was simply attributed generically to legal fees with no breakdown of amounts claimed for individual tasks, hourly rate of counsel involved and so forth.

[28] On August 25, 2025, Associate Judge Schwartz ordered that:

a) the Marshalling Application shall be adjourned to a date no later than September 25, 2025;

b) the conduct of sale application for the Wilson Property shall be adjourned to the same date that the Marshalling Application is to be heard;

c) the respondents' right to redeem the Wilson Property is extended to September 26, 2025; and

d) costs of this appearance were to be determined by the presider of the applications (once scheduled).

[29] Not decided at the August 25, 2025 hearing was a dispute between Genesis and the respondents regarding the manner of calculating interest (simple or compounding). This dispute has yet to be resolved due to the intervening events described below.

[30] Following further correspondence exchanged between counsel on the issue of the respondents' request for copies of Genesis's legal accounts, the respondents filed a notice application on August 29, 2025, primarily seeking to have the indemnity costs and interest under the Order *Nisi* determined. In the alternative, the respondents sought an order setting the redemption amount owing including interest and costs in order to exercise their right to redeem (the "Costs Application").

[31] Genesis strenuously stresses on appeal that the respondents did not tender evidence confirming their ability to redeem the Mortgage in support of the Costs Application. Rather, the extent of the evidence tendered by the respondents was a conditional commitment for financing in the principal amount of $475,000.

[32] On September 8, 2025, the Marshalling Application was heard and dismissed. Pursuant to the earlier order, FLR was held solely responsible for the interest accruing on the holdback monies between August 5, 2025, the date the sale of the Fuller Property completed, and the date the holdback was released to Genesis.

[33] Throughout, Genesis consistently maintained its position that it would not provide copies of invoices in support of their indemnity costs pursuant to the Order *Nisi* until the proceeding was concluded. Genesis asserted that redemption must be based on Genesis's claimed costs with any assessment by the registrar to occur at the conclusion of the litigation.

[34] In this regard, there was a further summary accounting provided, included in the affidavit #2 of Ryan Wang affirmed on September 15, 2025, which did break down the time range for the costs claimed somewhat and the amount claimed for the purposes of ascertaining the redemption amount was reduced to approximately $83,000. However, the respondents were still not provided with any details about the legal services rendered or the hourly rate of counsel involved.

[35] The respondents draw the court's attention to the fact that the above summary included "estimated legal fees for property sale" of some $15,000. The respondents submit that the application for approval of sale of the Fuller Property was uncontested and that any sale of the Wilson Property would only be necessary if they were unable to redeem.

[36] Before continuing with the chronology of events in the Petition, it is important to recognize that Genesis concedes that the respondents are entitled to have the indemnity costs assessed by the registrar and that Genesis must produce the legal accounts rendered by its counsel for the purposes of such assessment. However, that assessment shall occur at the conclusion of the litigation. Redemption, Genesis maintains, must be based upon the summary of costs provided on behalf of Genesis with any overpayment by the respondents to be refunded after the assessment is complete.

[37] The Petition ultimately came on for hearing before Associate Judge Schwartz again on October 1, 2025. On that date, Associate Judge Schwartz made the order which is now under appeal. The order provides as follows:

> 1. Within 14 days of today's date, the Petitioner [Genesis] is to file an appointment to have costs assessed to be heard on a priority basis, with bill of costs attached.
> 2. The Petitioner's [Genesis] application filed June 6, 2025 for conduct of sale [of the Wilson Property] will be adjourned to a date following the date costs are assessed.

[38] I have the benefit of a transcript of Associate Judge Schwartz's oral reasons for judgment delivered on October 1, 2025. They are brief and currently unreported, so I am going to quote substantially from them:

> [1] THE COURT: I am going to do my best here to make an order that respects the right of the mortgagors to redeem. I obviously [have] a somewhat long history with this file, and while I am aware that the order for indemnity costs was made in the original Order *Nisi*, although, as pointed out during submissions, that order reads:
>
> > The petitioner is entitled to his*(sic)* costs of the proceedings to date on an indemnity basis and the basis or scale at(*sic*) any further costs shall be determined by the court and the costs of the proceeding to date and any further costs order shall be added to the amount required to redeem the lands and property.
>
> [2] In other words, the indemnity costs were granted only up to the Order Nisi, which is a final order. Costs in any subsequent applications were to be determined on an application by application basis.

[3] It turns out that some of those subsequent applications have been subject to further indemnity costs awards, but I do not know whether all of them were.

[4] In any event, there is a right to redeem of the mortgagors, and the mortgagors have expressed an interest to redeem. I am aware from previous court applications that the amount of the costs is likely to determine whether they can redeem.

[5] I understand, in very general terms, the petitioner is seeking costs somewhere in the range of $104,000. That is based on submissions made before me today. The mortgagors take the view that that is a grossly excessive amount given the fact that, for the most part, this has been an uncontested foreclosure proceeding.

[6] I have assessed costs many times in foreclosure proceedings. I will say that I do not know that I have ever seen costs assessed, even on an indemnity basis, in the six-figure range, but it does happen. I am not suggesting that it cannot happen.

