***NWTBD Invest/Corp. and 6030009 Canada* S-1-CV-2016-000069**

***Inc., Denny et al*, 2018 NWTSC 51**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

BETWEEN:

# Northwest Territories Business Development and Investment Corporation

Plaintiff

- and -

# 60300009 Canada Inc., Lyle Gordon Denny, and Robert Keith Ross

Defendants

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Transcript of the Oral Decision held before The Honourable Justice A.M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 16th day of February, 2018. Proceedings continued on the 2nd of March, 2018.

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**APPEARANCES:**

Mr. D. McNiven: Counsel for the Plaintiff

Mr. L. Denny: On his own Behalf

1. THE COURT: A bit of background: In 2002
2. Mr. Denny and his partner, Bob Ross, incorporated
3. a company, 60300009 Canada incorporated, also
4. known as Surly Bob's, in order to open a
5. restaurant. In January of 2003 they obtained
6. loans from, what was at that point the Business
7. Credit Corporation, in the amount of $174,000.
8. There are actually four loans at issue. The
9. initial loan was for $174,000 and was guaranteed
10. by all the parties personally and, with respect
11. to Mr. Denny, with a $70,000 limited mortgage
12. against his home. There was a second loan of
13. $40,000 in August of 2003, which did not contain
14. a security clause with respect to the home, but
15. was essentially part of the same process.
16. In April of 2003, the BDIC
17. replaced the BCC. The Government credit
18. organization that was previously called the
19. Business Credit Corporation became The Business
20. Development and Investment Corporation (BDIC).
21. MR. DENNY: I didn't really feel
22. appropriate interrupting you, Your Honour, but it

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 23 | was 2005 | when | the | BDIC was incorporated. | April |
| 24 | 2005. |  |  |  |  |
| 25 | THE COURT: |  |  | Did I say 2003? |  |
| 26 | MR. DENNY: |  |  | Yes. |  |
| 27 | THE COURT: |  |  | I meant to say 2005. |  |

* 1. MR. DENNY: Thank you.
  2. THE COURT: I was looking at 2005 and said

3 2003.

1. MR. DENNY: I will sit down unless
2. something comes up.
3. THE COURT: I invite any of the three of
4. you to interject at any point in time, about any
5. particular item with respect to amount or with
6. respect to any other matter. I do not want to
7. have to correct it after by way of an
8. application. The spirit of the judgment will
9. remain the same. This is an extremely
10. complicated fact situation and I have done my
11. best to get as solidly on top of all of the facts
12. as I can, but I am not going to pretend that it
13. is not conceivable that I might make an error.
14. The BDIC took over the BCC's
15. obligations and responsibilities in 2005. In
16. 2006, Mr. Denny refinanced his house with, I
17. believe, the Charter Dominion Bank. In 2009 that
18. mortgage was paid off through a process by which
19. Mr. Denny transferred the ownership of his home
20. to Surly Bob's and took a mortgage back on the
21. home through his RRSP. His RRSP was part of a
22. locked in RRSP that he had gained through his
23. employment. At the termination of his employment
24. he was able to take it as a locked in RRSP as
25. opposed to a continuing pension benefit. This
26. was a way in which he could then access those
27. funds. This was in the amount of $215,000.
28. There was a further amount of $70,000 that was
29. applied to the purchase price, but that $70,000
30. was never actually transferred between Surly
31. Bob's and Mr. Denny. There was an understanding
32. that some transfer would take place and that
33. there would be some value attached to Mr. Denny
34. being allowed to remain in the home without
35. paying rent. That was contemplated with respect

12 to the $70,000.

