

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 137

Date: 2026 08 04
File No.: KBG-MJ-00062-2024
Judicial Centre: Moose Jaw

BETWEEN:

BANK OF MONTREAL

PLAINTIFF/APPLICANT

- and -

SHAWN PULVERMACHER

DEFENDANT/RESPONDENT

Appearing:

Kristian St. Onge
Shawn Pulvermacher

for the plaintiff/applicant
self-represented litigant

FIAT
August 4, 2026

BERGBUSCH J.

I. Introduction

[1] In this application the Court must determine whether to strike a statement of defence on the grounds that it is frivolous or vexatious, when one of the defences pleaded is that the Statement of Claim was issued after the expiry of a limitation period.

[2] Bank of Montreal [BMO] has sued Shawn Pulvermacher for a credit debt owing to it pursuant to a Mastercard Account. As of January 17, 2024, the unpaid balance was \$32,688.53, with interest accruing at 20.99 percent per annum. Mr. Pulvermacher has defended, claiming *inter alia* that the type of credit card he had was

different than the one referred to in the Statement of Claim, that the interest rate and amount of the debt are incorrect, and that the claim was issued after the expiry of the two-year limitation period. BMO has now applied for an order striking Mr. Pulvermacher's statement of defence, on the grounds that it is frivolous or vexatious.

[3] The issues the application raises are the following:

- (a) Is it plain and obvious that the defences asserted in the Statement of Defence are frivolous?
- (b) Is it plain and obvious that the defences asserted in the Statement of Defence are vexatious?
- (c) Should the Court refer the matter to the Local Registrar for a calculation of the amount owing, pursuant to Rule 6-58 of *The King's Bench Rules*?

[4] For the reasons which follow, I have concluded the Statement of Defence is frivolous and should be struck without leave to amend. A reference to the Local Registrar is not necessary.

II. Background

[5] BMO issued the Statement of Claim on May 29, 2024, and concurrently filed a Notice of Expedited Procedure, in accordance with Rule 8-3 of *The King's Bench Rules*.

[6] Mr. Pulvermacher served and filed a Notice of Intent to Defend on July 26, 2024.

[7] On August 8, 2024, Mr. Pulvermacher served and filed his Statement of Defence.

[8] BMO filed a Notice of Application, returnable on June 10, 2025, in which it sought an exemption from participation in mandatory mediation, an order striking the Statement of Defence on the basis that it is frivolous or vexatious, and costs.

[9] Justice Krogan denied BMO's request for an exemption from mediation and adjourned the balance of BMO's application *sine die*, returnable on 14 days' notice after the parties attended mediation.

[10] BMO filed a new Notice of Application returnable December 9, 2025, renewing its application for an order striking the Statement of Defence pursuant to Rule 7-9(2)(b) with costs. BMO filed the Affidavit of Paul Alexandre Rivard sworn November 19, 2025, in support of the application.

III. Law Governing Applications to Strike on the Grounds that a Pleading is Frivolous or Vexatious

[11] BMO brings its application pursuant to Rule 7-9(2)(b) of *The King's Bench Rules*, which reads:

Striking out a pleading or other document, etc. in certain circumstances

7-9(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

- (a) that all or any part of a pleading or other document be struck out;
- (b) that a pleading or other document be amended or set aside;
- (c) that a judgment or an order be entered;
- (d) that the proceeding be stayed or dismissed.

(2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:

(a) discloses no reasonable claim or defence, as the case may be;

(b) is scandalous, frivolous or vexatious;

(c) is immaterial, redundant or unnecessarily lengthy;

(d) may prejudice or delay the fair trial or hearing of the proceeding; or

(e) is otherwise an abuse of process of the Court.

(3) No evidence is admissible on an application pursuant to clause (2)(a).

[12] The principles governing applications to strike have been considered far more often in the context of challenges to statements of claim. On an application to strike a claim on the grounds that it is frivolous or vexatious, the Court may consider the merits of the claim and the motives of the party advancing it. In *Sagon v Royal Bank of Canada*, 1992 CanLII 8287 at para 18, 105 Sask R 133 (SKCA), Sherstobitoff J.A. discussed the high bar to be met before a statement of claim will be struck on these grounds:

