

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 21

Date: 2026 01 23
File No.: QBG-RG-02120-2015 & QBG-RG-00436-2018
Judicial Centre: Regina

BETWEEN:

SSC SECURITY SERVICES CORP. (formerly INPUT
CAPITAL CORP.)

PLAINTIFF

- and -

TERRY BLAINE GUSTAFSON, TRISHA DUCKARMIE, TS FARM
LTD., LAVERNE WESTMAN, THELMA WESTMAN, BRINKMAN
ENTERPRISES LTD., NELSON MOTORS AND EQUIPMENT
PARTNERSHIP, SOUTH COUNTRY EQUIPMENT LTD., FUTURE
FOUR AGRO INC., FARM CREDIT CANADA and HIS MAJESTY
THE KING IN RIGHT OF CANADA

DEFENDANTS

Counsel:

Graham E. Quick
M. Kim Anderson, K.C.
James F. Trobert

for the plaintiff
for the defendant, Terry Blaine Gustafson
for interested party, Terry Chad Gustafson

FIAT
January 23, 2026

ROBERTSON J.

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INTRODUCTION

[1] This decision addresses three applications from three persons relating to farmland that is the subject of a 2025 Order for judicial sale by the Sheriff. The plaintiff, SSC Security Services Corp. [SSC] (formerly Input Capital Corp. [ICC]) obtained judicial authorization for sale by the Sheriff of the land for the purpose of collecting on its judgment against the owner, Terry Blaine Gustafson [Terry].

[2] Terry Chad Gustafson [Chad], as mortgagee of the farmland, seeks orders: to amend an order *nisi* for sale granted in 2022 to ICC in its foreclosure action to allow Chad to foreclose on the farmland by issuing an order *nisi* for foreclosure in his name; giving Chad immediate possession of the farmland; and staying the Sheriff's sale.

[3] Terry, as defendant in the original actions and owner of the farmland, seeks the same orders as his son, Chad.

[4] SSC seeks orders dismissing the applications by Chad and Terry and to declare a lease of the farmland void as a fraudulent conveyance.

[5] For the reasons which follow, the applications by SSC are granted and the applications by Chad and Terry are dismissed, with costs awarded to SSC on Column 3 of the Tariff of Costs.

BACKGROUND

Affidavit Evidence

[6] While the parties relied on other evidence in the Court file, the parties filed and relied upon the following affidavits for these applications:

By Chad:

- Affidavit of Terry Chad Gustafson sworn November 20, 2025 and filed December 2, 2025
- Affidavit of Josh Gustafson sworn November 19, 2025 and filed December 2, 2025 [Josh Affidavit]
- Supplementary Affidavit of Terry Chad Gustafson sworn December 23, 2025 and filed December 30, 2025

By SSC:

- Affidavit of Harry Sheppard of Sheppard Realty Corp. sworn and filed December 19, 2025 [Sheppard Affidavit]
- Affidavit of Terry Hillman of McKercher LLP sworn and filed December 19, 2025 [Hillman Affidavit #1]
- Reply Affidavit of Terry Hillman sworn and filed January 9, 2026 [Hillman Affidavit #2]

Court files

[7] The Court file now fills two banker boxes of files. The files consolidate two original actions, one of which was transferred from the Judicial Centre of Estevan to Regina: QBG-RG-02120-2015 and QBG-ES-00089-2017 now QBG-RG-00436-2018. Although I was unable to find any record of an order consolidating the file, all parties believe there was such a consolidation so I proceed on that basis.

[8] The files are not actually fully consolidated. There is one file for QBG-RG-00436-2018 and eleven files for QBG-RG-02120-2015, including one for fiats and endorsements which is incomplete. The content of the files for the two actions may overlap or be duplicated. Regardless and as far as I can determine, the file records the following events relevant to the litigation:

Chronology of events

2014

April 30 Collateral Mortgage securing loan by ICC to Terry against 18 parcels of land [Farmland]

May 5	Collateral Mortgage registered in Land Tiles as Interest Register #119951703 [Mortgage]
December 31	Mortgage Amending Agreement
<u>2015</u>	
September 11	Brown J. issues consent interim preservation order against Terry
September 17	Brown J. extends preservation order until September 24; Consent Order issued
September 24	Dawson J. continues preservation order pending decision
December 22	Dawson J. Fiat dismissing ICC's application for injunctive relief
<u>2016</u>	
May 5	McMurtry J. orders Terry to produce records
May 10	Order of McMurtry J. issued
May 13	Amended Order of McMurtry J. issued
<u>2017</u>	
January 23	Schwann J. scheduling Fiat
March 21	Schwann J. case management order setting out steps and deadlines to allow summary judgment to proceed; Order issued as "Expedited Trial/Summary Judgment Order"
July 27	Schwann J. order for ICC questioning of employees of MNP LLP and TD Bank
<u>2018</u>	
February 6	Chicoine J. orders transfer of ICC's Estevan action QBG-ES-00089-2017 to Regina
May 17	Kalmakoff J. Judgment setting aside streaming contracts and security instruments between the parties as unconscionable, granting judgment to ICC in the amount of \$4,399,435.09 with costs on Column 3, and dismissing Terry's counter-claim: reported as 2018 SKQB 154 [<i>Kalmakoff Judgment</i>]

