KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 181**

Date: **2026 10 14**
File No.: KBG-RG-01529-2026
Judicial Centre: Regina

BETWEEN:

ALWEST INVESTMENTS LTD.

APPLICANT

- and -

101098399 SASKATCHEWAN LTD.

RESPONDENT

Counsel:

Jamie Larose	for the applicant
Karolee Zawislak	for the respondent

FIAT — DAVIS J.
October 14, 2026

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[1] Alwest Investments Ltd. [Alwest] seeks relief by way of an Originating Application. Alwest seeks the discharge of a registered mortgage interest on lands which it owns, pursuant to s. 107 and 109 of *The Land Titles Act, 2000*, SS 2000, c L-5.1 [*LTA*]. Murray Lewis is Alwest's sole director and shareholder. Penny Lewis, his sister, now holds enduring power of attorney to manage Murray Lewis' personal and property affairs due to his incapacity. The mortgage is in favour of 101098399 Saskatchewan Ltd. [1010 Sask], a company belonging to Ronald Loerzel, a friend of Murray Lewis' and a former director of Alwest.

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[2] Rule 3-49(d)(ii)(e) of *The King's Bench Rules* permits actions like this to be commenced by Originating Application.

[3] When an applicant proceeds by way of Originating Application, it is within the Court's discretion to determine if the matter can proceed summarily. The Rules, and in particular Rule 3-53, confer further discretion to determine whether the "full battery of procedures associated with a statement of claim" should be available to the parties, in matters where the contested nature of the evidence does not permit a summary determination: *Canadian Pacific Railway Company v Kelly Panteluk Construction Ltd.*, 2020 SKCA 123 at paras 168-169. The matter must be capable of summary determination for me to grant the relief requested in chambers.

[4] In this matter, there is controversy surrounding the validity of the mortgage, which refers to consideration of $500,000. The respondent asserts the mortgage was valid, arising from an elk processing venture which Alwest and 1010 Sask pursued. Mr. Loerzel attested that Mr. Lewis had a mortgage prepared in 1010 Sask's favour in return for the latter's elk processing plant, which is not specifically mentioned in the mortgage. 1010 Sask relies, in part, on a bill of sale for the purchase of gel capsules which were to be used in the processing venture, as well as on Mr. Loerzel's evidence of the agreement he reached with Murray Lewis.

[5] The applicant submits the mortgage was phony and was put in place to help protect the land from other creditors. There is little documentary proof that the mortgage was valid, or that there was consideration given for the mortgage interest. The applicant says no funds were advanced in exchange for the mortgage interest, and that the elk processing plant consists of a derelict old trailer with a sink and oven, with little value. 1010 Sask has made no effort to enforce the terms of the mortgage since the 2007 registration although in 2022 it issued a Statement of Claim against Alwest and Murray and Penny Lewis related to some equipment that was left on the lands.

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[6] Part of the applicant's position rests on statements that Murray Lewis made to his sister Penny Lewis when he still had capacity. The credibility and reliability of those statements is something that cannot be addressed on affidavit material alone. I also find myself presently unable to address the admissibility of these statements, although necessity and threshold reliability may well be amenable to proof by affidavit evidence. Specifically, it would be helpful to know why the deponent believes Murray Lewis' statements to be true, given that there are reasonable concerns about his trustworthiness more generally.

[7] The broader dispute between the parties cannot be resolved without a credibility assessment and a determination of whom, if anyone, to believe. The matter cannot be decided on a summary basis and may require cross-examination or even *viva voce* evidence. I note the Court of Appeal's cautious approach to orders under s. 109 of the *LTA*, as stated in *Burnouf v Burnouf*, 2022 SKCA 6 at para 42:

> [42] … [A] Court should be hesitant to exercise its powers under s. 109 for a vesting order in the context of an interim application where there is complexity in the law and the evidence. To some degree, at least, this hesitancy appears to be rooted in an understanding that a trial is the proper forum to determine issues relating to interests in land.

While not dealing with a vesting order, I find a similarly cautious approach is warranted here where there are serious concerns related to the validity of an interest in land.

[8] 1010 Sask submits that, given the evidence it has tendered, the Originating Application should simply be dismissed. Alwest submitted that, were I not inclined to allow the application, I could convert it to a statement of claim, or I could order that some or all of Parts 4 and 5 of *The King's Bench Rules* apply to this action. It argues that in any event I should not dismiss the application.

[9] I have determined that I should not convert the Originating Application to a statement of claim. Alwest may decide it wishes to proceed by statement of claim

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but forcing that process on the parties would deprive them of an expedited process to which they may still be entitled.

[10] I also conclude that it is premature to order which portions of Parts 4 or 5, if any, ought to apply to this action, with one exception which I will address shortly. I say that in part because Alwest only learned that the validity of the mortgage was in issue when it received the respondent's affidavit material, shortly before this application was argued. It has only just begun contemplating the nature of the factual dispute with which it is dealing and was understandably not in a position to assert which procedures in Parts 4 or 5 may be necessary.

[11] In *Kassian v Dynamic Glass & Door Ltd*., 2017 SKQB 22 at para 21 [*Kassian*], Scherman J. held that the Court should not order that procedures under Parts 4 and 5 apply unless it is necessary to do so in the circumstances of the case. This involves a proportionality assessment which merits focussed submissions by the parties. The parties should consider whether a trial of an issue should be directed, or whether some other means is suitable to resolving the evidentiary conflict.

[12] While applications to expand access to procedural tools or steps are ideally made before the judge who hears a trial or summary judgment application, a chambers judge can order the application of various procedures where the need to do so is "clear and obvious" (*Kassian* at para 21). Additionally, the parties may agree that some or all of Parts 4 and 5 ought to apply to this action: Rule 3-51.

[13] I have said the matter is not suitable for summary determination. As already noted, this does not mean that it must proceed by statement of claim. A trial may be conducted in relation to a matter that proceeds by originating application: Rule 3-55(e); *Scott v Seier Estate*, 2016 SKCA 76. In that case, the parties simply are exempt from the normal pre-trial requirements such as disclosure and questioning that apply to matters proceeding by statement of claim, unless they agree or the Court orders otherwise.

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[14] It may be appropriate for Alwest to proceed by statement of claim. Alternatively, it may be appropriate for the parties to proceed to trial on the Originating Application, with or without recourse to the procedures in Parts 4 and 5 of *The King's Bench Rules*. Or it may be possible for a future judge to summarily resolve the disputed factual issues after cross-examination on the affidavits.

[15] For now, I would leave the choice of process to the parties.

[16] In any event, I am prepared to order the parties to participate in mediation, as contemplated by Rule 4-10. Once mediation is complete, they may return the matter to Chambers to seek further direction. That may be an application for an order that some or all of Parts 4 and 5 apply, or that cross-examination take place. It may be for direction that the matter be set down for trial, or for some other relief which either party may choose to pursue.

[17] I make no order as to costs.

J.
A.S. DAVIS

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