Citation: Caplan and Company Ltd v Lyons, 2026 MBCA 84
Date: 20261015
Docket: AI25-30-10304

IN THE COURT OF APPEAL OF MANITOBA

2026 MBCA 84 (CanLII)

Coram: Madam Justice Holly C. Beard
Madam Justice Diana M. Cameron
Mr. Justice James G. Edmond

B E T W E E N:

CAPLAN AND COMPANY LTD., as Insolvency Trustee of THE ESTATE OF SIGMAR MORTGAGE SERVICES LTD., and GARY CURTIS GOLF SHOP LTD.	)	
(Plaintiffs) Respondents	)	
- and -	)	
JOHN ALEXSANDER DAVID LYONS, DEBORAH ANNE LYONS, and KATHERINE CLARISE ROMAINE	)	***J. A. D. Lyons**, **D. A. Lyons** and **K. C. Romaine** on their own behalf*
(Defendants) Appellants	)	***S. Q. K. Garfinkel** for the Respondents*
A N D B E T W E E N:	)	
JOHN ALEXSANDER DAVID LYONS, DEBORAH ANNE LYONS, and KATHERINE CLARISE ROMAINE	)	*Appeal heard:* ***May 13, 2026***
(Plaintiffs by Counterclaim) Appellants	)	*Judgment delivered:* ***October 15, 2026***
- and -	)	
CAPLAN AND COMPANY LTD., as Insolvency Trustee of THE ESTATE OF SIGMAR MORTGAGE SERVICES LTD., and CAPLAN AND COMPANY LTD., as Insolvency Trustee of THE ESTATE OF	)	

THOMAS HAROLD STANDING)
)
(Defendants by Counterclaim) Respondents)

BEARD JA

I. THE ISSUES

[1] This is an appeal of an order granting a claim by the plaintiff Gary Curtis Golf Shop Ltd. (Curtis Golf), as mortgagee, to enforce a debt and a mortgage (the mortgage) entered into by John Alexsander David Lyons (Mr. Lyons), Deborah Anne Lyons and Katherine Clarise Romaine (Ms Romaine) (together, the defendants), as mortgagors.

[2] The issues for appeal are:

(i) did the application judge err in finding that Curtis Golf is entitled to enforce the mortgage; and

(ii) did the application judge err in failing or refusing to add AAR Mortgage Services Ltd. (AAR Mortgage), a subsequent encumbrancer, as a defendant under rule 64.03 of the MB, *King's Bench Rules*, Man Reg 553/88 [the *KB Rules*].

[3] The defendants each took the same position regarding the issues at the summary judgment hearing and are taking the same position on this appeal.

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II. THE FACTS

[4] The facts are, largely, not at issue. Those facts that are important to the appeal are set out below, and the application judge's endorsement, with his factual findings, is attached as Appendix A. The statutory provisions referred to are set out in Appendix B.

[5] The defendants purchased a property on Young Street in Winnipeg, Manitoba (the property) and title was registered in their names on March 2, 2006. In 2013, they borrowed $80,000 through Sigmar Mortgage Services Ltd. (Sigmar), which was secured by a mortgage on the property that was registered on September 10, 2013, showing Sigmar as the mortgagee. The defendants retained a lawyer to represent them to complete the transaction.

[6] Sigmar was a registered mortgage broker whose business included arranging mortgages between borrowers and lenders.

[7] Curtis Golf was not the original lender; rather, the mortgage was originally financed by other investors (the original lenders). Sigmar arranged the mortgage, collected the funds from the original lenders, and was responsible to disburse them as agreed with the defendants. While the mortgage was registered in Sigmar's name, the original lenders were the beneficial owners. The defendants' payments under the mortgage were paid to Sigmar, which forwarded them to the original lenders. The defendants signed a disclosure to borrowers which explained that Sigmar's role as a mortgage broker was to arrange mortgages between borrowers and lenders.

[8] The agreement between Sigmar and the defendants provided that Sigmar would disburse the mortgage proceeds as follows:

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- $18,968.38 to TD Canada Trust to discharge an existing mortgage;

- $38,094.62 to B2B Trust (B2B) to discharge another existing mortgage (the B2B mortgage);

- $375.00 to cover an NSF cheque;

- $4,000.00 to Sigmar for its services; and

- $18,562.00 as an advance to the defendants.

[9] In 2019, the original lenders wanted to be paid out and terminate their investment, and Curtis Golf agreed to invest funds with Sigmar for that purpose. The terms of Curtis Golf's investment are set out in a letter from Thomas Standing (Mr. Standing), President of Sigmar, to Curtis Golf dated June 4, 2019, which states, in part, that Sigmar would be "holding this investment in trust for [Curtis Golf] on [its] behalf" and would collect and forward the monthly payments, less Sigmar's fee. Curtis Golf accepted those terms by signing and returning the letter to Sigmar. It advanced the funds to Sigmar on or about June 4, 2019, and began receiving the defendants' monthly mortgage payments on July 3, 2019. The payments continued, albeit irregularly, until February 26, 2021, which was the date of the last payment that Curtis Golf received.

[10] Contrary to its agreement with the defendants, Sigmar did not pay out the B2B mortgage in 2013.