[18] Striking out an entire claim on the ground that it is frivolous, vexatious or an abuse of process of the court is based on an entirely different footing. Instead of considering merely the adequacy of the pleadings to support a reasonable cause of action, it may involve an assessment of the merits of the claim, and the motives of the plaintiff in bringing it. Evidence other than the pleadings is admissible. Success on such an application will normally result in dismissal of the action, with the result that the rule of res judicata will likely apply to any subsequent efforts to bring new actions based on the same facts. Odgers on *Pleadings and Practice*, 20th Ed. says at pp. 153-154:

"If, in all the circumstances of the case, it is obvious that the claim or defence is devoid of all merit or cannot possibly succeed, an order may be made. But it is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. Its exercise would not be justified merely because the story told in the pleadings

is highly improbable, and one which it is difficult to believe could be proved." (footnotes omitted)

[13] In *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2022 SKCA 38 at paras 25-26 [*GHC*], Kalmakoff J.A. wrote that a claim can only be struck pursuant to Rule 7-9(2)(e) where it is plain and obvious that allowing it to proceed would be an abuse of process. The same standard applies to an application to strike a claim or a defence on the grounds that it is frivolous or vexatious. To succeed under Rule 7-9(2)(b) or (e), the applicant must establish “the claim is devoid of all merit and cannot possibly succeed”: *James Mann Family Trust v Yara Phosyn Ltd*, 2011 SKCA 146 at para 33; *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119 at para 43 [*Paulsen*].

[14] Evidence other than the pleadings is admissible on an application to strike a claim or defence because it is frivolous, vexatious, or an abuse of process. However, a judge cannot weigh competing evidence or make credibility findings. If there is conflicting evidence on a material issue, it is not plain and obvious that a claim or defence has no chance of success: *GHC* at para 26; *Paulsen* at para 42. That said, if only one side files evidence on a material point, that evidence is generally to be taken as true: *GHC* at para 26; *D & Y Acres Ltd. v Prairie Associate Organics Inc.*, 2002 SKQB 343 at para 13.

[15] The terms “frivolous” and “vexatious” have distinct meanings in this context. As explained in *Siemens v Baker*, 2019 SKQB 99 at para 25 [*Siemens*], a pleading is frivolous if it is “plain and obvious” or “beyond reasonable doubt” that the claims are “groundless and cannot succeed”: see also *Yashcheshen v Janssen Inc.*, 2022 SKCA 140 at para 20 [*Janssen*]. A pleading is vexatious if it has been “commenced for an ulterior motive (other than to enforce a true legal claim) or maliciously for the purpose of delay or simply to annoy the defendants”: *Siemens* at para 24; *Janssen* at para 20.

[16] These principles apply with necessary modification to an application to strike a statement of defence: e.g., *Farm Credit Corp. v Mann*, 1999 CanLII 12717 at paras 20-25, 182 Sask R 259 (SKQB); *Bank of Montreal v Giesbrecht*, 2005 SKQB 18 at paras 5-7; *Farm Credit Canada v Stomp Pork Farm (2008) Ltd.*, 2012 SKQB 99 at paras 10–11; *Paradigm Quest Inc. v Steffen*, 2026 SKKB 130 at para 17.

[17] Finally, while the Court will often be less exacting when reviewing pleadings drafted by self-represented persons, leniency has its limits: *Gaskin v Canada (Attorney General)*, 2026 SKKB 53 at para 22 [*Gaskin*]. Ultimately, “[s]creening out claims and defences that have no chance of success enhances efficiency, promotes fairness, and avoids unnecessary costs”: *Gaskin* at para 22.

IV. Analysis

Overview of the Pleadings

[18] BMO’s Statement of Claim sets out the basic elements of an action to recover a credit card debt. The account is described as a BMO Preferred Rate Mastercard Account, with an account number ending in 2495. The claim alleges the last payment on the account was made on April 17, 2023, in the amount of \$25.00. The claim says the debt owed was \$32,688.53 as of January 17, 2024, with interest accruing at 20.99 per cent per annum. In short, BMO has pleaded a straightforward debt claim related to an unpaid credit card account.

[19] The Statement of Defence is obviously drafted by a layperson. It contains several irrelevant statements about procedural steps in the proceeding itself, the defendant’s separation from his spouse, and his ongoing family law dispute. It also complains about harassing phone calls that he has received for two years, at all hours of the day, and the effect of these calls on his employment and psychological well-being.