2019

- June 18 Court of Appeal allows ICC's appeal against *Kalmakoff Judgment* and dismisses Terry's appeal: reported as 2019 SKCA 78
- October 15 Supreme Court of Canada, on Terry's application for leave to appeal, remands case to Court of Appeal for disposition in accordance with *Uber Technologies Inc. v Heller*, 2020 SCC 16: cited as 2020 CanLII 76220 (SCC)

2020

- April 8 Court of Appeal confirms its 2019 decision: reported as 2021 SKCA 56
- December 16 Supreme Court of Canada dismisses Terry's application for leave to appeal Court of Appeal's decision of April 8, 2020: cited as 2021 CanLII 129763 (SCC)

2021

- September 28 Currie J. Fiat granting judgment on QBG-RG-02120-2015 action for \$8,809,872.21 plus costs on Column 3: reported as 2021 SKQB 250 [*Currie Judgment*]

2022

- February 17 Court of Appeal dismisses Terry's appeal against *Currie Judgment*: reported as 2022 SKCA 22
- March 31 Keene J. denies Chad's request, as mortgagee, for adjournment; Order *Nisi* for Sale of Farmland granted with 30 day redemption period to pay \$4,120,192.32, plus interest and costs, citing *Scotia Mortgage Corporation v McNaughton*, 2021 SKQB 159
- April 1 Order *Nisi* for Sale granted by Keene J. issued [2022 Keene Order]
- May 10 SSC assignment of Mortgage to Chad registered on title as Interest No. 119951701, after payment of \$4,210,995.79 in full settlement of ICC claim for Mortgage debt and costs (Affidavit of Chad Gustafson sworn June 16, 2022, with Exhibit "A" Assignment of Mortgage, filed June 21, 2022) [Assignment]

June 16	Tochor J. rules amended <i>Currie Judgment</i> may issue; Amended <i>Currie Judgment</i> issued for SSC to recover \$8,809,872.21 with costs on Column 3 [<i>Currie Amended Judgment</i>]
June 21	Chad files Notice of Application in his name seeking order <i>nisi</i> for foreclosure on Farmland, relying upon the 2022 Keene Order
August 16	Smith J. dismisses Chad's application for order <i>nisi</i> for foreclosure with leave to re-apply
August 18	Payment of \$4,210,995.79 made towards <i>Currie Judgment/Currie Amended Judgment</i> (Danyliuk Fiat of August 5, 2025 at page 2)
November 2	SSC files originating application seeking discharge of Toronto-Dominion Bank mortgages registered against titles to Farmland

2023

January 18	Terry files Notice of Application for assignment of Toronto-Dominion Bank mortgages
July 13	Norbeck J. grants SSC's applications to discharge the Toronto-Dominion Bank mortgages from title and dismisses Terry's application to assign those mortgages [<i>Norbeck Decision</i>], relying upon <i>Farm Credit Corp. v Nelson</i> , 1993 CanLII 8891 at para 46, [1993] 6 WWR 518 (SKQB)
December 5	Court of Appeal dismisses Terry's appeal of <i>Norbeck Decision</i> in oral judgment: CACV 4240

2024

February 1	Chad files Notice of Application in his name seeking order <i>nisi</i> for foreclosure on the Farmland, relying upon the 2022 Keene Order
March 11	Keene J. Fiat dismissing Chad's application for a final order for foreclosure
March 22	Order issued for March 11, 2024 Fiat of Keene J. dismissing Chad's application for foreclosure, with costs awarded to SSC [2024 Keene Order]
March 25	Chad files appeal against 2024 Keene Order

2025

January 9	Court of Appeal for Saskatchewan hears Chad's appeal against 2024 Keene Order, with costs to SSC: reported as 2025 SKCA 21
February 19	Court of Appeal dismisses Chad's appeal of 2024 Keene Order: reported as 2025 SKCA 21
March 11	SSC files Amended Notice of Application for leave to dispose of land to satisfy <i>Currie Judgment</i>
March 25	Robertson J. grants adjournment request by SSC to April 3
April 3	Danyliuk J. grants adjournment requests from Terry and Chad to May 8, 2025
May 8	Danyliuk J. denies adjournment request by Terry and hears applications from SSC and Chad, reserving decision
August 5	Danyliuk J. Fiat: dismissing Chad's application to cross-examine appraiser for SSC who valued lands at \$7.2 million, because Chad does not have standing as mortgagee and, even if he had standing, there is little to be gained from the cross-examination and it would cause further delay; and granting SSC leave to proceed with the sale of land, pursuant to s. 104(b) of <i>The Enforcement of Money Judgments Act</i> , SS 2010, c E-9.22 [EMJA] and s. 21 of <i>The Saskatchewan Farm Security Act</i> , SS 1988-89, c S-17.1 with costs awarded against Chad set at \$1,000.
August 11	Order issued as result of August 5, 2025 Fiat of Danyliuk J. directing Sheriff to sell Farmland [Danyliuk Order]
October 2	McKercher LLP receives Delegation of Sale of Land for Farmland from Sheriff of the Judicial Centre of Estevan [Delegation of Sale] (Hillman Affidavit #1, para. 3 & Exhibit "C")
November 7	SSC files Notice of Application to vacate certificates of pending litigation registered on July 31, 2015 as Interest Register #121002321 against titles to Farmland by defendant Trisha Duckarmie related to family law proceeding against Terry involving division of family property
November 20	Norbeck J. grants Consent Order directing Registrar of Land Titles to discharge certificates of pending litigation
November 27	Consent Order authorized by Norbeck J. issued