[11] In 2014, when the defendants were arranging a mortgage with AAR Mortgage, they were advised by its lawyer that the B2B mortgage was still

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registered on their title to the property. It appears that they took no independent steps to confirm that information and made no inquiries of Sigmar at that time. Subsequently, they received a letter dated September 9, 2015, from a lawyer for B2B stating that B2B had initiated foreclosure proceedings against the property due to the nonpayment of its mortgage. The defendants contacted Sigmar and their own lawyer and were advised that Sigmar would look after the matter.

[12] Sigmar eventually paid out the B2B mortgage on November 5, 2019, from its general account (not a trust account) and that mortgage was discharged on December 5, 2019.

[13] The defendants admit in their amended statement of defence and counterclaim, and the application judge accepted, that the last payment made to Sigmar under the mortgage was on March 4, 2021. Further, they were already in arrears before that time, as confirmed in email messages sent by Ms Romaine to Sigmar in early December 2020.

[14] In the summer of 2019, the defendants reported the irregularities in their transactions with Sigmar and Mr. Standing to the Manitoba Securities Commission (the MSC). This, and complaints by others, led to an investigation by the MSC and, by order dated March 4, 2021, the MSC froze all of Sigmar's and Mr. Standing's accounts.

[15] On July 29, 2021, both Sigmar and Mr. Standing made voluntary assignments in bankruptcy under section 49(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [the *BIA*]. Caplan and Company Ltd. (Caplan) was appointed as the trustee in bankruptcy of their respective estates.

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By order of the MSC dated April 29, 2021, Sun Mortgage Corporation was retained to administer Sigmar's accounts, including the mortgage.

[16] Sigmar and Mr. Standing entered into a settlement agreement under *The Mortgage Brokers Act*, CCSM c M210 [the *MB Act*], dated November 18, 2021, which was approved by the MSC in an order dated November 19, 2021. In its reasons for decision, the MSC noted that, at that date, there were consent judgments against Sigmar and Mr. Standing in excess of $4.279 million.

[17] Caplan commenced this proceeding in 2022; however, on April 24, 2024, it filed an amended statement of claim to add Curtis Golf as a plaintiff. Thereafter, the proceedings were continued by Curtis Golf.

[18] On November 16, 2023, Caplan registered a transfer of the mortgage regarding the transfer of ownership of the mortgage from it to Curtis Golf.

III. DID THE APPLICATION JUDGE ERR IN FINDING THAT CURTIS GOLF IS ENTITLED TO ENFORCE THE MORTGAGE?

The Issues

[19] The defendants challenge several findings made by the application judge in deciding that Curtis Golf could enforce the mortgage. Those that bear some review are his findings that: (i) Curtis Golf was the beneficial owner of the mortgage; (ii) section 2(1) of the *MB Act* does not apply to Curtis Golf; (iii) the fact that the defendants had no notice of, and did not consent to, Curtis Golf's investment in the mortgage did not invalidate the mortgage or Curtis Golf's interest in it; and (iv) Sigmar and Mr. Standing's misuse of the

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mortgage proceeds or other misdeeds did not invalidate the mortgage or their obligation to complete payment of the amounts due under the mortgage.

[20] The defendants raise a number of questions, but they have not argued them in a way that this Court can respond. While some leeway can be given to self-represented litigants regarding the structure of their arguments, it is not this Court's role to develop the arguments or to provide legal advice. In my view, none of those questions raise legal points that are relevant to the facts and issues in this case, so I would decline to comment further on them.

The Application Judge's Decision

[21] The application judge found that Curtis Golf was the beneficial owner of the mortgage, pointing to the evidence of the funds that it paid to Sigmar, Sigmar's repayment of the original lenders' investment, the letter signed by Sigmar and Curtis Golf acknowledging their trust relationship, and the subsequent payment of the monthly mortgage payments to Curtis Golf.

[22] The application judge dismissed the defendants' arguments that they had no liability to Curtis Golf, those arguments being:

- the transaction with Curtis Golf violated section 2(1) of the *MB Act*;
- their contract was with Sigmar—not Curtis Golf—and they had no knowledge of, and did not consent to, Curtis Golf's investment in the mortgage; and

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- Sigmar breached the terms of the mortgage by failing to pay out the B2B mortgage in 2013 and committed other illegal acts, making the mortgage unenforceable.

[23] Finally, the application judge noted that the defendants had acknowledged that they had defaulted on the mortgage and that there were payments owing. He dismissed the counterclaim on the basis that the defendants were responsible for paying the mortgage.

The Parties' Positions

[24] The defendants acknowledged at the appeal hearing that they quit making the payments under the mortgage in March 2021, when the MSC froze the accounts of Sigmar and Mr. Standing, and that there were outstanding amounts owing. They also agreed that it is possible to transfer a mortgage. Their position is, basically, that the application judge erred in rejecting their arguments at the summary judgment hearing regarding the invalidity of the mortgage and their obligation to pay Curtis Golf, and that he erred in not addressing their argument that AAR Mortgage should be added as a defendant to the proceedings.

[25] Curtis Golf takes the position that the application judge made no errors and his decision should be upheld.

