KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 171**

Date: **2024 09 19**
Docket: QBG-RG-00580-2022
Judicial Centre: Regina

2024 SKKB 171 (CanLII)

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION

PLAINTIFF

\- and -

CASEY REGAN CHURKO

DEFENDANT

Counsel:

Conrad D. Hadubiak, K.C.	for the plaintiff
Casey Churko	for himself

FIAT ROBERTSON J.
September 19, 2024

Contents Paras

INTRODUCTION 1
BACKGROUND 2-3
ISSUES 4
POSITION OF PARTIES 5-8
First National 5-6
Mr. Churko 7-8
ANALYSIS 9-50
Adequacy of Appraisal Report 11-28
Purpose of valuation evidence 12-13

The King's Bench Rules **14-15**
The Land Contracts (Actions) Act, 2018 .... **16-17**
Lavigne **18-22**
Appraisal report **23-28**
Accuracy of Redemption Amount **29-37**
Fire Insurance **38-39**
Redemption Period **40-41**
Costs **42-47**
Form of Draft Order **48**
SUMMARY **49-50**

2024 SKKB 171 (CanLII)

INTRODUCTION

[1] This decision addresses an application for order *nisi* for foreclosure following summary judgment dismissal of the defence to the statement of claim. For the reasons which follow, the application is granted. The draft order *nisi* for foreclosure may issue with amendments set out below.

BACKGROUND

[2] The background to this application is set out in my decision of June 20, 2024, reported at 2024 SKKB 118 [*Summary Judgment*]. In that decision, I found there was no viable defence to the claim and that I would not exercise my discretion to deny the plaintiff relief through foreclosure action. However, I also allowed the defendant's counterclaim to proceed. The order for judgment was issued on July 2, 2024.

[3] On August 14, 2024, the plaintiff filed notice of application seeking order *nisi* for foreclosure with a seven-day redemption period. The application scheduled for

September 3, 2024, was adjourned to September 5, 2024, when it was argued in chambers with decision reserved.

2024 SKKB 171 (CanLII)

ISSUES

[4] The issues are whether the application should be granted to authorize order *nisi* for foreclosure to issue and, if so, on what terms?

POSITION OF PARTIES

First National

[5] On August 14, 2024, the plaintiff, First National Financial GP Corporation [First National], filed a covering letter along with notice of application seeking order *nisi* for foreclosure in Form 6-4. The application was supported by other documents filed on August 14, 2024: Form 13-31 Affidavit of Danny Sougaris sworn August 6, 2024 [Sougaris Affidavit] (with attached Exhibits "A" Occupancy Report, "B" Appraisal of 1201-1914 Hamilton Street, Regina [Property]); Form 10-42B Certificate of Search; Form 10-43A1 Order *Nisi* for Foreclosure (for non-matured mortgages); Form 12-15 Affidavit of Service by Email on the defendant; and Form 3-49 Acknowledgement of Service.

[6] The position of First National is that the order *nisi* should issue, but with a few amendments. First National asked that the draft order *nisi* be amended to delete "fire insurance" from para. 2, to substitute the standard 90 days for the current 7 days as the redemption period in para. 4, and to fix costs in para. 3(c). First National's lawyer said his client was asking for less than it was entitled to avoid delay in the resolution of this foreclosure proceeding, which began on March 20, 2022, when it filed its leave application.

Mr. Churko

[7] On August 29, 2024, the defendant, Casey Regan Churko [Mr. Churko], filed a letter under letterhead of KOT Law to the Local Registrar stating his opposition to the application. The text of that letter is reproduced below:

> This matter is set for chambers on September 3rd, 2024. I ask that you please bring this correspondence to the attention of the honourable presiding justice. I also request to appear by phone at [telephone number] as I am in Ontario next week.
>
> The Defendant opposes First National's application for an order *nisi*. The application should be dismissed with costs to the Defendant.
>
> (a) The value of the property has not been established. The appraisal report is inadmissible. A valuation report by an expert who has not acknowledged her duty to assist the Court and that is simply 'stapled' to an affidavit by a mortgagee's employee is inadmissible on an application for order *nisi*. [omitting footnote citing *Bank of Nova Scotia v Lavigne*, 2024 SKKB 83] An expert must comply with the affirmation duties in Rule 5-37. [footnote omitted] First National's appraiser does not acknowledge her duty to the court, nor set out her credentials. She does not express value as an opinion. She observes that the "price range" in the neighbourhood is up to $500,000, but references only 3 comparator property sales, each more than 12 months old. The hearsay appraisal report should thus be excluded on the application. [omitting footnote quoting *Lavigne* at paras 15 and 17]
>
> (b) The amount of the mortgage balance has also not been established. It was significantly contested on the application for summary judgment. A reference should be directed, as contemplated by Robertson J. First National previously filed 2 materially different mortgage account records: see Defendant's *Brief of Law* (2023-11-24), [at paragraph] 40. The fire insurance claimed in the draft order is not owed under the mortgage. The amount of interest is contested; interest was charged and added to the claimed principal after the period in which First National said the contract ended.
>
> (c) The redemption period should be 90 days, not 7 as proposed in the draft order. As Robertson J. observed, the standard redemption period is 90 days. There is nothing to warrant