[20] Somewhat more pertinently, Mr. Pulvermacher:

- (a) denies the claims in the Statement of Claim: defence at para. 1.
- (b) denies that he had a BMO Preferred Mastercard Account but admits he had an Airmiles Mastercard and says “the interest rate and statement of owings [sic] are not the same as the information provided in this claim”: defence at para. 2.
- (c) says he never had a “preferred MC with BMO” and acknowledges he had an Airmiles Mastercard that had “over 80,000 Airmiles and a limit of no more than \$26, 000 [sic] with an interest rate of 9.6%”: defence at para. 3.
- (d) claims he was not using the Airmiles Mastercard “from early 2021” and also says he “stopped utilizing any credit through BMO at the end of 2020 to early 2021”: defence at para. 3.
- (e) says he asked numerous times for copies of his account information, and BMO provided him information “that did not reflect my Airmiles account and did not present to be legitimate documents like the ones I would have received for monthly statements.” He says he was trying to see whether an account under his name was “not being used fraudulently”: defence at para. 3.
- (f) refers to two sections in *The Limitations Act*, SS 2004, c L-16.1 at s 5 and s 18: defence at para. 4.
- (g) asks that the claim be dismissed because of BMO’s alleged unwillingness to provide the statements requested for the BMO

Airmiles Mastercard: defence at para. 5.

[21] Reading the Statement of Defence generously, it asserts what are on their face reasonable defences to the claim. The defence denies that Mr. Pulvermacher had a BMO Preferred Mastercard Account, which is how the account is identified in the Statement of Claim. The defence also puts in issue the amount Mr. Pulvermacher owed on his BMO Airmiles Mastercard, questioning the applicable interest rate and the amount owing. Denial of the amount owing is a reasonable defence: *Smith v The Toronto-Dominion Bank*, 2023 SKCA 81 at paras 23-25 [*Smith*].

[22] Finally, the Statement of Defence cites ss. 5 and 18 of *The Limitations Act*. While the defence does not expressly state how these provisions apply, I infer Mr. Pulvermacher contends the Statement of Claim is barred because it was commenced “after two years from the day on which the claim [was] discovered”: *The Limitations Act* at s 5. Section 18 does not provide a defence; rather it establishes that the burden lies with the claimant to prove that a claim has not expired when a limitation period is put in issue.

[23] Having determined that the Statement of Defence raises viable defences on its face, I will now consider whether it is plain and obvious that those defences are frivolous or vexatious.

BMO’s Evidence

[24] In support of its application, BMO filed the Affidavit of Paul Alexandre Rivard sworn November 19, 2025. Mr. Rivard is a legal representative for BMO. Mr. Rivard attested that Mr. Pulvermacher entered into an agreement with BMO for a BMO Mastercard Account on November 3, 2009. A copy of the Mastercard application, which appears to have been signed by Mr. Pulvermacher, is attached to Mr. Rivard’s affidavit as Exhibit “A.” The application refers to the applicant as “I” and BMO as

“you.” The application includes the following:

I acknowledge that some services or benefits, including the AIR MILES Reward Program and the BMO Roadside Assistance Plan, are supplied by firms independent of you and that you are not responsible or liable for anything in connection with those services or benefits.

If you issue me a Card, I agree to abide by the Cardholder Agreement, as amended or replaced by you from time to time, which you send relating to that Card, and I agree that use of any Card applied for will show I received the Cardholder Agreement.

I will be responsible for all use of and any fees for or other charges to the BMO MasterCard Account.

[25] Mr. Rivard attached a copy of the BMO Credit Card Cardholder Agreement [Cardholder Agreement], which contains BMO’s standard terms and conditions for credit cards, as Exhibit “F.” Among other things, the Cardholder Agreement addresses the cardholder’s responsibility for the total debt and requires the cardholder to notify BMO within 30 days of any mistakes in monthly account statements sent by BMO:

8. Your responsibility for the total debt

You are responsible for and must pay the total debt. This applies whether or not you incurred the total debt, whether or not the total debt exceeds your credit limit, and regardless of how the total debt was incurred ...

[Cardholder Agreement at p. 5]

...

20. Your account statements and notices

...

You must contact us (see Section 30 for contact details) of [sic] any mistakes or missing information in your account statement no later than 30 days after your account statement date. If you

don't contact us, you agree that your account statement is correct, except for any amount we applied incorrectly to the account, which we may reverse at any time. ...

