

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella
Mr. Justice David J. Kroft

BETWEEN:

<i>CIBC MORTGAGES INC.</i>)	<i>A. M. Reina Flores</i>
)	<i>on their own behalf</i>
)	
<i>(Plaintiff) Respondent</i>)	<i>S. Marcoux</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Appeal heard and</i>
<i>ANA MARITZA REINA FLORES</i>)	<i>Decision pronounced:</i>
)	<i>May 29, 2026</i>
<i>(Defendant) Appellant</i>)	
)	<i>Written reasons:</i>
)	<i>June 12, 2026</i>

CAMERON JA (for the Court):

[1] The appellant appealed a summary judgment order granted in favour of the respondent in the sum of \$119,256.09 for her outstanding mortgage and \$23,350.78 in costs, with interest to accrue at the rate of 9.75 per cent per annum until payment in full, as well as an order of immediate vacant possession of the lands and premises subject to the mortgage.

[2] At the hearing, we dismissed the appeal with reasons to follow. These are those reasons.

[3] On December 12, 2007, the appellant executed a five-year mortgage secured against her home (the property) wherein she borrowed \$112,909.87

from the respondent. The mortgage was renewed periodically, with the last renewal commencing on June 23, 2023 and becoming due on December 15, 2023. Prior to the mortgage becoming due, the appellant had failed to make all payments as required. When the mortgage became due, the respondent was not prepared to renew it as it had done in the past.

[4] In his reasons granting the order, the summary judgment judge (the judge) accepted the respondent's up-to-date evidence of the amount owing under the mortgage. He found that there was no contractual term in the mortgage that would require the respondent to renew the mortgage when it became due. He explained that the appellant's arguments that the mortgage was in good standing were not relevant to the respondent's right not to renew, but, in any event, he did not accept her arguments in that regard. He noted that funds that the appellant had presented to the respondent after the mortgage had matured were not accepted by the respondent. Rather, the respondent's counsel held them in trust and returned them to her. The appellant forwarded the funds to the respondent a second time. In response, the respondent's counsel brought the money to court and the judge saw no reason why she ought not to accept its return.

[5] Regarding costs, the judge noted that article 10.3 of the mortgage agreement entitled the respondent to costs on a "substantial indemnity" basis. In accepting the respondent's itemized bill of costs, he noted that, while the amount was significant, it was fair, reasonable, fully disclosed and justified in the circumstances, including that the appellant appeared to have declined the opportunity to compromise with the respondent as she had been encouraged to do by the judge.

[6] The appellant's five grounds of appeal are:

- (1) there was no jurisdiction as a notice of motion for summary judgment had not been filed;
- (2) the proceedings were procedurally unfair;
- (3) the judge failed to apply the correct summary judgment test;
- (4) there was a failure to comply with the evidentiary requirements in foreclosure proceedings; and
- (5) the respondent failed to provide verifiable mortgage documentation required for an order of possession.

[7] A decision on a motion for summary judgment is discretionary. It is reviewed on the deferential standard and is only to be set aside if there is a material error on the law or facts, or if the decision is so clearly wrong as to be unjust. The determination of whether there is a genuine issue requiring a trial involves questions of mixed fact and law, reviewable on the standard of palpable and overriding error (see *Dakota Ojibway Child and Family Services et al v MBH*, 2019 MBCA 91 at para 36).

[8] The first two grounds of appeal can be dealt with together. It is undisputed that the appellant had notice of the summary judgment motion. The respondent filed its statement of claim on January 2, 2024. At the first pre-trial conference held on April 3, 2025, the judge granted the respondent leave to file the summary judgment motion. He set deadlines for the filing of affidavit evidence for the motion, as well as other deadlines. He also set the hearing date for the motion.

[9] At the second pre-trial conference held on July 15, 2025, the judge made further orders regarding the filing of affidavits in relation to the summary judgment motion. He specifically noted that the parties disagreed about the amount owing under the mortgage.

[10] On September 2, 2025, the hearing date for the motion, the judge noted that the notice of motion for summary judgment had not been filed. The respondent's counsel believed that it had been. In any event, the judge allowed the matter to proceed and ordered the respondent to file the notice of motion, which was later filed on September 4, 2025.

[11] In circumstances such as these, rule 2.01(1) of the MB, *King's Bench Rules*, Man Reg 553/88 [the *Rules*], provides that failure to comply with the *Rules* does not render a proceeding or a step or document a nullity, and the Court may grant the appropriate relief. Proceedings may only be set aside where necessary in the interests of justice.

[12] In *Cement Accents Manitoba Inc et al v Wagner Construction et al*, 2023 MBCA 59 [*Cement Accents*], a motion was brought under the wrong rule (the motion should have been brought under rule 20 instead of rule 49 of the *Rules*). This irregularity was corrected under rule 2. The Court explained (*Cement Accents* at para 27):

[Rule 2] empowers the Court, where necessary and in the interests of justice, to dispense with compliance with any rule. Also relevant is r 1 which states that the rules should be liberally construed to secure the just, most expeditious and least expensive determination of proceedings. Here, the issue of the nature of the settlement was fully argued before the motion judge and summary judgment considerations are, in any event, applicable to motions under r 49. Substituting the proper rule

will provide a just determination of this dispute and is proportionate.

[13] For an example of where the Ontario rule equivalent to rule 2 of the *Rules* was applied to uphold an order of partial summary judgment despite a motion not having been formally filed, see *Koohestani v Mahmood*, 2015 ONCA 56 at paras 38-40.

[14] In the present case, the appellant had ample notice of the motion for summary judgment. She also had disclosure of the documents related to it, as well as the arguments to be advanced by the respondent. The irregularity was that the respondent did not file the written notice of motion until after the motion was argued and decided. The judge considered the written motion filed *nunc pro tunc* and then signed the judgment.

[15] No procedural unfairness has been demonstrated, nor was the decision to proceed unjust.

[16] Next, in our view, grounds 3 to 5 do not demonstrate reversible error. The judge did not err in his application of the test for summary judgment. The appellant's arguments demonstrate her continued insistence that she was not in default of her mortgage, and her dispute about the amount owing. They also reflect her refusal to accept the terms of the mortgage she had entered into, including that the respondent was entitled to renew the mortgage in June 2023, that it had advised the appellant of the renewal and that the parties continued to act on the terms of that renewal. She further refuses to accept that the respondent was not required to renew her mortgage when it became due in December 2023.

[17] Finally, we would note that the materials filed by the appellant in this appeal appear to be generated by some form of artificial intelligence gone awry. The cases referred to in her factum have either been hallucinated or misrepresent the concepts claimed to be articulated in them. The respondent spent needless time and energy trying to verify the cases cited by the appellant. Arguments based on non-existent or irrelevant case law are unacceptable.

[18] In the result, we dismissed the appeal. Costs were granted on a substantial indemnity basis as articulated in article 10.3 of the mortgage agreement.

Cameron JA

Mainella JA

Kroft JA
