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Docket: CI 22-01-38699
CI 24-01-46659
(Winnipeg Centre)
Indexed as: 5716650 Manitoba Ltd. v. Caplan et al.
Cited as: 2025 MBKB 127

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

FILE NO. CI 22-01-38699

5716650 MANITOBA LTD.,	)	
	)	<u>Lauren L. Gergley</u>
	)	<u>Peter Halamandaris</u>
applicant,	)	for 5716650 Manitoba Ltd.
- and -	)	
	)	<u>Larry B. Nasberg</u>
CAPLAN AND COMPANY LTD., AS TRUSTEE	)	for B2B Bank o/a B2B Trustco
OF THE ESTATE OF SIGMAR MORTGAGE	)	
SERVICES LTD., B2B BANK OPERATING	)	No one appearing for the
AS B2B TRUSTCO, AND ROYAL BANK OF	)	respondents, Caplan and Company
CANADA,	)	Ltd. and Royal Bank of Canada
	)	
respondents.	)	

FILE NO. CI 24-01-46659

AND BETWEEN:

	)	<u>Timothy J. Fry</u>
SUN MORTGAGE CORPORATION,	)	<u>Robert J. Walichnowski</u>
	)	for Sun Mortgage Corporation
applicant,	)	
- and -	)	<u>Lauren L. Gergely</u>
	)	<u>Peter Halamandaris</u>
	)	for 55716650 Manitoba Ltd.
5716650 MANITOBA LTD.,	)	
	)	
respondent.	)	JUDGMENT DELIVERED:
	)	October 21, 2025

McCARTHY J.

INTRODUCTION

[1] This is a decision on two applications which were heard together.

[2] The first application, CI 22-01-38699 (the "Discharge Application"), was filed on December 5, 2022 by 5716650 Manitoba Ltd. ("571"). In that application 571 seeks to have several mortgages discharged from property to which it holds title, at 1214 Lorette Avenue, Winnipeg, Manitoba (the "Lorette Property"). Jack Morgante ("JM") and/or his wife Angie Morgante ("AM") are the principals of 571.

[3] The second application, CI 24-01-46659 (the "Sun Mortgage Application"), was filed on June 6, 2024 by Sun Mortgage Corporation ("Sun Mortgage"). Sun Mortgage is the current registered owner of Mortgage No. 5188296/1 (the "2020 Mortgage"), which is registered against the Lorette Property. The 2020 Mortgage was originally owned by Sigmar Mortgage Services Ltd. ("Sigmar"), however following the assignment into bankruptcy by Sigmar in 2021, the 2020 Mortgage was transferred to Sun Mortgage by Caplan and Company Ltd. ("Caplan") as Trustee for the Estate of Sigmar Mortgage Services Ltd. The principal of Sigmar was Thomas Standing ("Standing") who acted as a mortgage broker through Sigmar. Standing was also the principal of O.S. Investment Corp. ("OS").

OVERVIEW OF THE FACTS

[4] With respect to this overview, I start with the proviso that any summary of facts in this matter will necessarily be an oversimplification of the factual circumstances surrounding the transactions that are the subject of these applications. That is because

the mortgages and the property in question appear to be a small part of an elaborate fraudulent mortgage scheme perpetrated by Standing and Sigmar, with the involvement of a lawyer who was also acting for 571 and the Morgantes. Based upon the evidence before the court, which did not include evidence from Standing or the lawyer, the specifics of the scheme and role that the Morgantes and 571 played remain somewhat unclear.

[5] In a general sense, however, it is not in dispute that the role of Standing as a mortgage broker was to find investors who would invest money with Sigmar, and Sigmar would in turn loan money to various borrowers. It appears that Sigmar was the go-between with the investors and the borrowers, and that the investors did not necessarily know who was borrowing the money they invested, and the borrowers did not necessarily know who invested the money that they were borrowing. Rather, Sigmar acted on behalf of the investors by securing mortgages as security for their investments, and it acted on behalf of potential borrowers by securing loans on their behalf.