[7] I note parenthetically that my involvement in this case is such that I do not know that I see that level of complexity that would leave to a six-figure costs award. That being said, there has not been an assessment yet.

[8] There needs to be an assessment. Ultimately, the mortgagors need to know the amount to redeem before they can determine whether then can redeem. Again, that is going to be determined based on how costs are assessed.

[9] So I am going to make an order that the petitioner file its appointment to have their costs assessed within 14 days of today's date. I understand that a demand has already been made for a bill of costs. So I am going to make an order that the bill of costs be produced within 14 days.

[10] I am going to further order that the petitioner's conduct of sale application be adjourned to some day after the costs are assessed.

[11] We need to move the assessment part along, folks. I appreciate there are challenges with the court's time.

[12] Although I understand that these mortgagors agreed to indemnity costs in the mortgage documents that they signed, they have already lost their development property through a foreclosure sale, and this is now their opportunity to save their home.

[13] I do believe that the right to redeem is of paramount importance, and the mortgagors need to know what that redemption amount is. I am not prepared to see the conduct of sale order go ahead while the petitioner does not produce a bill of costs, notwithstanding a request being made. That will be the order.

[14] I will let scheduling know that I would like to have any assessment of the bill of costs heard on a priority basis. I do appreciate that nothing is guaranteed, but I am going to advise scheduling that there is a time sensitivity here. I am aware that interest continues to accrue at a considerable rate, and I do not want to see a situation where the petitioner's security is placed in jeopardy because we are waiting six or

> eight months for a costs assessment and, meanwhile, interest is ticking away and there is going to be insufficient equity in the property.
>
> …

[39] There were discussions about scheduling the hearing for the costs assessment pursuant to Associate Judge Schwartz's direction that it be heard on a priority basis and dates were offered by Supreme Court Scheduling. The range of dates was limited but Supreme Court Scheduling did offer the opportunity to have the assessment heard in Vernon or Penticton to maximize courtroom availability options. Counsel for Genesis advised they were not available for any of the dates offered.

[40] On October 7, 2025, Genesis filed its notice of appeal, and successfully applied before Justice Majawa, on a without notice basis, for an interim stay of Associate Judge Schwartz's order pending the hearing of the stay application on its merits. Genesis also applied for a change of venue for the hearing of the appeal from Kelowna to Vancouver.

[41] On October 15, 2025, the respondents filed a notice of application seeking an order that Genesis be responsible for the accrued interest with respect to the Order *Nisi* "from the date they [Genesis] refused to provide their bill of costs to the date their costs are assessed or for such time as the court deems appropriate" (the "Interest Application").

[42] On October 20, 2025, Genesis's stay application was heard by Justice Wilson. The request to have the appeal transferred to Vancouver was dismissed from the bench. The Interest Application was similarly adjourned from the bench to the date for the hearing of the appeal. Justice Wilson reserved judgment on the stay application.

[43] On October 27, 2025, Justice Wilson gave oral reasons for judgment granting the stay with certain identified conditions. Costs were adjourned to be decided by the justice hearing the appeal.

Grounds of Appeal

[44] Genesis appeals from the Order of Associate Judge Schwartz made October 1, 2025, on the following grounds:

1. Associate Judge Schwartz erred in law in ordering the petitioner [Genesis] to produce its legal bills and proceed with an assessment of its costs under an indemnity costs award, prior to the conclusion of this proceeding and in the absence of any protection for the petitioner's litigation privilege and solicitor-client privilege, thus effectively ordering waiver of privilege over the entirety of the petitioner's counsel's file while in the midst of litigation with adverse parties and causing the petitioner to lose its counsel of choice.
2. Associate Judge Schwartz made a palpable and overriding error of fact, explicitly or implicitly, in finding that the respondents, Sebastian Joseph Blais and Christine Jill de Vries, would be able to redeem the petitioner's mortgage but for the quantum of the petitioner's costs.
3. Further, or in the alternative, Associate Judge Schwartz erred in law by taking into account irrelevant considerations and by failing to take into account relevant considerations, in concluding that the said respondents' equitable right to redeem the mortgage outweighed the petitioner's right to maintain litigation privilege and solicitor-client privilege and to retain its counsel of choice.
4. Associate Judge Schwartz erred in law in adjourning the petitioner's application for conduct of sale in circumstances where the said respondents failed to satisfy the test for an extension of the redemption period.

Standard of Review

[45] As this is an appeal, it is necessary to address the applicable standard of review.

[46] The standard of review for appeals of Associate Judges' orders was helpfully outlined by Madam Justice Fitzpatrick in *Smith v. VM Agritech Limited*, 2025 BCSC 206 at paras. 12-13:

> [12] The leading case on the standard of review for appeals of Associate Judges' (formerly Masters') orders pursuant to what is now Rule 23-6(8.1) is *Abermin Corp. v. Granges Exploration Ltd.*, 1990 CanLII 1352 (BC SC), [1990] B.C.J. No. 1060 [*Abermin*]. On page 9, Justice MacDonald stated:
>
> > An appeal from a Master's order in a purely interlocutory matter should not be entertained unless the order was clearly wrong. However, where the ruling of the Master raises questions which are vital to the final issue in the case, or results in one of those final orders which a Master is permitted to make, a rehearing is the appropriate form of appeal.
>
> [13] The question in the latter category of cases—that is, "where the ruling of the Master raises questions which are vital to the final issue in the case, or results in one of those final orders which a Master is permitted to make"—is whether the associate judge was correct, not whether she was clearly wrong: *Canadian Western Bank v. 353806 B.C. Ltd.*, 2017 BCSC 1072 at para. 11.

