
Court of Appeal for Saskatchewan
Docket: CACV4615

**Citation: *Piecowye v The Bank of Nova Scotia*,
2026 SKCA 68**

Date: 2026-06-03

Between:

**Betty Ann Piecowye, also known as Bettyann M Piecowye, also known as Betty A
Piecowye, also known as Betty Pievowye, also known as Betty Ann Schedkosky**

*Appellant
(Applicant)
(Defendant/Plaintiff by Counterclaim)*

And

The Bank of Nova Scotia

*Respondent
(Respondent)
(Plaintiff/Defendant by Counterclaim)*

Before: Tholl, Kalmakoff and Drennan JJ.A.

Disposition: Appeal allowed

Written reasons by: The Honourable Justice Jerome A. Tholl
In concurrence: The Honourable Justice Jeffery D. Kalmakoff
The Honourable Justice Jillyne M. Drennan

On appeal from: 2025 SKKB 116, Saskatoon
Appeal heard: May 15, 2026

Counsel: Timothy Turple for the Appellant
No one appearing for the Respondent

Tholl J.A.

I. INTRODUCTION

[1] In 1998, an individual purporting to be Betty Ann Piecowye entered into a line of credit agreement with the Bank of Nova Scotia [BNS]. A Visa access card was provided to the individual to use the line of credit. Over the years, purchases were made using the access card and payments were made on the account. Monthly statements were sent to the address provided by the individual who entered into the agreement. Over time, the balance accumulated and, at some point, payments stopped.

[2] On June 24, 2020, BNS had a statement of claim issued in which it claimed that Ms. Piecowye was in default of the agreement and owed BNS \$46,363.86, plus accruing interest. Ms. Piecowye retained counsel and filed a statement of defence and a counterclaim on November 5, 2021. In her statement of defence, Ms. Piecowye denied that she entered into an agreement with BNS, denied that she had used the line of credit or the Visa access card, and denied that she owed any money to BNS. She also pleaded that the claim was barred by *The Limitations Act*, SS 2004, c L-16.1. Ms. Piecowye also counterclaimed against BNS for losses related to her diminished ability to access credit.

[3] Counsel for Ms. Piecowye withdrew on November 15, 2021. Thereafter, BNS or its counsel communicated with Ms. Piecowye by mail and email with no response. A certificate of non-compliance with mediation was issued by the Dispute Resolution Office when Ms. Piecowye did not attend the mandatory mediation session on April 5, 2022. It appears that nothing occurred over the next 2.5 years.

[4] BNS applied for summary judgment on September 5, 2024. The application was served personally on Ms. Piecowye on September 20, 2024. Ms. Piecowye did not file any material in response and did not attend on the return date of the application for summary judgment. In her absence, Elson J. granted judgment in favour of BNS: *The Bank of Nova Scotia v Piecowye* (4 February 2025), Saskatoon QBG-787-2020 (SKKB) [Judgment].

[5] In March of 2025, Ms. Piecowye received a notice from ISC Saskatchewan Inc. – the land titles office – indicating that a registration had been made on the title to her residence in the form of a writ of execution. She then retained new counsel. On June 3, 2025, she applied to have the Judgment set aside but was unsuccessful: *The Bank of Nova Scotia v Piecowye*, 2025 SKKB 116 [*Chambers Decision*]. She now appeals from that determination.

[6] For the reasons that follow, the appeal should be allowed and the Judgment set aside.

II. THE JUDGMENT

[7] The initial appearance for the application for summary judgment was set for October 17, 2024. Pursuant to the Court of King’s Bench General Application Practice Directive #9, “Scheduling of Summary Judgment, Set Aside and Judicial Review Applications” (1 November 2023), that first appearance is generally “for the purpose of managing the application and, after consultation with the parties, and when appropriate, ordering that a date and time for the hearing of the application be scheduled” (at para 3). However, a subsequent paragraph also states, “Although, in most situations, the merits of the application will not be determined at the initial appearance, nothing in this notice is intended to prohibit the Chambers judge from immediately hearing and deciding the application if, in the opinion of the Chambers judge, it is appropriate to do so” (at para 7).

[8] In this case, Elson J. determined that judgment should be granted at the initial appearance. The endorsement from that date reads in total as follows: “Under the circumstances, since Ms. Piecowye is not here and since she was personally served, I am satisfied that once a draft order is filed, and reviewed, it can be issued”.