[6] In total, there were five mortgages registered against the Lorette Property at the time of the discovery of the mortgage fraud scheme and Standing and Sigmar's assignment into bankruptcy. Those mortgages were:

- (a) a mortgage registered in 1989 by the Laurentian Bank of Canada (the "1989 Mortgage"). That mortgage was held by the Royal Bank of Canada at the time of filing of this application and has since been discharged as it was statute barred;

- (b) a mortgage registered in 1998 by Sigmar in the amount of \$65,000 (the "1998 Mortgage"), which is now held by Caplan. Discharge of that mortgage is not opposed as it is agreed that it is statute barred;
- (c) a mortgage registered in 2012 (the "2012 Mortgage") by B2B Trust ("B2B") and Sigmar in the amount of \$300,000, which is now held by B2B and Caplan;
- (d) a mortgage registered in 2020 by Sigmar in the amount of \$260,000 (the "2020 Mortgage") which is now held by Sun Mortgage; and
- (e) a mortgage which was registered in January 2021 by the Olympia Trust Company ("Olympia") in the amount of \$425,000 and continues to be held by Olympia (the "2021 Mortgage").

[7] 571 is the registered mortgagor on each of the above mortgages and is seeking to have the 1998, 2012 and 2020 mortgages discharged from title. Only the discharges of the 2012 and 2020 mortgages are opposed as it is agreed that the 1998 mortgage is statute barred.

[8] Sigmar was the mortgagee on both the 2012 mortgage and the 2020 mortgage, and B2B was also a registered mortgagee on the 2012 mortgage. It is not in dispute that Sigmar and B2B were registered as the mortgagees in their capacity as agents and trustees for their individual investors.

[9] In addition to the relationship between 571 and Sigmar on the 1998, 2012 and 2020 mortgages, the evidence suggests that AM and JM (the Morgantes), and their company 571, had a broader business relationship with Standing, Sigmar and OS. For

instance, JM acknowledged on cross-examination that, in addition to the Lorette Property, 571 held title to approximately 19 other properties which had been acquired on behalf of, or in partnership with, Sigmar.

[10] Although the true nature and extent of their business relationship is unclear, JM's evidence was that, notwithstanding that 571 held title to those 20 properties, 571 had never made any payments toward the acquisition of same, and where mortgages were registered against the properties, 571 was not responsible for making the mortgage payments.

[11] With respect to the Lorette Property specifically, it was JM's evidence that his family had acquired the property in 1984. It is a small apartment block in which JM, AM, and several other family members reside. Title to this property was transferred to 571 in 2012, concurrent with the registration of the 2012 mortgage.

[12] Between 2012 and 2021, Sigmar arranged financing for 571 and/or used the Lorette Property as security in a series of transactions which at times overlapped. A review of the documentary evidence filed in support of these applications discloses a series of transactions as follows.

[13] On April 30, 2012, Sigmar wrote to 571 confirming that financing had been arranged in the amount of \$300,000. The key terms of the financing were that the loan would be registered as a second mortgage against the Lorette Property, with monthly payments of \$3,300 including interest at 12 percent, and holdback of a sum representing the first six months of payments. A further provision called for deduction of "all funds advanced to Angie Morgante or Jack Morgante by O.S. Investment Corp. for this

property". The terms also required the discharge of the 1998 Mortgage to ensure that the 2012 Mortgage was the second charge on the property, subject only to the 1989 Laurentian mortgage. At the end of the letter, under the statement "I hereby agree to the above financing with terms and conditions as stated", JM signed on behalf of 571.

[14] The source of the funds for the 2012 Mortgage was Kenneth Leslie, who invested through B2B, and I C Co. Ltd. who invested through Sigmar.

[15] Preparation of the 2012 Mortgage was arranged by Sigmar, and signed by JM on behalf of 571 on May 24, 2012.

[16] On May 25, 2012, JM signed a Mortgagor's Release and Indemnity to B2B Trust on behalf of 571. That document, among other things, confirmed that 571 was borrowing \$100,000 from B2B as trustee for Kenneth Leslie, and that B2B would be the registered mortgagee on the mortgage securing that loan.

[17] The 2012 Mortgage was registered on August 20, 2012, in series with a Transfer of Title to the Lorette Property from AM to 571. The sum of \$300,000 was advanced under the 2012 Mortgage.

[18] Payments in the amount of \$26,400 were made by Sigmar on the 2012 Mortgage, presumably in part from the holdback. All payments stopped on June 2, 2014, at which point the balance owing on the B2B portion of the 2012 Mortgage was \$96,881.42. By December 31, 2019, the balance had accrued to \$182,691.99. That balance, plus interest, remains outstanding.

