

Court of King's Bench of Alberta

Citation: Equitable Bank v Taylor, 2026 ABKB 451

Date: 20260617
Docket: 2301 15791
Registry: Calgary

Between:

Elizabeth Trissha Taylor

Appellant/Defendant

- and -

Equitable Bank

Respondent/Plaintiff

Reasons for Decision
of the
Honourable Justice A.G. Kuntz

Appeal from the Decision by
Applications Judge J.R. Farrington
Dated the 18th day of October, 2024

I. Introduction

[1] The Appellant (**Ms. Taylor**) appeals the decision of Applications Judge Farrington dated October 18, 2024, granting a Redemption Order (the **Redemption Order**) in favour of the Respondent, Equitable Bank (**EQB**).

[2] For the following reasons, Ms. Taylor's appeal is dismissed.

II. The Facts

[3] EQB provided Ms. Taylor with a mortgage in the principal sum of \$472,000.00 on November 22, 2022 (the **Mortgage**) for her purchase of 651 Marine Drive SE, Calgary, Alberta,

T3M 2Z6 (the **Property**). The terms of the Mortgage included a Standard Form Mortgage. The maturity date for the Mortgage was November 24, 2024.

[4] The Mortgage went in and out of arrears starting in April 2023. EQB sent various demand letters requesting payment of the applicable arrears and legal fees. Ms. Taylor paid the arrears for certain time periods and not for others. She did not pay the legal fees.

[5] On November 27, 2023, EQB filed a Statement of Claim naming Ms. Taylor as a Defendant and seeking to foreclose on the Mortgage (the **Foreclosure Action**). The Statement of Claim included a claim for legal fees associated with the demand letters, which fees had been capitalized into the Mortgage pursuant to the terms of the Mortgage.

[6] Ms. Taylor filed a Statement of Defence on January 2, 2024. Ms. Taylor filed an Amended Statement of Defence on February 23, 2024, as well as a Third Party Claim against the builder and counsel to the builder. Ms. Taylor filed an Amended Amended Statement of Defence on February 26, 2024, and a Counterclaim on September 10, 2024.

[7] Ms. Taylor added counsel to the builder as a Third Party alleging, among other things, that they had failed to advise her that she should get independent legal advice and had suggested they were acting on her behalf. The Third Party Claim was summarily dismissed pursuant to the Order of Applications Judge Mason dated March 18, 2024. It was dismissed, in part, because the record showed that Ms. Taylor had been advised of her right to independent legal advice, and had signed a disclaimer in that regard.

[8] On March 15, 2024, EQB filed its Application for a Redemption Order, returnable April 2, 2024. In support of its application, EQB filed:

- (a) an Affidavit of Default sworn by Han Chen, Mortgage Defaults Officer, on January 4, 2024 (the **Affidavit of Default**);
- (b) a Supplemental Affidavit of Michael Akinlade, Mortgage Defaults Officer, sworn March 7, 2024;
- (c) an Affidavit of Value which estimated that the value of the Property was between \$698,000 (forced sale) and \$735,000 (direct comparison approach); and
- (d) a Certified Copy of Title.

[9] In the Affidavit of Default, Han Chen swore, among other things, that the principal sum had been advanced to Ms. Taylor, that Ms. Taylor was in default relative to payment of the principal and interest, and that the balance outstanding as of January 3, 2024, was \$479,844.62. Attached to the Affidavit of Default was:

- (a) the Memorandum of Mortgage signed by Ms. Taylor;
- (b) Land Titles registration;
- (c) a payout statement dated January 3, 2024, showing a principal, interest, late fees, previous solicitor legal fees (i.e. 1,971.00), other fees, and legal action administration fees owing in the total amount of \$479,248.32, plus per diem interest of \$79.90;
- (d) the Standard Mortgage Terms referred to in the Mortgage;

- (e) a Property Tax Statement indicating property taxes current to November 7, 2023; and
- (f) a statement from Mahogany Homeowners Association indicating fees current to November 7, 2023.

[10] Ms. Taylor filed her responding affidavit on March 18, 2024. In her affidavit, Ms. Taylor gave evidence to the effect that: (a) the Property should not have been sold to her because it failed to meet mandatory building and safety standards, (b) she signed the Mortgage without the benefit of legal counsel and that she was misled to believe that counsel for the builder was acting for her, and (c) she was not told that she should retain independent legal counsel.

[11] Ms. Taylor also swore that the builder and the builder's counsel had "falsified critical elements and calculations in [her] mortgage agreement".