[9] A draft order was filed by BNS on January 2, 2025. On January 3, 2025, Elson J. ruled that the “order may issue in the form of the draft order, now filed”. That draft order became the Judgment and is as follows:

On the application of ... The Bank of Nova Scotia, made before the court and on reading the Affidavit of Farrah Ansari, Brief and Notice of Application all filed:

WHEREAS the Defendant, Betty Ann Piecowye, also known as Bettyann M Piecowye, also known as Betty A Piecowye, also known as Betty Pievowye, also known as Betty Ann Schedkosky was personally served with Notice of Application, Brief, Affidavit in Support and accompanying material on September 20th, 2024, and the Defendant did not appear for the Application Hearing on October 17th, 2024.

THE COURT ORDERS THAT summary judgment be granted against the Defendant, Betty Ann Piecowye, also known as Bettyann M Piecowye, also known as Betty A Piecowye, also known as Betty Pievowye, also known as Betty Ann Schedkosky, for the amount claimed of \$46,363.86, with pre-judgment interest at the contractual rate of 24.99% from November 27, 2019, the date of default. Post-judgment interest at the contractual rate of 24.99% per annum and costs to be assessed.

[10] On June 3, 2025, Ms. Piecowye filed an application seeking to have the Judgment set aside.

III. CHAMBERS DECISION

[11] The Chambers judge began the *Chambers Decision* by setting out the history of the action. He then observed that Ms. Piecowye was not applying to open up a default judgment under Rule 10-13 of *The King's Bench Rules* but was applying to set aside a judgment that had been granted on evidence filed with the court. Regarding the approach to be followed in such a case, the Chambers judge referenced *Montgomery v Jahnke*, 2017 SKQB 374 at para 19 [*Montgomery*], and then quoted extensively from *Rennebohm v Rennebohm*, 2020 SKQB 350 at paras 18-21 [*Rennebohm*]. On this basis, he concluded that Ms. Piecowye was required to establish all four of the factors that would apply to a Rule 10-13 application as well as demonstrating that there were exceptional circumstances. Those four factors were noted by the Chambers judge to be set out in *Rennebohm* at para 21, quoting from *McAdam v Grimard*, 2017 SKQB 39 at paras 9-11 [*McAdam*], which itself quoted the following from *Middle Lake Hotel 2002 v Saskatchewan (Advanced Education, Employment and Labour)*, 2008 SKQB 481 at para 43:

- (1) the application is to be made as soon as possible after the judgment sought to be set aside comes to the attention of the applicant in the event of any delay, the applicant must justify and satisfactorily explain the reasons for the delay;
- (2) the applicant must provide a satisfactory explanation for his failure in responding to the claim;
- (3) the applicant must disclose the defence that raises arguable issues; and
- (4) the applicant must satisfy the court that an order setting aside the judgment will not seriously prejudice the party who has obtained the judgment.

[12] The Chambers judge determined that he need not address three of the four factors, stating as follows (*Chambers Decision*):

[12] To succeed on this application, Ms. Piecowye must establish all four of the Rule 10-13 factors, and she must establish the exceptional circumstances that are described in the additional requirement.

[13] It is not necessary for me to address three of the four Rule 10-13 factors. This is because I conclude that Ms. Piecowye has not established:

(a) the second of the Rule 10-13 factors, which is whether she has provided a satisfactory explanation for her failure to respond to the notice of application for summary judgment; and

(b) the additional requirement, which is whether the circumstances constitute exceptional circumstances creating an unjust result that should be set aside based on the principles of fairness and equity.

[13] Regarding the satisfactory explanation factor, the Chambers judge concluded that Ms. Piecowye had not provided such an explanation:

[18] In these circumstances, I am not satisfied that Ms. Piecowye has provided a satisfactory explanation for her failure to respond to the notice of application for summary judgment. Her “mistaken impression” that she still had a lawyer acting for her in the action is not reasonable. Her being unsettled in the aftermath of her husband’s sudden death is understandable, but her failure to respond to the notice of application that had been placed in her hands is not. A glance at the notice would have told her that it was about something important.

[19] It is more likely that Ms. Piecowye chose not to read or respond to the notice, consistent with her practice of not always reading her email and not always responding to correspondence.