[47] This appeal falls within the latter category. Namely, I must decide if Associate Judge Schwartz was correct.

[48] On a rehearing, the chambers judge may substitute his or her own assessment of the evidence but should be mindful that associate judges (formerly masters) hear foreclosure proceedings much more frequently than do chambers judges and have acquired a level of expertise that should not be ignored or quickly discounted: see *Canadian Western Bank v. 353806 B.C. Ltd.*, 2017 BCSC 1072 at para. 11. That caution is particularly apt here.

The Law

Right of Redemption

[49] “Redemption” is defined in the *Law and Equity Act* as follows:

> "redemption" means the payment, fulfillment or performance by the purchaser or person claiming through the purchaser, of all obligations secured by the property and, if there has been a breach or default of the purchaser or person claiming through the purchaser, by payment of
>
> (a) all expenses or disbursements reasonably made or incurred by the vendor in respect of the property, including taxes, repairs and payments in respect of other encumbrances, and
>
> (b) reasonable compensation for costs incurred by the vendor in bringing a proceeding or seeking to enforce the obligations of the purchaser to the extent provided for in the agreement for sale or in the *Supreme Court Civil Rules*.

[50] The common thread throughout the definition of redemption is reasonableness. The onus of establishing reasonableness rests with the party submitting the bill of costs or claiming the costs: see *Bulkley Valley Credit Union v. Jellett*, 2013 BCCA 298.

[51] In *Bulkley*, Justice Hinkson (as he was then) said as follows in considering a quite narrow appeal involving the interpretation of R. 21-7(10) [which *Rule* is not applicable here but is relevant by analogy]:

> [23] The respondent contends that the purpose of Rule 21-7(10) is to provide a party whose property is subject to foreclosure with the total amount owing, including the costs claimed, so that he or she can redeem the mortgaged property. I am unable to agree with this contention. The purpose of the Rule is to provide the party whose property is subject to foreclosure with notice of the amount claimed. If the amount is uncontested, then it will not have to be determined by an assessment. If it is contested, then an assessment is required.

> [24] In my opinion, the proper interpretation of the Rule is that a foreclosing party who is served with a notice to assess costs, must file a bill of costs for assessment, within 14 days after service of the notice, or lose its entitlement to costs. Thereafter, either party may take out the appointment for the assessment of the bill of costs. It may be that the parties will agree on a settlement of the bill of costs as presented, and that an appointment to assess the bill will be unnecessary.
>
> [25] If the party whose property is subject to foreclosure does not agree with the bill of costs presented, it may be in the interests of the foreclosing party to have the bill assessed so that it can pursue the recovery of its costs. If it does not do so, it will be unable to collect the costs to which it is may be entitled.
>
> [26] Alternatively, it may be in the interests of the party obliged to pay the costs in order to redeem its property to take out the appointment for the assessment of the bill as presented in order to be able to redeem the property.
>
> [27] Given these possibilities, I conclude that the proper interpretation of Rule 21-7(10) is that it only requires the foreclosing party to file its bill of costs for assessment, within 14 days after service of the notice to assess costs, but not to also file an appointment to assess its bill of costs, in order to avoid the loss its entitlement to costs.
>
> [28] To require the foreclosing party to take out an appointment for the assessment of its Bill of Costs at the same time it files its Bill of Costs would unnecessarily clog the apparatus for such assessments and delay those whose Bills of Costs must be assessed from scheduling their matters for assessment.

[52] The Court in *Coast Capital Credit Union v. Panorama Plateau Gardens Ltd.*, 2007 BCSC 970, analyzed former Rule 50(10) (now Rule 21-7(10)), as it concerns the denial of costs for failure to produce a bill of costs, albeit after the mortgagor had already exercised their right of redemption and paid the costs claimed by the mortgagee. Specifically, at paras. 12-13, Master Caldwell (as he was then) stated:

> [12] … the intention of Rule 50(10) appears to be to allow the mortgagor to put itself in a position to redeem the mortgage by knowing the total sum, including costs, which it is required to pay for such redemption. In the present case, the figure provided by the Appellant for the payout was incorrect. When the error was discovered, after payment, the Appellant provided Panorama with a discharge of mortgage which could only be registered if Panorama agreed to abandon its position regarding costs. This occurred on or about May 8, 2006. On May 15, 2006, Panorama's counsel demanded that the Appellant provide its Bill of Costs; again, it is to be noted that the Appellant's counsel had full payment of the mortgage and held all of its claimed costs already due to the error and resulting overpayment. That situation remained in a position of stand-off until June 30, 2006, almost two months after full payment was made by Panorama, when counsel agreed that the discharge could be registered without condition. Throughout that period, the Appellant refused to provide Panorama with its Bill of Costs; that refusal continues to this date.