1. Am I correct about that so
2. far, Mr. Denny, more or less?
3. MR. DENNY: More or less.
4. THE COURT: I think the more or less will
5. suffice for my reasoning on the case.
6. So that happens in February
7. of 2009. In August of 2010 there is a third loan
8. in the amount of $50,000. There are unlimited
9. guarantees and cross default agreements that are
10. signed. Then, in August of 2011, there is a
11. fourth loan in the amount of $55,000. That loan
12. specifically included a mortgage clause which was
13. against Mr. Denny's home, or at that point in
14. time, Surly Bob's home. The BDIC would have been
15. aware of the fact that the transfers had taken
16. place prior to finalizing that $55,000 loan
17. simply as a matter of due diligence and looking
18. into the file. In late 2012, Surly Bob's ceased
19. to operate as a business and was struck from the
20. registry. Towards the latter part of this span
21. of time, Mr. Denny's business partner essentially
22. abandoned him and his business. Mr. Denny became
23. gravely ill, and did the best he could to carry
24. the business on. What I see between the lines is
25. a sad story of a 10 or 11 year process of
26. attempting to make a business work, which in the
27. end, did not.
28. The BDIC has applied for
29. summary judgment. They sought originally a
30. declaration, basically, with respect to the
31. amounts owing under the four loans as well as two
32. other issues. One being an application to find a
33. fraudulent conveyance as between Mr. Denny and
34. Surly Bob's and a fraudulent preference with
35. respect to the incorporation of the mortgage
36. under Mr. Denny's own RRSP, essentially giving
37. Mr. Denny the benefit of the loan and preference
38. with respect to any other creditors. Mr. Denny,
39. unlike Surly Bob's and Bob Ross, was not found as
40. a creditor by default judgment. Those two
41. entities are, in fact, judgment debtors.
42. Mr. Denny has filed substantial documentary
43. responses to the issues.
44. I know that there were a
45. significantly greater number of issues brought up
46. in the Statement of Claim and the Statement of
47. Defence, but essentially the way I see it there
48. are three issues: the validity of the debt; the
49. validity of the transfer to Surly Bob's; and the
50. legitimacy of the RRSP transaction with respect
51. to the mortgage. Those are the three issues.
52. I will deal first with the
53. legitimacy of the debts. Mr. Denny raises a
54. number of issues with respect to these debts.
55. The first argument that he makes is that there
56. was a fiduciary relationship between himself and
57. the BCC or the BDIC. His argument essentially
58. is, and I am trying to summarize what was a very
59. long argument, that because the BDIC operates
60. under the umbrella of Government it has a
61. fiduciary relationship and duty of care to its
62. borrowers that goes beyond that between a bank
63. and its customers. In support of this argument,
64. he refers to the Supreme Court of Canada case,
65. *Hodgkinson v. Simms*, 1994 SCR 377, which I
66. reviewed. The case concerns the relationship
67. between a financial adviser and his client. I
68. find that there was no fiduciary relationship
69. between BDIC and its clients. There is an
70. obligation to deal fairly and honestly and I see
71. every indication that this was done. I do not
72. find that this argument raises any real concern.
73. There was also an argument
74. raised with respect to independent legal advice.
75. Mr. Denny suggests that because BDIC, and its
76. predecessor BCC, did not provide truly
77. independent legal advice to Mr. Denny, these loan
78. agreements and guarantee should not be
79. enforceable. Specifically, this is argued in
80. reference to the use of the same lawyer for both
81. sides of the transaction in several instances.
82. Mr. Denny is an obviously sophisticated person
83. who knew exactly what he was getting into. There
84. is insufficient merit to this argument to require
85. a trial.
86. Mr. Denny also raises concerns
87. arising from the fact that the Business Credit
88. Corporation was subsumed under the Business
89. Development Investment Corporation in 2005. This
90. is essentially a reconstitution of the same
91. organization. Mr. Denny claims that not being
92. formally advised of this was both material non
93. disclosure and a fraudulent concealment. Apart
94. from the change in name, there was no impact on
95. the relationship between the various parties and
96. there is no merit to either of these arguments.
97. Likewise, the reconstitution of the BCC as the
98. BDIC does not engage limitations of action
99. considerations.
100. Mr. Denny also claims that the
101. impact of the subsequent loans and subsequent
102. agreements constitutes a material variance with
103. respect to the obligations anticipated in the
104. earlier loans. The taking on of a further loans
105. which incorporated indebtedness for earlier loans
106. by virtue of cross default terms is not a
107. material variance, but simply a mutually agreed
108. upon expansion of a previously contemplated fluid
109. debtor, creditor relationship. There was nothing
110. untoward about any of these terms and no
111. potentially successful argument flows from this
112. issue.
113. With respect to the form of
114. the agreements: All are challenged by Mr. Denny
115. for similar reasons, including the reasons I have
116. mentioned above. Further, they are claimed to be
117. vague, unclear on their terms, limited by the
118. lack of independent legal advice, unenforceable
119. by virtue of the *Limitations Act* or already
120. satisfied due to the poor wording of their terms.
121. One of the more original claims is that by virtue
122. of having already made payments to the extent of
123. the limited liability, the rest of the loan is
124. unenforceable against Mr. Denny personally. This
125. is interesting, but clearly not a valid argument.
126. Mr. Denny advances long,
127. complicated, and sophisticated arguments for the
128. proposition that the agreements do not mean what
129. they say they mean and that he does not owe what
130. he clearly understood he would owe when he signed
131. them. I am not convinced that there is any
132. properly triable merit to any of these arguments.
133. With respect to summary
134. judgment. The application was made under Rule
135. 174(1) which reads that a plaintiff may, after a
136. defendant has delivered a Statement of Defence,
137. apply with supporting affidavits or other
138. evidence for summary judgment against the
139. defendant on all or part of the claim in the
140. Statement of Claim. Summary judgment was
141. considered by the Supreme Court of Canada in the
142. *Hryniak* decision, 2014 1RCS. I am referring now
143. to page 89, the second full paragraph. A summary
144. judgment must be granted whenever there is no
145. genuine issue requiring trial. There will be no
146. genuine issue requiring trial when the judge is
147. able to reach a fair and just determination on
148. the merits, on the motion for summary judgment.
149. This will be the case when the process, one,
150. allows the judge to make the necessary findings
151. of fact, two, allows the judge to apply the law
152. to the facts, and three, is proportionate or
153. expeditious and the less expensive means to
154. achieve a just result.
155. The *Hryniak* decision was
156. considered by the Northwest Territories Superior
157. Court, by Justice Shaner. In the *Leishman v.*
158. *Hoechsmann et al* decision, 2016 NWT SC 27 at
159. paragraph 40, taking the approach set out in
160. *Hryniak*, the question is not whether there is a
161. genuine issue for trial, but rather whether there
162. is a genuine issue requiring trial and tools such
163. as cross-examination available in the trial
164. process to allow a court to reach a fair and just
165. result.
166. I have found that summary
167. judgment is available with respect to the
168. validity of the loan documents and the cross
169. application of the loan debt agreements.
170. I believe, Mr. McNiven, that
171. you had a list with respect to exactly what you
172. believe those numbers to be. I do not believe
173. that Mr. Denny substantially argued against the
174. numbers; what he was arguing about was whether or
175. not those numbers applied to him. To that extent
176. what I would suggest, Mr. McNiven, is that when
177. you take out the order you specify exactly how
178. you have arrived at the numbers in question with
179. respect to Mr. Denny's status as a judgment
180. debtor. I will review that to make sure that I'm
181. in agreement with how the numbers were arrived
182. at. I believe it was an amount of roughly
183. $180,000 of total debt. The same debt that was
184. applied against the other two co-defendants.
185. MR. MCNIVEN: Yes.
186. THE COURT: Moving on to the other issues.
187. These issues are perhaps easier to describe but
188. harder to wrestle with. The plaintiff alleges
189. that the transaction transferring ownership of
190. the home to Surly Bob's as well as the taking on
191. of the debt associated with that transfer within
192. Mr. Denny's RRSP constitutes both a fraudulent
193. transfer and a fraudulent preference. I have
194. reviewed the law on those issues. There are
195. troubling aspects to the transfer. But I am
196. dealing with this in an application for summary
197. judgment. I am not dealing with this as the
198. trial judge. I had to keep reminding myself of
199. that. You have all seen during the course of
200. these proceedings that I do the best that I can
201. to try to get the parties to recognize each
202. other's obligations and responsibilities and do
203. the best I can as well to bring matters to
204. conclusion. But I am not the trial judge. I am
205. a judge hearing an application for summary
206. judgment.
207. There were two issues that
208. troubled me about these transactions. The first
209. was timing. The transactions took place in

