Federal Courts Reports
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A-154-21

2023 FCA 95

His Majesty the King in right of Canada (*Appellant / Respondent by cross-appeal*)

v.

Bezan Cattle Corporation, Barbara Bezan and **Latyon Bezan** (*Respondents / Appellants by cross-appeal*)

INDEXED AS: CANADA V. BEZAN CATTLE CORPORATION

Federal Court of Appeal, Rennie, Monaghan and Roussel JJ.A.—By videoconference, November 16, 2022; Ottawa, May 9, 2023.

Agriculture — Appeal, cross-appeal from Federal Court decision dismissing action against Barbara and Layton Bezan (Bezans) but granting summary judgment against Bezan Cattle — Attorney General seeking to set aside that judgment and have summary judgment entered against them — Bezan Cattle cross-appealing, asking that summary judgment against it be set aside or, alternatively, that matter be remitted to Federal Court for trial — In 2008, Bezan Cattle and Bezan Feeders Inc. (BFI) applied for advances from Manitoba Livestock Cash Advance Inc. (MLCA) under Advance Payments Program (Program) established by Agricultural Marketing Programs Act — Under Program, producers of agricultural product may apply for advance payments from certain administrators, including organizations involved in marketing the product — Advances secured against agricultural product, repayable as set out in repayment agreement between producer, administrator — Corporation eligible to receive advance under Program only if shareholders agreeing to be jointly, severally liable with corporation to administrator — As shareholders, Bezans signed document labelled "Joint and Several Guarantee" under which they agreed "to be jointly and severally liable" for any amount owing by applicant under Program — Bezan Cattle's application requested $100,000 — BFI's application for approximately $200,000 changed to indicate that Bezan Cattle, rather than BFI, was the applicant — Circumstances in which these changes made, and who made them, unclear — Minister of Agriculture and Agri-Food (Minister) subsequently granted two stays of default to cattle, hog producers who had received advances under the 2008–2009 Program — Terms of stay required Bezan Cattle to negotiate amended repayment agreement with MLCA or to rollover part of outstanding balance to current production period — Bezan Cattle did not provide all of required documentation for rollover — MLCA asked Bezan Cattle to execute, return settlement agreement under which outstanding $300,000 advance plus interest would be repaid over five-year period — Monthly payments made until 2013, but then stopped — In 2014, MLCA asked Minister to repay amounts owing to it — Minister thereby became subrogated to MLCA's claims against Bezan Cattle, Bezans — Brought action to recover amount owing, later brought motion for summary judgment — Before Federal Court, Bezans argued, inter alia, that advances void because MLCA

made unilateral, material changes to them without their consent — Also asserted that their obligations under the Joint and Several Guarantee were unenforceable under The Saskatchewan Farm Security Act (SFSA), s. 31 — Federal Court concluded there was no genuine issue for trial — In its view, Bezan Cattle, Bezans raised no credibility issues that would preclude summary judgment — Federal Court also concluded that Bezans' subsequent actions caused Bezan Cattle to accept legal responsibility for advances — Determined that the Joint and Several Guarantees executed by Bezans were guarantees as defined in SFSA, s. 31(1)(b), and in absence of any evidence that formalities required by s. 31 were met, were unenforceable against them — Accordingly, Federal Court dismissed action against Bezans — Attorney General appealed decision to dismiss action against Bezans, asserting that Federal Court erred in concluding that SFSA, s. 31 applies to Joint and Several Guarantee — Bezan Cattle cross-appealed decision to grant summary judgment against it, alleging Federal Court erred in deciding there was no genuine issue for trial given differences in evidence regarding changes to applications for advances — Issue on appeal whether Joint and Several Guarantee constituting guarantee as defined in SFSA, s. 31 — Federal Court erred in adopting analysis in Prairie Centre Credit Union Ltd. v. River Ridge Cattle Corp., concluding that "a farmer is a form of a mortgagor (that can be different than a real property mortgagor) who grants security over other assets used in farming" — Only a person who has granted a secured interest (mortgage) over farm land, or is otherwise specifically described in definition of mortgagor in SFSA, s. 2, qualifying as mortgagor, and so a farmer for purposes of s. 31 — Federal Court correctly observed that SFSA defines "mortgagor" to include (1) purchaser under an agreement for the sale of farm land, (2) personal representative, successor or assignee of such purchaser or mortgagor, (3) person claiming through such a purchaser or mortgagor — However, Federal Court did not observe that these three specific inclusions only describe persons that fall outside ordinary meaning of mortgagor — Term "mortgagor" imprecise, equivocal — Definition insufficient for determining whether legislators intended mortgagor to be interpreted as including person who grants chattel mortgage — Intended ordinary meaning of definitions of mortgagor, mortgagee having to be gleaned from their context, purpose — Mortgagor intended to mean person who has granted mortgage on real property — Person who has granted chattel mortgage cannot qualify as mortgagor for purposes of SFSA — To qualify as mortgagor, person must have granted mortgage over farm land or be within one of specific inclusions in definition of mortgagor — Purpose of term "mortgagor" is to identify person who has granted security in the form of mortgage over real property that is farm land and homestead — For purposes of s. 31, a farmer is a mortgagor — In order to fall within that definition, Bezan Cattle had to be a farmer as defined for that purpose — Applying textual, contextual, purposive interpretation, a mortgagor is a person who has granted a mortgage over farm land or is otherwise described in specific inclusions in definition of mortgagor in SFSA, s. 2 — Chattel mortgagor not a mortgagor for purposes of SFSA — No evidence on record that Bezan Cattle was a farmer within meaning of s. 31 — Bezans led no evidence that Bezan Cattle owned land or had granted a mortgage over land — Appeal therefore allowed — As for cross-appeal, issue whether there was genuine issue for trial for purposes of motion for summary judgment — Bezan Cattle asserted that Federal Court erred in deciding there was no genuine issue for trial, in holding it liable for advanced funds — Federal Court did not err in concluding there was no genuine issue for trial — No doubt that Federal Court understood that BFI, Bezan Cattle separate entities — Federal Court made no reviewable errors in coming to its conclusion that Bezan Cattle was liable for advances, in granting summary judgment against Bezan Cattle — Appeal allowed; cross-appeal dismissed.