> [13] The overall effect of the Appellant's position runs contrary to the clear intention of Rule 50(10) which is to allow for timely finalization of the redemption process. I find that there was a demand by Panorama to the Appellant for its Bill of Costs to be provided; the Appellant failed to provide that Bill of Costs within 14 days as requested, or, in fact, at all. Accordingly, the Appellant is not entitled to claim or recover costs.

[53] Considering the foregoing, I accept that the law supports the respondents' position that the intention of Rule 21-7(10) is for a timely finalization of the redemption process which requires the submission of costs claimed as part of the redemption amount where costs are being claimed. By analogy, the objective of timely finalization of the redemption process should apply in this scenario.

[54] A mortgagor's equitable right to redeem the mortgage can also, it is recognized, outweigh a lender's solicitor-client privilege over their legal accounts, particularly when the mortgagor seeks to challenge the reasonableness of legal costs added to the redemption amount: see *Hometown Investment Ltd. v. Janzen*, 1982 CanLII 534 (BCSC) at paras. 8-9 and *Toronto Dominion Bank v. Eiboff*, 1982 CanLII 281 (BCSC) at para. 9.

[55] In *Hometown*, the Court indicated that on a subsequent hearing to fix the amount of costs incurred, the mortgagee's solicitor should produce the bill of costs rendered to their client: para. 9. This process ensures that the mortgagor has notice and can challenge the reasonableness of the bill.

[56] Similarly in *TD Bank*, the Court held that, at the hearing to determine the amount of costs incurred by the mortgagee, the mortgagee's solicitors must produce their bill rendered to the mortgagee. There must also be evidence that the mortgagee accepts this bill, and the respondents (mortgagors) must have notice and the opportunity to challenge the reasonableness of the bill of the solicitors for the mortgagee: para. 9.

Assessment of Costs

[57] Costs on a solicitor and client basis are assessed on a full indemnity basis, representing the fees a client was prepared to pay their lawyer for the work done: see *Tangerine Financial Products Limited Partnership v. The Reeves Family Trust*, 2014 BCSC 25 at para. 25. While this process is less concerned with what an objectively reasonable legal fee would be, it still focuses on what is reasonable,

proportional and fair as between the client and their solicitor in that particular matter: see *Sequoia Mergers & Acquisitions Corp. v. Camacc Systems Inc*., 2022 BCSC 272 at para. 5. Even when solicitor and client costs are awarded, the assessment must consider the factors enumerated in s. 71 of the *Legal Professions Act*, S.B.C. 1998, c. 9 [*LPA*]: see *Tangerine* at para. 34.

[58] Section 71(4) of the *LPA* sets out the factors to be considered when determining the reasonableness of an expense:

> (a) the complexity, difficulty or novelty of the issues involved,
>
> (b) the skill, specialized knowledge and responsibility required of the lawyer,
>
> (c) the lawyer's character and standing in the profession,
>
> (d) the amount involved,
>
> (e) the time reasonably spent,
>
> (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
>
> (g) the importance of the matter to the client whose bill is being reviewed, and
>
> (h) the result obtained.

[59] In cases where costs are awarded based upon a contractual indemnity, the assessment of reasonableness can be guided by the factors in s. 71 of the *LPA*, though these factors are not exhaustive: see *The Owners, Strata Plan VIS 1549 v. Cinnabar Brown Holdings Ltd.*, 2024 BCSC 970 at para. 40. The court will allow costs that provide a full indemnity, but only for those costs that were reasonably necessary to protect the party's interest under the mortgage: see *Johal v. Virdi*, 2012 BCSC 450 at para. 19. The party seeking costs bears the onus of proving that the fees were reasonable and necessary: see *Johal* at para. 37.

[60] The paying party has the right to challenge the reasonableness of the fees and disbursements, and a certain amount of disclosure is contemplated to facilitate this challenge: see *Sequoia* at paras. 14 and 34. This may include the waiver of privileged information, which must be balanced against the right of a party to natural justice: see *Sequoia* at paras. 14 and 24. Disclosure should be tailored to be necessary and proportionate to address the natural justice requirements: see *Sequoia* at para. 36. The conduct of the parties, such as

vigorous opposition, can also be a significant factor accounting for the magnitude of costs incurred: see *Johal* at para. 37; and *Tangerine* at paras. 42 and 83. In determining which interest must prevail, the court must engage in a balancing test: see *Gichuru v. Smith*, 2014 BCCA 414 at paras. 109-111. Continuing with *Gichuru*, which addresses special costs specifically, the Court stated at para. 113:

> [113] . . . the assessment of special costs [requires] a waiver of privilege. One of the main purposes of special costs is to indemnify the successful party for the actual legal costs they have incurred. Absent a bill or other evidence of the legal fees incurred there is no way of knowing the amount of those costs. While the disclosure of the legal account may result in a waiver of privilege, that is the price that a party may have to pay if it seeks to recover special costs.

Analysis: Assessment of Costs Prior to Expiry of the Redemption Period

[61] Upon consideration of the facts and the law, and applying the appropriate standard of review, I reach the same conclusion that Associate Judge Schwartz did. It accords with the principles of natural justice that the respondents are entitled to have Genesis's costs assessed before the redemption period for the Wilson Property expires.