6 February of 2009. There were further loans in

1. both August of 2010 and August of 2011. The
2. business only became defunct towards the end of
3. 2012. So there was two-and-a-half years of time
4. between the transfers and the debt and the
5. eventual collapse of the business. It is beyond
6. the evidence before me to make a firm ruling with
7. respect to credibility and issues of a fraudulent
8. conveyance.
9. Further to that, there were
10. possible legitimate reasons for those transfers.
11. Mr. Denny's ability to tap into his RRSP money
12. was limited by the fact that it was a locked in
13. RRSP and therefore there had to be some form of
14. equity taken on in order to access those funds.
15. During submissions I raised the possibility that
16. this was simply done in order to free up funds to
17. carry on the business and also to allow for
18. further financing. Mr. Denny agreed. I am not
19. suggesting that I think that is the only reason
20. it was done. I am not suggesting that at a trial
21. a different result might obtain. I just find it
22. impossible at this stage to rule conclusively
23. that the taking on of the debt was a fraudulent
24. preference. I will have some comments for
25. everybody at the conclusion of these remarks and
26. I want to have some further discussion, but I am
27. not going to do that during the course of the
28. decision.
29. Some of the same concerns
30. apply to the transfer of the property to Surly
31. Bob's. There are other reasons this could have
32. been done rather than simply a desire to protect
33. assets from creditors. There are tax
34. implications, for one. Mr. Denny, as the owner
35. of a home, is not able to deduct interest
36. payments or other payments with respect to his
37. principal residence. Surly Bob's would be able
38. to deduct those charges. This is just one
39. example.
40. The other issue arises in
41. terms of the benefit that Mr. Denny was able to
42. obtain by way of free rent during this entire
43. time. Again, I am not suggesting that at trial I
44. would necessarily find these were not fraudulent
45. conveyances, but there is simply insufficient
46. evidence before me to make that finding at this
47. point in time.
48. I do not find for the purposes
    1. of the application for summary judgment that a
    2. fraudulent conveyance or fraudulent preference is
    3. made out to the extent necessary. Because of the
    4. nature of my findings in this case, no one side
    5. is conclusively the victor. I will therefore
    6. make an order for costs.
    7. With respect to the RRSP: One
    8. of the comments that was made by the plaintiff in
    9. their materials was that there is no clear
    10. indication of money changing hands, but there is
    11. a clear indication of the use of Mr. Denny's
    12. retirement funds to further fund this business,
    13. the process of taking that $215,000 out of the
    14. security investment and attempting to secure that
    15. investment against the property. There are two
    16. ways of characterizing this. It may have been an
    17. attempt to protect the property from creditors,
    18. in which case the fraudulent conveyance issue may
    19. well arise. It may also have simply been a way
    20. of protecting the RRSP amounts or pension through
    21. the use of property. There are two ways of
    22. looking at it. One of which may involve a
    23. fraudulent conveyance or preference, the other of
    24. which would not.
    25. That concludes my remarks
    26. with respect to the decision in this case. I
    27. will have some further remarks with respect to
49. other issues, which I wish to raise at this point
50. in time.
51. Mr. McNiven, do you have a
52. sufficient amount of information to draw up the
53. order?
54. Is there anything else you
55. need from me at this point?
56. MR. MCNIVEN: No, I think that's fine.
57. THE COURT: Thank you.
58. First, let me ask all of you,
59. do you want further comments from me at this
60. point in time with respect to this matter?
61. Mr. Denny.
62. MR. DENNY: No, I've understood what you
63. said.
64. THE COURT: All right.
65. MR. DENNY: There isn't.
66. THE COURT: Mr. McNiven?
67. MR. MCNIVEN: The cost is reasonable and one
68. issue that is on my mind because had we not had
69. to deal with Mr. Denny's voluminous documentation
70. and complicated and confusing arguments on the
71. first (indiscernible) of this, which we spent a
72. lot of time dealing with. And the fact that the
73. mortgage and all of the loan documents clearly
74. spells out that solicitor client cost of
75. enforcement or view in payable. That is an issue
76. that I would argue is not really fair to the BDIC
77. considering that we did get some prejudgment on
78. the first part and we did have to argue about it.
79. THE COURT: What breakdown would you
80. suggest in terms of costs with respect to that
81. argument versus the fraudulent conveyance
82. argument?
83. MR. MCNIVEN: In terms of proportionality I
84. would say 50/50, really.
85. THE COURT: What kind of amount are we
86. talking about?
87. MR. MCNIVEN: I don't actually know at this
88. point, Your Honour.
89. THE COURT: Mr. Denny, what do you say
90. about that?
91. MR. DENNY: I disagree, obviously. I
92. agree with what you said. Again, there may --
93. they've extended this a long time themselves
94. through their deals. They came up with the
95. fraudulent conveyance a year into this case -- or
96. six months into the case and that all had to be
97. dealt with. They've re-filed an amended
98. Statement of Claim that had to be addressed as
99. well. So, again, they've extended it as long as
100. anything that I've done even though my stuff was
101. voluminous (indiscernible). Again, I'm
102. self-represented, I had no choice in that matter.
103. I cannot get somebody to represent me in the
104. Territories.
105. THE COURT: Fair enough.
106. MR. DENNY: So I agree with what you said
107. that there shouldn't be any costs.
108. THE COURT: I am going to make some
109. further comments before I deal with that issue.
110. One of the aspects of this
111. case that I have struggled with was that, despite
112. my reservations about whether or not the transfer
113. and the preference were fraudulent, there really
114. is no question that there has been an unjust
115. enrichment since the collapse of the business in
116. allowing the debt owing to the RRSP to swell to
117. the point that it has subsumed any of the
118. available equity.
119. MR. MCNIVEN: I understand that.
120. THE COURT: As well, Mr. McNiven, I find
121. it hard to believe that creditors have never had
122. to confront a situation where security was held
123. by a now defunct corporation and that it would
124. require the debtor to reinstate that corporation
125. in order to auction the property. There must be
126. ways of going about this. I invite you to
127. consider that in terms of where we go from here.
128. Clearly businesses that are healthy do not go out
129. of business, businesses that are unhealthy do.
130. And at that point in time the action on security
131. is going to require some ability to access the
132. corporation's assets.
133. The debt right now is about
134. $180,000. The two credit instruments that
135. reference the property were limited in their
136. amounts to $70,000 and $55,000 for a total of
137. $125,000, plus interest and cost to realize the
138. debt. There is a clear problem with respect to a
139. supposably hands-off or arms length relationship
140. between Mr. Denny and the trust company that is
141. holding the mortgage for that property. This is
142. challengeable but not challengeable in this
143. format and through these materials.
144. If you are able to reach an
145. agreement with respect to the amounts owing and
146. you require a judge's order to allow a sale or
147. you require a judge's order to free up some funds
148. that would otherwise be funds within an RRSP, I
149. am happy to continue on with the file to that
150. extent. Clearly, Mr. Denny, if this matter does
151. have to go to trial it could go either way. In a
152. trial situation, dealing with those amounts
153. characterized properly, there is a risk of a
154. finding of fraudulent conveyance and fraudulent
155. preference. There is an even greater risk that
156. any of the increase in the value of the mortgage
157. that was generated by interest would be
158. challengeable even if caveats were filed against
159. the mortgage. There would be a question of the
160. arms length relationship that you are supposed to
161. have with the trust company that is holding the
162. mortgage.
163. With respect to costs given, I
164. think I need to know a little bit more about what
165. you are suggesting, Mr. McNiven.
166. MR. MCNIVEN: Can I?
167. THE COURT: I have heard Mr. Denny on the
168. issue. What do you have to say?