[20] Ms. Piecowye has not provided a satisfactory explanation for her failure to respond to the application for summary judgment.

[14] Turning to exceptional circumstances, the Chambers judge found as follows:

[21] For the same reasons, I am not satisfied that the circumstances of the bank having obtained a summary judgment against Ms. Piecowye “constitute exceptional circumstances creating an unjust result that should be set aside based on the principles of fairness and equity” (*Montgomery* at para 36). It is not unjust, unfair or inequitable that, in the circumstance of Ms. Piecowye not responding to the notice of application, the court proceeded with the application and granted judgment.

[22] Ms. Piecowye argues in addition, though, that there is another element that constitutes the circumstances as exceptional. She says that, when this matter came before the court on the summary judgment application, and when it became apparent that she was not there in response, the bank ought to have sought an adjournment so that it could give her additional notice. That adjournment, she argues, should and would have been granted by the presiding judge.

...

[24] ... she argues that the bank was obliged to give her extra notice of the application for summary judgment, on top of the notice that she already had received by way of personal service.

[25] For two reasons, I do not accept this argument. First, the principle arising in *Miller* [2006 SKQB 306] applies to cases in which counsel are involved on both sides. The principle arises from lawyers' professional obligations to each other. The principle does not apply to self-represented litigants.

[26] Second, the obligation referred to in *Miller* was an obligation to give the other side notice before taking a step in the action. Here the bank did that. It served Ms. Piecowye with personal notice of the application. With this argument Ms. Piecowye effectively is asking that yet another layer of notice be added. *Miller* provides no basis for such a proposal, and there is no reason or sense to the proposal.

[27] The bank had no obligation to seek an adjournment of the summary judgment application, in order to give additional notice to Ms. Piecowye. There was no such application before the presiding judge, and the judge had no obligation to adjourn the matter on his own initiative. Properly, he ruled that since Ms. Piecowye had been served personally with notice of the application and had not attended, it was appropriate to proceed with the application.

[28] These are not exceptional circumstances that justify setting aside the summary judgment.

[15] Ms. Piecowye's application was dismissed with costs and the Judgment remained in place.

IV. ISSUES

[16] The following issues are raised in Ms. Piecowye's notice of appeal:

- (a) Did the Chambers judge err in exercising his discretion in dismissing the application to set aside the Judgment by
 - (i) not considering and applying the reasoning in *Ballentyne v Benard*, 2012 SKCA 23 [*Ballentyne*], in relation to ensuring that the application of the court's rules and principles do not violate the principles of fundamental justice and equity and in relation to the court's interpretation of what is meant by "wilful default", and
 - (ii) not considering and applying *Desbiens v Warken*, 2020 SKQB 145 [*Desbiens*], or *Browne Building Services Ltd. v North Country Homes Ltd.*, 2010 SKQB 20 [*Browne Building Services*], in relation to the erroneous and imperfect understanding that Ms. Piecowye had of the proceedings?

- (b) Did the Chambers judge err by failing to first examine each of the four factors that are applied in a Rule 10-13 application and then examine whether the circumstances of the matter constitute exceptional circumstances, thus creating an unjust result that should be set aside based on the principles of fairness and equity, including by
 - (i) failing to consider that Ms. Piecowye's filed statement of defence includes a pleading that the plaintiff's claim is statute barred by *The Limitations Act* and is therefore a nullity,
 - (ii) failing to consider Ms. Piecowye's submission that the Court of King's Bench has no jurisdiction to grant a judgment where the alleged debt has been extinguished by the expiration of the limitation period, and
 - (iii) determining that the lack of jurisdiction and lack of notice issues raised by Ms. Piecowye did not constitute exceptional circumstances?
- (c) Did the Chambers judge err in determining that there was no obligation on BNS to provide any additional notice of its intention to Ms. Piecowye before taking out a judgment in default, including by
 - (i) concluding that the obligation to provide fair notice before proceeding to obtain a judgment in default applies only as between parties who are represented by counsel, and
 - (ii) failing to consider that Practice Directive #9 provides direction to the Court of King's Bench regarding the scheduling of summary judgment applications and directs the Court at the initial appearance to manage the application, which may include determining the parties' readiness to proceed in the context of BNS's decision to proceed without providing the courtesy of any additional notice to Ms. Piecowye?