[19] The balance of the Sigmar portion of the 2012 Mortgage was \$414,171.53 in January 2021. That balance was paid by Sigmar from a mortgage advance from Olympia in 2021. No portion of the 2021 Mortgage advance was paid to B2B.

[20] On December 12, 2018, Sigmar wrote to 571 confirming that financing had been arranged in the amount of \$425,000. The key terms of financing were that the loan would be secured by a first mortgage on the Lorette Property with monthly payments of \$4,300 inclusive of interest at a rate of 10.75 percent. The letter also indicated that "all funds advanced to Angie Morgante and Jack Morgante by O.S. Investment Corp. for this property in the approximate amount of \$350,000" would be deducted from the mortgage advance. The letter is signed by Jack Morgante as president for 571 immediately following the statement, "I hereby agree to the above financing with terms and conditions as stated".

[21] On January 11, 2019, Sigmar wrote to 571 confirming financing had been arranged in the amount of \$260,000. The key terms were that the loan would be secured by a second mortgage against the Lorette Property, payments would be \$2,650 per month including interest at a rate of 11.5 percent, and that the funds would be used "to pay back funds already advanced by O.S. Investment Corp. release". That letter was signed by AM directly under the statement "I hereby agreed to the above financing with terms and conditions as stated".

[22] On June 3, 2019, Standing wrote to Richard and Wendi Thiessen (the "Thiessens") on behalf of Sigmar confirming that their investment of \$260,000 would be secured by a second mortgage against the Lorette Property, subject only to a \$425,000 mortgage.

[23] On June 5, 2019, according to Sigmar records the \$260,000 was advanced to Sigmar and \$5,000 was disbursed to JM, and the balance to OS.

[24] On September 18, 2019, a letter was sent from Sigmar to Peter Ginakes ("Ginakes"), the lawyer acting for Sigmar and 571, confirming financing of \$260,000 for 571. The terms of the financing contained in that letter were payments of \$2,650 per month, including interest at a rate of 11.5 percent. The mortgage would be a second mortgage subject only to the first mortgage to Sigmar in an amount not exceeding \$425,000. These financing instructions related to monies that had already been advanced, and subject to a mortgage that had not yet been registered.

[25] On June 4, 2020, Standing confirmed by e-mail to Ginakes that he would deal with Jack (presumably JM) on the prior encumbrances that needed to come off title.

[26] On June 6, 2020, AM signed an Order to Pay to Sigmar, on behalf of 571. That document indicated that, after deducting "all sums necessary to discharge prior encumbrances..." and payment of various other transaction fees, the remaining balance, if any, was to be paid "to O.S. Investment Corp. to be applied to outstanding debt by 5716650 Manitoba Ltd or its shareholder".

[27] On June 12, 2020, in response to an e-mail from a legal assistant at Ginakes' office regarding the "2020 Morgante Deals", Standing confirmed that if their law firm registered the mortgage he would deal with the encumbrances.

[28] The 2020 Mortgage was signed by AM on July 6, 2020. The Declaration as to Possession, also signed by AM, showed four other mortgages registered on title at that

time. The mortgage was then registered on July 6, 2020. It was maturing a day later, on July 7, 2020.

[29] No payments were made on the 2020 Mortgage, and the balance due when it matured was \$293,796.41.

[30] On August 10, 2020, Ginakes sent a reporting letter to 571, directed to the attention of AM. Under the heading "Registered Encumbrances", the letter states that "the Lender has instructed that it will deal directly with respect to discharge of...", followed by a list that identifies four existing Mortgages, a Mortgage Transmission, two Mortgage Transfers and a Certificate of Judgment. That section is underlined for emphasis. Under "Payouts", the letter states, "We confirm that you have made arrangements with the Lender as to the disbursement of the mortgage proceeds to pay O.S. Investment Corp.'s debt against this property and that no loan monies were advanced through our office".

[31] Despite the payment provisions in the 2012 and 2020 Mortgages, it was JM's evidence that Standing or Sigmar was to make all mortgage payments. JM confirmed that he, AM and 571 did not make any payments under those mortgages.

[32] On September 1, 2020, a letter marked "hand-delivered" was provided by Sigmar to AM as President of 571. The letter referenced prior meetings and discussions, and indicated that the mortgage on the Lorette Property was seriously in arrears. The letter included a formal demand for payment in full on or before September 30, 2020. JM acknowledged on cross-examination that he received that letter.