169. MR. MCNIVEN: At this point in time I'd
170. suggest that maybe I could provide a short
171. written submission because I could find out
172. exactly what the costs are. And that may be the
173. more efficient way to deal with it because we
174. could do it on a considered basis that way.
175. THE COURT: Very good.
176. MR. MCNIVEN: And I did have one other thing
177. that comes to mind. This is a foreclosure
178. application and if we have an order declaring
179. what the debt is, which we do now, my question is
180. in terms of the order I would be applying for an
181. order *sine die* and --
182. THE COURT: I think you may -- I will
183. leave that with you for the next two weeks in
184. terms of what applications you can make as a
185. result of this order. A foreclosure would be
186. against Surly Bob's.
187. MR. MCNIVEN: Right.
188. THE COURT: Right. I do not know that
189. Mr. Denny can even comment on that at this point.
190. He is not Surly Bob's anymore and --
191. MR. MCNIVEN: With respect, Your Honour, he
192. is still the director for Surly Bob's. He can't
193. just ignore it and avoid it completely by
194. allowing it to be dissolved by the registry. So
195. we can serve him and he has to be the voice of
196. Surly Bob's. So there's nothing to stop a
197. foreclosure order against Surly Bob's because
198. that's the only way BDIC is ever going to recover
199. any money out of this.
200. THE COURT: Fair enough.
201. Mr. Denny, any comments on
202. that?
203. MR. Denny: Not at this point.
204. THE COURT: Do you want to deal with that
205. in two weeks?
206. MR. MCNIVEN: I guess what you're suggesting
207. is you make the order today and then we'll
208. adjourn to speak to implementation of the order
209. in two weeks?
210. THE COURT: Why don't we do that. And in
     1. terms -- because the implementation of the order
     2. is complicated.
     3. MR. MCNIVEN: It is, yes.
     4. THE COURT: And there may well be other
     5. issues that you want to raise in two weeks as
     6. well. I have heard you with respect to the
     7. costs, I will hear you further in two weeks. You
     8. raised a good argument with respect to the costs,
     9. but I want to know exactly what kind of money we
     10. are talking about. And I will point out when you
     11. are looking into that, that while Mr. Denny's
     12. materials were voluminous, the response required
     13. was not. But I know you had to make sure there
     14. was nothing there and that took a significant
     15. amount of time. It took me a significant amount
     16. of time. Why don't we hold off on that until we
     17. come back in two weeks.
     18. With respect to the order to
     19. the nisi and in respect to the foreclosure, you
     20. are asking me to make that order today, right?
     21. MR. MCNIVEN: That was the original
     22. application. It never changed.
     23. THE COURT: Okay. Any comment at this
     24. point in time about me making that order about
     25. the foreclosure?
     26. MR. DENNY: Just time. Who gets what out
     27. of the house, that's what I need to know.
         1. THE COURT: Well, I think the order for
         2. foreclosure, even if I make it today, what kind
         3. of a redemption period were you seeking? In your
         4. original application you asked for no redemption
         5. time.
         6. MR. DENNY: And he said six months when we
         7. were talking the last time.
         8. THE COURT: Well, but that was a different
         9. context.
         10. MR. DENNY: Yeah.
         11. THE COURT: What do you actually suggest
         12. at this point?
         13. MR. DENNY: I think we'd have to speak to
         14. that in two weeks because I think that the whole
         15. 60,000 foot view is appropriate because in terms
         16. of trying to -- trying to suggest a reasonable
         17. reduction period, keeping in mind the time that
         18. has elapsed since this started, keeping in mind
         19. the seasonality of foreclosures and so forth, I
         20. think -- and in, again, Mr. Denny's ability to
         21. sell the house in the meanwhile. He's had plenty
         22. of time since this all started to do something
         23. about it.
         24. THE COURT: All right. So we will deal
         25. with that, then, and we will deal with the issue
         26. of costs in two weeks as well.
         27. MR. DENNY: Okay.
211. THE COURT: And any other issues that
212. arise in terms of the implementation of this
213. order. You are already in contact with Mr. Denny
214. in any event if things come up, you can let him
215. know what you are going to be looking at?
216. MR. MCNIVEN: Yes.
217. THE COURT: It has been a long road. I
218. will keep the file and we will put it over for
219. two weeks to the 2 of March at 10:00.
220. MR. DENNY: Okay. I have a question for
221. you.
222. THE COURT: Sure.
223. MR. DENNY: Is it all right if I sit?
224. With regards to, again, I understand what you've
225. said so far, again, the property will be sold,
226. that's not an issue. I've been trying for a long
227. time. My health won't let me stay here. It's
228. just too cold.
229. THE COURT: Yes.
230. MR. DENNY: I just need to know who's
231. going to get what from the house. That's what I
232. don't know. I don't understand that yet.
233. THE COURT: Okay. Why don't we -- I don't
234. think there is anything stopping us from having a
235. conversation. Mr. McNiven, do you have any
236. difficulty with that at this point in time? And
237. you are welcome to make comments as well. We
238. have got it on the record. The problem is that
239. the priority of debt insurance is quite an issue,
240. right?
241. MR. DENNY: It is, but the main point of
242. the whole proceeding is to sell the property and
243. turn it into money.
244. THE COURT: Yes.
245. MR. DENNY: The priorities aren't going to
246. change.
247. THE COURT: No, they are not.
248. MR. DENNY: So --
249. THE COURT: There is no reason to sit on
250. the sale pending --
251. MR. DENNY: Exactly.
252. THE COURT: I hear you about that. And
253. once the issue with respect to the order nisi is
254. dealt with, I will make that order next week.
255. MR. DENNY: Because I was just going to
256. say that in the very best case scenario the
257. property sells, BDIC gets paid, and there's money
258. left over -- the BDIC and the RRSP mortgage get
259. paid out and then there's money left over that
260. pays out, you know, the costs or whatever else is
261. out there. And --
262. THE COURT: Obviously you are talking
263. about the original $215,000 on the RRSP mortgage
264. at this point, right?
     1. MR. DENNY: Right.
     2. THE COURT: Because that -- you are
     3. already up to 400, I think you said the property
     4. is worth about 380 or 360.
     5. MR. DENNY: I don't know. I don't even
     6. know what it would be worth. My point, you never
     7. know what you're going to be dealing with until
     8. the property is sold. So in -- maybe I'm overly
     9. optimistic, but housing property is down in
     10. Yellowknife and the foreclosure could be sold for
     11. more than the appraised market value.
     12. THE COURT: You never know.
     13. MR. DENNY: Again, going back to what you
     14. said was the priorities. And, like I said, I
     15. have no problem with what's going on so far.
     16. But, again, I have to stay in the house and I
     17. have to maintain the house because you can't
     18. leave it abandoned. That's impossible. You can
     19. not do that in this town. Everything would
     20. freeze. I'm more than willing to leave, that's
     21. not an issue either. I just need to know a time
     22. frame. If it's going to be two weeks, if it's
     23. going to be a month. That's all I'm asking. The
     24. priorities of who gets paid what out of the
     25. property, that's going to be determined. I
     26. understand that. I have no issue with that.
     27. THE COURT: Well, that is something that
         1. you and Mr. McNiven on behalf of BDIC can talk
         2. about. If you come up with numbers that you can
         3. both live with, I mean, obviously that has always
         4. been on the table from the beginning. But I
         5. should think at this point in time now that the
         6. issue of the debt has been clarified those
         7. discussions might be more fruitful.
         8. So, anyway, I can have no part
         9. in that unless you want me to have a part in it.
         10. So I will leave that with you. But, yes, two
         11. weeks and we will deal with the issue of costs
         12. and any other issues that arise. My expectation
         13. is that I will be signing an order nisi in two
         14. weeks.
         15. MR. DENNY: That's March 2nd?
         16. THE COURT: March the 2nd at 10:00.