STATUTES AND REGULATIONS CITED

Agricultural Marketing Programs Act, S.C. 1997, c. 20, ss. 10(1)(d), 22, 23(1),(2).

Federal Courts Act, R.S.C., 1985, c. F-7, s. 53(1)(b)(i).

The Legislation Act, S.S. 2019, c. L-10.2, ss. 2-10, 2-18(1), 2-27(1),(2) (as am. by S.S. 2022, c. 19, s. 7).

The Saskatchewan Farm Security Act, S.S. 1988–89, c. S-17.1, ss. 2(1) "homestead", "implement", "mortgage", mortgagee", "mortgagor", "purchase money security interest", "secured party", "security agreement", "security interest",(2) "farmer", 3 "action", "farmer", 4, 9,

11, 12, 13, 15, 17, 18, 21(7) “farmer”, 25 “action”, 26, 27(1),(2), 27.1(b) “farmer”, 31 “creditor”, “guarantee”, 39(1) “farmer”, 41, 42, 43 “farmer”, 44, 45(a) “farmer”, 46(1) “article”, 65 “farmer”, 66, 71, 73, 109.

CASES CITED

NOT FOLLOWED:

Prairie Centre Credit Union Ltd. v. River Ridge Cattle Corp., 2010 SKQB 135 (CanLII), 353 Sask. R. 300.

APPLIED:

Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

CONSIDERED:

Moodie v. Canada, 2021 FCA 121; *Saint John Tug Boat Co. v. Irving Refining Ltd.*, [1964] S.C.R. 614, 46 D.L.R. (2d) 1; *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29, [2020] 3 S.C.R. 247; *Lyle Harvey Trimble (Re)*, 2017 SKQB 59 (CanLII), [2017] 8 W.W.R. 815; *Dietz v. Bank of Montreal*, 1996 CanLII 4903, 107 W.A.C. 263 (Sask. C.A.); *Bank of Montreal v. Coutts* (1992), 99 Sask. R. 144, 87 D.L.R. (4th) 352 (Sask. Q.B.); *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; *Milano Pizza Ltd. v. 6034799 Canada Inc.*, 2018 FC 1112, 159 C.P.R. (4th) 275; *Gemak Trust v. Jempak Corporation*, 2022 FCA 141, [2023] 1 F.C.R. 461.

REFERRED TO:

Ehler Marine & Industrial Service Co. v. M/V Pacific Yellowfin (Ship), 2015 FC 324, 477 F.T.R. 7; *Blais v. Canada (Attorney General)*, 2004 FC 1638, 263 F.T.R. 151; *Trans Tec Services Inc. v. Lyubov Orlova (The)*, 2001 FCT 958, [2001] 4 F.C. D-45; *R. v. A.D.H.*, 2013 SCC 28, [2013] 2 S.C.R. 269; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795; *Kovlaske v. Canadian Imperial Bank of Commerce*, 2002 SKQB 434 (CanLII), 226 Sask. R. 200; *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6; *Bank of Montreal v. Wakaw Enterprises Ltd. et al. (No. 2)*, 1990 CanLII 7409, 90 Sask. R. 17 (Q.B.); *Manitoba v. Canada*, 2015 FCA 57, 470 N.R. 187; *Burns Bog Conservation Society v. Canada*, 2014 FCA 170, 83 C.E.L.R. (3d) 1; *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; *Gupta v. Canada*, 2021 FCA 31, 77 Imm. L.R. (4th) 173; *Badawy v. Igras*, 2019 FCA 153; *Quan v. Cusson*, 2009 SCC 62, [2009] 3 S.C.R. 712.