[33] On January 12, 2021, Standing wrote to Ginakes advising that Sigmar had arranged financing for 571 in the amount of \$425,000. That mortgage was executed by AM on January 14, 2021, and funds were advanced on January 21, 2021, in trust for 571. On January 25, 2021, Ginakes wrote to Sigmar enclosing a cheque for \$422,500 payable to Sigmar "as per their direction". According to Sigmar records, \$414,082 from those funds was used to satisfy the Sigmar portion of the 2012 Mortgage.

[34] No postponement agreement was ever registered with respect to any of the mortgages.

[35] A Notice Exercising Power of Sale (NEPS) was filed with respect to the 2020 Mortgage on August 1, 2023, indicating a balance of \$414,171.53 owing at that time.

[36] After the NEPS was filed, 571 initiated these proceedings, seeking to have the Laurentian and three Sigmar mortgages discharged.

[37] In response, Sun Mortgage filed its application seeking an order for possession of the Lorette Property as trustee for the Thiessens.

ANALYSIS

[38] It is 571's position that, if not for the improper conduct of Standing, the 1998, 2012 and 2020 Mortgages would have been paid out with the proceeds of the 2021 Olympia mortgage, and the prior mortgages would have been discharged.

[39] JM also denied that he, AM, or 571 ever received any of the proceeds of any of the mortgage loans registered against the Lorette Property.

[40] 571 argues that, despite the fact that 571 was the mortgagor on all three mortgages registered against the Lorette Property, the Morgantes and 571 were not

required to make any payments on those mortgages. JM deposed that the Morgantes and 571 relied upon representations from Standing that Sigmar would make all payments required under the mortgages, and that prior mortgages would be discharged as required. There was no evidence provided as to the basis for that arrangement or any documentation to support the existence of such an agreement.

[41] JM alleged, through his evidence, that 571 was a victim of the same fraudulent mortgage scheme perpetrated by Standing against his investors, which resulted in the loss of Standing's mortgage broker license, an investigation into allegations of fraud, and the bankruptcy of Standing and Sigmar.

[42] 571 argues that the 2012 and 2020 Mortgages should be found to have been redeemed and that equity requires that they be discharged from title.

[43] Sun Mortgage takes the position that the Morgantes and 571 were either actively involved or complicit in Standing's fraudulent mortgage scheme, and because they do not come to the court with clean hands, they are not entitled to the equitable relief they seek.

[44] Sun Mortgage also argues that 571 has failed to meet its onus of proving, on a balance of probabilities, that, but for the fraudulent conduct of Standing, the 1998, 2012 and 2020 Mortgages would have been paid off and discharged. It points out that the funds borrowed under the 2021 Mortgage were not even sufficient to pay out the prior mortgage balances, and also, that the Morgantes knew that the prior mortgages had not been discharged after each subsequent mortgage was registered as they were supposed to have been. It is their position that the Discharge Application should be dismissed.

[45] B2B, who holds the 2012 Mortgage with Caplan, argues that their portion of the debt secured by the 2012 Mortgage has not been repaid, or redeemed, and therefore the mortgage should not be discharged.

[46] With respect to its application for possession of the Lorette Property, Sun Mortgage submits that 571 is clearly, and without lawful or equitable excuse, in default of their obligations under the 2020 Mortgage and that, as such, possession should be granted to Sun Mortgage as the legal mortgage holder.

[47] B2B did not take a position with respect to the Sun Mortgage application.

The Discharge Application

[48] With respect to the Discharge Application, the onus lies on 571, as the applicant, to establish on a balance of probabilities that the 1998, 2012 and 2020 Mortgages were either paid, or redeemed, and should be discharged.

[49] With respect to the 1998 Mortgage, it is agreed that the mortgage is statute barred, and Caplan does not oppose its discharge. I expect that Caplan will attend to discharge of that mortgage, and if not, an order may be taken out with respect to discharge of same.

[50] With respect to the 2012 Mortgage, it is not in dispute that Sigmar's portion of the mortgage debt was repaid from the proceeds of the 2021 Olympia mortgage. It is B2B's position, however, that the portion of the debt owed to B2B, which was also secured by the 2012 Mortgage, remains outstanding.