[12] The parties appeared in court on multiple occasions between March and October 2024, with Ms. Taylor applying to stay and / or dismiss the Foreclosure Action, and for an interlocutory injunction. Ms. Taylor's applications were ultimately unsuccessful. Some of the appearances were as follows.

[13] On April 2, 2024, the parties appeared before Judge Farrington on EQB's application for a Redemption Order. Judge Farrington adjourned the application to April 23, 2024, and gave Ms. Taylor until April 19, 2023, to file an affidavit with the details in support of her concerns about the Mortgage.

[14] Ms. Taylor did not file an affidavit by April 19, 2023, but she did file an affidavit on April 25, 2024. In her affidavit, Ms. Taylor alleged, among other things, that EQB failed to conduct due diligence on the Property and knowingly withheld information about deficiencies in the Property contrary to their obligations to her when providing the Mortgage.

[15] The April 23, 2024, return date for EQB's application for a Redemption Order was adjourned to April 26, 2024, when it was heard by Applications Judge Prowse.

[16] Judge Prowse adjourned EQB's application *sine die* and set a procedural schedule for Ms. Taylor's questioning on EQB's Affidavit of Default. Judge Prowse directed Ms. Taylor to provide EQB with a list of questions that she wanted to ask one week prior to her questioning. Ms. Taylor did not provide a list of questions to EQB. As a result, EQB did not make its affiant available for cross-examination.

[17] On July 23, 2024, EQB filed the affidavit of Han Chen sworn July 16, 2024 (**Updated Affidavit of Default**), in support of its application for a Redemption Order. The Exhibits to the affidavit included:

- (a) a payout statement on the Mortgage showing a balance of \$493,592.85 owing as of February 22, 2024, including inspection fees, legal fees and disbursements, and a per diem interest of \$79.92;
- (b) an Arrears Statement dated April 23, 2024; and
- (c) an Arrears Statement as of July 9, 2024.

[18] As noted in the Updated Affidavit of Default, EQB had previously provided the payout statement and the arrears statement dated April 23, 2024, to Ms. Taylor's counsel at their request.

[19] On September 12, 2024, the parties appeared before Applications Judge Mattis on EQB's application for a Redemption Order. This time, the matter was adjourned to October 18, 2024, with Judge Mattis directing that:

- (a) Ms. Taylor file and serve an affidavit by September 30, 2024, containing evidence from an actuary as to the perceived errors in the payout statement, and a list of payments she had made since May 2024;
- (b) EQB file and serve an affidavit by September 30, 2024, clarifying any prior legal fees capitalized into the Mortgage;
- (c) Ms. Taylor book a Rule 9.35 taxation appointment regarding EQB's legal fees by September 30, 2024, which could not be cancelled without leave of the Court, or on the direction of the Assessment Officer. Judge Mattis made this direction because Ms. Taylor had previously adjourned two taxation appointments; and
- (d) Ms. Taylor provide an interior appraisal of the Property.

[20] On September 27, 2024, Ms. Taylor filed an affidavit as directed by Judge Mattis. Ms. Taylor swore that her experts were unable to complete their assessments of the Mortgage calculation because EQB was refusing to provide relevant information. Ms. Taylor also swore that she had not made any payments towards the Mortgage since June 2024.

[21] Attached to Ms. Taylor's affidavit as Exhibit A was an interior appraisal report dated January 23, 2024, showing that the Property had a market value of \$710,000. Attached as Exhibit B was a booking request for a taxation appointment. Ms. Taylor later cancelled the taxation appointment of her own accord.

[22] EQB filed an affidavit on September 30, 2024, attesting to the fact that EQB had forwarded a payment history to Ms. Taylor on September 18, 2024, clarifying the legal fees that had been capitalized into the Mortgage. The payment history was attached to the affidavit as Exhibit B. The payment history was from November 22, 2022, to August 22, 2024, and showed a principal balance owing of \$471,940.36.

[23] On October 17, 2024, Ms. Taylor filed an application returnable October 18, 2024, for an order requiring EQB to attend questioning for discovery in the Foreclosure Action. This application was heard at the same time as EQB's application for a Redemption Order.

III. The Redemption Order and Decision Under Appeal

[24] On October 18, 2024, the parties appeared before Judge Farrington who granted the Redemption Order.

[25] At the hearing, Ms. Taylor argued that legal and other fees were improperly capitalized into the Mortgage, and that EQB was refusing to be cross-examined on its affidavit regarding the amount owing under the Mortgage.

