

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 16

Date: 2025 01 27  
Docket: QBG-MF-00025-2022  
Judicial Centre: Melfort

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BETWEEN:

BTB MORTGAGE INVESTMENT CORPORATION

Plaintiff

- and -

MICHAEL DAVID HARPHAM and NICOLE LUCETTE  
HARPHAM

Defendants

## Appearances:

Andrew M. Krocynski  
Monique V. Bews  
Michael D. Harpham

for the for the plaintiff  
for the defendant, Nicole Lucette Harpham  
on his own behalf

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FIAT  
January 27, 2025

DANYLIUK J.

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[1] This is the plaintiff's application for a deficiency judgment and for the assessment of its costs of this action. The sole issue turned out to be the propriety of the mortgagee's addition of certain out-of-pocket costs to the mortgage account.

[2] The order confirming sale was granted December 12, 2023. Almost one year elapsed before this application was brought. The delay is unexplained.

[3] On the return date of the within application questions were raised about the amount of property management fees the plaintiff had charged to the mortgage account. Specifically, the payments on utility did not make sense. Leave was given to the plaintiff to file further material explaining same.

[4] On January 9, 2025 the Court received the affidavit of Crystal Peragon, the property manager. That affidavit was sworn December 18, 2024. While there are voluminous attachments exhibited to that affidavit, the body of it is brief and is worth reproducing:

1. THAT I am a Team Lead employed by Veranova Properties Limited and as such, have personal knowledge [*sic*] the matters and facts hereinafter deposed to except where stated to be on information and belief and where so stated I verily believe the same to be true.
2. THAT attached hereto and collectively marked as Exhibit "A" to this my Affidavit are the invoices for the utility charges incurred in this matter.
3. THAT attached hereto and collectively marked as Exhibit "B" to this my Affidavit is the Statement of Utilities, referencing each of the invoices marked as Exhibit "A" for the utility charges in this matter.
4. THAT the higher invoices are during the colder months, resulting from the increased need for heat at the subject property.
5. THAT in November 2023, temporary electric heaters were installed at the subject property which affected the utility charges.
6. THAT I make this Affidavit for the use and benefit of this Honourable Court.

[5] This is not much of an explanation. For example, why were temporary electric heaters required in November 2023?

[6] The bills attached as Exhibit "A" do not appear to be complete

documents. It is difficult to discern the date of each bill. That has to be inferred from the due date listed for payment.

[7] As well, in Exhibit “A” the utility bills are not set out in chronological order. In fact the bills skip back and forth in time. This Court sought a cogent explanation of the charges claimed against the mortgagors’ account. Reproducing the contents of a notional shoebox full of documents and leaving the Court to try to reconcile the account is not an acceptable way to address a legitimate inquiry.

[8] The first SaskEnergy bill appearing in Exhibit “A” appears to have been rendered in December 2022 as the payment due date was January 3, 2023. The bill was for \$27.02 and the property manager paid that bill.

[9] The second SaskEnergy bill forming part of Exhibit “A” goes backward in time to (it appears) August 9, 2022 where it was noted the account had a credit balance forward of \$713.36. The current bill of \$29.42 was also listed as a credit, bringing the credit balance up to \$742.78.

[10] This sent me on a trail of inquiry, one I could not resolve.

[11] Neither in the body of the affidavit nor in the Exhibits are these transactions fully explained. I cross-referenced Exhibits “A” and “B” and found it impossible to discern how this credit arose. Was there a credit due to payments by the mortgagors? I do not know. Was there some other sort of overpayment? I cannot say.

[12] In addition to the unexplained credit on the utility account, the management company’s list of utility costs (Exhibit “B” – set out on a month-by-month basis) does not in all instances correspond with the amounts set out on the actual bills in Exhibit “A”. Again, it is the plaintiff and the management company it hired who have the knowledge of these matters. The initial material was deficient. The plaintiff was given an opportunity to provide proper information. The plaintiff has failed to do so.

[13] What ought to have been abundantly clear from the chambers hearing is that I was looking for an explanation of significant amounts that had been added to the mortgage account for property management fees – almost \$10,000. From the material dumped on my desk, from the lack of care taken in drafting, and despite giving the mortgagee two opportunities to put proper material before me, I do not have any such explanation.

[14] What is the effect of this deficiency on the plaintiff's part? It is incumbent upon a party who claims costs to prove the costs, including any out-of-pocket expenses.

[15] Rule 11-18 of *The King's Bench Rules* applies. Rule 11-18(1) applies to what might be termed court disbursements. Rules 11-18(2) and (3) apply to costs other than such disbursements. Rule 11-18(3) is apposite here:

(3) Disbursements other than fees paid to the Court must not be assessed or allowed unless it is established by affidavit that the disbursement was made or that the party is liable for the disbursement.

[16] At the first hearing of this application I noted the deficiencies in the material and invited the proper verification of these claimed disbursements. Now, a haphazard, slapdash affidavit has been filed as verification. In actual fact it is no verification at all. It has provided more obfuscation than illumination.