- November 28 McKercher LLP receives email from Terry's lawyer informing SSC of purported lease of Farmland by Terry to Lionsgate Farms, a registered business name for a partnership between Josh Gustafson [Josh], his mother and his brother (Hillman Affidavit #1, para. 9 & Exhibit "H"; and Josh Affidavit, paras. 2-3 & Exhibit "B")
- December 2 Notice of Application filed by Chad seeking order: to amend 2022 Keene Order and authorize Chad to proceed with judicial sale of Farmland; to give Chad immediate possession of Farmland; and to stay Sheriff's sale of Farmland
- December 9 Robertson J. adjourns Chad's applications to January 6, 2026
- December 19 Notice of Application filed December 19, 2025 by SSC to dismiss Chad's application and declare void the lease of Farmland by Terry to Lionsgate Farms
- Delegation of Sale amended to extend delegation from December 31, 2025 to May 31, 2026 (Hillman Affidavit #1, para. 3 & Exhibit C")
- December 23 Notice of Application filed by Terry to amend 2022 Keene Order and thereby authorize Chad to issue order *nisi* for Sale of Farmland, to give Chad immediate possession of Farmland for purpose of sale, and to stay the Sheriff's sale of the Farmland
- December 31 Consent adjournment of all three applications to January 13, 2026
- 2026
- January 13 Robertson J. adjourns applications with consent to January 16, 2026
- January 16 Applications heard by Robertson J. with decision reserved

ISSUES

- [9] There are cross-applications from Chad and Terry and SSC.

Chad's applications:

- Notice of Application filed December 2, 2025 to amend 2022 Keene Order to authorize Order *Nisi* for Sale, give the applicant immediate possession of land for purpose of sale, and to stay the Sheriff's sale of the Farmland
- Notice of Objection filed December 30, 2025 to the Sheppard Affidavit.

SSC's application:

- Notice of Application filed December 19, 2025 to dismiss Chad's application and declare void a lease to Lionsgate Farms of much of the Farmland

Terry's application:

- Notice of Application filed December 23, 2025 to amend 2022 Keene Order and authorize Chad to issue Order *Nisi* for Sale of the Farmland, to give Chad immediate possession of land for purpose of sale, and to stay the Sheriff's sale of the Farmland

[10] Although both Chad and Terry in their notices of application sought issuance of order *nisi* for judicial sale of the Farmland, Chad in oral argument was clear that what he wants is an order for foreclosure.

[11] The applications may be resolved by addressing the following questions:

1. Should the objected parts of the Sheppard Affidavit be struck?
2. Does Chad have standing to seek amendment of the 2022 Keene Order?

3. Should the Court exercise its discretion to authorize judicial sale or foreclosure of the Farmland by Chad?
4. Is the lease of Farmland to Lionsgate Farms void as a fraudulent preference or fraudulent conveyance?
5. Should the Sheriff's sale be stayed?
6. What cost, if any, should be awarded?

ANALYSIS

[12] At the outset, I will observe that this case illustrates the problems that can arise when a foreclosure action is combined with an action for monetary damages. In *Conexus Credit Union 2006 v Benko*, 2021 SKQB 321, I cautioned that, as a general rule, such combination of claims is improper.

[13] I will deal with the issues stated above in that order.

Should the objected parts of the Sheppard Affidavit be struck?

[14] Chad objected to paragraph 11 of the Sheppard Affidavit as inadmissible because the content was “opinion, speculative, non-expert evidence, and argumentative”. I disagree and dismiss the objection.

[15] In *M.R.L.P. v Canada (Attorney General)*, 2018 SKQB 248 at paras 8 and 13, Currie J. distinguished between opinion and personal experience in declining to strike paragraphs of affidavits to which similar objection was made. I have followed that decision in similarly declining to strike affidavit evidence in: *Alliance Seed Corporation v Fournier*, 2026 SKKB 5 at para 29; *3sHealth v Canadian Union of Public Employees*, 2024 SKKB 31 at para 28, reversed in part on other grounds 2024 SKCA 106; and *Verdient Foods Inc. v United Food and Commercial Workers, Local*

1400, 2019 SKQB 288 at paras 15-18. See also: *R v Hamilton*, 2011 ONCA 399 at paras 237-240 and 259; and *Questor Technology Inc. v Stagg*, 2021 ABQB 636 at paras 56-60.