[62] Genesis is contractually entitled, pursuant to the terms of the Mortgage, to seek costs on an indemnity basis upon default. That term is intended to be for the benefit of Genisis.

[63] Genesis was put on notice by the respondents at the time it applied for the Order *Nisi* in March 2025 that this relief was opposed by the respondents. Indeed, it was the only relief opposed by the respondents. Further, the respondents did not oppose costs entirely; they opposed indemnity costs.

[64] When Genesis elected to pursue that relief, as opposed to electing to default to seeking costs pursuant to the tariff set forth in the *British Columbia Supreme Court Civil Rule*s [*Rules*], Genesis was required, upon demand, to disclose the invoices supporting its indemnity costs to the respondents such that they could be in a position to have those costs assessed before being in a position to know the amount required to redeem the Wilson Property.

[65] In this regard, I clearly am not being asked to determine the appropriate amount of the costs which the respondents recognize they are liable to pay to

Genesis. Like Associate Judge Schwartz, however, my initial reaction is that the amount referenced in the materials to date appears, on its face, very high for a foreclosure proceeding that was only commenced in March 2025 and certainly well in excess of what tariff costs would be based on the number of recorded steps in the Petition.

[66] It may be, however, that the costs claimed by Genesis can all be entirely supported based upon the specific circumstances of this foreclosure which are not entirely apparent from the appeal record. However, if that is the case, the respondents are entitled to receive the necessary documentation to test that submission before being able to determine whether they are in a position to exercise their right to redeem the Wilson Property.

[67] While this is not the fact pattern, what if the costs claimed (in summary form and without supporting invoices) were $400,000? Would this require the respondents to make efforts to borrow funds that almost double the amount outstanding after the application of the net sale proceeds from the Fuller Property to redeem the Wilson Property, only to then proceed to succeed upon an assessment limiting their obligation to pay costs to Genesis to a mere fraction of that amount? I recognize that costs of $400,000 in a foreclosure petition may seem patently absurd. However, Genesis's appeal is not tethered to any defence of the indemnity costs claimed on the merits. Genesis's appeal is tethered to the legal proposition that privilege over its legal accounts must prevail and that the respondents must exercise their right of redemption, if possible, based upon the summary of costs tendered by Genesis with any refund for overpayment to be made to the respondents after the assessment at the conclusion of the proceeding. That, in my view, tips the balancing exercise I referred to above when reviewing the law on the right of redemption too far in favour of Genesis's right to assert privilege.

[68] Somewhat in the same vein, I find it does not lie with Genesis to criticize the respondents' failure to provide conclusive evidence of their ability to redeem when Genesis controls the information necessary for the respondents to be able to determine what amount it actually is they need to show to the court they can raise through refinancing (or other sources) in order to exercise their right of redemption. In the circumstances, the right of redemption must remain available to

the respondents while the issue of the reasonableness of the indemnity costs claimed is litigated or the right becomes moot.

[69] In my view, simply stated, Genesis had an election to make when the respondents made demand for production of a bill of costs on August 8, 2025. If Genesis sought indemnity costs as it is entitled to under the Order *Nisi*, it was obligated to provide the necessary accounting, including the attendant waiver of privilege, even though the litigation was ongoing. If Genesis preferred the protection of privilege, Genesis could have elected to receive only costs in accordance with the *Rules* notwithstanding the terms of the Order *Nisi*. That is a quite standard exercise and only requires Genesis to, in addition to correctly identifying the specific steps taken pursuant to the tariff, tender invoices in support of any disbursements claimed (which it appears to have already done).

[70] I accordingly dismiss Genesis's appeal of Associate Judge Schwartz's October 1, 2025 order on the basis that Associate Judge Schwartz:

a) Did not err in law in ordering Genesis to produce its legal bills and proceed with an assessment of its costs under an indemnity costs award prior to the conclusion of this proceeding;

b) Did not make a palpable and overriding error of fact in finding that the respondents would be able to redeem the Mortgage but for the quantum of the Genesis's costs;

c) Did not err in law by concluding that the respondents' equitable right to redeem the Mortgage outweighed Genesis's right to maintain litigation privilege and solicitor-client privilege; and

d) Did not err in law in adjourning Genesis's application for conduct of sale of the Wilson Property in circumstances where the respondents failed to satisfy the test for an extension of the redemption period.

The Interest Application

[71] As noted above, the Interest Application seeks an order that Genesis be responsible for the accrued interest with respect to the Order *Nisi* "from the date

they refused to provide their bill of costs to the date their costs are assessed or for such time as the court deems appropriate".

[72] The Interest Application is opposed by Genesis on the basis that the issue of interest was judicially determined at the time the Order *Nisi* was made and that the Order *Nisi* is a final order which was not appealed.

[73] Section 19 of the *Law and Equity Act* addresses the payment of interest after default in a foreclosure proceeding. Specifically, s. 19 provides that:

> **Payment of interest after default**
>
> **19** In a proceeding for the foreclosure of the equity of redemption in mortgaged property, the court must, unless exceptional circumstances exist, order that the payment of interest is to be calculated and payable to the date full payment is made to redeem the property.