2024 SKKB 171 (CanLII)

> departure from that in this case. The property is not vacant. The occupancy check that First National relies on is inadmissible double hearsay; but it does not even say that the property is vacant. The costs claimed, on a solicitor client basis, could not be assessed within 7 days, nor could the application proposed in the order *nisi* be heard on 7 days notice. The claim for solicitor-client costs is opposed.

[8] The position of Mr. Churko, as I understand it, is that the application should be dismissed with costs awarded to him. He argued that there was unfairness in First National's lawyer not filing a brief of law and in proposing changes to the draft order *nisi* filed for the application. He argued that order *nisi* cannot issue for a few reasons. First, the appraisal report of the Property does not comply with the requirements set out for admissibility of expert opinion evidence in Rule 5-37 of *The King's Bench Rules* and in *Bank of Nova Scotia v Lavigne*, 2024 SKKB 83 [*Lavigne*]. Second, the amount owing for redemption must be determined to be accurate in a reference under Rule 10-43. Third, the 7-day redemption period is too short and far below the standard 90-day redemption period. Mr. Churko also asked for an award of costs if the application was dismissed.

ANALYSIS

[9] In this part, I will address Mr. Churko's objections to the application and other concerns.

[10] The applicant for order *nisi* must satisfy the Court it has met all requirements for the requested order. At the same time, if the respondent opposing the application files nothing substantive, the application is likely to be granted. In this case, First National filed a complete application. Mr. Churko filed in opposition to the application a two-page letter which is argument. He said he also relied upon materials

2024 SKKB 171 (CanLII)

filed for the summary judgment application. I have considered all materials filed in reaching my decision.

Adequacy of Appraisal Report

[11] Mr. Churko argued that the appraisal report filed by First National in support of this application was inadmissible because it did not comply with the requirements set out in Rule 5-37 and *Lavigne* for admissibility of expert opinion evidence.

Purpose of valuation evidence

[12] In judicial sale, valuation evidence is required to establish the minimum or upset price required by s. 5 of *The Limitation of Civil Rights Act*, RSS 1978, c L-16, which is based upon a percentage (usually 85-90%) of the current market value of the property. Where the order sought is for foreclosure, the valuation evidence is necessary to ensure that foreclosure is not granted where there is substantial equity. Otherwise, the mortgagee might obtain a windfall profit at the expense of the owner or other creditors who would, in case of judicial sale, be entitled to any surplus funds from sale of the property, after payment of the mortgage balance and allowed costs of the litigation.

[13] The Sougaris Affidavit in para. 7 states there is no equity remaining in the Property. That statement is uncontradicted. I am satisfied that there is no equity in the Property which might warrant refusal of order *nisi* for foreclosure and substitution of order *nisi* for judicial sale. The mortgage balance exceeds the appraiser's opinion of the market value of the Property. There are also registered judgments on title, indicating other significant debt claims. None of those creditors appeared at any stage of the

2024 SKKB 171 (CanLII)

foreclosure proceedings, which might indicate they did not expect to realize any payment from sale of the Property.

