

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 6

Date: 2025 01 13  
File No.: KBG-ES-00036-2023  
Judicial Centre: Estevan

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BETWEEN:

SCOTIA MORTGAGE CORPORATION

PLAINTIFF

- and -

MURRAY KENT SCHNEIKART, MARY-ELLEN GRACE SCHNEIKART  
and HELEN TENN

DEFENDANT

**Counsel:**

Laura K. Schaan  
No one appearing

for the plaintiff  
for the defendants

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FIAT  
January 13, 2025

BERGBUSCH J.

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## INTRODUCTION

[1] This is an application by the plaintiff, Scotia Mortgage Corporation [SMC], to assess the costs of judicial sale, SMC's post-leave solicitor-client costs, and property management expenses incurred by SMC after the defendants had vacated the property.

[2] This Court has provided SMC and its counsel clear directions in recent decisions regarding the costs that may be claimed in judicial sales. These do not include

a separate fee for the mortgagee's solicitors to complete the sale transaction. Unfortunately, SMC and its counsel have not gotten the message. The costs claimed contrary to this Court's guidance must be disallowed. In addition, the post-leave solicitor-client costs must be discounted to sanction this conduct.

## **BACKGROUND**

[3] This without notice application involves a property sold by judicial sale for the sum of \$47,500; with closing adjustments, the amount paid by the purchaser was \$48,199.78. The balance due on the mortgage as of September 4, 2024 was \$45,771.42, inclusive of principal and interest. The surplus after payment of the principal and interest owed to SMC was \$2,428.36. SMC seeks a deficiency judgment against the defendants that, in the circumstances, will consist solely of costs of the foreclosure proceeding.

[4] As part of the process of determining the amount of the deficiency judgment, SMC applies without notice for an order assessing the costs of the judicial sale, the post-leave solicitor-client costs of SMC, and property management fees incurred by SMC.

[5] Originally SMC sought costs assessed at \$17,368.39, and a deficiency judgment of \$14,941.04. These included costs of inspections by the property manager after the home had been vacated by the mortgagors. Counsel for SMC filed a brief of law, contending that inspection fees should be recoverable and that this Court's recent decision in *Scotia Mortgage Corporation v Yamniuk*, 2024 SKKB 48 [*Yamniuk*] was wrongly decided. Surprisingly, counsel's brief did not refer to *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133, 62 RPR (6th) 313 [*Keep*], where the prohibition on recovery of inspection fees was expressly addressed at paras. 104-106.

[6] On November 26, 2024, Baldwin J. provided the following decision

regarding the application to assess costs as it then appeared:

In light of the decision in *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133, and in the interest of judicial comity, I decline to permit the plaintiff to claim costs associated with inspections (including mileage for the purpose of the inspections). Leave is granted to resubmit materials on this basis.

[7] The without notice application next came before Justice Robertson. The requested costs were \$15,793.39, with a deficiency judgment of \$13,365.03. Robertson J. wrote the following on December 17, 2024:

Application Without Notice for Assessment of Costs and Deficiency Judgment

What are the “Sale Closing Costs” of \$1,061.50 stated in paragraph 3(c) of the Affidavit of Erin Newton sworn November 28, 2024. (They are also stated in the calculation page attached to the draft judgment.) The answer may be provided by letter.

[8] By letter dated January 7, 2025, counsel for SMC provided the following explanation:

With respect to the above-mentioned matter, and further to the fiat of Justice Robertson dated December 17, 2024, the sale closing costs of \$1,061.50 as stated in paragraph 3(c) of the Affidavit of Erin Newton, sworn November 28, 2024, relate to the costs for legal services rendered in connection with the sale of the property including, but not limited to, searches, phone calls, preparation of required documents, receiving and disbursing sale proceeds, all attendances, correspondence and reporting incurred in handling the sale closing. A copy of the invoice relating to same was attached as part of Exhibit “A” to the Affidavit of Kerry Schneider, sworn November 22, 2024, and filed with the Court on November 25, 2024 as part of SMC’s initial application for assessment of costs. ...

[9] The invoice attached to the affidavit of Kerry Schneider, a foreclosure paralegal with MLT Aikins LLP, contains a single time entry with the date “Sep 19/2024”, the initials “MKK”, and the following detail:

All services rendered in connection with the sale of the property including but not limited to, searches, phone calls, preparation of required documents, receiving and disbursing sale proceeds, all attendances, correspondence and reporting herein.