[17] I am therefore denying the claim for costs of the management company for the reasons that follow.

[18] **First**, Rule 11-18 was breached insofar as this claim for disbursements was not properly verified by affidavit despite more than one chance to do so. This requirement is often ignored or taken lightly by counsel. It should not be.

[19] **Second**, the disbursements prior to the granting of leave ought to have

been raised at the leave stage. Section 8(3) of *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001, recognizes this Court's plenary jurisdiction over the costs of a leave application:

8(3) The judge may order any party to an application for leave to commence an action to pay all or any portion of the costs of the application.

[20] **Third**, the law in Saskatchewan is that pre-leave costs are to be dealt with at the leave stage and no pre-leave costs were awarded here when leave was granted. The authorities are clear on this point; examples include *Homequity Bank v Lindemann*, 2021 SKQB 326; *CIBC Mortgages Inc. v Whitesell*, 2016 SKQB 131 at para 3; *Toronto-Dominion Bank v Krawchuk*, 2006 SKQB 31 at para 11, 276 Sask R 121. In this regard I also note *Toronto-Dominion Bank v Huot*, 2008 SKQB 345 at paras 5-6, 340 Sask R 239:

[5] *The Land Contracts (Actions) Act* [SS 1978, c L-3 (rep)] requires that the mortgagee must obtain leave of the court before commencing that foreclosure action, though. The mortgagor will be required to pay the mortgagee's costs associated with that pre-action process - the pre-leave costs - only if the chambers judge concludes that the mortgagor has conducted himself or herself inappropriately.

[6] It is not the case that the mortgagor will be ordered to pay pre-leave costs as a matter of course, flowing from the mortgagor's promise to pay or from the usual practice of ordering costs in a foreclosure action. Rather, because the Act provides pre-action protection to mortgagors, a mortgagor is entitled to that protection without paying for it in costs unless the mortgagor's conduct justifies such payment.

[21] At the leave to commence stage of court proceedings it would be easy for a lender to include in its affidavit material a summary of these additional costs or disbursements to that date. This was not done here. The chambers judge who granted leave in this matter granted no pre-leave costs; therefore, the plaintiff cannot expect to

recoup them at a later date.

[22] That the plaintiff was aware of the situation regarding the property is indisputable. Paragraph 14 of the initial affidavit of default of Steven Froese sworn February 2, 2022 refers to the fact that the mortgagors no longer occupied the subject property. Further, in paragraph 18 of that same affidavit Mr. Froese stated the plaintiff intended to claim pre-leave costs.

[23] **Fourth**, Mr. Froese's affidavit (sworn June 6, 2023) filed in support of the order for sale by judicial listing application sets out amounts owed under the terms of the two mortgages granted by the mortgagors in paragraphs 4 and 5. Absolutely no mention is made of property management fees incurred so far. These figures in that affidavit were used in the sale order including in defining the right of redemption. The plaintiff cannot lurk in the weeds on such significant amounts.

[24] **Fifth**, and tied to the fourth reason, when plaintiff's counsel filed the Peragon affidavit a cover letter was sent. The letter presents argument but some of the matters referred to in counsel's letter are not in evidence on this application. I am not considering arguments with no basis in the evidence. Further, given the phrasing of the sale order and the affidavit it was based upon, the plaintiff cannot now maintain the property management fees are anything other than costs which are subject to the discretion of this Court.

[25] **Sixth**, overall the claim for property management costs is not strong in this case. Counsel for mortgagees now treat this claim for such fees as something that will automatically be granted. This is not the case:

- *Royal Bank of Canada v Wolff*, 2017 SKQB 318 at para 33, 17 CPC (8th) 395, where the courts need to supervise claims for “questionable and exorbitant management fees”.

- *Royal Bank of Canada v Hollmann*, 2017 SKQB 299 at para 10, where the Court noted that costs are not awarded as a matter of course: “The discretion to award costs must always be exercised in a principled manner, and on the facts.”

[26] Here, with poor evidence and unsupportive law, the discretion points toward not allowing management fees.

[27] Given the weak legal position and that factually the claimed disbursements are not duly verified by affidavit, I must decline to award the property management disbursements incurred by the plaintiff.

[28] I note one last matter, somewhat parenthetically as it does not form any vital component of my analysis leading to this decision. In recent times the proliferation of management fees, and the amounts claimed thereunder, has skyrocketed. The default of a mortgagor does not result in “open season” to claim any and all fees and costs whatsoever which may occur to the lender. Notwithstanding standard mortgage terms, the statute and case authorities in Saskatchewan create reasonable limits on extraneous charges. It is my respectful view that many of the claims for such fees far exceed these reasonable limits. Given the oft-stated supervisory jurisdiction of this Court over land realization processes generally, and judicial sales in particular, it is reasonable to expect that the justices of this Court will be monitoring such fees.

[29] The plaintiff shall file (to my attention) a new calculation of the amounts due and the portion of same subject to a claim for deficiency judgment, omitting the property management fees.

“R.W. Danyliuk” J.  
R.W. DANYLIUK