[26] Ms. Taylor argued that the Mortgage was unenforceable because she did not have legal representation when she signed the Mortgage and was misled to believe that builder's counsel was acting for her. As a result, Ms. Taylor argued that she did not give informed consent to the Mortgage.

[27] Finally, Ms. Taylor argued that the Redemption Order should not be granted because there were structural issues with the home and she was suing the builder together with EQB in that regard. Ms. Taylor argued that all together these things compromised the enforceability of the Mortgage, and that as a result EQB was not entitled to a Redemption Order.

[28] Judge Farrington found that Ms. Taylor entered into the Mortgage with EQB in order to purchase the home, and that EQB had advanced funds for that purpose. Judge Farrington held that the issue of what is owing under the Mortgage was separate from the issue with the quality of the home, and that what was owing under the Mortgage could be resolved on its own by calculation. Judge Farrington held that a dispute over whether the amounts owing are correct generally cannot be used to extend a foreclosure action indefinitely because, at its core, the foreclosure action is about funds that were advanced and used to purchase a home.

[29] Judge Farrington held that there was a valid Mortgage in place and directed a Redemption Order – Judicial Listing in its template form. Judge Farrington ordered that \$482,361.38 was due and owing as of October 18, 2024, plus costs on a solicitor and client basis as worded in the Mortgage, plus interest thereafter at the mortgage rate, plus other amounts chargeable under the Mortgage (the **Indebtedness**).

[30] The Redemption Order stated that prior to its entry, the assessment officer shall check the amounts claimed in the statement of secured indebtedness, including the particulars provided in the Affidavit of Default and the plaintiff's calculations. Thereafter, Judge Farrington gave Ms. Talyor three months from the service of the Redemption Order to apply to vary the amount declared owing and gave her leave to question EQB remotely. In this way, Judge Farrington addressed Ms. Taylor's concerns about cross-examination.

[31] Judge Farrington ordered that EQB was entitled to summary judgment on the enforcement of the Mortgage, subject to any outstanding issues regarding the balance.

IV. Post the Redemption Order

[32] EQB served Ms. Taylor with the Redemption Order on October 22, 2024. Ms. Taylor filed a Notice of Appeal on October 25, 2024, and served EQB on October 31, 2025.

[33] On November 21, 2024, Ms. Taylor filed an application to stay the Redemption Order. The stay application was heard and dismissed on November 25, 2024.

[34] Ms. Taylor did not apply to vary the amount found owing in the Redemption Order as permitted by Judge Farrington. Ms. Taylor either did not accept or did not respond to the schedule EQB proposed for her cross-examination of EQB after the hearing on October 18, 2024.

[35] On December 3, 2024, EQB provided Ms. Taylor with a payout letter advising that the outstanding balance on the Mortgage to December 10, 2024, would be \$537,042.24, with a per diem interest of \$80.06.

[36] Ms. Taylor sold the Property. On December 10, 2024, Ms. Taylor's lawyer provided EQB with a trust cheque in the amount of \$537,042.24 representing the outstanding balance on the Mortgage. Thereafter, EQB discharged the Mortgage.

[37] On April 24, 2025, the parties appeared before the Honourable Justice D.J. Reed for Ms. Taylor's application for an Order to consolidate an action she had not yet filed with this appeal. Ms. Taylor did not file any evidence in respect of the application before Justice Reed.

[38] In the end, Ms. Taylor abandoned the consolidation part of her application and asked the Court to set a schedule for filing her materials in support of this appeal. Justice Reed directed Ms. Taylor to file and serve a Record of Proceedings, including any relevant transcripts and additional affidavit evidence, including expert evidence, by May 2, 2025.

[39] Justice Reed also prescribed the remaining procedural steps for this appeal which included that all cross-examinations on any affidavits be completed on June 6, 2025. The only cross-examination was by EQB of one of Ms. Taylor's experts.