[10] A fee of \$900 is charged for these services. Taxable disbursements of \$59.52 are also claimed, consisting of “Realtiplus Web Usage Fee (Lawyer Done Deal)” of \$44.52 and “ISC/Land Titles” of \$15.00. With applicable GST and PST, the total comes to \$1,061.50.

[11] Attached to the same affidavit is the invoice from The Barrister Group, who acted as the selling officers for the judicial sale. Their fee was \$475; with GST and PST, the total invoice amount was \$527.25.

[12] Another document attached to the affidavit of Kerry Schneider is the invoice of MLT Aikins LLP for professional services from September 28, 2023 to November 18, 2024 for this matter. These appear to be the post-leave solicitor-client costs of SMC. Specific time entries associated with each billing lawyer or paralegal are listed on the invoice. The total fees are \$4,386.10. With taxable and non-taxable disbursements and applicable taxes, the total invoice comes to \$6,046.62.

[13] Nearly all the time entries on the detailed MLT Aikins invoice are associated with the initials KLS, which I infer are the initials of Kerry Schneider. None of the entries are associated with the initials MKK.

## **DISCUSSION**

[14] This Court normally assesses solicitor-client costs claimed in foreclosure and judicial sale actions by comparing them to a standard reference point or standard cost as a benchmark. This promotes consistency and transparency and assists the parties in assessing their positions. This was well-explained by Mills J. in *CIBC Mortgages Inc. v Greyeyes*, 2017 SKQB 313 at paras 11-13, 17 CPC (8th) 410, and I adopt his

explanation. Following this reasoning, Danyiuk J. determined in *First National Financial GP Corporation v Maurice*, 2021 SKQB 248 [*Maurice*], that the rough going rate for standard legal fees awarded as solicitor-client costs in foreclosure/sale matters should rise from \$4,500 to \$5,000. The question whether this benchmark should be increased again has been addressed recently (see *Keep* at paras 86-91) but need not be considered here.

[15] I note that the total post-closing fees claimed by SMC in this case are less than the standard amount generally allowed in judicial sale proceedings. The fees are based on the actual time spent by timekeepers and are consistent with the fact that this file was relatively straightforward. The defendants appeared twice at the leave application stage, but thereafter all steps in the proceeding were unopposed.

[16] Robertson J. revisited the issue of solicitor-client costs in foreclosure proceedings in *Keep*. At paras. 63-64, he noted that the Court usually awards a standard amount for legal fees, which is intended to cover all legal services in a routine foreclosure proceeding. However, a separate set of legal fees for closing the sale of the mortgaged property has been rejected by this Court. As Robertson J. stated in *Keep* at para 64:

[64] The standard amount, referred by the Bank’s lawyer as a “benchmark”, applies to a normal or routine foreclosure proceeding, recognizing that a normal foreclosure proceeding may be more or less involved. The standard amount is intended to cover all legal services involved in post-leave foreclosure proceedings. In *Yamniuk* [*Scotia Mortgage Corporation v Yamniuk*, 2024 SKKB 58] at para 31, Rothery J. rejected an attempt to claim a separate set of legal fees for closing the sale of the mortgaged property, noting at para. 35 that the issued order confirming sale is the transfer authorization submitted to Land Titles Office to transfer title.

[17] In *Yamniuk*, Rothery J. observed at para. 31 that the law on this point is clear and the costs incurred by the mortgagee in confirming the sale are included in the

standard post-leave solicitor-client costs to be awarded. At para. 35, she commented that the invoice for costs pertaining to the sale of the property was “illusory”:

[35] Thus, the invoice MLT rendered to SMC for \$1,071.37 pertaining to the “sale of the property” is illusory. There is no separate transaction that amounts to the “expenses of the sale”. The issued Order Confirming Sale is the transfer authorization that is submitted to the Land Titles Office for transferring the property to the purchaser. In short, MLT is not entitled to these monies.

[18] In a judicial sale, counsel for the mortgagee does not prepare a transfer authorization, affidavit of value, and *Homesteads Act* [*The Homesteads Act, 1989, SS 1989-90, c H-5.1*] Affidavit, nor does counsel meet with the vendor to review and witness these documents.