[Cardholder Agreement at p. 10]

[26] Mr. Rivard also attested that the Mastercard Account remained active from November 3, 2009 to date. He attached Mastercard statements from January 17, 2018, to January 17, 2025, addressed to Shawn RB Pulvermacher for card number 5191 2301 3374 2495. The statements up to and including April 17, 2021, are headed "BMO AIR MILES Mastercard" and include information about the "Total Reward Miles" earned. The statements from May 17, 2021 onward are headed, "BMO Preferred Rate Mastercard" and do not include information about reward miles.

[27] Mr. Rivard attested the last payment made by the debtor was a \$25.00 credit received on March 28, 2023, which was transferred from a bank account bearing number 0509-XXXX-506. The account statement showing this transaction is attached as Exhibit "C" to the affidavit.

[28] Mr. Rivard also included some emails with Mr. Pulvermacher, showing that BMO and its counsel corresponded with Mr. Pulvermacher regarding his debt and BMO provided him with copies of credit card statements from 2018 to 2024. Mr. Pulvermacher indicated in an email that he wanted to "negotiate in good faith to get a number that is fair for everyone in this matter settled and payed": Affidavit "E" to the Affidavit of Paul Alexandre Rivard [errors in original].

[29] BMO's evidence is admissible and may be considered by the Court to determine whether the Statement of Defence is frivolous or vexatious. Further, given the mundane nature of BMO's evidence and the fact that Mr. Pulvermacher filed no evidence in response, I accept BMO's evidence as true.

Defence that Mr. Pulvermacher did not have a BMO Preferred Rate Mastercard Account

[30] Mr. Pulvermacher says he had a BMO Airmiles Mastercard Account and not a BMO Preferred Rate Mastercard Account. However, they are one and the same account. The account statements he received from BMO between 2018 and 2024, which cover the transition between the two programs, all identify a BMO Mastercard having the number 5191 2301 3374 2495.

[31] In the credit card application, which he signed, Mr. Pulvermacher acknowledged that the “AIR MILES Reward Program” was a service provided by a third party and BMO was not responsible for it.

[32] The changeover from a BMO Airmiles Mastercard to a BMO Preferred Rate Mastercard was apparent on the account statements. Every statement was headed “BMO AIR MILES Mastercard” until May 17, 2021, after which the statements referred to the “BMO Preferred Rate Mastercard.” The balance owing on the April 17, 2021, account was \$25,959.39, and that same amount is identified as the “previous balance” on the next account statement, which was the first that mentioned the BMO Preferred Rate Mastercard. To repeat, it is the same account.

[33] Finally, Mr. Pulvermacher continued to use the credit card and to make payments on the account after it was identified in account statements as a BMO Preferred Rate Mastercard.

[34] In short, it is plain and obvious Mr. Pulvermacher’s defence that BMO sued him for a different Mastercard account than the one he had cannot succeed and is groundless.

Denial of the Amount Owing

[35] Mr. Pulvermacher agreed in his credit card application that he would be

responsible for all use of and any charges to the BMO Mastercard Account. He also agreed in the Cardholder Agreement that he was responsible for and had to pay the total debt, whether he incurred it or not or how it was incurred and whether it exceeded his credit limit or not. Mr. Pulvermacher agreed to advise BMO of any mistakes or missing information in his account statement no later than 30 days after his account statement date.

[36] The account statements filed in evidence include a running balance of the amount owing by Mr. Pulvermacher for his BMO Mastercard. They also include notices sent to him of changes to the interest rate he would be charged on the account. The debt alleged in the Statement of Claim, \$32,688.53 as of January 17, 2024, with interest accruing at 20.99 per cent per annum, corresponds to the account statement from that date.

[37] *Smith* involved an application to strike a statement of defence because it did not disclose a reasonable defence. In the appeal decision at para. 25, Richards C.J.S. explained that a defence should not be struck when the only issue raised is the amount owing. Rather, the statement of defence should be allowed to stand and the matter should be referred to the Local Registrar for a calculation of the amount owing, pursuant to Rule 6-58. See also *Canada (Attorney General) v Blerot*, 2001 SKCA 18 at para 16.

[38] Here, BMO challenges the Statement of Defence on a different basis, namely that it is frivolous or vexatious. The Court is entitled to consider evidence, including the account statements filed by BMO. Mr. Pulvermacher alleges in the defence that he asked BMO for his “statement of owings,” but the documents BMO provided did not appear to be legitimate. Mr. Pulvermacher also claims he was trying to ascertain if someone was using his account fraudulently. Mr. Pulvermacher did not file evidence to cast doubt on a specific transaction listed in the account statements. He offered no basis for his allegation that statements BMO provided him were not

“legitimate.” As noted, the account statements BMO filed in evidence are uncontradicted and Mr. Pulvermacher agreed in his credit card application and the Cardholder Agreement that he was responsible for all charges to the account.