[74] As is apparent, s. 19 contains mandatory language that the interest must be calculated and payable to the date of full payment of the redemption amount unless there are exceptional circumstances (emphasis added).

[75] The respondents referred the court to two cases where the concept of exceptional circumstances in the context of s. 19 of the *Law and Equity Act* is discussed:

a) *United Savings Credit Union v. 631252 B.C. Ltd*., 2003 BCSC 367; and

b) *Century Services Corp. v. LeRoy*, 2022 BCCA 239.

[76] In *United Savings*, the respondent owners, who were innocent purchasers of the subject real property, applied to fix the amount to redeem a first mortgage in favour of the petitioner. The petitioner had been granted an order *nisi* under the first mortgage which was supposed to have been discharged at the time they purchased the property. The owners submitted that the redemption amount should be fixed in the sum that the Special Fund Committee of the Law Society was prepared to pay. The court denied the application and fixed the redemption amount in accordance with the contractual rate provided for in the first mortgage on the basis that it had not been shown that this was an appropriate case for the exercise of equitable jurisdiction as there was no involvement or inaction by the petitioner that would make it inequitable for the mortgage to be redeemed based upon the full contractual interest rate.

[77] In reaching that conclusion Justice J. Sigurdson reviewed s. 19 of the *Law and Equity Act* in some detail beginning at para. 23:

> [23] Mr. Clark also relies on s. 19 of the *Law and Equity Act*, for the court's jurisdiction to fix the redemption amount at a different interest rate than provided in the mortgage. That section provides:
>
> > In a proceeding for the foreclosure of the equity of redemption in mortgaged property, the court must, unless exceptional circumstances exist, order that the payment of interest is to be calculated and payable to the date full payment is made to redeem the property.
>
> [24] Mr. Clark's argument is that exceptional circumstances exist and therefore the court under section 19 should, in the circumstances, vary the interest rate.
>
> [25] I think that section deals with the date to which interest is to be calculated to redeem the property rather than giving the court a statutory jurisdiction to vary interest in exceptional circumstances.
>
> [26] Section 19 of the *Law and Equity Act* was enacted in 1981 in response to the Court of Appeal decision in *North West Trust Co. v. Paramount Management Corp.* (1978), 93 D.L.R. (3d) 416 (B.C.C.A.).
>
> [27] In *North West Trust*, *supra*, the Court of Appeal considered what should be the usual order in setting the amount of money which must be tendered for redemption. The usual rule prior to the decision in *Avco Financial Services Realty ltd. v. Gustafson* (1977), 3 B.C.L.R. 67 was that interest was payable for the entire redemption period. Under this rule, as I understood it a mortgagor who had a six month redemption period would pay six months' interest no matter when the monies were tendered. In *Avco*, *supra*, Catliff LJSC as he then was ordered that interest was payable only to the date that the money was paid, and not calculated to the end of the redemption period.
>
> [28] In *North West Trust*, *supra*, the Court of Appeal concluded that the usual order should be the old form of order.
>
> [29] Section 19 apparently was introduced to provide that the *Avco* form of order was the usual order. These comments are of course obiter as the issue before me is not the date to which interest runs but rather the interest rate. I do not think that the purpose or meaning of section 19 is to allow the court to vary the rate of interest in exceptional circumstances.
>
> (Emphasis added.)

[78] In *Century Services*, which cites *United Savings* and various other authorities, the trial judge exercised their equitable jurisdiction to decline to calculate interest on the redemption amount at the contractual rate. The fact pattern was very unusual in that the amount required to redeem under the order *nisi* was still in contention more than 13 years after that order was pronounced.

The appeal was allowed on the basis that the trial judge erred in purporting to exercise an equitable jurisdiction to disallow the contractually agreed upon rate of interest. The law, including equity, did not permit a court to make a substantial change to the terms of a valid contract such as made by the trial judge on the basis that the rate agreed to was excessive, or that one party's conduct in breach of the loan agreement could not be countenanced.

[79] In writing for the Court, Justice Newbury discussed s. 19 of the *Law and Equity Act* and stated as follows:

> [37] The next question, the trial judge stated, was whether interest was payable and if so at what rate and to what date. According to Century, Ms. Leroy had not raised the question of interest until August 2020 when she filed her written submissions. Century says that *without notice*, the trial judge "morphed the issue to one where she could also arbitrarily choose an interest rate and the time period it would run as opposed to denying it outright" and that the judge ultimately "decided the matter based on her own research" and "mistaken accounting analysis, both seen for the first time in the reasons, without providing the parties any notice or opportunity to respond."
>
> [38] Ms. LeRoy sought to invoke an equitable jurisdiction that would relieve her from the obligation to pay *any* interest or at least from paying interest as stipulated in the Loan Agreement. The trial judge described her submission, based in part on *United Savings Credit Union v. 631252 B.C. Ltd.* 2003 BCSC 367, as follows:
>
> > Ms. LeRoy says that Century's conduct, specifically, the posting of the Contested Charges to the TLT Loan account and the improvident realization, precluded her from ascertaining the true amount outstanding. This deprived her of the opportunity to make an informed decision about whether to redeem. She says that she had to endure years of discovery and a trial to determine that the Contested Charges had been improperly posted to the TLT Loan account and then several years of further litigation to determine that Century breached its duty of prudent realization, and that Century should not profit from its conduct by receiving any interest at all. She observes that had she tendered $2 million in response to Century's demand she would have vastly overpaid.
> >
> > Alternatively, Ms. LeRoy says that it would be inequitable to award Century anything more than contractual interest on the declining balance of the TLT Loan between September 23, 2008 (the day of the demand) and February 26, 2009 (the lowest point), and that interest on any amount outstanding as of February 26, 2009 should be calculated at prejudgment interest rates pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, rather than at the contractual rate. [At paras. 126–7; emphasis added.]
>
> [39] In response, Century contended that the Court had no power to decline to award contractual interest, citing the cases mentioned at para. 128. In the alternative, it claimed that Ms. LeRoy was not entitled to