Analysis

(i) Curtis Golf as the Beneficial Owner of the Mortgage

[26] The application judge's finding that Curtis Golf was the beneficial owner of the mortgage is amply supported by the documentary evidence,

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including: the timing of Curtis Golf's payment to Sigmar (June 4, 2019); the contemporaneous letter dated June 4, 2019 signed on behalf of both Sigmar and Curtis Golf confirming that Sigmar would be holding the mortgage in trust for Curtis Golf; the repayment to the original lenders (June 14, 2019); and the payment of the monthly mortgage payments to Curtis Golf starting on July 3, 2019.

[27] The defendants also argue that the Curtis Golf investment was used to acquire the B2B mortgage, rather than to buy out the original lenders; however, that argument is not supported by the documentary evidence. The B2B mortgage was not paid until November 5, 2019, over four months after the original lenders were repaid, and B2B was paid from Sigmar's general account, not its trust account. Further, no one acquired the B2B mortgage—B2B was repaid and its mortgage was discharged.

[28] The application judge's finding that Curtis Golf became the beneficial owner of the mortgage in 2019 is a finding of mixed fact and law that is reviewable on the standard of palpable and overriding error. In my view, he did not err in so finding.

[29] Curtis Golf's claim to enforce the mortgage was strengthened following Sigmar's bankruptcy. Upon Sigmar filing for bankruptcy under section 49(1) of the *BIA*, its right to deal with its property, including the mortgage, ceased and vested in Caplan, as its trustee (see the *BIA*, s 71). As noted on the title to the property, on September 16, 2022, Caplan registered a transmission of the mortgage at the land titles registry to register its ownership of the mortgage (see *The Real Property Act*, CCSM c R30, ss 1 (definition of "transmission"), 49(1) [the *RP Act*]), as well as a notice of exercising power

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of sale of the property. On November 16, 2023, it registered a transfer of the mortgage related to the transfer of ownership of the mortgage from it to Curtis Golf. Thus, Curtis Golf became the legal owner of the mortgage, as well as being the beneficial owner (see the *RP Act*, s 101(2)).

(ii) The MB Act

[30] The defendants argue that, pursuant to section 2(1) of the *MB Act*, only a licenced and registered business can collect mortgage payments and that, because neither Curtis Golf nor Sigmar was registered, the defendants could not, and cannot, make payments to them. In my view, the application judge was correct in finding that the exemption in sections 2(1)(b) and 3(1)(f)(ii) of the *MB Act* would apply to exempt Curtis Golf from the application of this provision.

[31] The defendants also argue that section 20 of the *MB Act* applies to prohibit Curtis Golf from collecting payments under the mortgage. While it does not appear that this issue was addressed by the application judge, the response is clear. Sections 20(3) and 20(4) of the *MB Act* would apply to exempt Curtis Golf from this provision. Curtis Golf is both the lender and, due to the transfer of the mortgage, the owner of the mortgage, so it is exempt from the prohibitions in section 20.

[32] Thus, in my view, these provisions in the *MB Act* do not support the defendants' arguments that they were prevented from making payments under the mortgage, that Curtis Golf was prevented from collecting any mortgage payments, or that to do so would be prohibited or constitute a fraud.

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(iii) Curtis Golf Was Unknown to the Defendants

[33] The defendants argue that they do not owe any money to Curtis Golf because they had no knowledge of, and did not consent to, the transaction with Curtis Golf. Further, they argue that they had no contract with Curtis Golf and there was no meeting of the minds.

[34] Curtis Golf is not claiming that it had a contract with the defendants. Its position is that the mortgage was validly transferred to it, as the beneficial owner, by Caplan, as the trustee in bankruptcy, giving it the right to enforce the mortgage.

[35] Mr. Lyons acknowledged, at the appeal hearing, that the defendants knew of the original lenders, so they knew that there were investors involved. The evidence shows that Curtis Golf replaced the original lenders as the investor. Further, Ms Romaine stated, at the appeal hearing, that the defendants were not disputing that a mortgage can be transferred.

[36] The application judge rejected the defendants' argument that they had no liability to Curtis Golf. He pointed out that section 101(3) of the *RP Act* provides for the transfer of a mortgage and established that a transferee "acquires all rights, powers and privileges associated with the mortgage, including the right to enforce payment" (Appendix A at para 22). Further, he found that, under the common law, the mortgagee may do so without the concurrence of the mortgagor (see Appendix A at para 23). At the appeal, Curtis Golf provided the decision in *First City Trust Co v Farrell*, 1985 CarswellAlta 587, (1985) 66 AR 81 (ABQB), and referenced paragraph 45, arguing that it further supports the application judge's finding that notice was not required.

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[37] The defendants have not provided any jurisprudence to support their position that their knowledge and consent were required. In my view, the application judge did not err in finding both that there was no requirement that the defendants be advised of, or consent to, either Curtis Golf's beneficial ownership of the mortgage or to its transfer, and that those transactions were valid and enforceable notwithstanding the defendants' lack of knowledge and consent.

(iv) Sigmar's Fraudulent Acts

[38] The defendants argue that they should not be required to repay the mortgage due to Sigmar's admitted significant misconduct and misuse of clients' funds, including its failure to repay the B2B mortgage in 2013. They say that that failure invalidated the mortgage and that Curtis Golf's claim should be against Sigmar and Mr. Standing.