[40] Further to Justice Reed's Order, Ms. Taylor filed the following expert reports:

- (a) expert report of Sarah Hawco dated March 17, 2025. Ms. Hawco is a Chartered Financial Accountant and was retained to quantify the monetary amounts paid by Ms. Taylor in respect of the Mortgage and to provide a breakdown between interest, principal, and fees. Ms. Hawco opined that EQB's records were inadequate, and that Ms. Taylor was overcharged on the Mortgage by about \$40,000.00;
- (b) expert report of Justin Williams of Silver Tree Structural Ltd. dated March 19, 2025 (the **Williams Report**), which provided a visual structural engineering review of the Property;
- (c) expert report of Ritchard Dong dated June 28, 2024, but filed May 6, 2025. Mr. Dong provides accounting and bookkeeping services. Mr. Dong's opinion included that Ms. Taylor was "being double charged fees that were rolled into the balance of the mortgage" and that EQB had provided incomplete and convoluted information; and
- (d) expert report of Peter Gorham dated April 1, 2025. Mr. Gorham is an actuary and was asked to provide a comprehensive calculation of the amounts that Ms. Taylor paid to EQB under the Mortgage. Mr. Gorham's opinion included that there were many discrepancies in EQB's payout statements, and that EQB's files were "a mess".

V. Grounds of Appeal

[41] Ms. Taylor submits that Judge Farrington erred by:

- (a) granting the Redemption Order based solely on the untested Affidavit of Default sworn by EQB on January 24, 2024, and failed to consider the Respondent's uncontested expert reports which contradict the Affidavit of Default;
- (b) failing to reconcile "inconsistencies or deduct proven overpayments" in the Mortgage calculation and reliance on financial ledgers that contained material misstatements and contradictory entries;

- (c) denying Ms. Taylor procedural fairness and natural justice because she was not permitted to cross-examine EQB on the Affidavit of Default sworn January 24, 2024;
- (d) applying an incorrect legal test under section 8 of the *Interest Act* in respect of default fees; and
- (e) declaring the Mortgage valid and subsisting while the matter was subject to adjudication in another action.

VI. Standard of Review

[42] Rule 6.14 of the *Alberta Rules of Court*, Alta Reg 124/2010 governs an appeal from the decision of an Applications Judge. Rule 6.14(3) states:

An appeal from an applications judge’s judgment or order is an appeal on the record of proceedings before the applications judge and may also be based on additional evidence that is, in the opinion of the judge hearing the appeal, relevant and material.

[43] The standard of review on an appeal from an Applications Judge is correctness: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166 at paras 16-18, 30 [*Bahcheli*].

[44] When the appeal is on the record, the question is whether the Applications Judge was correct on the record before him or her: *Western Energy v Savanna Energy*, 2022 ABQB 259 at para 22.

[45] Where new evidence has been filed on appeal, and where the presiding justice has determined that the new evidence is relevant and material, the court must conduct a *de novo* review: *Rayner v Mizier*, 2026 ABKB 160 at paras 5-6 [*Rayner*]; *Gudzinski Estate v Allianz Global Risks US Insurance Company Limited*, 2012 ABCA 5 at para 24; *Lesenko v Wild Rose Ready Mix Ltd*, 2024 ABKB 333, at paras 14-15 [*Lesenko*].

VII. Analysis

a. Ms. Taylor’s New Evidence

[46] Ms. Taylor filed four expert reports as new evidence on this appeal. Those reports are not relevant and material to the appeal because they are not relevant to the core relief sought before Judge Farrington. Rather, they concern ancillary relief that Ms. Taylor is now out of time to pursue.

[47] The core issue before Judge Farrington was whether there was a valid and subsisting Mortgage, and whether the Mortgage was in default such that EQB was entitled to a Redemption Order. As held by Judge Farrington, Ms. Taylor entered into the Mortgage because she needed funds to purchase the Property. EQB advanced the funds so that she could do so. Ms. Taylor was required to pay the Mortgage; when she failed to do so, EQB became entitled to foreclose on the Property.

[48] The Redemption Order was a standard form order, that allowed for the enforcement of a standard form mortgage. The issues before Judge Farrington were straightforward and he did not err in his analysis or decision. The expert reports would not have been relevant to Judge Farrington's decision, and they are not relevant now.

[49] The expert reports could only have been relevant to the Mortgage balance. Judge Farrington gave Ms. Taylor three months from the date of the Redemption Order to cross-examine EQB and apply to vary the amount owing. Ms. Taylor needed to file her expert reports within that time frame. Ms. Taylor did not take those steps, and it is too late for her to challenge the Mortgage balance as a result.