[16] Mr. Sheppard in paragraph 1 of his affidavit identifies himself as “a broker and the owner of Sheppard Realty Corp.”. In paragraph 11 he prefaces his statements about the lease with the following words: “As a broker, I have experience with both the sale and leasing of farmlands in Saskatchewan. Based on my experience, I noted that the following terms of the Lease are unusual for farmland leases:”.

[17] While the difference between opinion and knowledge based upon experience and education are sometimes difficult to distinguish, I am satisfied that the objected statements are reliable statements of fact within the personal knowledge of the affiant and, as such, admissible evidence. The weight to be accorded that evidence is a different question from its admissibility.

Does Chad have standing to seek amendment of the 2022 Keene Order?

[18] Justice Danyliuk, in his Fiat dated August 5, 2025, ruled that Chad did not have standing as mortgagee to apply to cross-examine SSC’s appraiser nor to add the Sheriff as a party. I agree with Justice Danyliuk’s ruling and apply it to this application. Even if I did not agree, I would apply it on the basis of judicial comity.

[19] Chad certainly has an interest in the proceedings as a secured creditor, but that does not make him a party on par with SSC or Terry. Justice Danyliuk expressly recognized that interest in his Fiat at page 2, stating “He is a priority creditor and these proceedings must, and will, respect his priority position.”

[20] I find that Chad does not have standing to bring an independent application to amend the 2022 Keene Order. If he wanted to commence a foreclosure action based on default of the mortgage agreement in his name, he would have to follow

the usual procedure. The 2022 Keene Order does not provide him with a short-cut to foreclosure.

[21] This finding does not end the matter, since Terry filed the same application. As the named defendant and owner of the Farmland, I accept that he has standing. I will therefore proceed to consider the next issue.

Should the Court exercise its discretion to authorize judicial sale or foreclosure of the Farmland by Chad?

[22] Assuming that I am wrong and Chad has standing to make application, I would still dismiss his application. I also dismiss Terry's application.

[23] Amendment of an order *nisi* is discretionary. The Court's reluctance to revisit and amend orders *nisi* for sale is stated in many decisions of the Court. See: *CIC Asset Management v Townsgate Development Corporation*, 2022 SKCA 31 at para 13; refusing leave to appeal against 2021 SKQB 327 at para 15; and *CIBC Mortgages Inc. v Taylor*, 2018 SKQB 118 [*Taylor*].

[24] There are several reasons to dismiss the application to amend the 2022 Keene Order and issue a new order *nisi* for sale or foreclosure of the Farmland, any one of which is sufficient reason.

[25] First, Chad is attempting to "piggyback" on an order *nisi* in which he was not a party. He does not have standing to make the application.

[26] Second, delay is a factor weighing against amendment of an order *nisi*. (*Taylor* at paras 30(a) and 33) The 2022 Keene Order was granted March 31, 2022 and issued April 1, 2022 – almost four years ago. That delay is sufficient reason for dismissal of the applications.

[27] Third, the foreclosure action commenced by ICC was concluded. The 2022 Keene Order, which was an Order *Nisi* for Sale, did not proceed to final order because the Mortgage was redeemed by payment of the Mortgage debt. That foreclosure action concluded with the debtor exercising his right of redemption by full payment of the Mortgage balance and costs, as allowed by the 2022 Keene Order. The 2022 Keene Order, in conformity to the Court's forms, expressly limited the right of redemption to Terry as mortgagor. (2022 Keene Order at para. 3 titled "Mortgagor's right to redeem the Land") There was no final order for sale because Terry redeemed the land within the redemption period by payment to ICC of the Mortgage debt. The redemption payment was made with funds provided by his son Chad. The foreclosure action commenced by ICC is now a "dead letter". It cannot be resurrected by a different party years later to thwart a valid sale for a different debt.

[28] Fourth, the Assignment placed Chad in the position of mortgagee, not plaintiff. Although the Assignment purported to substitute Chad for ICC/SSC as plaintiff in the foreclosure action, the style of cause was never amended. That would require application to the Court for an order.

[29] Parties cannot contract out of the legislation governing foreclosure or the rules of Court governing litigation and thereby deprive the Court of its inherent jurisdiction to supervise the conduct of litigation. See *Potash v Royal Trust Co.*, 1986 CanLII 34 at paras 37 and 40, [1986] 2 SCR 351 (SCC). Although the plaintiff is entitled to direct its action, under the principle of *dominus litis*, meaning master of the suit, the Court is not a passive spectator or rubber stamp and may invoke its superior jurisdiction to protect the proper administration of justice or prevent an abuse of its process. This jurisdiction applies to all litigation. See, for example, *Medernach v Nutrien Ltd.*, 2021 SKQB 31 at para 23; and *Poffenroth Agri Ltd. v Brown*, 2020 SKQB 31 at para 2, affirmed 2020 SKCA 121. But the Court's supervisory jurisdiction has special emphasis in foreclosure actions. In *Taylor* at para 20, Danyliuk J. wrote:

[20] There will be no shock to those experienced with foreclosure practice in Saskatchewan that this court jealously guards, and sedulously fosters, its supervisory jurisdiction. This has evolved through legislation, case law, and longstanding practice. Much of the legislation and case law in this area is designed for the protection of debtors, and to ensure that creditors realizing on their security do so in an orderly fashion.