The King's Bench Rules

[14] While Mr. Churko relied upon Rule 5-37, which deals with the duty of an expert witness, Rule 5-46, which deals with admissibility of appraisal reports, may also be relevant. Both Rules are reproduced below:

> **DIVISION 3**
>
> **Experts and Expert Reports**
>
> **Duty of expert witness**
>
> **5-37**(1) In giving an opinion to the Court, an expert appointed pursuant to this Division by one or more parties or by the Court has a duty to assist the Court and is not an advocate for any party.
>
> (2) The expert's duty to assist the Court requires the expert to provide evidence in relation to the proceeding as follows:
>
> (a) to provide opinion evidence that is objective and non-partisan;
>
> (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
>
> (c) to provide any additional assistance that the Court may reasonably require to determine a matter in issue.
>
> (3) If an expert is appointed pursuant to this Division by one or more parties or by the Court, the expert shall, in any report the expert prepares pursuant to this Division, certify that the expert:
>
> (a) is aware of the duty mentioned in subrules (1) and (2);
>
> (b) has made the report in conformity with that duty; and
>
> (c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

2024 SKKB 171 (CanLII)

> . . .
>
> **Appraisal report in evidence**
>
> **5-46**(1) Subject to subrule (4), in all proceedings to which these rules apply an appraisal report is admissible in evidence.
>
> (2) A party intending to submit an appraisal report in evidence must, not less than 30 days before the date scheduled for a pre-trial conference, provide to every other party to the action:
>
> (a) a copy of the appraisal report; and
>
> (b) a summary of the qualifications of the person making the report.
>
> (3) A party who has been provided with a copy of an appraisal report and who intends to require the author of the report to attend at trial to be cross-examined on the report shall give notice to the other party of that intention within 30 days after the trial date has been scheduled.
>
> (4) Unless the Court otherwise orders, an appraisal report must not be admitted in evidence unless subrule (2) has been complied with.

[15] It may be noted that Rule 5-46(4) allows the Court to relax or waive the requirements of that Rule in admitting an appraisal report into evidence.

The Land Contracts (Actions) Act, 2018

[16] *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001 in ss. 10(1)(a) authorizes the judge to require an appraisal in a foreclosure action. Section 10 is reproduced below:

> **Actions**
>
> **10**(1) In an action, the judge may require the parties to provide all information that, in the opinion of the judge, may be relevant, including:
>
> (a) an appraisal of the land that includes the appraised value;

2024 SKKB 171 (CanLII)

> (b) the state of the defendant's account with the plaintiff;
>
> (c) the income and assets of the parties, unless the party is a financial institution; and
>
> (d) prevailing conditions of a local or temporary nature.
>
> (2) On considering the information mentioned in subsection (1), the judge may:
>
> (a) make an order:
>
> (i) granting the relief sought in the action;
>
> (ii) refusing to grant the relief sought in the action;
>
> (iii) postponing the payment of money due to the plaintiff;
>
> (iv) varying or extending an order from time to time;
>
> (v) imposing the terms and conditions to which an order may be subject;
>
> or
>
> (vi) staying the action; or
>
> (b) make any other order that the judge considers appropriate.
>
> (3) The judge may order any party to an action to pay all or any portion of the costs of the action.

[17] The use of the word "may" in s. 10 means that the authority to require appraisal evidence is discretionary. The Court may require an appraisal or not. Or the Court may accept other valuation evidence. This statutory authority would also supersede requirements of *The King's Bench Rules*, if the Court so allowed.

Lavigne

[18] *Lavigne* is an important decision which follows and is consistent with prior decisions of this Court which have criticized inadequate or unreliable valuation

2024 SKKB 171 (CanLII)

evidence in foreclosure proceedings. See, for example: *Royal Bank of Canada v Schnedar*, 2004 SKQB 146 at para 18, 248 Sask R 123; *Royal Bank of Canada v Hanterman*, 2013 SKQB 158 at para 8, 419 Sask R 253; *CIBC Mortgages Inc. v Taylor*, 2018 SKQB 118 at paras 45 – 47, [2018] 9 WWR 340 [*Taylor*]; *Royal Bank of Canada v Gaudet*, 2019 SKQB 87 at para 27; *Royal Bank of Canada v Yuzak*, 2019 SKQB 145 at para 27; *Bank of Nova Scotia v Nieswandt*, 2020 SKQB 53 at para 14; *Fairstone Financial Inc. v Hein*, 2020 SKQB 301 at paras 30 – 31; *Canadian Imperial Bank of Commerce v Doan*, 2020 SKQB 274 at paras 13 – 16; and *Manulife Bank of Canada v Holmes*, 2023 SKKB 105 at para 107.

2024 SKKB 171 (CanLII)

[19] In *Taylor* at para 47, Danyliuk J. summed up these concerns.

> [47] Foreclosure practice in this province has moved to the point where any number of people are throwing opinions of value at the court. There is no evidence that those deponents even have any expertise, much less compliance with the *White Burgess* [2015 SCC 23, [2015] 2 SCR 182] test. This practice should, in my view, be modified, and mortgagees' counsel should proceed with more care in regard to the type of evidence put before the court.