[50] In summary, the new evidence does not establish in any way that Judge Farrington erred by granting the Redemption Order, or by giving Ms. Taylor three months to challenge the balance owing: *Dickey v Pep Homes Ltd*, 2006 ABCA 402, at para 26. The new evidence is, therefore, not relevant to this appeal.

b. Reliance on Untested Affidavit Evidence

[51] Contrary to Ms. Taylor's submission, Judge Farrington did not grant the Redemption Order based solely on an outdated Affidavit of Default sworn January 24, 2024. As Ms. Taylor herself pointed out to Judge Farrington at the hearing on October 18, 2024, EQB had filed an updated Affidavit of Default sworn July 16, 2024.

[52] There was also EQB's affidavit sworn September 30, 2024, which explained the capitalization of legal fees into the Mortgage, and attached a Mortgage history. Accordingly, there was sufficient evidence before Judge Farrington to allow him to make a finding in respect of the Mortgage balance, subject to review by an assessment officer, and potentially upon application by Ms. Taylor.

[53] EQB's evidence remained untested because Ms. Taylor did not comply with Judge Prowse's direction to provide EQB with her proposed questions before questioning. Without that list, EQB did not make its affiant available for questioning. Regardless of whether EQB should have made itself available for questioning, Judge Farrington accounted for this fact in his decision by allowing Ms. Taylor three months from the date of the Redemption Order to apply to vary the amount owing. Consistent with Judge Farrington's direction, EQB offered questioning dates to Ms. Taylor, but she did not proceed.

[54] Judge Farrington was correct to conclude that any dispute about the precise amount owing under the Mortgage did not prevent EQB from obtaining a Redemption Order. The record showed that a significant amount remained owing and that the Mortgage was in default. In those circumstances, EQB was entitled to the Redemption Order.

c. Failure to Reconcile Inconsistencies

[55] Judge Farrington did not err by failing to reconcile "inconsistencies or deduct proven overpayments" in the Mortgage calculation or by relying on financial ledgers that contained material misstatements and contradictory entries.

[56] Judge Farrington was not required to reconcile alleged discrepancies in the Mortgage balance because he made the Mortgage balance subject to two reviews. First, the Redemption

Order could not be issued by the Court until the amount owing was reviewed by an assessment officer. Second, Ms. Taylor had three months from the date of the order to apply to vary the amount owing. Ms. Taylor did not apply to vary the amount owing, and she is now out of time for doing so.

d. Denial of Procedural Fairness

[57] Judge Farrington did not deny Ms. Taylor procedural fairness or prevent her from questioning EQB on its affidavits.

[58] Leading up to the hearing on October 18, 2024, Ms. Taylor had been granted three adjournments for the purposes of preparing her case and cross-examining EQB. At the hearing, Ms. Taylor was still not entirely prepared to proceed and had not cross-examined EQB. Contrary to Ms. Taylor's submissions, EQB did not blatantly refuse to be cross-examined. EQB did not submit to cross-examination because Ms. Taylor did not provide questions in advance as required by Justice Prowse.

[59] Judge Farrington specifically addressed Ms. Taylor's concerns regarding procedural fairness by giving her three months from the date of the Redemption Order to challenge the balance, including through cross-examining EQB remotely. EQB offered Ms. Taylor dates for cross-examination, which she refused. Instead, Ms. Taylor sold the house and paid out the Mortgage balance as requested by EQB.

[60] Judge Farrington did not err by denying Ms. Taylor procedural fairness. Ms. Taylor did not take advantage of the opportunities she was given to challenge the Mortgage balance.

e. Section 8 of the *Interest Act*

[61] Judge Farrington did not err in respect of s 8 of the *Interest Act*. If Ms. Taylor wanted to challenge EQB's application of the *Interest Act*, she could have raised those concerns within three months of the Redemption Order. She did not do so.

f. Validity of the Mortgage

[62] Judge Farrington did not err by declaring the Mortgage valid and subsisting in the Foreclosure Action while Ms. Taylor was challenging its validity in a separate action. Judge Farrington's decision was correct on the record before him. The other action will be considered on its own, and the impact of Judge Farrington's decision on the issues in that case can be considered by the presiding judge.

VIII. Conclusion

[63] For the reasons given, Ms. Taylor's appeal is dismissed.

[64] I accept EQB's written submissions for costs in accordance with Schedule C. If there are any issues in respect of the total amount owing they should be taken to an assessment officer.

Heard on the 27th day of June, 2025.

Dated at the City of Calgary, Alberta this 17th day of June, 2026.

Allison G. Kuntz
J.C.K.B.A.

Appearances:

Elizabeth Trissha Taylor, Self Represented
Defendant/Appellant

Rafael Badiola, Hendrix Law
for the Plaintiff/Respondent