invoke equity because she did not have clean hands, having "intentionally reneged" on a contractual promise to secure a replacement mortgage on the Duncan property. (This argument was rejected for the reasons at paras. 182–3.) As well, the lender submitted that Ms. LeRoy had not expressly sought equitable relief from contractual interest in her pleadings and that it was now too late to amend them because the matter had not been explored at trial. (At para. 129.)

[40] The trial judge began her analysis of the interest questions by acknowledging that contractual interest at the annual rate of 24%, compounded monthly, was not illegal. It had reflected the high-risk nature of the loan made to TLT when it was in *CCAA* protection and there was a "real risk" of bankruptcy. The judge also expressed the view that there had been no inequality of bargaining power between the parties resulting in an improvident bargain that would justify setting aside the guarantee itself. (Citing *Uber Technologies Inc. v. Heller* 2020 SCC 16 at paras. 65 and 79.) She formulated the real issue before her as follows:

> The issue is whether this Court has the jurisdiction to depart from a contractual interest rate in the course of fixing the amount required to redeem a mortgage, or order that interest is payable to a date other than the date full payment is made, because of the mortgagee's post-contracting conduct and, if so, whether that jurisdiction should be exercised in this case. [At para. 131; emphasis added.]

[41] The judge found that none of the cases cited by the parties provided clear authority either way as to whether the Court had jurisdiction to depart from contractual interest or to make interest payable to a date other than the date of full payment. In *United Savings Credit Union*, Sigurdson J. had left the issue open: he found the case before him was not an appropriate one in which to exercise a jurisdiction to vary an interest rate, *assuming it existed*. (At paras. 13–8.) In *Bank of Montreal v. Awards-West Ventures Inc.* (1990) 50 B.C.L.R. (2d) 363 (C.A.), the Court was concerned with whether delay on the part of the mortgagee in pursuing a claim on the covenant constituted a defence known to law. *Agate Developments Ltd. v. United Gulf Developments Ltd.* 2009 NSSC 160 did not concern the purported jurisdiction in equity to fix the terms on which a mortgagor may exercise the equitable right to redeem, and in any event, had been overruled in *Jorna & Craig Inc. v. Chiasson* 2020 NSCA 42. Other cases to which the judge was referred had been about interest on claims in debt.

[42] This left the Supreme Court of Canada's decision in *Bank of America Canada v. Mutual Trust Co.* 2002 SCC 43, which the trial judge described at paras. 150–4 of her reasons. It revolved around s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, which permitted a court in making an order "for the payment of money" to award interest thereon at the pre-judgment interest rate, but prohibited an award of interest on interest. Similarly, s. 129 specified that money owing under an order bears interest at the post-judgment interest rate, but prohibited an award of interest under that provision "where interest is payable by a right other than under this section." The trial judge in *Bank of America*, Mr. Justice Farley, had found the respondent lender in breach of the loan contract for a number of reasons, including that it had acted in bad faith in refusing to fund the loan to which it had agreed, had caused unreasonable delay in

replacing its counsel, and had taken the position that it was relieved of its obligation to provide takeout financing as agreed. (At para. 10.)

…

[52] In light of the foregoing, the trial judge concluded that in fixing the redemption amount in a foreclosure proceeding, the Court had the discretion in exceptional circumstances to order that interest be calculated and paid to a date other than the date of full payment of redemption. She could see no principled reason why that discretion would not extend to ordering, in exceptional circumstances, that interest be calculated at a rate other than the contractual rate. *Bank of America* was said to support this position. Further support was found in *Citi Cards v. Ross* 2014 ONSC 114, where the Court stated:

> Exceptional circumstances that would cause a court to decline to apply a contractual interest rate must be more than just financial hardship for the borrower: vague or unclear terms, overriding policy concerns such as a criminal interest rate, unconscionable conduct on the part of the lender, or commercially unsophisticated parties. None of these apply here. [At para. 27.]
>
> …

[87] I come at last to the primary question of principle in this case — did the trial judge err in varying the interest rate from the contractual rate to the court order interest rate between February 26, 2009 and June 30, 2021? Century contends that this ruling deprived it of over $6 million — although one must keep in mind the 'limited-recourse' nature of Ms. LeRoy's guarantee.