[20] I share those concerns. However, I do not read *Lavigne* as going as far as Mr. Churko believes it does, in particular in his claim that it requires that appraisal evidence submitted in support of applications for order *nisi* in foreclosure proceedings (seeking either foreclosure or judicial sale) satisfy the strict requirements for expert opinion evidence in trials.

[21] On the contrary, in *Lavigne* at para 13(i), Gerecke J., in summarizing principles garnered from his review of the Court's jurisprudence, stated:

> i. To date, this Court has not held that in every foreclosure each mortgagee must obtain a full appraisal from a certified appraiser. However, all evidence of value must be reasonable: *Royal Bank of Canada v Yuzak*, 2019 SKQB 145.

[22] And at para. 16, Gerecke J., after summarizing "Principles governing valuation evidence", stated that:

> [16] At this time, I am not laying down a broad rule that CMAs cannot be relied on as evidence of value, including on an order *nisi* application. …

Appraisal report

[23] Mr. Churko argued that the appraisal was unreliable because it did not satisfy professional standards. I disagree.

[24] The valuation date stated in the report is July 30, 2024, being the date of inspection. So this was a recent and current valuation.

[25] The appraisal report at page 4, above the valuator's signature, describes the Property under the heading "Property Identification". Above that heading appears the following certifications:

> I certify that to the best of my knowledge and belief:
>
> 1. The statements of fact contained in this report are true and correct.
>
> 2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my impartial and unbiased professional analyses, opinions and conclusions.
>
> 3. I have no past, present or prospective interest in the property that is the subject of this report and no personal and/or professional interest or conflict with respect to the parties involved with this assignment.
>
> 4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

2024 SKKB 171 (CanLII)

> 5. My engagement in and compensation is not contingent upon developing or reporting predetermined results, the amount of value estimate, a conclusion favouring the client, or the occurrence of a subsequent event.
>
> 6. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the CUSPAP.
>
> 7. I have the knowledge and experience to complete this assignment competently, and where applicable this report is co-signed in compliance with CUSPAP.
>
> 8. No one has provided professional assistance to the member(s) signing this report.
>
> …
>
> 9. As of the date of this report the undersigned has fulfilled the requirements of the AIC's Continuing Professional Development Program.
>
> 10. The undersigned is a member/are all members in good standing of the Appraisal Institute of Canada. Where applicable this report is co-signed in compliance with CUSPAP. Where a report bears two signatures, both the signing appraiser and co-signing appraiser assume full responsibility for this report.

[26] The appraiser, Haleigh Clements, signed the report. Her credentials are shown below her name and signature with the box checked for "P. App. AACI, Membership #906462". I recognize this designation to stand for Professional Appraiser, Accredited Appraiser Canadian Institute. (The Appraisal Institute of Canada is also named in certification #10.)

[27] The certifications, along with the professional credentials of the appraiser and her signature, assure the Court that the opinion of value was made according to professional standards. And there is no evidence to the contrary.

2024 SKKB 171 (CanLII)

[28] I am satisfied that the appraisal report submitted by First National in support of its application for order *nisi* is reliable and sufficient.

Accuracy of Redemption Amount

[29] Mr. Churko, in his letter and argument, asked for a reference under Rule 10-43 to ascertain the amount owed under the mortgage. Rule 10-43 is reproduced below:

> **Determination of amount due**
>
> **10-43**(1) On an application for order nisi, the Court shall determine the amount due:
>
> (a) under the mortgage; or
>
> (b) under any provision of an agreement to extend the time for payment under the mortgage or to vary the terms and conditions of the mortgage.
>
> (2) For the purpose of subrule (1), the Court:
>
> (a) may make any order for reference for the purpose of taking the accounts that may be necessary; and
>
> (b) shall fix a time within which the defendant or defendants may redeem the mortgage.
>
> (3) An order nisi for foreclosure:
>
> (a) for a non-matured mortgage is to be in Form 10-43A1; and
>
> (b) for a matured or demand mortgage is to be in Form 10-43A2.
>
> (3.1) The applicant for an order under this rule shall file a draft order in the applicable form, with all additions, insertions and changes underlined.
>
> (4) In determining the amount due and required to redeem the mortgage, the plaintiff may estimate the amount of and give credit for