[39] While Sigmar and Mr. Standing have admitted to significant misconduct and misuse of lenders' funds, there is no evidence to suggest that Curtis Golf had any involvement in, or knowledge of, those acts.

[40] As the application judge found, Sigmar's misuse of the mortgage funds did not result in any loss to the defendants. It repaid the mortgage in full in 2019 and registered a discharge, all at no cost to the defendants.

[41] Further, I note that the defendants were alerted to issues regarding the discharge of the B2B mortgage in 2014, during the AAR Mortgage transaction, and they were told by B2B's lawyers in 2015 that the B2B mortgage had not been discharged and was in arrears, but they continued to treat the mortgage as valid and to make payments to Sigmar until 2021. I am

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of the view that, if the defendants suffered any consequential loss, which seems very doubtful, their claim does not relate to the validity of the mortgage; rather, it would be against Sigmar and/or Mr. Standing.

[42] In my view, the application judge did not err in dismissing this argument.

Conclusion

[43] For these reasons, it is my view that the defendants have not established that the application judge erred in granting Curtis Golf's claim to enforce the mortgage.

IV. ADDING AAR MORTGAGE UNDER RULE 64.03 OF THE *KB RULES*

[44] While the defendants did not raise this issue in their notice of appeal, they argue in their factum, and they argued at the appeal hearing, that AAR Mortgage, which held a subsequent mortgage on the property, should have been added as a defendant to these proceedings under rule 64.03 to avoid a multiplicity of proceedings. They state that Curtis Golf's counsel wrongly argued before the application judge that this was a "[r]ed [h]erring", and their numerous requests were ignored by the application judge.

[45] Rule 64.03 states:

All persons interested **64.03(1)** All persons interested in the equity of redemption shall be named as defendants in the action subject to subrule (2).	**Personnes intéressées** **64.03(1)** Les personnes intéressées au droit de rachat sont désignées comme défendeurs à l'action, sous réserve du paragraphe (2).

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Exception **64.03(2)** The plaintiff may commence the action without naming subsequent encumbrancers as defendants where it appears expedient to do so by reason of their number or otherwise, but the plaintiff may make a motion without notice on a reference after judgment to add as defendants all subsequent encumbrancers who were not originally made parties.	**Exception** **64.03(2)** Le demandeur peut introduire l'action sans désigner comme défendeurs les titulaires postérieurs d'une sûreté si leur nombre ou un autre motif le justifie. Le demandeur peut cependant présenter une motion sans préavis dans un renvoi après jugement pour joindre comme défendeurs les titulaires postérieurs d'une sûreté qui n'avaient pas été constitués parties à l'action.

[emphasis added]

[46] First, there was no evidence before us that the defendants filed a motion to add AAR Mortgage as a defendant to the proceedings, although Ms Romaine did send a letter to the application judge dated February 25, 2025, asking that AAR Mortgage be present at a pre-trial conference set for March 7, 2025. Whatever discussion occurred about this issue, there was no evidence provided that the application judge made any order that would be subject to appeal.

[47] Second, AAR Mortgage filed a claim for $13,845.32 in Small Claims Court on January 24, 2025, to collect an unpaid debt under a 2014 loan agreement with the defendants. The small claim was set for hearing on May 5, 2025. While it had also registered a mortgage against the property in 2014, it was not taking any steps in the small claim proceeding to enforce the mortgage.

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[48] The summary judgment motion in the present matter was set for hearing on April 11, 2025. In my view, by February 25, 2025, it would not have been expedient, either for the parties in the present matter or for AAR Mortgage, to add it to the present proceeding. Both matters were set for hearing in the very near future, and adding AAR Mortgage as a party would have delayed the hearing of both matters indefinitely.

[49] Third, the issues that the defendants appear to be raising regarding AAR Mortgage do not relate to the validity of the mortgage, which was in place many months before their unrelated dealings with AAR Mortgage.

[50] While there is no order under appeal on this issue, in my view, even if the application judge did refuse this request, that decision was discretionary and he would not have erred in so ordering.

V. CONCLUSION

[51] For the above reasons, I would dismiss the appeal in its entirety with costs under the tariff in favour of the plaintiffs.

_____ JA

I agree: _____ JA

I agree: _____ JA

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APPENDIX A

ENDORSEMENT SHEET

[redacted]

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INTRODUCTION

[1] The plaintiff, Gary Curtis Golf Shop Ltd., (referred to as "Curtis" or the "plaintiff" in this Endorsement) has brought a motion for summary judgment. Curtis seeks to collect a debt owed by the defendants John Alexander David Lyons, Deborah Anne Lyons and Katherine Clarise Romaine due to their default under a mortgage registered against their property located at 619 Young Street in Winnipeg, Manitoba ("Young Street").

[2] As of April 11, 2025, the plaintiff claims the principal and interest owing on the mortgage is $119,742.80. To collect the amount owed, the plaintiff seeks an order for vacant possession and sale of the property on Young Street.

[3] The defendants counterclaimed against Caplan and Company Ltd., as insolvency trustee of the Estate of Sigmar Mortgage Services Ltd. ("Sigmar"), and the Estate of Thomas Harold Standing ("Thomas Standing"). The counterclaim seeks a variety of relief that includes an order that any money owed or awarded by the court against the defendants in this action is the responsibility of Thomas Standing and Sigmar. The defendants ask that the claim for possession and sale of their property at Young Street be dismissed. The defendants also seek a court order that Curtis, Caplan and Company Ltd., and Thomas Standing have no contact with them.