[88] As we have seen, there are some authorities (see paras. 52–3 above) in which courts have varied terms concerning the payment of interest — most often, to vary the *date from which interest runs* in a foreclosure. In that context, of course, s. 19 of the *Law and Equity Act* applies, requiring the Court to order the payment of interest to the date of payment in full unless "exceptional circumstances" exist. (See paras. 132–149 of the trial judge's reasons.)

[89] Notwithstanding cases such as *Magnum Leasing, supra,* most courts are reluctant to interfere with contractual interest rates, especially those agreed upon by commercial parties. While the day has passed when "Chancery mend[ed] no man's bargain" (see *Maynard v. Moseley* [1676] 3 Swan 651 at 655, cited by Harman L.J. in *Campbell Discount Co. v. Bridge* [1961] 2 All ER 97 (C.A.), *rev'd* [1962] 1 All ER 35 (H.L.)), modern courts do not regard themselves as having some free-floating discretion to ignore or vary contractual terms of which they disapprove. Equity 'follows the law' and still operates on certain principles to this day. It will not enforce penalties; it will relieve against certain mistakes; it will relieve against an unconscionable bargain or fraud. But I am not aware of any equitable principle that would permit a court to rewrite a commercial loan agreement solely by virtue of the judge's opinion that an interest rate (though legal) was excessive, or that a party's misconduct was deserving of punishment in the form of the denial of interest at the rate agreed upon. This was a high-risk loan and as such was always going to exact a high rate of return for the lender. The Loan Agreement was entered into by TLT in an effort to

> obtain more time in the very difficult circumstances facing it. Ms. Leroy has not challenged the judge's finding that there was no inequality of bargaining power resulting in an "improvident bargain". (At para. 130.) I assume that she has remained in occupation of the property since 2008.
>
> …
>
> [93] As in *Bidell*, it was open to Ms. LeRoy as well to pay something, if not the total amount Century claimed under the mortgage, in order to stop interest building up over what turns out to have been a very long period indeed. At the same time, I appreciate that where a high rate of interest is running, a guarantor who does not have deep enough pockets to pay the amount demanded by the lender, but believes it is incorrect will, in the trial judge's phrase, may be motivated to avoid "years of protracted litigation while the amount owing exponentially increases" as a result of the high rate. Where the collateral is one's home, this situation is even more difficult. However, in my respectful view, the law (including Equity) does not permit a court to make a substantive change to the terms of a valid contract such as that made by the trial judge here on the ground that the rate agreed to by the parties was excessive, or that one party's conduct in breach of the loan agreement "cannot be countenanced".
>
> (Emphasis in original.)

[80] Importantly, what the respondents seek here is not a variation of the contractual interest rate. The relief sought is a time limited "pause" in the accrual of the contractual rate of interest. This is a proposition which Justice J. Sigurdson indicated, in *United Savings,* in obiter, was within the scope of the equitable jurisdiction conferred by s. 19 of the *Law and Equity Act*. That obiter is, in my view, effectively endorsed by the Court of Appeal in *Century Services* even though the issue was again not squarely before them.

[81] Having regard to the circumstances, I conclude that the scenario that has arisen in the Petition since October 1, 2025, constitutes exceptional circumstances which merit the exercise of my equitable jurisdiction. Had the October 1, 2025 order of Associate Judge Schwartz been complied with, Genesis was obligated to deliver its bill of costs (which by necessity would have attached all of the invoices from its counsel that support the indemnity costs claimed) within 14 days and the assessment of those costs was directed to be heard on a priority basis. Exactly what date that assessment would have occurred is unknown, but we do know from the appeal record that dates were offered in October 2025 in three separate registries in the Okanagan Valley.

[82] Instead, Genesis appealed and successfully obtained a stay of that order pending the hearing of this appeal on its merits. Said hearing of the appeal

extended beyond the original one-day time estimate and had to be continued in early 2026. The interest that has been accruing under the Mortgage during this intervening time is significant and further jeopardizes the prospect of the respondents' ability to potentially exercise their equitable right of redemption as they have consistently maintained is their intention, if possible.

[83] Accordingly, I order, pursuant to s. 19 of the *Law and Equity Act*, that the interest on the Mortgage is halted from October 1, 2025, until the first business day following the assessment of Genesis's indemnity costs. This should all occur in a timely fashion in accordance with Associate Judge Schwartz's order. Specifically, Genesis is obliged to deliver its bill of costs within 14 days of these reasons for judgment, and the assessment is to be, to the extent possible, given priority by Supreme Court Scheduling.

Costs

[84] Costs are always awardable at the discretion of the court, based upon the application of Rule 14-1 of the *Rules* and the governing case law. This rule applies in petitions as well as actions.

[85] The general principle is that costs are awarded to the successful party: see Rule 14-1(9). "Success", as it is defined for the purposes of costs, means substantial success.

[86] The respondents have been successful on the appeal. The respondents are thus entitled to their costs of the appeal, which includes the stay application hearing before Mr. Justice Wilson. Those costs shall be assessed pursuant to the tariff on the basis of ordinary difficulty. The costs of the appeal are payable in any event of the cause but are not payable forthwith.

"Hardwick J."