[21] In my view, this remains true when a mortgagee seeks sale of a mortgaged property. The court supervises that sale. That type of sale process, indeed the sale itself, is subject to court approval.

[30] Fifth, this form of assignment would likely be void as contrary to public policy by doing mischief to a statutory scheme in place for decades. As this Court knows from its experience supervising foreclosure proceedings, it is not uncommon for foreclosure proceedings to end short of judicial sale or foreclosure because the property owner was able to obtain re-financing from another mortgage lender. In those cases, the existing mortgage is discharged on payment of the mortgage balance and the new lender registers a new mortgage agreement against title to the land. If this Court were to accept what Chad and Terry propose, then the new lender could simply assume the old Mortgage and, at any time in the future, resume the original foreclosure action without completing any of the preliminary steps, which are mandated by law. That scenario is incompatible with the governing legislation and case law.

[31] Sixth, this Court has previously rejected similar applications by Chad: Smith J. on June 16, 2023; and Keene J. on March 11, 2024 (2024 Keene Order). The 2024 Keene Order was upheld by the Court of Appeal: *Gustafson v SSC Security Services Corp.*, 2025 SKCA 21. Chad cannot keep coming back to Court with the same application and expect a different result.

[32] Seventh and finally, I find the applications to be an improper attempt to interfere with an authorized judicial process and a collateral attack on the Danyliuk Order authorizing the Sheriff's sale. No appeal was taken against the Danyliuk Order.

This mischief, which is consistent with previous attempts to delay SSC, should not be countenanced by the Court.

Is the lease of Farmland to Lionsgate Farms void as a fraudulent preference or fraudulent conveyance?

[33] SSC asks that the Court declare the purported lease of the Farmland to Lionsgate Farms as void. In doing so, SSC relies on both *The Fraudulent Preferences Act*, RSS 1978, c F-21 and the *Fraudulent Conveyances Act*, 1571 (UK), 13 Eliz 1, c 5 [*Statute of Elizabeth*]. Both statutes are intended to prevent improper attempts by debtors to defeat the legitimate claims of creditors. The different criteria for their application were reviewed in *Moody v Ashton*, 2004 SKQB 488 [*Moody*] and more recently in *Yapi ve Kredi Bankasi Anonim Sirketi v Arslan*, 2026 SKCA 6 at paras 84-85.

The Fraudulent Preferences Act

[34] *The Fraudulent Preferences Act* in s. 3 provides that transfers of property made by a person who is insolvent with intent to defeat or delay his creditors are void as against that creditor:

Transfers to defeat creditors

3 Subject to sections 8, 9, 10 and 11 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

[35] I am satisfied that this applies to Terry's purported lease of the Farmland to Lionsgate Farms.

[36] There are three aspects to consider in determining whether the lease is void under s. 3 of *The Fraudulent Preferences Act*: 1. whether the Act applies to a lease; 2. whether the lease was made with fraudulent intent; and 3. whether Terry was insolvent or unable to pay his full debts at the time the lease was made.

[37] In *Alberta (Attorney General) v Samuel Doz Professional Corp.*, 1993 CanLII 7049 at para 28, [1993] 6 WWR 260 (ABQB), Ritter J. applied *The Fraudulent Preferences Act*, RSA 1980, c F-18 at s 1 (since rep) in finding a lease void. The Alberta provision he relied upon is similar to s. 3 of *The Fraudulent Preferences Act* of Saskatchewan. I am satisfied that the scope of s. 3 includes lease agreements.

[38] In *Moody* at paras 122-123, Baynton J. stated that a voluntary conveyance of property is void under *The Fraudulent Preferences Act* if:

1. the transfer is made with fraudulent intent to delay, hinder or defraud creditors; and
2. the transferor, at the time of the conveyance:
 - a) is in insolvent circumstances;
 - b) is unable to pay his debts in full; or
 - c) knows that he is on the eve of insolvency.