[4] The parties and I agree this dispute is appropriate for summary judgment as there is no genuine issue requiring a trial. The summary judgment process is a more expeditious and less expensive means to achieve a just result as the evidence allows me to make findings of facts and apply the law to those facts. (See Rule 20 of ***The Court of King's Bench Rules***, M.R. 553/88.)

BACKGROUND

[5] There is little dispute about the background of this matter so I will be brief. Sigmar was an authorized mortgage broker and Thomas Standing was employed by Sigmar as a mortgage official. As a mortgage broker, Sigmar offered mortgage products to borrowers on behalf of multiple lenders or investors. At times, Sigmar would register the mortgage security in the names of the investors and at other times Sigmar registered the mortgage security in Sigmar's name, pursuant to trust agreements with the investors.

[6] The defendants are the registered owners of the Young Street property. On September 10, 2013, the defendants obtained a mortgage on the property on Young Street from Sigmar in the amount of $80,000 which was registered in the Winnipeg Land Titles Office as Instrument No. 4406505/1.

[7] The mortgage stipulates an interest rate of 12 per cent per annum. The defendants were to pay $1,000 per month, which covered the cost of interest, and a small amount went towards paying down the principal.

[8] The interest rate was significant, but the defendants agreed to it and had the benefit of legal advice when negotiating the mortgage.

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[9] From the $80,000 mortgage, the defendants received $18,562 as Sigmar was to use most of the funds to pay off prior debts of the defendants that included:

a.	Payout of the B2B mortgage	$38,094.62
b.	Payout of the TD Canada Trust mortgage	$18,968.38
c.	Payment of a NSF cheque	$375
d.	Sigmar mortgage service fee	$4,000

(Court document 30, Affidavit of Andre Vanderzalm, affirmed October 31, 2024, at tab E) ("Affidavit of Vanderzalm").

[10] Although Sigmar brokered the mortgage, Doug and Lori Brownstone were the beneficial owners of the mortgage. On September 16, 2013, they provided $80,000 to Sigmar for this investment opportunity. Sigmar administered the mortgage for a fee, collected the payments from the defendants and provided the payments to Doug and Lori Brownstone.

[11] In 2019, Doug and Lori Brownstone requested to be bought out of the mortgage and removed as beneficial owner. On or about June 4, 2019, Curtis advanced $78,586.03 to Sigmar to facilitate the Brownstone buyout. Sigmar provided those funds to Doug and Lori Brownstone, thereby extinguishing their beneficial interest and securing Curtis as beneficial owner of the mortgage. The defendants continued to make mortgage payments to Sigmar which in turn were remitted to Curtis.

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THE DEMISE OF SIGMAR

[12] As previously noted, Sigmar was to payout the B2B mortgage in September 2013. Sigmar failed to do so. Two years later, the defendants were surprised and alarmed to receive a letter dated September 9, 2015, from a lawyer advising them that B2B had initiated foreclosure proceedings against their property. The defendants contacted Sigmar and their lawyer and were advised the problem would be resolved.

[13] Thomas Standing on behalf of Sigmar held discussions with B2B for approximately two years, offering excuses and lies about why the defendants had not paid out the B2B mortgage. Eventually, on November 5, 2019, Sigmar paid out the B2B mortgage and it was discharged from the title of the defendants' property on December 5, 2019.

[14] The defendants and others contacted the Manitoba Securities Commission ("MSC") to lodge complaints about Thomas Standing and Sigmar. On March 4, 2021, the MSC suspended Sigmar and Thomas Standing, effectively ending their business. On July 29, 2021, Caplan and Company Ltd., were appointed as insolvency trustee of the Estate of Sigmar and Thomas Standing. In August 2021, Caplan and Company Ltd., appointed Sun Mortgage Corporation to administer approximately 200 mortgages previously registered in the name of Sigmar including the mortgage on Young Street.

[15] The defendants acknowledge they stopped paying the mortgage on March 3, 2021 as Sigmar was no longer in business. There is some dispute about the

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exact amount owing to the mortgage, but it is clear the outstanding balance on the mortgage exceeded $80,000 and no further payments have been made.

DISCUSSION AND DISPOSITION

Is Curtis the Beneficial Owner of the Mortgage?

[16] I do not hesitate in concluding Curtis is the beneficial owner of the mortgage. The evidence is clear that Curtis paid $78,586.03 to Sigmar on June 4, 2019 (Court Document 29, Affidavit of Curtis, affirmed on October 23, 2024, at tab D) ("Affidavit of Curtis"). Sigmar provided a letter to Curtis confirming the payment and that the investment would be held in trust. The letter confirms Curtis is to receive 10.5 per cent interest on his investment (Affidavit of Curtis, at tab C).

[17] On March 30, 2021, Curtis attended the defendants' property to advise he was the beneficial owner of the mortgage and payments should be made to Curtis. The defendants advised Curtis they had no contract with him and he should go after his friend for his losses. On April 26, 2021, Curtis had his lawyer write to the defendants to advise that Curtis is the beneficial owner of the mortgage and entitled to the payments. The defendants continued to decline to make payments.