[17] Given that I have determined that a combination of portions of grounds of appeal (a) and (b) should be given effect and the Judgment should be set aside, there is no utility in addressing the remaining grounds.

V. ANALYSIS

A. Non-participation of BNS in this appeal

[18] One lawyer was BNS's counsel throughout this matter in the Court of King's Bench. She is a member of the Law Society of Ontario. Her name and contact information appears as the address for service on the statement of claim signed by her on June 25, 2020. Her contact information subsequently appears on all the documents filed in the Court of King's Bench where counsel is referred to. This includes the notice of intent to defend the counterclaim, the statement of defence to the counterclaim, two applications without notice, and the notice of application that sought summary judgment. She filed a brief of law and appeared on BNS's application that resulted in the Judgment. She was the lawyer served with Ms. Piecowye's application to set aside the Judgment, and she filed material in response and argued the matter in the Court of King's Bench, which resulted in the *Chambers Decision*.

[19] Ms. Piecowye served her notice of appeal on this same lawyer on August 15, 2025. Thereafter, neither that lawyer nor any counsel acting on behalf of BNS has communicated with the Court or participated in this appeal in any manner.

[20] Ms. Piecowye served her appeal book and factum on BNS's counsel on October 23, 2025. This triggered BNS's obligation to file its respondent's factum: Rule 27 of *The Court of Appeal Rules*. When BNS failed to file its factum, Ms. Piecowye's appellate counsel emailed BNS's counsel on December 11, 2025, informing her that he had prepared an application for an order requiring BNS to file its factum and inquiring if she would be able to confirm that she would, instead, simply file it. There was no response, so Ms. Piecowye served the application on BNS's lawyer. The lawyer filed no material in response and did not attend the hearing of the application. An order was granted requiring BNS to file its factum by January 30, 2026, and ordering costs against BNS. That order was not complied with and BNS never filed a factum in this matter. On February 5, 2026, a date of May 15, 2026, was set for the appeal. An email was sent by the Registrar to BNS's lawyer notifying her of this date. The Registrar sent a formal notice of this hearing date to her on March 30, 2026.

[21] In advance of the hearing date for the appeal, the Registrar attempted to contact BNS's lawyer several times because it is highly unusual for counsel of record to fail to engage in an appeal. The contact on this issue consisted of emails on April 7, 2026, and April 16, 2026, which specifically noted the appeal date of May 15, 2026, and inquired whether she or anyone else on behalf of BNS would be filing material or appearing. These emails were sent to the two email addresses that are listed in the address for service sections of her documents in the Court of King's Bench. One of them is the email address set out for her on the website for the Law Society of Ontario, where she is listed as an active member. The lawyer did not respond to the emails. Additionally, the Registrar left a voicemail message for her on April 16, 2026, and a deputy registrar left one on May 14, 2026: both of which noted the hearing date and asked her to contact the registrar's office. Again, the phone number used was the one listed on the documents filed by the lawyer in the Court of King's Bench, which is the one listed on her profile on the Law Society of Ontario website. There was no response to these voicemails.

[22] A deputy registrar took the further extraordinary step of phoning the lawyer's employer on the morning of the hearing, confirmed that she continued to work for that organization, and told the person the deputy registrar spoke with that the hearing was commencing within the hour. All of this was in addition to the formal hearing notice sent to the lawyer by the office of the registrar on March 30, 2026. Despite these attempts at communication, BNS's counsel did not respond and did not appear at the appeal hearing nor has she communicated subsequently with the office of the registrar.

[23] Ms. Piecowye's counsel has not had any communication from BNS's counsel after the notice of appeal was served.

[24] This absence of contact with the Court and lack of participation in an appeal is unusual, perhaps unprecedented in this Court, from counsel for a large financial institution. There may be good reasons why BNS's counsel, as a lawyer and an officer of the court, did not respond to the repeated communications from the Court and did not attend the appeal hearing, but none are apparent.

[25] As a result of BNS's absence from the appeal, the Court is left with no counter-arguments to Ms. Piecowye's submissions and no opposition to the appeal. While Ms. Piecowye still has the onus of establishing an error in the *Chambers Decision*, the Court did not have the benefit of any arguments to the contrary for Ms. Piecowye's submissions.

