

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Richard J. Chartier  
Madam Justice Diana M. Cameron  
Madam Justice Janice L. leMaistre

***BETWEEN:***

<b><i>BANK OF MONTREAL</i></b>	)	<b><i>K. D. Pearson</i></b>
	)	<i>on behalf of the Appellant</i>
	)	<i>as a friend of the Court</i>
(Applicant) Respondent	)	
	)	<b><i>T. J. Webber</i></b>
- and -	)	<i>for the Respondent</i>
	)	
<b><i>LUANNE LORRAINE LECLAIR</i></b>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
	)	<b><i>February 24, 2020</i></b>
(Respondent) Appellant	)	
	)	<i>Written reasons:</i>
	)	<b><i>February 28, 2020</i></b>

**LEMAISTRE JA** (for the Court):

[1] The respondent appeals an order dismissing her motion to set aside or vary the order granting the Bank of Montreal (BMO) vacant possession of the lands and premises upon which she was residing (the property). BMO was the mortgagee by way of the mortgage registered against the property which was, and remains, in default.

[2] After hearing the appeal, we dismissed it with reasons to follow. These are those reasons.

[3] After the respondent defaulted on her mortgage, BMO brought a motion for vacant possession of the property. After the motion was granted and the order was signed, instead of appealing the order, the respondent

brought a motion to set aside or vary the order pursuant to r 59.06(2)(a) of the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88:

**Setting aside or varying**

**59.06(2)** A party who seeks to,

- (a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;
- (b) suspend the operation of an order;
- (c) carry an order into operation; or
- (d) obtain relief other than that originally awarded;

may make a motion in the proceeding for the relief claimed.

[4] The respondent sought to have the order set aside or varied on the basis that there was evidence of fraud and she sought to rely on facts arising after the order was made.

[5] In dismissing the respondent's motion, the motion judge concluded that the motion was "more akin to an appeal" of the order for vacant possession and that none of the criteria in rule 59.06 had been met.

[6] The respondent's grounds of appeal can be summarised as follows:

1. the order for vacant possession should not have been made;
2. the order for vacant possession was based on facts not in evidence and was made prior to cross-examination on affidavits and in the respondent's absence;
3. the motion to set aside or vary the order for vacant possession

was not heard by the judge who granted the order;

4. the motion judge did not properly apply rule 59.06(2)(a);
5. the respondent is at a disadvantage because she is self-represented;
6. BMO's claim is not represented because there is no contract for professional representation in the record; and
7. the respondent was denied due process by the actions of counsel.

[7] We are of the view that there is no basis for appellate intervention.

[8] The order for vacant possession has not been appealed and, therefore, this Court cannot review the merits of that order (see *Wong v Grant Mitchell Law Corp et al*, 2016 MBCA 65 at paras 4-5).

[9] We are not persuaded that the motion judge misdirected himself or that his decision is so clearly wrong that it amounts to an injustice (see *Lantin et al v Seven Oaks General Hospital*, 2019 MBCA 115 at para 21). Moreover, we agree with the motion judge that the criteria in r 59.06 had not been met. We are also not persuaded that, in the circumstances of this case, the motion should have been heard by the judge who made the order for vacant possession.

[10] Finally, the respondent's assertions about BMO's lack of representation and the conduct of its counsel are entirely without merit.

[11] In the result, the appeal was dismissed with costs.

leMaistre JA

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Chartier CJM

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Cameron JA

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