[51] 571 argues with respect to the 2012 and 2020 Mortgages that, regardless of Sigmar's knowledge that the Olympia proceeds were insufficient to satisfy its separate

obligations to its investors under the 2012 and 2020 Mortgages, that information was not known to 571. It asserts that Standing represented to 571 that Sigmar would discharge the prior mortgages upon registration of the 2021 Mortgage, and that that representation was made with the intention that 571 would act on it. 571 did act by causing the 2021 Mortgage in the amount of \$425,000 to be registered against the Lorette Property. 571 argues that their understanding, based upon the representations made by Standing, was that the sole purpose of the 2021 Mortgage was to discharge the prior mortgages. It is their position that they should not suffer the consequences of Sigmar and Standing's misrepresentations and failure to do as they promised. 571 asks that the court find that the mortgages were redeemed, and that Sun Mortgage, B2B and Caplan are estopped from taking any further steps to enforce the mortgages against 571.

[52] In response, Sun Mortgage argues that it is clear on the facts before the court that 571 and the Morgantes were actively involved in a fraudulent mortgage scheme with Standing. It argued that the only explanation for why title was taken in the name of 571 for property acquired and paid for by Standing or Sigmar, is that Standing was soliciting investment in properties without disclosing that he, or his partner, was the owner of that property. It is Sun Mortgage's position that Sigmar was to pay the mortgages because 571 was really a strawman intended to deceive the investors as to the true nature of their security.

[53] Sun Mortgage argued that 571 was an integral part of Standing's fraudulent scheme, and that it now improperly comes to court asking to be relieved of debt obligations that were fraudulently undertaken. It is Sun Mortgage's position that 571

does not come to court with clean hands and has not met its onus of proving that it is entitled to equitable relief.

[54] Further, Sun Mortgage points out that innocent investors hold valid security in the form of mortgages registered against the Lorette Property, which secure money they loaned under false pretenses. They argue that the equities favour those investors.

[55] With respect to 571's position that the 2012 and 2020 Mortgages were redeemed, I make several observations.

[56] First, the Morgantes and 571 offer no evidence which satisfies me that the representations they claim to have relied upon were ever made directly to 571, JM or AM, by Standing or Sigmar. The evidence relied upon in JM's affidavit material is primarily based upon a review of Sigmar's file during the course of this litigation. JM does not depose that he ever saw information such as written instructions from Standing to Ginakes at the time that the 2021 Mortgage was being arranged. Neither he, nor AM, deposed to any discussions or specific representations made to either of them by Standing about the purpose of the 2021 Mortgage, or the discharge of prior mortgages from title. AM offered no evidence at all on this motion, and the evidence from JM on this issue was simply a recitation of what he read in the Sigmar file. Evidence of his own involvement is vague to non-existent.

[57] While I agree that there is evidence that Standing made representations in his written instructions to Ginakes, that he would personally attend to paying out or arranging for discharge of the prior mortgages, there is no evidence that the same representations were made to 571.

[58] Further, with respect to whether representations made to the lawyer acting for 571 were sufficient to constitute representations made to 571, the evidence suggests that the decision to borrow money had already been made prior to the payout and discharge instructions being conveyed to Ginakes by Standing. In fact, the earliest mention of financing in the amount of \$425,000 was a December 12, 2018 e-mail from Sigmar to 571, well before any representations to Ginakes relating to the 2021 Mortgage that are in evidence in this matter. That would suggest that 571 did not rely upon those representations in deciding to have new financing from Olympia arranged.

[59] There is also evidence that prior to agreeing to the 2021 Mortgage, both AM and JM had signed and received several documents listing prior mortgages which were to have been discharged but remained on title. As one example, JM endorsed his approval to the December 12, 2018 letter from Sigmar outlining the financing arrangements with Olympia, which listed several mortgages which should have been discharged previously. His evidence was that he simply didn't notice.

[60] I am not persuaded by 571's argument that a representation by Sigmar was the only possible explanation for the Olympia mortgage. The evidence is clear that Standing and Sigmar were carrying out a mortgage fraud scheme, and that there was a business arrangement between Standing and 571 which involved acquiring several properties in 571's name, without 571 having paid for the purchase of the property, nor making any mortgage payments on mortgages 571 had entered into. 571 also shared the same lawyer as Sigmar for these transactions. The evidence also suggests that the 2021 Mortgage was in fact contemplated prior to the 2020 Mortgage as several of the

instructions relating to the 2020 Mortgage referenced one prior charge mortgage for \$425,000.