B. The Chambers judge erred in not considering all parts of the test

[26] The Chambers judge stated that to “succeed on this application, Ms. Piecowye must establish all four of the Rule 10-13 factors, and she must establish the exceptional circumstances that are described in the additional requirement” (at para 12). This was an error. Under a Rule 10-13 application or under an application to set aside an order or a judgment based on the merits in the absence of a party, the four circumstances are to be considered cumulatively. Of course, in some situations, any one factor could be so convincing that it is sufficient on its own to determine such an application. For example, if the prejudice suffered by a plaintiff constituted irreparable harm of a serious nature, that factor could be determinative. Likewise, if a defendant cannot even meet the low bar of raising an arguable defence, the application to overturn a judgment would undoubtedly be dismissed. Additionally, if the default was done wilfully for an ulterior purpose, the absence of a satisfactory explanation for a lack of a response may be sufficient on its own. In such cases, the factors can become *prerequisites*, as discussed in *Willrun Payroll Services Inc. v Prairie Land & Investment Service Ltd.*, 2010 SKCA 42 at para 22 [*Willrun*].

[27] Otherwise, it is generally the cumulative effect of the four factors in a consideration of all the circumstances that must be examined. This approach is both explicit and implicit in the jurisprudence: see, for example, *Browne Building Services; Rimmer v Adshead*, 2002 SKCA 12 [*Rimmer*]; *Ballentyne; 2 Hearts Personal Care Ltd. v Klepsch*, 2012 SKCA 26; *Sparrow v Shnurr*, 2017 SKQB 358 [*Sparrow*]; *Montgomery; Porter v WGG Construction Ltd.*, 2019 SKQB 269; *Desbiens*; and *Blackbird Security Inc. v EyeQ Security Services Inc.*, 2026 SKKB 34 [*Blackbird*].

[28] The conclusion that the mere failure of any one factor is not automatically dispositive is reflected in this Court’s decision in *Ballentyne*: “the merit of the matter is the dominant consideration, provided the delay not be accompanied by irreparable harm” (at para 12, quoting *Rimmer* at para 60). If a failure to provide a sufficient explanation for not responding was determinative on its own, then merit could not be characterized as the dominant consideration because a finding of an insufficient explanation would trump even the combination of the strongest defence and a total absence of prejudice. *McAdam* provides a specific example in which the absence of a reasonable explanation for the failure to respond, short of wilful default, was not treated as dispositive.

[29] I note that in *Sparrow* the four factors were described in a less imperative way than was articulated by the Chambers judge. I would agree the correct approach to a consideration of the four factors is more accurately phrased in the manner set out in *Sparrow*:

[17] While there cannot be hard and fast rules as to what will be fair in any given circumstances, the jurisprudence provides some guidance to the court as to how its judicial discretion might be exercised. The following are often referred to as factors to be taken into account by the court when exercising its discretion and deciding what is fair:

- (1) The application to set aside should be made expeditiously after the default judgment comes to the attention of the applicant;
- (2) The applicant should provide a satisfactory explanation for the failure to respond to the claim;
- (3) The applicant should disclose a defence that raises arguable issues; and
- (4) The applicant should satisfy the court that an order setting aside a default judgment will not seriously prejudice the plaintiff.

[30] Lastly, I would refer to *Desbiens*, where the factors to be examined under Rule 10-13 were stated not “to be applied mechanically or rigidly”, and “[i]nstead, these principles must be examined within an overall context of equity and fairness” (at para 23).

[31] Here the Chambers judge addressed only one factor – whether Ms. Piecowye had provided a satisfactory explanation for her failure to respond to the summary judgment application – and then considered only that factor and an argument regarding additional notice when he examined whether exceptional circumstances existed. Given that there was no finding of wilful default, this was an error of law that affected the bottom line of the *Chambers Decision*. As such, the appeal should be allowed and the *Chambers Decision* set aside. It then falls to this Court to evaluate the factors and determine the proper outcome.

C. The Judgment should be set aside

[32] The first factor to examine is whether Ms. Piecowye made her application to set aside the Judgment as soon as reasonably possible after it came to her attention. Additionally, if there was any delay in doing so, Ms. Piecowye must justify and satisfactorily explain the reasons for the delay. I find that Ms. Piecowye acted expeditiously in the context of this matter in bringing her application to set aside the Judgment.