The Defendants' Position

[18] The defendants failed to comply with the request for payment believing the request violated section 2(1) of ***The Mortgage Brokers Act***, C.C.S.M. c. M210 (the "***Act***"). This section requires a business to be licensed and registered as a mortgage broker under the ***Act*** to collect payments. However, section 3(1)(f)(ii) provides an exemption to registration for a person who invests in mortgages

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through a registered mortgage broker. That exemption also applies to section 20(1) of the ***Act***. As an investor and beneficial owner of the mortgage, Curtis is not required to be registered as a mortgage broker to collect payments.

[19] The defendants maintained the mortgage was a contract between Sigmar and themselves. The defendants claim they were unaware any third-party investors were involved in the mortgage. I previously noted the defendants had the assistance of legal counsel when they negotiated the mortgage with Sigmar in 2013. Sigmar provided a disclosure document to the defendants explaining that the broker acts as an intermediary between the borrowers and the lenders (Affidavit of Vanderzalm, at tab C).

[20] In addition, there is an email exchange between defendant Katherine Romaine and a Sigmar representative on December 9, 2020, where Sigmar is requesting payments on the mortgage. Sigmar advises the investor in this mortgage is constantly calling asking for his payments. In the email exchange, Sigmar notes that the defendants had only provided $1,400 toward the mortgage in all of 2020. That amount is not disputed as Ms. Romaine acknowledges the defendants fell way behind with payment due to the Covid-19 situation (Affidavit of Vanderzalm, at tab J).

[21] The disclosure documents provided in 2013 and the email exchange from December 9, 2020, convinces me that the defendants knew there were investors involved with this mortgage. Even if the defendants were unaware that Curtis was

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the beneficial owner of the mortgage, the law allows for the transfer of the mortgage.

[22] ***The Real Property Act***, CCSM c. R30, provides for the transfer of mortgages and establishes that a transferee acquires all rights, powers and privileges associated with the mortgage, including the right to enforce payment. Section 101(3) explains:

Right of transferee to sue on mortgage	**Droit de poursuite du bénéficiaire du transfert**
101(3) By virtue of a transfer of a mortgage, encumbrance, or lease, the right to sue thereupon and to recover any debt, sum of money, annuity, or damages thereunder, notwithstanding it may be held to constitute a chose in action, and all interest at the time of the transfer, in the debt, sum of money, annuity, or damages, are transferred, so as to vest them in the transferee; but nothing in this section prevents the court from giving effect to any trusts affecting the debt, sum of money, annuity, or damages, in case the transferee holds it as trustee for any other person.	**101(3)** En vertu du transfert d'une hypothèque, d'une charge ou d'un bail, le droit d'ester et celui de recouvrer une créance, une somme, une rente et des dommages-intérêts au titre de celles-ci, bien que ces droits puissent être considérés comme des choses non possessoires, ainsi que tous les intérêts, à la date du transfert, sur la créance, la somme, la rente ou les dommages-intérêts sont transférés de façon à être dévolus au bénéficiaire du transfert. Le présent article n'a toutefois pas pour effet d'empêcher le tribunal de donner effet à des fiducies visant la créance, la somme, la rente ou les dommages-intérêts dans le cas où le bénéficiaire du transfert les détient à titre de fiduciaire pour un tiers.

[23] In addition, "at common law a mortgagee is entitled to transfer his security, either absolutely or by way of sub-mortgage, and with or without the concurrence of the mortgagor" (Victor Di Castri, Registration of Title to Land, Ch. 13.

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Mortgages: IX. Transfers of Mortgages and Mortgaged Land at §. 13:54 Transfer by Mortgagee of Mortgage (Carswell:1988)).

[24] The defendants refused to make payments so Caplan and Company Ltd., as insolvency trustee of the Estate of Sigmar Mortgage Services Ltd., filed their claim on September 26, 2022. It became clear that Curtis was the beneficial owner of the mortgage and an amended statement of claim adding Curtis as a plaintiff was filed on April 24, 2024. To be clear, this claim no longer involves Caplan and Company Ltd. It is prosecuted only by Curtis as the sole plaintiff.

[25] The amended statement of defence and counterclaim was filed July 8, 2024.

[26] The thrust of the defendants' case is that Sigmar breached the terms of the mortgage in 2013 when Sigmar failed to discharge the B2B mortgage. The defendants say this makes the terms of the mortgage unenforceable. I disagree.

[27] I acknowledge that Thomas Standing and Sigmar failed to payout the B2B mortgage in September 2013, but it was eventually paid out in 2019. As previously noted, the B2B mortgage was discharged from the title of the defendants' property on December 5, 2019. The defendants obtained the full benefit and value of the $80,000 mortgage and are thereby required to pay it in full.

[28] It is unfortunate the mortgage had a significant interest rate with relatively low monthly payments. The payment history from September 2013 until March 2021 demonstrates that the defendants were unable to make any headway in paying off the mortgage. There were missed payments, and interest continued to

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grow. Then there were catch-up payments, but the principal continued to hover close to $80,000 (Affidavit of Vanderzalm, at tab I).