[39] In the circumstances, I am satisfied that the account statements are conclusive evidence of the amount owing and nothing will be gained by referring the matter to the Local Registrar.

[40] It is plain and obvious that Mr. Pulvermacher’s denial of the amount owing lacks substance and cannot succeed as a defence to BMO’s debt claim.

Defence Based on Expiry of Limitation Period

[41] This issue most often arises when a defendant applies to strike a statement of claim after the alleged expiry of a limitation period. As explained in *101270777 Saskatchewan Ltd. v YQZH Management Incorporated*, 2026 SKCA 23 at para 3 [YQZH], the Court of Appeal has approved the “limited use” of Rule 7-9(2)(e) when it is plain and obvious the plaintiff issued the statement of claim knowing the limitation period had expired:

[3] Beginning with *Campbell v Cooper*, 2017 SKCA 55, this Court has sanctioned the limited use of Rule 7-9(2)(e) of *The King’s Bench Rules* to strike statements of claim because of the expiration of an applicable limitation period. Apart from other restrictions on the use of the abuse of process doctrine, the power to strike an action on this basis has been exercised when the court is able to find that it is plain and obvious that the plaintiff has commenced the action knowing that it was time barred.

[42] If there is an arguable issue that the claim is statute barred, it cannot be struck as an abuse of process: *GHC* at para 25; *Gersten Estate v Weimer*, 2026 SKCA 13 at para 25.

[43] In *YQZH*, the Court of Appeal upheld the chambers judge's decision declining to strike the statement of claim because it was not plain and obvious that the limitation period had expired. The appellants' focus was on the judge's alleged error in failing to apply s. 18 of *The Limitations Act* - the burden of proof provision. The issue was whether it was plain and obvious the claims could not succeed, not whether the plaintiff had discharged its ultimate burden of proving the limitation period had not expired. The record included evidence of continuing acknowledgements by the defendants of their liability to the plaintiff. The chambers judge held, correctly, that the plaintiff could credibly argue its claims arose only when the last of the acknowledgements was made by the defendants. The existence of the defendants' acknowledgements extending the limitation period was a live issue to be resolved on a summary judgment application or at trial.

[44] As I read para. 8 of *YQZH*, while expressing reservations the Court of Appeal left open whether a chambers judge can or should decide that a plaintiff has discharged its burden under s. 18 of *The Limitations Act* on an application to strike:

[8] It is far from clear that s. 18 operates in a case like this one, when the court is called upon to consider an application to strike a statement of claim under Rule 7-9(2)(e). As a matter of first impression, it is arguable whether s. 18 of *The Limitations Act* applies when the full merits of a limitation period defence are to be determined, such as in the context of a summary judgment application or trial, and not in a context like this one where a party seeks to strike a claim because it is an abuse of process. As a general proposition, at least, an applicant seeking to strike a claim because it is an abuse of process carries the burden of showing that it is plain and obvious that the plaintiff knew the action was commenced outside of the limitation period.

[Emphasis added]

[45] In the present case, the plaintiff also relies upon the defendant's acknowledgement of the debt, but with the added twist that the plaintiff applies to strike

a limitations defence because it is plain and obvious the claim was commenced inside the applicable limitation period. The shoe is on the other foot compared to the scenario in *YQZH*.

[46] Mr. Pulvermacher has invoked the two-year limitation period specified in s. 5 of *The Limitations Act*. BMO contends it has discharged its burden under s. 18 of *The Limitations Act* by leading evidence that Mr. Pulvermacher acknowledged the debt during the two years before the Statement of Claim was issued. This acknowledgement takes the form of payments on the Mastercard Account and a written communication with BMO.

[47] BMO relies upon s. 11 of *The Limitations Act*, which reads, in relevant part, as follows:

Acknowledgments and part payments

11(1) If a person acknowledges the existence of a claim for payment of a debt, for the recovery of property, for the enforcement of a charge on property or for relief from enforcement of a charge on property, the act or omission on which the claim is based is deemed to have taken place on the day on which the acknowledgment was made.