[33] It will be recalled that the certificate of non-compliance with mediation was issued in April of 2022. BNS then waited over two years to bring its application for summary judgment. Summary judgment was effectively granted on October 17, 2024, subject only to the filing of a satisfactory draft order. BNS did not file that draft order until January 2, 2025. The order was reviewed and approved by Elson J. the following day. BNS had the order issued one month later on February 4, 2025. BNS took steps to register an interest (a writ of execution) against Ms. Piecowye's residence for which she received notice in March of 2025. This notice brought the Judgment to her attention. Ms. Piecowye promptly retained her current lawyer, but his schedule caused some delay. Ms. Piecowye's application to set aside the Judgment was signed by her counsel on May 6, 2025, with her supporting affidavit being sworn or affirmed on April 29, 2025, and it was filed with the Court of King's Bench on June 3, 2025. Given the various time periods that passed in the conduct of this litigation and the nature of the action, I conclude that Ms. Piecowye acted with appropriate dispatch in filing her application to set aside the Judgment.

[34] Second, the Court must examine whether Ms. Piecowye has provided a satisfactory explanation for her failure to respond to the summary judgment application. Here, the Chambers judge determined that she had not done so. His factual findings regarding her failure to read or respond to the application are entitled to deference. However, the Chambers judge did not go as far as finding that Ms. Piecowye had engaged in a wilful default. The reasoning from *Ballentyne* is relevant in this regard:

[13] While one might imagine circumstances in which a "wilful" failure to defend an action might constitute sufficient reason to deny an application to set aside a default judgment, as noted, the fundamental principle relevant to the exercise of judicial discretion in these cases is that it is necessary to ensure that the application of the Court's rules and principles does not violate the principles of fundamental justice and equity. As Cameron J.A. pointed out in *Rimmer v. Adshead*, the applicable principle requires consideration of all the circumstances and a strong reason to deny a defendant his or her day in court when he or she can demonstrate an arguable defence to the claim and the delay has not caused the plaintiff irreparable harm.

[14] This point is particularly apt with respect to defendants who, like the appellants, do not appreciate the risk of not responding to a statement of claim. Despite the cautionary wording on the face of a statement of claim, it is not uncommon that an individual will fail to appreciate that not responding in a legal way to a statement of claim will result in a legally enforceable judgment against him or her by default. There may be many reasons for this. For example, an individual may fail to read the document out of fear, or he or she may read it but not understand it or what it requires, or may fail to read it carefully enough, or may simply ignore it as yet another tactic in an on-going dispute with the party opposite. Such conduct may well be negligent; but, if it falls short of a deliberate decision to allow a

default judgment to issue, such conduct, in and of itself, does not justify denial of an application to set aside a default judgment brought in a timely way where the applicant has shown an arguable defence and no irreparable prejudice to the plaintiff if the default judgment is set aside. In short, in my opinion, a “wilful” default (i.e., one which could in and of itself justify dismissal of an application to set aside the default judgment) occurs where the defendant understands the import of a statement of claim and deliberately decides to let the matter go to default judgment, whether to vex the plaintiff with the cost, delay and inconvenience of defending an application to set it aside or otherwise.

[35] Applying *Ballentyne*, Popescul C.J.K.B. noted the following in *Blackbird* about the lack of a satisfactory explanation that did not go as far as a wilful default:

[22] Accordingly, with respect to the “satisfactory explanation” factor, where the other factors are satisfied, a defendant will not be regarded as having failed to provide a satisfactory explanation for not responding to a claim unless there is a wilful default, meaning the defendant understands the significance of the statement of claim and deliberately allows a default judgment to be entered, whether to impose cost, delay or inconvenience on the plaintiff or otherwise. Such conduct, in and of itself, does not justify dismissal of the application.

[36] While the Chambers judge did not accept the adequacy of Ms. Piecowye’s explanation for not responding to the summary judgment application, there was no wilful default or deliberate conduct for ulterior purposes on the part of Ms. Piecowye in allowing the Judgment to be granted.