[29] The defendants acknowledge in their statement of defence, affidavit, documents and submission that they owe money on the mortgage. The last payment on the mortgage was March 3, 2021. I conclude the defendants have defaulted on the mortgage. The defendants' counterclaim is dismissed as they are responsible for paying the mortgage.

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CONCLUSION

[30] I find Curtis is the beneficial owner of the mortgage and entitled to enforce the mortgage. There was some dispute about the last payment made by the defendants. I find the defendants did make a final payment of $460 on March 3, 2021 and that amount is to be deducted from the principal at that time. Thereafter, Curtis is entitled to the principal plus pre-judgment and post-judgment interest at the rate of 10.5 per cent.

[31] Curtis seeks an order for possession and sale of Young Street. It is a reasonable request as the defendants defaulted on the mortgage in March 2021 and have refused to make further payments.

[32] I find Curtis is entitled to an order for possession and sale of Young Street in accordance with the terms of mortgage Instrument No. 4406505/1.

[33] Curtis is entitled to his legal costs. If the parties cannot agree on the amount, they are to book a separate one-hour hearing before me to discuss the issue.

DATE August 18, 2025

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APPENDIX B

The relevant statutory provisions referred to in this decision are:

MB, *King's Bench Rules*, Man Reg 553/88:

All persons interested **64.03(1)** All persons interested in the equity of redemption shall be named as defendants in the action subject to subrule (2).	**Personnes intéressées** **64.03(1)** Les personnes intéressées au droit de rachat sont désignées comme défendeurs à l'action, sous réserve du paragraphe (2).
Exception **64.03(2)** The plaintiff may commence the action without naming subsequent encumbrancers as defendants where it appears expedient to do so by reason of their number or otherwise, but the plaintiff may make a motion without notice on a reference after judgment to add as defendants all subsequent encumbrancers who were not originally made parties.	**Exception** **64.03(2)** Le demandeur peut introduire l'action sans désigner comme défendeurs les titulaires postérieurs d'une sûreté si leur nombre ou un autre motif le justifie. Le demandeur peut cependant présenter une motion sans préavis dans un renvoi après jugement pour joindre comme défendeurs les titulaires postérieurs d'une sûreté qui n'avaient pas été constitués parties à l'action.

Bankruptcy and Insolvency Act, RSC 1985, c B-3:

Assignment for general benefit of creditors **49 (1)** An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person's property for	**Cession au profit des créanciers en général** **49 (1)** Une personne insolvable ou, si elle est décédée, l'exécuteur testamentaire, le liquidateur de la succession ou l'administrateur à la succession, avec la permission du tribunal, peut faire une cession de tous ses biens au

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the general benefit of the insolvent person's creditors.

Vesting of property in trustee
71 On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

profit de ses créanciers en général.

Dévolution des biens au syndic
71 Lorsqu'une ordonnance de faillite est rendue, ou qu'une cession est produite auprès d'un séquestre officiel, le failli cesse d'être habile à céder ou autrement aliéner ses biens qui doivent, sous réserve des autres dispositions de la présente loi et des droits des créanciers garantis, immédiatement passer et être dévolus au syndic nommé dans l'ordonnance de faillite ou dans la cession, et advenant un changement de syndic, les biens passent de syndic à syndic sans cession ni transfert quelconque.

The Real Property Act, CCSM c R30:

Definitions
1 In this Act, and in instruments purporting to be made or registered under this Act, unless the context otherwise requires

"transmission" means the passing of title to land, mortgages, encumbrances, or leases, in any manner other than by transfer from the owner. (« transmission »)

Définitions
1 À moins que le contexte n'exige une interprétation différente, les définitions qui suivent s'appliquent à la présente loi ainsi qu'aux instruments censés être faits ou enregistrés aux termes de la présente loi.

« transmission » Cession d'un titre foncier, d'une hypothèque, d'une charge ou d'un bail, exception faite du transfert émanant du propriétaire. ("transmission")

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Assignment to creditors
49(1) Upon an assignment being made by the owner of any land, mortgage, encumbrance, or lease, for the benefit of his creditors, or under an authorized assignment, or in connection with a proposal by a debtor for a composition, extension, or scheme of arrangement, to or with his creditors under the *Bankruptcy and Insolvency Act* (Canada), the assignee or trustee may by way of a transmission application apply to the district registrar to be registered as owner of any land, mortgage, encumbrance, or lease, included in the assignment, and the district registrar may, pursuant to the application, transmit any land, mortgage, encumbrance, or lease, so included, to the assignee or trustee, who shall become the owner thereof and shall be vested with all the rights and powers of which the assignor was possessed.

Cession dans l'intérêt des créanciers
49(1) À la suite d'une cession faite dans l'intérêt de ses créanciers par le propriétaire de biens-fonds, d'hypothèques, de charges ou de baux, dans le cadre d'une cession autorisée ou d'une proposition faite en vue d'un concordat, d'un atermoiement ou d'un accommodement avec les créanciers sous le régime de la *Loi sur la faillite et l'insolvabilité* (Canada), le cessionnaire ou le fiduciaire peut présenter une demande de transmission au registraire de district afin d'être inscrit comme propriétaire des biens-fonds, des hypothèques, des charges et des baux visés par la cession. Le registraire de district peut en outre, suite à la demande, transmettre ces biens-fonds, ces hypothèques, ces charges et ces baux au cessionnaire ou au fiduciaire qui en devient le propriétaire et qui est investi de tous les droits et pouvoirs du cédant.