(2) For the purposes of subsection (1), an acknowledgment:

(a) subject to subsections (3), (7) and (8), must be in writing and must be signed by the person making it or the person's agent; and

(b) must be made, before the expiry of the limitation period applicable to the claim, to the claimant, the claimant's agent, a receiver, a receiver-manager or an official receiver or trustee acting pursuant to the *Bankruptcy and Insolvency Act* (Canada).

(3) In the case of a claim for payment of a debt, part payment of the debt by the person against whom the claim is made or by the person's agent is deemed for the purposes of subsection (1) to be an acknowledgment.

(4) Subsection (1) applies to an acknowledgment of the existence of a claim for payment of a debt even though the person making the acknowledgment refuses or does not promise to pay the debt or the balance of the debt still owing.

...

[Emphasis added]

[48] BMO submits it is plain and obvious that the Statement of Claim was issued in time and Mr. Pulvermacher's limitations defence is bound to fail.

[49] Often, the application of a limitation period to a set of facts will involve some ambiguity, which may include contested facts and the need to make credibility findings. Whether a debt was acknowledged may not be plain and obvious and may require a summary judgment application or at trial.

[50] However, in this case BMO has filed the account statements for Mr. Pulvermacher's Mastercard, which show unequivocally that payments were made during the two years preceding issuance of the Statement of Claim on May 29, 2024. Specifically, multiple payments were made on Mr. Pulvermacher's Mastercard Account by transfers from an account with the number 0509-XXXX-565:

Transaction Date	Amount Paid
June 16, 2022	\$473.00
July 24, 2022	\$923.00
August 13, 2022	\$10.00
September 11, 2022	\$500.00
October 12, 2022	\$467.00
November 13, 2022	\$455.00
January 6, 2023	\$75.00
January 13, 2023	\$50.00
January 28, 2023	\$20.00
March 28, 2023	\$25.00

[51] I find that those payments meet the requirements of ss. 11(3) of *The Limitations Act*. Any one of those part payments, on its own, was an acknowledgement by Mr. Pulvermacher of the debt's existence and tolled the limitation period.

[52] BMO also relies upon Mr. Pulvermacher's email dated August 29, 2024, addressed to Mr. Rivard (Affidavit of Paul Alexandre Rivard, Exhibit "E"), which reads:

Hi

I haven't received all the statements yet,

I have a separation agreement that states in me refinancing the family home a can payout portions of the debts on credit cards and In This case is like to negotiate and clear it up. I would like to try and negotiate to get this matter resolved. As per the statements you provided it shows that more than 15k of this debt is from interest rates that were three times what the normal card was has resulted in this huge and unfair burden placed on me and my family during a high conflict divorce, I feel I have enough evidence to prove there was financial hardship by the card company BMO and potentially even more nefarious things pertaining to the change i. The card type as well and also the time and duration of this matter as well as the Harassment by BMO. This divorce shows that the other party was liable for half all debts. That being said I'd like to negotiate in good faith to get a number that is fair for everyone in this matter settled and payed. Please let me know if we can work something out. I am dealing with a lender and we need these number to do the refinancing and pay out debts and if we can come to an agreement we hopefully can get this account payed and closed in the refinancing process that is underway

[Errors in original]

[53] I am unable to read Mr. Pulvermacher's statements in this email as a clear acknowledgement of the existence of the debt, especially when I compare this situation to the communications reviewed by Layh J. in *I.D.H. Diamonds NV v Embee Diamond Technologies Inc.*, 2017 SKQB 79, aff'd 2017 SKCA 79. Thus, I do not base my decision on this email.

[54] However, considering the Mastercard account statements, I conclude it is plain and obvious the defendant acknowledged the debt by payment or part payment during the two-year period before May 29, 2024. Thus, BMO has discharged its burden of proving that the limitation period has not expired. I have been able to reach this conclusion without weighing any conflicting facts or assessing credibility.

[55] Mr. Pulvermacher's defence based upon the expiry of a limitation period is bound to fail.

V. Conclusion

[56] For the foregoing reasons, I conclude the Statement of Defence is frivolous, in that it is plain and obvious and beyond reasonable doubt that the defences pleaded are groundless and cannot succeed. I would not strike the Statement of Defence on the ground that it is vexatious, because I am not persuaded it was advanced for an ulterior motive or maliciously for the purpose of delay.

[57] I make the following orders:

- (a) The Statement of Defence is struck, without leave to amend; and
- (b) The plaintiff is entitled to costs of the application, which I fix at \$1,250.

J.
P.T. BERGBUSCH