# 17 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

18 **ADJOURNED TO MARCH 2, 2018, AT 10:00 A.M.**

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# (PROCEEDINGS CONTINUED ON MARCH 2, 2018)

1. THE COURT: The Lyle Gordon Denny matter.
2. Mr. McNiven, are you in possession of a
3. transcript of the last --
4. MR. MCNIVEN: No, Your Honour, we did order
5. a transcript but it has not yet been received.
6. THE COURT: I believe it was not sent yet
7. because there was a bit of a miscommunication
8. between the management of the court order's
9. office and the transcript was filed before I had
10. the opportunity to edit it. I think I indicated
11. when we were doing this that I may actually
12. substantially edit this.
13. MR. MCNIVEN: And, in fact, that was one of
14. the -- one of the potential hiccups that I had in
15. terms of preparing for today, because although I
16. do take notes, they're not always that well
17. detailed.
18. THE COURT: Well, I can do what I can do,
19. I do have a rough transcript. Maybe what I can
20. do, if I have your solicitors undertaking to
21. destroy the transcript after we've finished
22. dealing with it.
23. MR. MCNIVEN: Right.
24. THE COURT: What I can do is direct the
25. clerk to provide a copy of my copy to you.
26. MR. MCNIVEN: Thank you.

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| 1 | THE | COURT: I'll get you a copy of it. |
| 2 | MR. | MCNIVEN: Your Honour, I haven't even |
| 3 |  | seen the transcript. |
| 4 | THE | COURT: I know you haven't seen it. |
| 5 |  | The transcript might help you in terms of putting |
| 6 |  | together the order. |
| 7 | MR. | MCNIVEN: Yes. If I got the edited |
| 8 |  | transcript, that was what I'm saying. I don't |
| 9 |  | need to see anything before that. |
| 10 | THE | COURT: Which means I have to edit it. |
| 11 | MR. | MCNIVEN: Okay. |
| 12 | THE | COURT: We'll figure that out. |
| 13 | MR. | MCNIVEN: A chicken and egg thing here. |
| 14 | THE | COURT: So in terms of today's |
| 15 |  | appearance, I think the main reason for today's |

1. appearance was the confirmation that was
2. (indiscernible) directly seeking in relation to
3. this motion.
4. MR. MCNIVEN: Now, again, Your Honour, I did
5. two things. And I may have overstepped this, but
6. I also prepared a draft order and organized that.
7. And I know I can't rely on that until you've
8. actually formally edited the transcript and so
9. forth. So I could provide a draft at least.
10. THE COURT: Well, I think you can rely on
11. that in the sense of when I gave a ruling nothing
12. is going to change.
    1. MR. MCNIVEN: Right.
    2. THE COURT: All that is going to change
    3. are the words that I might have used at the time.
    4. MR. MCNIVEN: Okay. But --
    5. THE COURT: So the order was the order the
    6. last time we were in court and that's the date of
    7. the order.
    8. MR. MCNIVEN: That's better, then, if my
    9. order works. So, Your Honour, I did prepare an
    10. affidavit and I'll give a copy to my friend. My
    11. client had not actually prepared and provided us
    12. with the calculation of the outstanding interest
    13. until late yesterday. That's the reason why I
    14. wasn't able to get the -- get that number. And
    15. it's attached to this affidavit, so if I might
    16. just provide this to the Court.
    17. THE COURT: Sure.
    18. MR. MCNIVEN: And that will help explain
    19. things.
    20. THE COURT: Thank you.
    21. MR. MCNIVEN: Now, before I get into the
    22. order obviously I need to deal with the issue
    23. about cost. So what I did in terms of that is I
    24. have provided the Court with a summary of the
    25. costs, the actual costs and the amount of costs
    26. that we're seeking. The actual costs are in
    27. Exhibit B and the memorandum of calculations that
13. shows the amount that we have reduced is in
14. Exhibit A -- I'm sorry, that's the other way
15. around. Exhibit A is the memorandum of
16. calculations, Exhibit B is a copy of the
17. calculation of costs, and Exhibit C is a copy of
18. the backup for the calculation of costs.
19. THE COURT: You're simply taking that
20. amount and dividing it in two to be --
21. MR. MCNIVEN: Not quite, Your Honour. I
22. actually went through the invoices to see if I
23. could determine what time was spent on the -- as
24. Your Honour had directed or indicated, I tried to
25. break it down into the time on the summary
26. judgment that was granted versus the part that
27. was not granted. And I was pretty close because
28. it was almost half -- it was less than half,
29. though. Slightly less than half. So the cost
30. that we're claiming would be $23,643.50. And the
31. reason -- the reason I say that is if we refer to
32. the invoices themselves and the calculation, it
33. shows the costs that were deducted from the
34. actual -- from the actual solicitor client
35. invoices.
36. THE COURT: Okay.
37. MR. MCNIVEN: And then as I had already
38. indicated, there is clearly a provision in all of
39. the loan documentation that is the contractual
40. costs that are relied on for the solicitor client
41. cost.
42. THE COURT: It's typical.
43. MR. MCNIVEN: Yes.
44. THE COURT: Mr. Denny, apart from your
45. earlier statement and in reference to my initial
46. analysis, do you have anything you want to add to
47. the cost?
48. MR. DENNY: I do and I don't. It might be
49. just one point. Because it's just being added to
50. what's owed under the guarantees any way, which
51. more than likely will not be paid any ways
52. because I don't have the money. So it basically
53. forces me (indiscernible) which costs become
54. irrelevant because I don't have the money to pay
55. it in the first place. So I can come up with a
56. bunch of stuff, but it's really a waste of
57. everybody's time.
58. THE COURT: Well, and either way you're
59. going to be forced to bankruptcy.
60. MR. DENNY: Probably.
61. THE COURT: Can I see the draft order
62. next, please? Mr. McNiven, perhaps you can help
63. me with the information of amounts to owe. The
64. application for summary judgment was denied, so I
65. need you to talk me through this. The $215,000
66. plus interest that you were seeking is the total