[61] There was no explanation offered by JM as to why 571 would have agreed to take title to various properties, or execute mortgage commitments and allow mortgages to be registered against 571 property, if 571 or the Morgantes were not somehow involved in the scheme, or receiving something in return. There was no reasonable explanation offered as to why 571 was promising to repay debt that Sigmar was actually expected to pay.

[62] In my view, the most likely explanation is that 571 was either an active partner or a willing enabler in the fraud scheme, and that 571 and the Morgantes were receiving some benefit from it. If I am correct, then they come before the court with unclean hands seeking an equitable remedy, and they are disentitled to same on that basis alone.

[63] Even if 571's involvement in the fraudulent scheme is not established by the evidence before the court, 571 has not met its onus of proving that there was any representation made to 571, which 571 relied upon to its detriment, such that an equitable remedy in its favour is appropriate. In addition to the lack of credible evidence about any actual representation made to 571 by Standing, there is also no compelling evidence of detrimental reliance upon such a representation. This is not a situation where 571 asserts that they were making payments under the mortgages. Rather, it was JM's evidence that 571 made no payments toward the mortgages registered against the Lorette Property, or any other mortgages entered into with Sigmar. It would perhaps be a different situation if 571 had made payments under the mortgages, but those payments

had not been received by the investors because of the intervening acts of Standing. That is not the situation here.

[64] 571 also asserts that it did not receive any proceeds advanced under the mortgages registered against the Lorette Property. However, according to Sigmar's records, JM was paid \$5,000 from the \$260,000 invested by the Thiessens in June 2019, and the balance was paid to OS on the direction of 571 as repayment for prior advances 571 owed OS. The January 11, 2019 letter from Sigmar to 571 confirmed financing of \$260,000 and that the proceeds borrowed by 571 would be used to pay back OS. That letter was signed by AM on behalf of 571. Similarly, AM signed an Order to Pay on June 6, 2020, directing that any balance of mortgage proceeds should be applied to outstanding debt by 571 to OS. And finally, the August 10, 2020 reporting letter from Ginakes to 571 with respect to the 2020 Mortgage, confirmed the arrangements between 571 and the lender that mortgage proceeds were to be disbursed to pay back debt to OS.

[65] Despite their denials that 571 ever owed OS money, there was no reasonable explanation offered by the Morgantes as to why they would have executed written instructions to the lawyer for 571 to pay mortgage proceeds borrowed by 571, and repayable by 571, to OS for "repayment of advances from OS" if they did not owe, or expect to owe, money to OS.

[66] Not only has 571 offered no reasonable explanation for the directions signed by its principals, but the assertion by JM that no monies were ever borrowed or received from OS is directly contradicted by the evidence of Wendi Thiessen. The Sigmar records from August 2018, and from September 2019 to February 2021, obtained by Ms. Thiessen

as an investor in Sigmar, disclosed that prior to the mortgage fraud scheme being discovered, there were over 80 payments made from OS to JM totaling approximately \$341,650. Those payments are based upon only a portion of the Sigmar records available. JM offered no explanation for receipt of those funds, indicating only that he did not remember receiving money from OS.

[67] In my view, 571's argument that they did not receive any of the 2012 or 2020 Mortgage proceeds is not a valid factual or legal argument. Money advanced to a borrower under a mortgage becomes a debt of the borrower/mortgagor, even if it is disbursed on the instructions of the borrower to other parties or cover other debt, encumbrances, or obligations. The situation here is no different than a mortgagor borrowing \$200,000 and directing that \$100,000 go to pay out a prior mortgage. The mortgagor is still liable for repayment of the \$200,000 borrowed.

[68] In this case, there is also no documentation or evidence to support 571's claim that they were not responsible for making the mortgage payments on the 2012 and 2020 Mortgages, and that they are therefore, not in default of their obligations by not making the payments.