[39] Fraudulent intent may be established by evidence of suspicious circumstances, sometimes described as “badges of fraud”. There are several “badges of fraud” with respect to the lease. The lease is between related parties and therefore non-arms length. Lionsgate Farms is controlled by Josh, who is Terry’s nephew and Chad’s cousin. (Josh Affidavit, paras. 2-4) The parties to the lease had knowledge of the creditor’s claim when the lease was made. (Josh Affidavit, para. 5) The leased lands include most of the Farmland. (Hillman Affidavit #1, Exhibit “G”) The annual lease

rate of \$90,000 is below market rents. (Sheppard Affidavit, para. 9(a)) The lease agreement has no escape clause, thus effectively encumbering the Farmland until 2028. (Sheppard Affidavit, para. 9(b); Hillman Affidavit #1, Exhibit “G”; and Josh Affidavit, para. 6) Although the lease agreement was supposedly made on March 1, 2024, no notice was provided to SSC, as judgment creditor, until November 18, 2025, two days before the date of Chad’s Notice of Application. (Sheppard Affidavit, para. 9; Hillman Affidavit #1, para. 9; and Hillman Affidavit #2, para. 4) The lease was not registered against the leased lands. (Sheppard Affidavit, paras. 9-10) The meta data for the lease agreement document suggests the lease was actually created on September 21, 2025 by Josh, a full year after it was supposedly signed by the parties and five weeks after the Danyliuk Order authorized the Sheriff’s sale. (Hillman Affidavit #1, paras. 9 – 10 & Exhibits “G” and “H”; and Josh Affidavit, Exhibit “A”)

[40] Terry and Chad did not adduce evidence to counter these facts. Terry’s counsel suggested the evidence of the meta data was not conclusive. But even if one discounted some of these suspicious circumstances, the cumulative effect of the remaining circumstances would still justify the conclusion that the lease agreement was made with fraudulent intent to defeat, delay or hinder SSC as creditor.

[41] The date of the lease agreement is March 1, 2024. That date is almost two years after registration of the Seizure Notice against the Farmland. The report of the Farm Land Security Board dated March 14, 2024 [Report] reviewed Terry’s financial standing in the context of his failure to pay the outstanding *Currie Judgment*. The Report at page 12 concluded “The Board concludes that Terry Gustafson does not have a reasonable possibility of meeting the obligations of the Judgment.” The Report at page 13 also concluded “Based on the findings, the Board concludes Terry Gustafson has not made a sincere and reasonable effort to meet the obligations of the Judgment.” I find that Terry was insolvent and unable to pay his debts at the time the lease was made.

[42] I find that the lease is void as a fraud under *The Fraudulent Preferences Act*.

[43] Since the two statutes have different criteria, I will go to consider whether it is also void under the *Statute of Elizabeth*.

Statute of Elizabeth

[44] The *Statute of Elizabeth* in its preamble and in ss. 1(a) explains the purpose of the law to void fraudulent conveyances intended to defeat claims of lawful creditors. Unlike *The Fraudulent Preferences Act*, the *Statute of Elizabeth* does not require proof that the debtor was insolvent at the time of the challenged transaction. The *Statute of Elizabeth* may be applied to void any transfer of property with intent to hinder, delay, or defraud creditors, except for a *bona fide* purchase for good consideration and without notice of the debtor's fraudulent intent. This intent is expressed in the preamble:

An Act against Fraudulent Deeds, Alienations, &c.

FOR the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, more commonly used and practiced in these days than hath been seen or heard of heretofore: Which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent, to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued: Be it therefore declared, ordained, and enacted by the authority of this present Parliament, that all and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements,

hereditaments, goods and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution at any time had or made sithence the beginning of the queen's majesty's reign that now is, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose, actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, covinous, or fraudulent devices and practices as is aforesaid, are, shall or might be in anywise disturbed, hindered, delayed or defrauded to be clearly and utterly void, frustrate, and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

[45] Saskatchewan courts have over many years recognized the application of the *Statute of Elizabeth* in Saskatchewan, including in: *Bank of Montreal v Reis*, 1925 CanLII 158, [1925] 3 DLR 125 (SKSC); *Bludoff v Osachoff*, 1928 CanLII 146 at para 22, [1928] 3 DLR 179 (SKCA); *Stewart v Zacharuk*, 1948 CanLII 184, [1949] 1 WWR 213 (SKKB) at p 219; *Scott v Scott*, 1965 CanLII 415, 52 DLR (2d) 666 (SKQB); *Petryshyn v Kochan*, 1940 CanLII 166, [1940] 3 DLR 796 (SKKB); *Moody* at para 125; *Johnson v Johnson*, 2012 SKCA 87 at paras 80-81; *Stecyk v Smysniuk*, 2013 SKQB 227 at paras 54-56 reversed on other grounds 2015 SKCA 54 at para 18; *BTA Real Estate Group Inc. v Family Fitness Inc.*, 2021 SKQB 107 [BTA]; *Meng v Wang*, 2025 SKKB 184 [Meng]; and *Royal Bank of Canada v Mickel*, 2025 SKKB 213 [Mickel].

[46] In *Moody* at paras 125-126, Baynton J. recognized that the *Statute of Elizabeth* remains in force in Saskatchewan:

[125] The Saskatchewan case law recognizes that the *Statute of Elizabeth* is in force in the province and that the insolvency of the transferor need not be proven as an element of a fraudulent conveyance under that Act. *Petryshyn v. Kochan*, [1940] 2 W.W.R. 353 (Sask. Q.B.) and *Stewart v. Zacharuk*, [1949] 1

W.W.R. 213 (Sask. K.B.), and the many decisions that followed them. These cases also establish that the intent of the transferee is immaterial. Only the intent of the transferor is relevant.