[37] Additionally, I note that Ms. Piecowye’s husband passed away unexpectedly in July of 2024, which was a few months before she was served with the application for summary judgment. In her April 29, 2025, affidavit, she described herself as “being in shock for at least six months” after his death. She further averred that she thought that her previous lawyer still represented her at the time and that was why she did not take any steps to respond to the application for summary judgment. In this regard, the Chambers judge found as follows:

[18] ... Her “mistaken impression” that she still had a lawyer acting for her in the action is not reasonable. Her being unsettled in the aftermath of her husband’s sudden death is understandable, but her failure to respond to the notice of application that had been placed in her hands is not. A glance at the notice would have told her that it was about something important.

[19] It is more likely that Ms. Piecowye chose not to read or respond to the notice, consistent with her practice of not always reading her email and not always responding to correspondence.

[38] I must defer to the Chambers judge’s view of the quality of the explanation provided for not responding to the summary judgment application. But, given that her actions did not amount to wilful default and in light of all the other factors favouring Ms. Piecowye, this does not rise to

the level of a failure to provide a reasonable explanation that is of such a nature as to preclude setting aside the Judgment.

[39] Next, further to the test, Ms. Piecowye must establish that she has a defence that raises arguable issues. She asserted two main points in this regard. First, she denies that she entered into the agreement with BNS, used the Visa access card, or obtained any money from BNS. Second, she relies on a limitation period defence.

[40] After examining Ms. Piecowye's denial that she is the individual in question, it is my view that she has raised a strong arguable defence supported by evidence. In that regard, I note the following from the material:

- (a) On the summary judgment application, Farrah Ansari, an employee from BNS's collection agent, averred that the monthly line of credit statements, including the final statement, dated November 1, 2019, were mailed to an address on Avenue J South. The BNS statement filed in this matter has that same address. Ms. Piecowye averred that she has lived on Needham Crescent since 1991 and has never had any connection with the address on Avenue J South. She provided a copy of the title for the Needham Crescent property, which reflects it being in her name since 1991.
- (b) While Ms. Ansari averred that the statement of claim was served at the same address as the last line of credit statement was sent to and that the statement of claim was received by Ms. Piecowye – presumably in an attempt to establish a connection to the Avenue J South address – that averment was incorrect. The statement of claim itself stated that Ms. Piecowye lived at the *Needham Crescent* address. The affidavit of BNS's process server, Dave West, which was attached to Ms. Ansari's affidavit, stated that the process server attempted service of the statement of claim at the Needham Crescent address and further stated, "I do believe Betty Piecowye living at ... Needham Crescent ... is evading service". Using this November 23, 2020, affidavit, BNS applied for and obtained an order of substitutional service, which permitted it to serve the statement of claim by registered mail at the Needham Crescent address. None of the material filed on the application for substitutional service mentioned the Avenue J South address, which appears to have been the address that BNS used for the account holder right up to the point where it says the default occurred.

- (c) Ms. Piecowye averred that she did not enter into any agreement with BNS at any point, has never borrowed money from BNS, has never used or had possession of a BNS credit card, has never received a BNS credit card statement, and has never made a payment on the account. BNS has not provided an agreement containing Ms. Piecowye's signature or provided any information connecting the purchases or payments to Ms. Piecowye. The only agreement filed on the summary judgment application was a January 2016 Personal Credit Agreement Companion Booklet, which is dated 17.5 years after the agreement was allegedly signed, and it has no place for a signature. On the application to set aside the Judgment, BNS filed a Scotiabank Credit Cardholder agreement and BNS's representative, Spencer Bak, averred that this was the agreement into which Ms. Piecowye entered. I note that this agreement is also unsigned and is undated, recognizing that this cardholder agreement indicates that continued use of the account constitutes acceptance of the terms of any new agreement when it is amended.
- (d) In the June 30, 2025, affidavit of Mr. Bak, filed on behalf of BNS on the application to set aside the Judgment, Mr. Bak exhibited a Transit Change Request purported to have been signed by Ms. Piecowye on April 7, 2016, at the Stonegate Centre branch of BNS. In response, Ms. Piecowye averred that, while this document does have a signature, it does not contain her signature. She says that the one on the document is materially different from her signature in a number of respects and invites comparison to the signature on her affidavit filed before this document was produced. Ms. Piecowye further averred that she has only banked with the Bank of Montreal and the Canadian Imperial Bank of Commerce and never with BNS. She deposed that she has no connection with the Stonegate Centre and does her banking on the west side of Saskatoon.
- (e) In his affidavit, Mr. Bak averred that BNS has several branch notes about Ms. Piecowye's attendance at BNS over the years, including one from May 7, 2016, in which she allegedly gave advance notice to BNS that she and her husband would be travelling to Ukraine, with the note indicating the date of travel as May 9 to 22, 2016. In response, Ms. Piecowye averred that she has never travelled to Ukraine and has no family members there.