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| 1 |  | amount of all indebtness under all of the |
| 2 |  | instruments? |
| 3 | MR. | MCNIVEN: Yes. |
| 4 | THE | COURT: The mortgage is only referred |
| 5 |  | to two and there were only two mortgages, |
| 6 |  | correct? |
| 7 | MR. | MCNIVEN: Yes. |
| 8 | THE | COURT: The order -- explain to me, |
| 9 |  | you're not claiming priority with respect to the |

1. debt, you're simply claiming the debt as against
2. the property, correct?
3. MR. MCNIVEN: Yes. And my understand -- and
4. I anticipated this, Your Honour, and I was going
5. to raise this. My understanding was that on

15 November 23rd, I think it was, or 24th we had

1. reviewed the mortgage and the cross default
2. clause in the mortgage and the cross default
3. agreement. Now, that cross collateralized all of
4. the security and that's why we've got that amount
5. in the declaration. So that's basically why the
6. declaration is worded the way that it is. And
7. this is another thing that I wanted to read from
8. the transcript to see if there was -- if that
9. would help me. But my understanding in any notes
10. from chambers on that date indicated that the
11. Court had agreed with that argument.
12. THE COURT: What I had agreed with is the
    1. argument that Mr. Denny owed what he owed. In
    2. terms of -- under the four -- was it four or five
    3. loan documents? It was five, I believe.
    4. MR. DENNY: Four loans and four
    5. guarantees.
    6. THE COURT: Okay. So it was four loans,
    7. four guarantees. And that was the amount that he
    8. is now a judgment debtor owner, correct?
    9. MR. MCNIVEN: Yes.
    10. THE COURT: In terms of the order nisi I
    11. think you're -- you're certainly not limited in
    12. terms of making a greater claim against whatever
    13. comes out of the proceeds, but in terms of
    14. establishing the order nisi and a potential
    15. argument for priority, I think you've got an
    16. undisputed debt. And this is only with respect
    17. to summary judgment. It's not what I think would
    18. happen after trial, it's how far I'd be willing
    19. to go on summary judgment. I think as far as the
    20. summary judgment goes, the two mortgage debts,

21 was it 70,000 and 55,000?

1. MR. MCNIVEN: Yes.
2. THE COURT: So for a total of $125,000.
3. That's the amount that was capped as mortgage
4. land billing against the property. Now, I think
5. that you would likely be successful with respect
6. to the cross collateral claims, but as far as
7. which loans would then take priority over the
8. secured amount with respect to the Denny mortgage
9. that's being held by Canada Trust, that's an
10. issue that's going to have to be sorted out.
11. It's not an issue that I can make a determination
12. on at this point in time. As you indicated last
13. time, the priorities are not going to change.
14. The fact is the property has to get sold.
15. MR. MCNIVEN: And there's -- I mean, at that
16. point in time there is a postponement agreement
17. as far as the Canada Trust mortgage goes, so...
18. THE COURT: There is a postponement
19. agreement with respect to the 70 and the $55,000.
20. MR. MCNIVEN: Okay.
21. THE COURT: Right? That's what the
22. agreement was.
23. MR. MCNIVEN: Right. Okay. I'm with you.
24. So what I need to do, then, is change the --
25. change the interest amount. Because the claim
26. amount isn't going to -- isn't going to change.
27. And my friend had actually provided a backup
28. calculation that deals with that amount. I'll
29. give a copy to my friend. So we have the 70,000
30. and $55,000 mortgage and we have calculated the
31. interest on both of those as well.
32. THE COURT: And I think the issue is how
33. far I was willing to go in the summary judgment

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| 1 |  | ruling. You're referring to everything as |
| 2 |  | mortgages? |
| 3 | MR. | MCNIVEN: Right. |
| 4 | THE | COURT: I think you're going to need |
| 5 |  | to divide the two. The application for the order |
| 6 |  | nisi is with respect to the two mortgages, right? |
| 7 | MR. | MCNIVEN: Yes. |
| 8 | THE | COURT: That amount -- you've already |
| 9 |  | got a ruling -- I think there was a separate |
| 10 |  | ruling with respect to the establishment of |
| 11 |  | Mr. Denny's -- |
| 12 | MR. | MCNIVEN: So what I would anticipate |
| 13 |  | doing, Your Honour, and I think I can do this |

1. relatively quickly is under paragraph 1 where it
2. refers to the summary judgment I can clarify the
3. amount there and refer to the guarantee. And
4. then the declaration with reference to the
5. mortgages and that will split it into the two
6. bits that need to be reflected in the order.
7. THE COURT: Well, I believe as well, the
8. mortgage guarantees with respect to the personal
9. indebtness Mr. Denny was signing off on. I don't
10. believe that those capped amounts, the 70 and the
11. $55,000, did they carry -- were they specifically
12. plus interest or were they simply limited
13. liability to that amount?
14. MR. MCNIVEN: They include interest from the

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| 1 |  | date of demand and that's the -- |
| 2 | THE | COURT: Okay, thank you. |
| 3 | MR. | MCNIVEN: -- amount in the calculation. |
| 4 | THE | COURT: Okay. So that's the |
| 5 |  | escalation you're going to have to come up with? |
| 6 | MR. | MCNIVEN: Yes. And I do have that, if I |
| 7 |  | can provide it to the Court you can see what I'm |
| 8 |  | referring to. The difference comes out to -- |
| 9 |  | that amount would be $145,032.76 for the |
| 10 |  | mortgages. |
| 11 | THE | COURT: Total. |
| 12 | MR. | MCNIVEN: Right. |
| 13 | THE | COURT: Okay. |
| 14 | MR. | MCNIVEN: And then the guarantee would |
| 15 |  | be the higher amount that I'd put in this -- in |
| 16 |  | this draft. |
| 17 | THE | COURT: Right. So the -- so you'll |