[126] One principle established by the early case law is that the *Statute of Elizabeth* should be interpreted purposively. Lord Mansfield in *Cadogan v. Kennett* (1776), 98 E.R. 1171 at 1172 observes that it should be construed liberally as reflecting the aversion of the common law to fraud. In a more recent decision that dealt with inter-family transactions, Furlong, C.J. in *Lewisporte Wholesalers Ltd. v. Hynes* (1980), 24 Nfld. & P.E.I.R. 252 (Nfld. S.C.) indicated at para. 13 that he would be prepared to give a liberal construction to it if he could be satisfied on which side that liberality was to be exercised.

[47] In *BTA* at para 35, Elson J. also recognized that the *Statute of Elizabeth* continues to apply in Saskatchewan:

A. Fraudulent Conveyance – Statute of Elizabeth Law

[35] There remains some controversy whether the *Statute of Elizabeth* is in force in all common law provinces. The view has been expressed that, in some jurisdictions, application of the statute has been overtaken by provincial fraudulent conveyance legislation. See *Royal Bank of Canada v North American Life Assurance Co.*, [1996] 1 SCR 325 at para 84 (WL) [*Ramgotra*]. In Saskatchewan, however, it seems doubtful that this controversy ever existed. If it did, it was largely put to rest in *Moody v Ashton*, 2004 SKQB 488, 258 Sask R 1 [*Moody*], where, at para. 125, Baynton J. acknowledged the case law that recognized the statute's application. As I will note later in this decision, Baynton J. also observed a substantive difference between the *Statute of Elizabeth* and the provincial fraudulent conveyance legislation that exists in this province, namely, *The Fraudulent Preferences Act*, RSS 1978, c F-21.

[48] In *BTA* at para 41, Elson J. adopted the following analytical framework from *Palechuk v Fahrlander*, 2006 ABCA 242 [*Palechuk*], on the necessary elements to obtain a remedy under the *Statute of Elizabeth*. *Palechuk* at para 31 reads as follows:

[31] To obtain a remedy under the *Statute of Elizabeth*, the plaintiff must establish the following:

- (1) there must be a conveyance of real or personal property;
- (2) for no or nominal consideration;
- (3) with intent to defraud, delay, or hinder creditors;
- (4) the party challenging the conveyance must be someone who was a creditor at the time of the conveyance or someone with a legal or equitable right to claim against the transferor; and
- (5) the conveyance must have had the intended effect.

(Emphasis in original)

[49] In *Meng* at para 34, Smith J. applied this test for his analysis as did Robertson J. in *Mickel* at paras 25 - 30. I will employ this framework to decide whether the lease is a fraudulent conveyance.

Conveyance of property

[50] The lease is for use of real property.

For no or nominal consideration

[51] The lease rate is below market value.

With intent to defraud or hinder creditor

[52] The lease was made with knowledge of the *Currie Judgment* and collection efforts. The badges of fraud reviewed above apply equally here.

Applicant was creditor at time of conveyance

[53] SSC was a creditor when the lease was made and actively pursuing collection of the debt.

Conveyance had the intended effect

[54] If allowed to stand, the lease would encumber the Farmland and hinder its sale or reduce the sale value, thereby defeating or impeding debt collection.

Shifting Onus of Proof

[55] If the applicant establishes the required elements, as has occurred here, then the onus shifts to the person seeking to uphold the transaction as legitimate. See: *Moody* at paras 139-142; and *Mickel* at para 31.

[56] Chad claims the lease is legitimate. For the reasons already given, I reject that claim and find it to be a fraudulent conveyance to defeat the sale of the Farmland.

[57] For these reasons, I find the lease to be void and of no force and effect with respect to sale of the Farmland by the Sheriff. In doing so, if necessary, I rely upon *The Land Titles Act, 2000*, SS 2000, c L-5.1 at ss 107(1)(d) and (e) and 109. The Sheriff may sell the Farmland free and clear of the purported lease agreement.

Should the Sheriff's sale be stayed?

[58] The Sheriff's sale has been judicially authorized by the Danyliuk Order. If applicants sought review of that order, they should have either applied to Justice Danyliuk or filed an appeal. They did neither. That omission is reason enough to dismiss the stay applications.

[59] Even so, I will briefly review the objections to the Sheriff's sale, if only to avoid further litigation.

[60] Chad and Terry argued that the *EMJA*, under which the Sheriff's sale is proceeding, in s. 34(2)(a) creates a duty on the Sheriff to other creditors:

Acting on enforcement instruction

34(1) Subject to subsection (2), on receipt of an enforcement instruction, the sheriff shall take the enforcement measure requested in the enforcement instruction or ordered by the court.

(2) The sheriff is not required to take the enforcement measure requested by an enforcing judgment creditor in an enforcement instruction, if, in the opinion of the sheriff:

- (a) the enforcement measure is not reasonable or practicable;
- (b) the enforcement measure is not permitted by law; or
- (c) the requirements of this Act or the regulations have not been met.

