

KING'S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 3

Date: 2025 01 08
File No.: KBG-BF-00160-2024
Judicial Centre: Battleford

BETWEEN:

INNOVATION FEDERAL CREDIT UNION

PLAINTIFF

- and -

ROBERT ALLEN PANTELUK

DEFENDANT

Counsel:

Milad Alishahi and Michael Marschal

for the plaintiff

FIAT
January 8, 2025

HILDEBRANDT J.

[1] Recently there have been several applications by mortgagees seeking orders *nisi*, whether for sale by real estate listing or for foreclosure, in which fire/property insurance has been included in the calculation of the amount due and owing under the mortgage. This amount is then set, in the draft order filed, as that which the mortgagor must pay to redeem the land. This decision addresses another such application.

[2] In some of the applications, the issue of whether the insurance may be included in the mortgage account has been flagged for the court by counsel for the mortgagee. In others, such as in this case, the amount has simply been included in the

calculation proffered in the body of the affidavit of a representative of the mortgagee.

[3] Here, the applicant, Innovation Federal Credit Union [Innovation], seeks an order *nisi* for foreclosure in relation to a matured mortgage on residential property. The affidavit of the Credit Union employee, Kristel Scheafer, states that, as of December 13, 2024, the mortgage balance due and owing is \$79,051.39. Included in that amount is \$563.92 of property insurance.

[4] While this may seem like a relatively insignificant amount, in at least one other situation the insurance amount claimed has been over \$3,500. This adds a substantial increase in the redemption hurdle to be met by a mortgagor in 90 days or less, depending upon the terms of the order *nisi* granted. But the amount is not the issue. Rather, it is the characterization of the insurance as part of the mortgage account which is of concern.

[5] Such an inclusion does not appear to be authorized by the provisions of s. 10-11 of *The King's Bench Act*, SS 2023, c 28:

10-11 If default is made in the **payment of money due under a mortgage** or in the observance of a covenant contained in a mortgage and, under the terms of the mortgage, the payment of other portions of the principal money is accelerated by reason of the default and those portions become due and payable:

(a) the mortgagor may, **notwithstanding any provision of the mortgage** to the contrary and at any time before sale or before the grant of a final order of foreclosure, **perform the covenant or pay the arrears that are in default**, with costs to be taxed; and

(b) **on performing a covenant or paying arrears** pursuant to clause (a), the mortgagor is relieved from immediate payment of the portion of the money secured by the mortgage that has not become payable by lapse of time.

[Emphasis added]

[6] By s.10-11, redemption requires only payment of “the arrears that are in default” and “default” is nonpayment “of money due under a mortgage”. As such, the inclusion of the cost of the fire/property insurance, which was apparently paid by the Credit Union, is not to be included in the calculation of the amount outstanding at this juncture. Obtaining insurance coverage appears to relate to the performance of a covenant, in which the mortgagor may have failed. While the Credit Union may well have an interest in purchasing insurance to protect its interest, and potentially that of the mortgagor, the purchase amount therefor does not become part of the amount due and owing under the mortgage.

[7] There is a distinction between the quantification of the mortgage account and the calculation of costs for which the mortgagee may seek reimbursement upon review by the court at the conclusion of the foreclosure process. At that point, the insurance may be considered, taking into account such matters as the term for which it was purchased and any refund received by the mortgagee in light of, for example, an earlier than expected sale of the property in the judicial sale context.

[8] In *Home Equity Mortgage Corporation v Matycio*, 2018 SKQB 283 [Matycio], while not addressing fire insurance particularly, Elson J. commented, at para. 16, on how mortgagees are prohibited from adding “any costs or fees that a mortgagee seeks to collect as incidental to the mortgage default” when quantifying the mortgage account.

[9] Further support for this view may be garnered from s. 11 of *The Limitation of Civil Rights Act*, RSS 1978, c L-16, which states:

11 Notwithstanding anything contained in any mortgage of land whether heretofore or hereafter given or in any agreement renewing or extending the same, no taxes, rates or assessments, other than taxes, rates or assessments levied or charged against the land and paid by the mortgagee, shall be charged by the

mortgagee to the mortgagor or added to the mortgage account; and an agreement, stipulation or covenant to the contrary is null, void and of no effect.

[10] This section permits only property taxes, and not other rates or assessments paid by the mortgagee, to be added to the mortgage account, “notwithstanding anything contained in the mortgage”.

[11] I am mindful that Lawton J. in *Indian Head Credit Union Limited v R & D Hardware Ltd.* (1986), 54 Sask R 161 (CanLII) (Sask QB) at para 30, appears to have included insurance premiums along with principal, interest, and taxes, in the amount owing. However, this insurance issue does not appear to have been subject to argument or analysis. On appeal, how the amount owing by the mortgagor was calculated was indeed raised but “too late in the day”, according to the Saskatchewan Court of Appeal in (1988), 66 Sask R 90 (CanLII) (Sask CA) at para 28. While the age of a decision is not the sole determinant of its utility, the passage of time and additional jurisprudence does give opportunity for clarification of the law. Accordingly, given the legislative provisions noted above, and the principle expressed in *Matycio*, property/fire insurance purchased by the mortgagee is not to be included in the calculation of the mortgage account.

[12] In this case, leave is granted to submit a new draft order *nisi* for foreclosure, with paras. 2 and 3(a) amended to delete reference to the fire insurance and to set the redemption amount as \$78,487.47 rather than the \$79,051.39 currently claimed.

J.
B.R. HILDEBRANDT