1. (indiscernible) two orders with respect to
2. Mr. Denny's personal indebtness, which is the
3. total amount.
4. MR. MCNIVEN: Right.
5. THE COURT: And then you're going to have
6. the order nisi with respect to the property,
7. which is only going to encompass the two
8. mortgages and the interest component of the two
9. mortgages.
10. MR. MCNIVEN: Right. And what I -- what I
    1. was trying to articulate is I could put that in
    2. one order as long as I split it into two
    3. sections.
    4. THE COURT: Okay. What I don't mind is a
    5. mischaracterization of the entire debt as being
    6. decided at the summary judgment --
    7. MR. MCNIVEN: Right.
    8. THE COURT: -- as the mortgage debt. And
    9. I haven't.
    10. MR. MCNIVEN: And this was what I -- I was
    11. hoping I could -- I'm pretty sure the transcript
    12. didn't deal with the cross default and the
    13. implications of that.
    14. THE COURT: I think the transcript is
    15. organic, things kind of growing as we go along.
    16. That's one of the reasons why I wanted to edit it
    17. as well. But if it wasn't clear the last time,
    18. that was my intention --
    19. MR. MCNIVEN: Okay.
    20. THE COURT: -- is that I wasn't willing
    21. to go the full distance. But I certainly
    22. accepted your arguments with respect to the
    23. indebtness of Mr. Denny and personal guarantees.
    24. I accept that there are mortgages. As to whether
    25. or not mortgages are, in fact, a priority, is not
    26. my issue.
    27. MR. MCNIVEN: Right.
11. THE COURT: But there are those
12. postponement agreements, when they have force,
13. when they don't. And my guess is that when the
14. matter proceeds through after the sale of the
15. home the amount that you're going to come up
16. with, 143 or whatever it is, is going to be
17. successfully high to (indiscernible) the value of
18. the property. But that's not for me to decide
19. here today.
20. MR. MCNIVEN: Would you like me to provide
21. the calculation for the mortgages?
22. THE COURT: No, I'm content with your
23. calculation, it's just the division of it has
24. to --
25. MR. MCNIVEN: Right.
26. THE COURT: -- take place before I'm
27. going to sign off on the orders. Mr. Denny, does
28. that all make sense to you?
29. MR. DENNY: Well, I'll just run it by you,
30. if that's okay.
31. THE COURT: Sure.
32. MR. DENNY: As far as I understand from
33. summary judgment, you're denying the summary
34. judgment against the (indiscernible) and
35. you're --
36. THE COURT: I'm not finding that there's a
37. sufficient threshold for me to make a summary
38. determination. I'm not finding that it didn't
39. happen.
40. MR. DENNY: Right. And you're saying that
41. the guarantees are in force and I owe X amount of
42. dollars?
43. THE COURT: Yes.
44. MR. DENNY: Okay. With regards to the
45. property, which you say there's three mortgages
46. on, I won't even go into that --
47. THE COURT: Two mortgages. It's two
48. mortgages from them and a mortgage from you.
49. Yes.
50. MR. DENNY: Okay. And we need to decide
51. the priorities with respect to that property. So
52. as far as this summary judgment side, I will put
53. it over here, I understand that's not an issue, I
54. need to know what we need to go forward on the
55. property. I guess we'll have to have another
56. hearing or something with regards to deciding the
57. priority on the -- who has priority on the
58. mortgage.
59. THE COURT: Yes. Basically, in the order
60. nisi, there are mortgages and they are making an
61. application for foreclosure. As to what actually
62. happens with the proceeds of that application,
63. that's another issue, right?
64. MR. DENNY: Yes.
65. THE COURT: But at this point at least
66. there's going to be movement, the house will get
67. sold.
68. MR. DENNY: Okay. Because it has to be
69. foreclosed on because technically I don't own the
70. house.
71. THE COURT: Well, and that's -- I wasn't
72. blind to the fact that this isn't necessarily
73. completely contrary to your interests or to the
74. BDIC's interests, right? Neither one of you is
75. able to move forward until something happens,
76. right? So I am going to sign an order nisi.
77. MR. DENNY: Right.
78. THE COURT: I just want to make sure that
79. the order nisi doesn't go beyond -- and I don't
80. fault Mr. McNiven for this, this is a complicated
81. file, we've been trying to work our way through
82. it, but I don't fault him for what's in front of
83. me today. I just want to make it a little bit
84. clearer that the guaranteed debt, the mortgage
85. debt that is driving the order nisi, is there.
86. The cross collateral claims are likely fully
87. enforceable and I just didn't make a ruling on
88. that. The main reason why I didn't make a ruling
89. on it at this point in time is that I believe
90. that the cross collateral agreements came later
91. than the original $70,000 mortgage.
    1. MR. DENNY: Most definitely.
    2. THE COURT: Again, I'm not saying that
    3. they wouldn't be held up in court. What I'm
    4. saying is that I wasn't willing to do that at the
    5. level of the summary judgment application, that's
    6. all.
    7. MR. DENNY: No, and that's fine.
    8. THE COURT: And I had to be mindful of
    9. that as I went through the file, obviously,
    10. because my temptation always is to complete
    11. matters and get everything done. But there are
    12. limitations. So Mr. McNiven is clear on what the
    13. order has to say at this point in time. I don't
    14. know that I need to drag you both back to court
    15. in order for you to sign off on that. I'm
    16. prepared to do that as soon as I get the order.
    17. I'm in a jury trial next week
    18. and then I'm out for March break. So I presume
    19. that -- I mean, I can certainly sign orders if
    20. I'm not in a jury trial, that's not an issue, I
    21. just can't bring it back to court.
    22. MR. MCNIVEN: Now, Your Honour, one final
    23. thing that we can deal with today is the
    24. redemption period, and my client is seeking a
    25. three month redemption period. That will enable
    26. the property -- enable Mr. Denny to do what he
    27. needs to do to make repairs of whatever and to
92. provide vacant possession so that the property
93. can be sold. Or alternately, you know, when we
94. do sell the property he can vacate the property.
95. THE COURT: I'll hear from you on this as
96. well, Mr. Denny. I'll just let you know what my
97. first thoughts are. The redemption period makes
98. perfect sense to me. I'm assuming there's going
99. to be some cooperation from you, Mr. Denny?
100. MR. DENNY: Well, I will try.
101. THE COURT: So I'm assuming cooperation.
102. If that doesn't happen, I might have to get
103. involved again. But a 90 day redemption period
104. makes sense. I think there should be a caveat
105. that would allow you to remain in the home
106. providing you cooperate with the sale until the
107. closing point.
108. MR. DENNY: Okay. And I --
109. THE COURT: So in 90 days it will be ready
110. for sale.
111. MR. DENNY: That doesn't mean I'm selling
112. the property, that means the court is selling the
113. property?
114. MR. MCNIVEN: You can --
115. MR. DENNY: I don't want to sell the
116. property. I don't think I'm -- it's not my
117. property, it's the company's. The company
118. doesn't exist to me, the court has to sell the

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| --- | --- | --- |
| 1 |  | property. That's just -- |
| 2 | THE | COURT: What do you suggest, |
| 3 |  | Mr. McNiven? |
| 4 | MR. | MCNIVEN: I just want to clarify. I'm |
| 5 |  | not going to make a suggestion because it's up to |
| 6 |  | Mr. Denny to decide what he would like to do, but |
| 7 |  | I can pretty well guarantee that if we have to |