Registration to pass rights
101(2) Upon the registration of a transfer of a mortgage, encumbrance, or lease, the mortgage or encumbrance or the estate or interest of the lessee, as set forth in the transfer, with all rights, powers, and privileges, thereto belonging or appertaining, passes to the transferee; and the

Effet de l'enregistrement
101(2) Suite à l'enregistrement du transfert d'une hypothèque, d'une charge ou d'un bail, l'hypothèque, la charge, le domaine ou l'intérêt du preneur, énoncé dans l'acte de transfert, ainsi que tous les droits, pouvoirs et privilèges y accessoires, sont transférés au bénéficiaire du transfert. Ce

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transferee thereupon becomes mortgagee, encumbrancer, or lessee, and is subject to the same requirements, and liable for the same liabilities, as he would have been subject to and liable for, if so named in the original instrument.

dernier devient de ce fait créancier hypothécaire, bénéficiaire de charge ou preneur, est soumis aux mêmes exigences et est tenu aux mêmes obligations que s'il avait été désigné dans l'instrument original.

Right of transferee to sue on mortgage

101(3) By virtue of a transfer of a mortgage, encumbrance, or lease, the right to sue thereupon and to recover any debt, sum of money, annuity, or damages thereunder, notwithstanding it may be held to constitute a chose in action, and all interest at the time of the transfer, in the debt, sum of money, annuity, or damages, are transferred, so as to vest them in the transferee; but nothing in this section prevents the court from giving effect to any trusts affecting the debt, sum of money, annuity, or damages, in case the transferee holds it as trustee for any other person.

Droit de poursuite du bénéficiaire du transfert

101(3) En vertu du transfert d'une hypothèque, d'une charge ou d'un bail, le droit d'ester et celui de recouvrer une créance, une somme, une rente et des dommages-intérêts au titre de celles-ci, bien que ces droits puissent être considérés comme des choses non possessoires, ainsi que tous les intérêts, à la date du transfert, sur la créance, la somme, la rente ou les dommages-intérêts sont transférés de façon à être dévolus au bénéficiaire du transfert. Le présent article n'a toutefois pas pour effet d'empêcher le tribunal de donner effet à des fiducies visant la créance, la somme, la rente ou les dommages-intérêts dans le cas où le bénéficiaire du transfert les détient à titre de fiduciaire pour un tiers.

The Mortgage Brokers Act, CCSM c M210:

Requirement to be registered

2(1) No person shall act as a mortgage broker, authorized

Inscription obligatoire

2(1) Nul ne peut, en vue de toucher une rémunération, agir

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official or mortgage salesperson, for or in expectation of remuneration, unless the person

(a) is registered as a mortgage broker, authorized official or mortgage salesperson, as the case may be; or

(b) is exempted from the requirement to be registered, under section 3, the regulations or an order of the commission made under section 55.

à titre de courtier d'hypothèques, de représentant officiel ou de vendeur :

a) à moins d'être inscrit à ce titre;

b) à moins d'être exempté de l'obligation de s'inscrire par l'article 3, les règlements ou l'ordonnance visée à l'article 55.

Exemptions from registration
3(1) Subsection 2(1) does not apply to

(f) a person who

(ii) buys or sells mortgages or invests in mortgages through a registered mortgage broker,

if that person does not engage in any of the activities set out in clauses (e) and (f) of the definition of mortgage broker[.]

Exemptions d'inscription
3(1) Le paragraphe 2(1) ne s'applique pas aux personnes suivantes :

f) les personnes qui n'exercent pas les activités mentionnées aux alinéas e) et f) de la définition de l'expression « courtier d'hypothèques » et qui :

(ii) vendent ou achètent des créances hypothécaires ou qui font des placements hypothécaires, par l'intermédiaire d'un courtier d'hypothèques inscrit[.]

Mortgage obligations continue
20(3) Subsection (1) does not prevent the parties to the mortgage from exercising all the rights, remedies and powers

Recouvrement du capital et des intérêts par un prêteur
20(3) Le paragraphe (1) n'a pas pour effet d'empêcher les parties au contrat d'hypothèque d'exercer les droits, recours et

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therein provided, and in particular, the right of the lender to recover the sum actually advanced to or for the account of the borrower together with interest thereon at the rate stated in the mortgage or any extension thereof.

pouvoirs prévus, et en particulier, le droit du prêteur hypothécaire de recouvrer du débiteur la somme qu'il a effectivement prêtée à celui-ci ou pour le bénéfice de celui-ci, ainsi que les intérêts courus sur cette somme au taux indiqué à l'acte hypothécaire ou à la reconduction qui en est faite

Payments to persons exempt from registration

20(4) Subsection (2) does not apply to the payment of commissions to persons exempted from registration under this Act or to persons duly registered as mortgage brokers under this Act or under an Act of any province of Canada.

Commissions versées aux personnes exemptées d'inscription

20(4) Le paragraphe (2) ne s'applique pas au paiement de commissions aux personnes exemptées de l'inscription sous le régime de la présente loi et aux courtiers d'hypothèques dûment inscrits sous le régime de la présente loi ou d'une loi d'une province canadienne.

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