[19] SMC is again seeking to claim costs for a separate transaction related to the sale of the property, this time in the amount of \$1,061.50. The invoice contains identical wording to the invoice scrutinized by Rothery J. in *Yamniuk*. The explanation provided in response to Robertson J.’s inquiry about the “Sale Closing Costs” simply repeats *verbatim* the generic description of the services rendered set out in the invoice.

[20] There were no attendances in this case. The only document in evidence prepared in relation to the sale was a “Vendors’ Final Statement of Adjustments,” a very simple statement undoubtedly prepared by a paralegal.

[21] For the reasons set out in *Keep* and *Yamniuk*, SMC is not entitled to claim the sale closing costs. It is troubling that SMC and its counsel have attempted to claim the same closing costs in this matter that were expressly disapproved by Rothery J. in *Yamniuk* following well-established precedent.

[22] SMC’s without notice applications for the assessment of costs both cite one decision, *Maurice*. In seeking sale closing costs, SMC’s counsel did not refer the Court to the decisions in *Yamniuk* and *Keep* and seek to distinguish them, even though

SMC is, once again, seeking relief contrary to binding case law. This is especially surprising since Rothery J. made this very point in *Yamniuk* at para 24. It has been said many times but is worth repeating that a party applying for without notice (*ex parte*) relief has the responsibility to provide full, frank, and complete disclosure to the Court and to cite all relevant case authority, including decisions adverse to the applicant's position: *Bank of Nova Scotia v Herman*, 2016 SKQB 351 at paras 10 and 19.

[23] Further, in *Yamniuk* at para 28, Rothery J. wrote, "Future applications that do not comply with the law will be met with appropriate sanctions." To be clear, she made this point after expressing disapproval that counsel for the mortgagee had retained monies, rather than paying them into Court until solicitor-client costs had been assessed. The surplus remaining in the present case after the principal and interest owed to SMC were repaid was too small for SMC's counsel to deduct its fees from the net proceeds, so that issue did not arise. Nevertheless, the point made by Rothery J. applies here. SMC's application for assessment of costs does not comply with the law in ways that have been made clear to SMC and its counsel in reported decisions twice in the last year.

[24] The Court has discretion respecting the costs of and incidental to a proceeding. A mortgagee who has acted reasonably in instituting, carrying on, or resisting proceedings has the right to costs on a solicitor-and-client basis: Rule 11-7 of *The King's Bench Rules*. However, a mortgagee who has been guilty of vexatious, oppressive, fraudulent, or otherwise inequitable conduct may be deprived of some or all of its costs: *Mayhew v Adams*, [1931] 1 DLR 611 (Sask CA) at 613; *Central Mortgage and Housing Corporation v Johnson* (1971), 20 DLR (3d) 622 (Sask CA) at 624-625; *Rozdilsky v Kokanee Mortgage M.I.C. Ltd.*, 2020 SKCA 1 at para 10.

[25] In seeking to recover "illusory" sale closing costs in the present case, in the face of recent decisions of this Court disallowing such costs that SMC neglected to

bring to the Court's attention, SMC has acted vexatiously, oppressively, and inequitably. If allowed, these unjustified costs would have added to the deficiency judgment against the defendants. I have reluctantly determined that the mortgagee's conduct in this case should be sanctioned by discounting the solicitor-and-client costs to which it would otherwise be entitled.

[26] I am reducing SMC's post-leave legal costs by \$500, and therefore allowing \$3,886.10, plus applicable taxes. This modest reduction is intended as a signal to SMC and its counsel that they must revise their practice or run the risk of greater sanctions in the future.

[27] Different counsel from the same firm represented SMC in *Yamniuk, Keep*, and the present matter. Accordingly, the comments in this decision should not be read as directed solely at counsel of record.

## CONCLUSION

[28] In summary, I allow SMC's assessed costs as follows:

- (a) \$3,886.10 for legal fees, plus disbursements of \$1,144.79, and taxes;
- (b) \$6,049.02 for property management fees (which is the reduced amount from the original amount claimed of \$7,624.02, after removal of costs claimed for inspections in accordance with the fiat of Baldwin J., following *Keep*);
- (c) Real estate commissions of \$2,109; and
- (d) Selling officer fees of \$527.25.

[29] An order and deficiency judgment should be prepared in accordance with this decision. I will remain seized of this matter for the purpose of any further issues

that may arise regarding the implementation of this decision.

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J.  
P.T. BERGBUSCH