1. sell the property it's going to cost more. And
2. if Mr. Denny wants to sell the property, the
3. company still owns it up until the final Order
4. for Sale. So if he wants to try to sell it he
5. can have that and we're fine with that.
6. THE COURT: He would have to then
7. reinstate the company in order to sell it.
8. MR. MCNIVEN: Well, he's going to have to do
9. whatever he needs to do. But I think that would
10. be part of the -- if just for hypothetically if I
11. were acting as a solicitor on that sale, in order
12. to get the company in good standing it would cost
13. a few hundred dollars out of the sale of, you
14. know, 300 some thousand dollars, I would
15. anticipate that's not going to be a big problem
16. for a lawyer to do. So if Mr. Denny wanted to,
17. he could have done that at any point in time, and
18. he still can.
19. THE COURT: Another thing we can do,
20. Mr. McNiven, which would involve less cost is
21. that if Mr. Denny wanted to put the place up for
22. sale, when we get to the point where you're
23. actually dealing with the documents, I could make
24. an Order for Sale and agree on an Order for Sale;
25. then we wouldn't even have to reinstate Surly
26. Bob's.
27. MR. MCNIVEN: Yes.
28. THE COURT: Right?
29. MR. MCNIVEN: That's another way to do it,
30. yes.
31. THE COURT: Mr. Denny is reluctant to
32. reinstate Surly Bob's, I'll leave that to him,
33. but it does seem to be a real reluctance. So if
34. there's a way around that by just providing a
35. simple order for my signature, I'm quite prepared
36. to do that. That would then allow you,
37. Mr. Denny, to try to get back some value from the
38. property and not -- and correct me if I'm wrong,
39. Mr. McNiven, but it's typically about between 10
40. and $15,000 of costs associated with the sale of
41. a home, right?
42. MR. MCNIVEN: It's a percentage for the
43. realtor so that --
44. THE COURT: Well, there's a percentage for
45. the realtor. I'm talking about the legal costs
46. if the bank actually had to go through the
47. process itself.

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| --- | --- | --- |
| 1 | MR. | MCNIVEN: I think that's reasonable. |
| 2 | THE | COURT: Yes, because that's roughly |
| 3 |  | what I recall seeing on a number of these sorts |
| 4 |  | of cases. |
| 5 | MR. | DENNY: Right. |
| 6 | THE | COURT: Does that help? |
| 7 | MR. | DENNY: That helps there. I have one |
| 8 |  | more question -- |
| 9 | THE | COURT: Sure. |
| 10 | MR. | DENNY: -- or point that needs to be |
| 11 |  | addressed. Again, the house can be sold, |

1. whatever, and the proceeds are going to go
2. wherever, that's fine, I have no issues with that
3. part. But we need to determine the priorities,
4. and how do we do that?
5. THE COURT: That's not for me to say at
6. this point.
7. MR. DENNY: Okay.
8. THE COURT: I think that's something that
9. I would suggest you discuss with Mr. McNiven and
10. that you do so with a very open mind to
11. possibilities. With respect to the order for
12. costs. Mr. McNiven, I did reconsider after your
13. submissions last time, and you're right. The
14. challenges to the loans themselves are very
15. clearly without merit and as such the solicitor
16. client costs that you've now narrowed down are
17. appropriate. I am going to grant the order for
18. costs with respect to that. That order for costs
19. will not attach to the mortgage debt, but will
20. attach to the general indebtness. In other
21. words, I don't want to see it added to the order
22. nisi.
23. MR. MCNIVEN: I do have a submission.
24. THE COURT: Sure.
25. MR. MCNIVEN: Because those costs are
26. secured by the mortgage. We could not have sold
27. the property without going through all of those
28. exercises to get there. We had -- I counted
29. them, counting today 15 court appearances
30. including all the case management and so forth.
31. So this lasted a very long time because of the
32. defence that was filed. And although it might
33. have seemed simple to the Court, it certainly --
34. THE COURT: It didn't seem simple to the
35. Court, Mr. McNiven.
36. MR. MCNIVEN: On the judgment. On the debt
37. part, though.
38. THE COURT: Okay.
39. MR. MCNIVEN: It was very complicated
40. because Mr. Denny made it very complicated. And
41. we tried to fasttrack it by putting it in case
42. management, and Mr. Denny was cooperative, I'm
43. not faulting him for that, but the reality was
44. when he provided us with an encyclopedia of cases
45. dealing with every single defence you could come
46. up with, it really required a lot of work to go
47. through that. In addition, we had to go through
48. the cross-examination on the affidavit so that we
49. could clarify what was going on. So I tried to
50. help -- in essence, I looked at it as if I was
51. more or less trying to -- in order to assist the
52. Court I was trying to clarify things from
53. Mr. Denny's perspective as a self-represented
54. litigant so that we could cut to the chase as
55. fast as we could, which is unfortunately not very
56. fast.
57. THE COURT: Mr. Denny, any comments beyond
58. the comments you've already made with respect to
59. the impact of the costs? You've convinced me,
60. Mr. McNiven. You're going to have the costs of
61. the order nisi. When do you expect to get those
62. orders for my signature?
63. MR. MCNIVEN: I want to say today, Your
64. Honour. It won't take long because I do have the
65. calculation.
66. THE COURT: Anytime next week is fine.
67. MR. MCNIVEN: And I was going to say, I want
68. to say today, but I think it may be more likely
69. that by the middle of next week at the latest I
70. can get them to you.
    1. THE COURT: I look forward to seeing them.
    2. MR. MCNIVEN: Thank you.
    3. THE COURT: And do we need another court
    4. appearance?
    5. MR. MCNIVEN: I don't think so. I think
    6. we're fine now. I think if we can get on with
    7. the next part then hopefully the next time this
    8. will be before the Court will be with an order
    9. where Mr. Denny has sold the property. And if
    10. not we'll be there with an Order for Sale.
    11. THE COURT: Mr. McNiven, we'll adjourn
    12. *sine die*. Before we do that I want to thank you
    13. for your hard work on this file.
    14. Mr. Denny, we deal with a
    15. fairly large number of self-represented persons.
    16. You have conducted yourself as a gentleman and
    17. it's appreciated by the Court. I wish you well.
    18. We'll sign off.

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# 1 CERTIFICATE OF TRANSCRIPT

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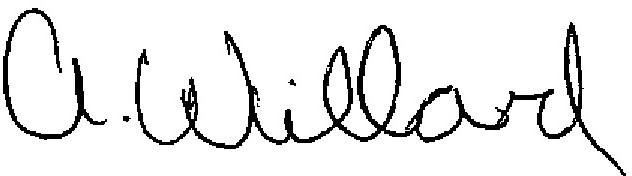
1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 22nd day of March, 2018.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. Allison Willard
2. Court Reporter

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