- (f) Mr. Bak averred that it was the practice of BNS to always obtain two pieces of identification when entering into an agreement such as the one here. But he did not attach copies of any such identification to his affidavit, although a screen shot purporting to show Ms. Piecowye's social insurance number and birthdate was exhibited. Ms. Piecowye averred that she has never provided any identification to BNS.

[41] Ms. Piecowye has demonstrated that she has a strong arguable defence, supported by evidence, consisting of her assertion that she is not the person who contracted with BNS.

[42] Further, Ms. Piecowye relies on a limitation period defence. While the merits of such a defence are not readily apparent here, it cannot be dismissed out of hand. This raises an additional arguable defence, given Ms. Piecowye's arguments about the lack of credit card statements attached to BNS's affidavits, and the conclusory averments from BNS's representatives about the date of the default without further relevant detail.

[43] Lastly, the Court must look at whether setting aside the Judgment will seriously prejudice BNS. Given its absence from the appeal hearing, BNS has not put forth any submissions about prejudice and none is readily discernible from the record.

[44] After examining these four factors, the jurisprudence indicates that a court should go further and consider whether exceptional circumstances exist: *Montgomery*, *Rennebohm*, and *Blackbird*. Ms. Piecowye submits that this case law is not binding on this Court and that we should decide exceptional circumstances are not required. This position does not appear to accord with this Court's decision in *Swift River Farms Ltd. v Pillar Capital Corp.*, 2022 SKCA 89 at para 88. However, given the absence of a counter-argument on this point, coupled with the fact that I find that exceptional circumstances exist here, I would leave that determination for another day.

[45] While it is a close-to-the-line call, I find that exceptional circumstances are established through a combination of the following:

- (a) Ms. Piecowye challenged the Judgment with sufficient promptness.

- (b) While Ms. Piecowye did not provide a good explanation for her lack of response to the summary judgment application, she did not engage in a wilful default. Additionally, she had serious personal issues affecting her at the time, including the death of her husband shortly before she was served with the application for summary judgment.
- (c) Ms. Piecowye has raised significant issues supporting her position that she is not the person who entered into the agreement with BNS, providing a strong arguable defence. As noted above, merit is the dominant consideration in the absence of prejudice.
- (d) There is no prejudice to BNS associated with setting aside the Judgment.
- (e) The amount at stake is significant to Ms. Piecowye.
- (f) BNS has not acted expeditiously in pursuing the action.
- (g) The application for summary judgment was adjudicated on evidence at the initial appearance in Chambers, but the reasons provided by Elson J. indicate that the lack of attendance and participation by Ms. Piecowye was a determinative factor, thus making the Judgment more akin to a default judgment; and
- (h) BNS has not opposed the appeal.

[46] Taking all of the above into account, it is my opinion that it is fair and equitable to set the Judgment aside in its entirety.

[47] Lastly, Ms. Piecowye seeks an order “setting aside the Writ of Execution”, which has, perhaps, been registered as an interest against the title to her Needham Crescent residence. After noting the reasoning in *Willrun*, I am concerned that there is insufficient information before this Court regarding this issue. The appeal book does not contain any documents related to a writ of execution or the registration by BNS of an interest on the title to the Needham Crescent property. As a result, I would decline to make the order requested. However, this is without prejudice to Ms. Piecowye’s ability to apply to the Court of King’s Bench for such relief.

VI. CONCLUSION

[48] The appeal should be allowed and the Judgment set aside in its entirety. There shall be no costs for the application in the Court of King's Bench, which resulted in the *Chambers Decision*. BNS shall pay costs to Ms. Piecowye for this appeal on Column 2 of the Tariff of Costs.

“Tholl J.A.”

Tholl J.A.

I concur.

“Kalmakoff J.A.”

Kalmakoff J.A.

I concur.

“Drennan J.A.”

Drennan J.A.