2024 SKKB 171 (CanLII)

> anticipated rents and profits to be derived from the land in question before the expiration of the period of redemption.
>
> (5) If the amount actually received does not exceed the amount estimated pursuant to subrule (4), it is not necessary by reason of the rents and profits having been received to reopen the account and fix a new period of redemption.
>
> (6) Except as otherwise provided in this rule, if the state of the accounts ascertained by a judgment or order under this rule is changed before the date fixed for redemption:
>
> > (a) the plaintiff may apply, without notice or on any notice that the Court may determine, to fix the amount to be paid in lieu of the amount previously ascertained; and
> >
> > (b) on an application pursuant to clause (a), the Court may fix a new period of redemption.
>
> (7) If the day appointed for payment by any order nisi under this rule has not arrived and the state of the account has been changed by payment or otherwise, the plaintiff may give notice, by registered mail if no defence has been delivered, to the party by whom the money is payable that:
>
> > (a) the plaintiff gives the party credit for a sum certain to be named in the notice; and
> >
> > (b) the plaintiff claims that there remains due with respect to the mortgage a sum certain to be named in the notice.
>
> (8) If a notice of credit is given pursuant to subrule (7) and if the sums named in the notice appear proper to be allowed and paid, the final order may be granted in Form 10-43B without fixing a new period of redemption, but the party to whom the notice is given may apply to the Court to fix, by reference or otherwise, the amounts proper to be allowed and paid instead of the amounts mentioned in the notice.
>
> (9) If after the expiry of the period of redemption but before the final order is made, the plaintiff receives any money by way of rents and profits of the land in question, the Court may make the final order in Form 10-43B without fixing a new period of redemption.

[30] As discussed in the *Summary Judgment* at paras 77 – 82, I concluded that a dispute over the amount owing did not require a trial, since the Rules provide alternate

2024 SKKB 171 (CanLII)

means of settling that question, including a reference under Rule 10-43 in the case of mortgage debt. Rule 10-43(3.1) requires filing of a draft order to initiate a reference. No such written application was filed. Further, the decision to order a reference is discretionary.

[31] I note as well that Rule 10-40(5) entitles a defendant at any time to demand particulars of the amount claimed by the plaintiff. If the particulars are not promptly provided, the defendant may apply to the Court to stay the action:

> **Claim in mortgage action**
>
> **10-40**
>
> . . .
>
> (5) A defendant is entitled at any time by notice in writing to demand particulars of the amount claimed by the plaintiff.
>
> (6) Within 3 days after the receipt of the notice mentioned in subrule (5), the plaintiff shall:
>
> > (a) deliver to the defendant a statement of account setting out the full particulars of the amount claimed by the plaintiff; or
> >
> > (b) mail the statement mentioned in clause (a) to the defendant by registered mail to the address given by the defendant in the notice.
>
> (7) If the plaintiff fails to comply with a demand pursuant to subrule (5), the defendant may, without delivering any defence to the statement of claim, apply to the Court for an order staying the action as against the defendant until the demand is complied with.
>
> (8) On an application pursuant to subrule (7), the Court may grant the order on those terms as to costs or otherwise that the Court considers just.

[32] Regardless, the question raised by Mr. Churko about the amount payable for redemption will be addressed.

2024 SKKB 171 (CanLII)

[33] The Sougaris Affidavit at para. 3 stated the amount owing on the mortgage at $230,329.98 as of July 10, 2024, with a breakdown by balance, interest and tax. This amount appears in the draft order filed at paras. 2 and 3(a). Paragraph 3(b) states the accruing interest rate as 2.29% per year from July 10, 2024. Paragraph 3(c) claims the plaintiff's costs on a solicitor-client basis. So, apart from the costs, the amount claimed as owing is easily ascertainable.

[34] Leaving aside the lack of filed application for a reference, Mr. Churko did not persuade me in his argument that the amounts claimed by First National, supported by the sworn Sougaris Affidavit, were inaccurate. First National provided evidence supporting its claim. It is not enough to say the amount claimed is not accurate.

[35] Mr. Churko referred me to para. 40 of his brief of law filed for the summary judgment application, which in turn refer to affidavits filed in 2023 for that application. In para. 40 of that brief, Mr. Churko complained that First National did not account for the charges disallowed in the earlier applications for leave, which were both dismissed, and that the accounts filed in this action are different from information provided in those prior actions. It would be concerning if they were the same, given the passage of time and the decisions in those applications which either found the claimed fees or charges had been paid or were not otherwise properly claimed.