[69] JM's evidence is that, despite having signed mortgages on behalf of 571 which required monthly payments by 571, and despite allowing mortgages to be registered as encumbrances against 571 property, he did not follow up as to whether mortgage proceeds were advanced, where the advances went, or whether the required payments were being made. Further, in spite of receiving a reporting letter from his lawyer on August 10, 2020 confirming that 571 had made arrangements directly with Sigmar for

disbursement of the mortgage proceeds to OS debt, which JM says 571 did not owe, JM did nothing further. Neither AM nor JM indicated a concern about mortgages being registered against the property without prior mortgages being discharged as required. JM also confirmed that he received annual mortgage statements which showed that payments were not being made as required, and that he received a demand letter from Sigmar with respect to the mortgages being in default. His evidence was that upon receipt of the demand letter, he confronted Standing, but he could not recall if he contacted his lawyer. One would expect that receipt of such a demand for payment would have been very alarming if Sigmar was supposed to be making the payments. Overall, the evidence from 571 does not address many of the factual questions crying out for an explanation, and is simply not credible.

[70] Even though the evidence may be inconclusive as to the full extent of 571's involvement, it strongly suggests that the Morgante's were participants in, and not victims of the mortgage fraud scheme. It is likely, in my view, that 571 was taking title for Sigmar so that the investors would not know that the land securing their debt was owned by Sigmar. And it is also likely that the unexplained payments received by the Morgantes from OS were compensation for taking title and executing mortgages that they had no obligation to pay, but for which they were legally liable.

[71] However, even if that is not the case, the evidence is clear that 571 was executing mortgage commitments, and providing inadequate security for loans, that it had no intention of repaying. At the very least, 571 was complicit in mortgage fraud by executing mortgage documents that it knew to be false and misleading.

[72] The Morgantes signed both the mortgage documents and the Orders to Pay as officers for 571, and 571 is bound by the terms of those documents. Even if Sigmar had committed to making the payments, 571's recourse for its failure to do so would be against Sigmar.

[73] In the circumstances, I am satisfied that 571 does not come to court with clean hands, and that the evidence does not support 571's position that it is entitled to the equitable remedy of estoppel and/or a finding that the 2012 and 2020 Mortgages were redeemed.

[74] The Discharge Application is dismissed.

The Application for Possession

[75] With respect to Sun Mortgage's application for possession, I find, based upon my findings of fact outlined above, that the 2020 Mortgage is in default. There is no evidence that any payments were ever made toward that mortgage.

[76] I am also satisfied that Caplan, as Trustee for the Sigmar Estate, became the legal owner of the 2020 Mortgage as a result of the Sigmar bankruptcy. In his capacity as Trustee, Caplan held that mortgage in trust for its beneficial owners.

[77] Based upon the evidence from Andre Vanderzalm and Wendi Thiessen, including the letter of June 3, 2019 from Sigmar to the Thiessens referencing a mortgage on the Lorette Property, I am satisfied that the Thiessens and their company, Lujasat Ltd., advanced the \$260,000 which was secured by the 2020 Mortgage, and are the beneficial owners of the debt secured by that mortgage. I also accept that the beneficial owners have received no payments on their investment.

[78] With respect to issues raised by 571 about the ability of the bankruptcy trustee to assign a mortgage at the request of the beneficial owner, I am not persuaded that there was anything unlawful in doing so, or that any consideration is required for such an assignment to be valid. I am satisfied that the assignment of the 2020 Mortgage from Caplan to Sun Mortgage is valid, and that pursuant to s. 101(2) of *The Real Property Act*, C.C.S.M. c. R30, Sun Mortgage is now deemed to be the mortgagee.

[79] As the mortgagee, Sun mortgage is entitled to an Order for Possession by virtue of 571's default in payment under the mortgage. The Manitoba Court of Appeal in *Royal Bank v. Omoerah* 1995, 102 Man. R. (2d) 319, 93 W.A.C. 319 (C.A.), at para. 4, stated that the mere fact of default is sufficient to entitle the mortgagor to the order for possession (note: it is clear from the facts of that case that the Court of Appeal's reference to "mortgagor" was intended to be "mortgagee" as that case was an appeal which upheld an Order for Possession granted to a mortgagee in the lower court).

[80] In the circumstances, Sun Mortgage shall have an Order for Possession of the property located at 1214 Lorette Avenue, in Winnipeg, and legally described as:

FIRSTLY: LOT 1 BLOCK 14 PLAN 5025 WLTO
IN RL 29 TO 34 PARISH OF ST BONIFACE
SECONDLY: PARCEL 23 PLAN 7135 WLTO
IN RL 29 PARISH OF ST BONIFACE

COSTS

[81] If the parties are unable to agree upon costs, they may file written submissions or set a time before me for further oral submissions.

_____. J.