...

[61] I do not read s. 34(2) in that way. On the contrary, s. 34 affirms the independence and discretionary authority of the Sheriff in taking enforcement action, subject to the law, judicial direction and the Sheriff's own good judgment as to what is "reasonable or practicable".

[62] Chad and Terry complain that the Sheriff has not been transparent. The basis for this complaint, which is all it is, is that the Sheriff did not provide Chad and Terry with an appraisal for his valuation of the Farmland. The concern is that the sale of the Farmland might not produce enough funds to pay the Mortgage debt. This concern is allayed for three reasons. First, SSC acknowledges the priority claim of the Mortgage debt. Second, the sale of the Farmland is conditional on producing sufficient funds to pay the Mortgage debt. (Hillman Affidavit #1, Exhibit "D") In other words, if the offers for sale did not reach that amount in total, there would be no sale or transfer of titles. And third, SSC obtained an appraisal which supports its belief that the Farmland will sell for more than the Mortgage debt.

[63] Another complaint is with the Sheriff's delegation to McKercher LLP. While the applicants do not point to any misconduct, they say it has a taint of partiality, given that McKercher LLP is SSC's lawyer. They point out that this would not usually be permitted by the Court in a judicial sale resulting from a foreclosure proceeding. While true, a Sheriff's sale under the *EMJA* is a different proceeding with distinguishing features.

[64] First, s. 4(1) of the *EMJA* expressly allows delegation to "a judgment creditor":

Sheriff authorization

4(1) Subject to the regulations, the sheriff may authorize any person, including a judgment creditor, to perform any function that the sheriff is empowered or required by this Act or the regulations to perform.

[65] The Court will generally defer to the Legislature when it expressly authorizes something.

[66] Second, the delegation is not to the judgment creditor, but to its lawyers. As lawyers, they are subject to professional duties both to and beyond the client, including to the Court.

[67] Third, the delegation in paragraph 3 expressly provides for the offers to purchase to be presented to the Sheriff. The Sheriff remains responsible. And the Court remains available for review if a serious and legitimate concern arises.

[68] Fourth and finally, the Court exercises a supervisory role over Sheriff's sales. *The Land Titles Act, 2000* in s 160.1 requires Court confirmation of any sale, with notice required by s. 160.3:

Sale by sheriff

160.1(1) No sale by a sheriff or other officer, under process of law, of a parcel for which title has issued, or of a lease or mortgage of land for which title has issued, is of any effect until the sale is confirmed by order of the court.

...

Confirmation of sale

160.3(1) Unless the court dispenses with the notice requirements set out in this subsection, an application to the court to confirm the sale of a parcel or a mortgage under process of law may be made by the sheriff or other officer making the sale, or by any person interested in the sale, on notice:

- (a) to the registered owner or interest holder; and
 - (b) to all interest holders subsequent in interest to the execution creditor.
- (2) If the court confirms the sale, the costs of confirmation are to be paid out of the purchase money, or as the court directs.
- (3) If the court does not confirm the sale:
- (a) the purchase money is to be refunded to the purchaser; and
 - (b) the court may make any order that the court considers just with respect to:
 - (i) the costs of all parties to the sale; and
 - (ii) the costs of the application for confirmation

[69] The applicants also complained that the sale process has been delayed, with an extension of the delegation from December 31, 2025 to May 31, 2026. It is difficult to take this complaint seriously, given their past pattern of obstruction. But if that is a concern, then the sooner the sales proceed, the better.

[70] Finally, Chad and Terry argued that the *EMJA* does not authorize compulsory discharge of registered interests, in the event of a Sheriff's sale. SSC

replied that SSC's lawyer said they had never heard of a creditor refusing discharge of their registered interest in such circumstances. Creditors are obliged to discharge upon tender of full payment of the debt. This is inherent in the sale process, which could otherwise be defeated by one recalcitrant creditor. The *EMJA* in ss 103 and 105(3) expressly provide for discharge of interests to allow for transfer of clear title to the purchaser.

[71] While I am inclined to agree with SSC, I need not make any ruling. This argument is premature and speculative. If the need actually arises, the question can be argued and decided by this Court.

[72] I see no reason to interfere with the Sheriff's sale. I therefore dismiss the applications to stay the Sheriff's sale, confirm the Danyliuk Order and direct that the Sheriff proceed.

[73] If the Sheriff requires further judicial direction, the Court is available to assist the Sheriff as a Court official.

What costs, if any, should be awarded?

[74] SSC has been successful and is entitled to an award of costs. This was a complex matter with briefs filed by the three lawyers. Oral argument extended over four hours. A single set of costs are awarded, calculated on Column 3 of the Tariff of Costs, payable forthwith by Chad and Terry. SSC may collect the entire award from one or the other or both.

DECISION

[75] The applications of Chad and Terry are dismissed. The applications of SSC are granted. The draft orders filed by SSC may issue, with amendment to incorporate the costs award.

[76] I thank counsel for their submissions and assistance.

J.
D.N. ROBERTSON