[36] Mr. Churko also appeared to argue in his letter that no interest could be added to the outstanding mortgage balance after it matured. I reject that argument. The end of a mortgage term does not void the mortgage agreement as an enforceable contract. When the mortgage term ends and the mortgage becomes a matured mortgage, the entire mortgage balance is due and owing. Interest continues to accrue as provided under the mortgage agreement.

2024 SKKB 171 (CanLII)

[37] On the evidence before me, I find that the amounts claimed in the draft order *nisi* are accurate and valid and ascertainable for the purpose of redemption. I will deal with the issues of redemption period and amount of costs below.

Fire Insurance

[38] Mr. Churko objected to the claim for fire insurance in para. 2 of the draft order *nisi*. The Sougaris Affidavit, which breaks the amounts owing on the mortgage, makes no claim for fire insurance. First National's lawyer conceded that there was no claim for fire insurance, saying it was listed in error. This perhaps illustrates the danger in using office precedents, instead of going back to the clean form available on the Saskatchewan Publications website.

[39] The reference to "fire insurance" is to be removed from the order *nisi*.

Redemption Period

[40] The draft order in para. 4 proposed a seven-day redemption period. Mr. Churko argued there was no good reason to deviate from the standard 90 days. Mr. Churko disputed First National's assertion that the Property was vacant, saying in argument that he occupied it as one of his residences. First National's lawyer said the seven-day period was reasonable, given there had been no payments on the mortgage balance for three years. Nonetheless, First National would accept the standard redemption period of 90 days.

[41] The redemption period will be 90 days.

2024 SKKB 171 (CanLII)

Costs

[42] The draft order in para. 3(c) proposed an award of costs to the plaintiff on a solicitor-client basis:

> (c) The plaintiff's costs, on a <u>solicitor-client basis, excluding the costs for the summary judgment application</u>, subject to the Court's assessment on application by the plaintiff or the defendant.
>
> [underline in original]

[43] Although this is a standard term in order *nisi* for foreclosure, Mr. Churko argued that the redemption amount remains uncertain until costs are assessed.

[44] First National's lawyer pointed out that this issue is likely academic. First National does not expect Mr. Churko to exercise his right of redemption. And s. 6 of *The Limitation of Civil Rights Act*, reproduced below, provides that a final order of foreclosure operates in full satisfaction of the debt, including any cost award:

> **Effect of final order of foreclosure**
>
> **6** Every final order of foreclosure of a mortgage on land shall operate in full satisfaction of the debt secured by the mortgage; provided that a right of redemption exercisable after a final order of foreclosure made prior to the twenty-first day of February, 1935, shall be exercisable after a final order of foreclosure made after that date.

[45] First National's lawyer also pointed out that First National could have sought other costs, but had not done so to avoid argument that would likely prolong the foreclosure proceedings. To avoid delay, First National's lawyer asked that costs be fixed to address this objection.

[46] Costs are usually determined at the end of the foreclosure proceedings, either upon redemption or on or soon after order confirming sale. I fix costs in this case at the request of the mortgagee and to address the issue raised by Mr. Churko. This

2024 SKKB 171 (CanLII)

should not be viewed as any precedent. One would expect an owner seeking to redeem the property at this stage would pay the mortgage balance, with accruing interest, into Court to stop both accruing interest and preclude any final order. The issue of additional costs payable would then be resolved by agreement or by the Court on application of either party. That is expressly provided for in Form 10-43A2 in para. 3(c).

2024 SKKB 171 (CanLII)

[47] I fix costs payable to the plaintiff at $5,000, being the current standard amount for a typical foreclosure action. While this action was not typical, First National was not seeking an increased award. This award of costs includes costs of this application, which are otherwise provided for in para. 7 of Form 10-43A2.

Form of Draft Order

[48] The draft order filed is in Form 10-43A1 Order *Nisi* for Foreclosure (for non-matured mortgages). As discussed in my prior decision, this mortgage matured on December 2, 2021. So, the proper form would be Form 10-43A2 Order *Nisi* for Foreclosure (for matured and demand mortgages). The issued order must be in that form.

SUMMARY

[49] The application for order *nisi* for foreclosure is granted. The draft order may issue, but with the following amendments:

1. Form 10-43A2 shall be used;
2. The words "and fire insurance" shall be deleted from para. 2;
3. Paragraph 3(c) shall be deleted and the following words substituted: "the plaintiff's costs are fixed at $5,000.";

4. Paragraph 6 shall be deleted.

[50] I will remain seized in case any further direction is required.

J.
D.N. ROBERTSON

2024 SKKB 171 (CanLII)