APPEAL and CROSS-APPEAL from a Federal Court decision (2021 FC 397) dismissing action against Barbara and Layton Bezan but granting summary judgment against Bezan Cattle. Appeal allowed; cross-appeal dismissed.

APPEARANCES

Don Klaassen and *Stephen McLachlin* for appellant/respondent by cross-appeal.

Shawn Patenaude and *Courtney Yaremchuk* for respondents/appellants by cross-appeal.

SOLICITORS OF RECORD

Deputy Attorney General of Canada for appellant/respondent by cross-appeal.

Shawn Patenaude Legal Prof. Corp., Yorkton, Saskatchewan, for

respondents/appellants by cross-appeal.

The following are the reasons for judgment rendered in English by

[1] MONAGHAN J.A.: The Attorney General of Canada on behalf of the federal Minister of Agriculture and Agri-Food (Minister) brought a motion for summary judgment against Bezan Cattle Corporation (Bezan Cattle) and its two shareholders, Barbara and Layton Bezan. The Federal Court (2021 FC 397 *per* Justice Little [reasons]) granted summary judgment against Bezan Cattle but dismissed the action against the Bezans.

[2] The Attorney General appeals that decision and asks this Court to set aside the judgment dismissing the claim against the Bezans and to enter summary judgment against them. Bezan Cattle cross-appeals, asking this Court to set aside the summary judgment against it or, alternatively, to remit the matter to the Federal Court for trial.

[3] I would allow the appeal and dismiss the cross-appeal. Before explaining my reasons, a brief outline of the relevant background is warranted.

I. Background

A. *The Federal Advance Payments Program*

[4] The *Agricultural Marketing Programs Act*, S.C. 1997, c. 20, (AMPA) establishes and governs the Advance Payments Program (the Program) which supports agricultural producers. Under the Program, producers of agricultural product may apply for advance payments from certain administrators, including organizations involved in marketing the product. The advances are secured against the agricultural product and are repayable as set out in the repayment agreement between the producer and the administrator. The AMPA mandates certain terms in the agreements between the administrator and the producer.

[5] A corporation is eligible to receive an advance under the Program only if its shareholders agree in writing to be jointly and severally liable with the corporation to the administrator: AMPA, paragraph 10(1)(d) and section 22.

[6] If the producer defaults in its repayment obligations, the administrator may ask the Minister to repay any outstanding amount to the administrator and, provided certain conditions are met, the Minister must do so: AMPA, subsection 23(1). Once the Minister pays the administrator, the Minister is subrogated to the administrator's rights against the producer and any person jointly and severally liable with the producer: AMPA, subsection 23(2).

[7] As this Court has previously explained, "[t]he program facilitates access to credit for agricultural producers by transferring a substantial portion of the lending risk to the Minister" but the "Minister is nevertheless entitled to be made whole in the event of the producer's default": *Moodie v. Canada*, 2021 FCA 121, at paragraphs 5 and 6.

B. *Advances at Issue*

[8] In 2008, Bezan Cattle and Bezan Feeders Inc. (BFI), another corporation owned by the Bezans, applied for advances from Manitoba Livestock Cash Advance Inc.

(MLCA) under the Program. Bezan Cattle applied for an emergency advance on April 9, 2008, and BFI applied for a continuous flow advance on April 29, 2008.

[9] In each case, the application consisted of several documents including an application form and a repayment agreement. As required by MLCA and the AMPA, the Bezans, as shareholders, signed a document labelled “Joint and Several Guarantee” under which they agreed “to be jointly and severally liable” for any amount owing by the applicant under the Program.

[10] Bezan Cattle’s application originally requested $45,938.88, but that amount was changed to $100000. BFI’s application for approximately $200,000 was changed to indicate that Bezan Cattle, rather than BFI, was the applicant. The circumstances in which these changes were made, and who made them, are unclear. However, the Federal Court was satisfied MLCA sent the revised application forms to the Bezans: reasons, at paragraphs 18 and 25. I will return to the relevance of these changes to the Federal Court’s decision later in these reasons.

[11] In their affidavits filed in response to the summary judgment application, the Bezans affirmed that they did not authorize any changes to the application forms for the advances. However, those affidavits did not contest that the money had been advanced, received and used, or that MLCA’s letters and the enclosed revised application forms had been received by the Bezans: reasons, at paragraphs 18 and 25.

[12] MLCA deposited the $100,000 emergency advance (less certain fees deducted at source) in Bezan Cattle’s bank account and the $200,000 continuous flow advance (again less certain fees deducted at source) in BFI’s bank account, as requested in the applications. The emergency advance was repayable after 12 months and the continuous flow advance before September 30, 2009. The security for the advances included Bezan Cattle’s cattle.

[13] The Minister subsequently granted two stays of default to cattle and hog producers who had received advances under the 2008–2009 Program. The first was granted in 2009 and, on May 19, 2009, both Bezans executed a stay of default agreement on behalf of Bezan Cattle. Under this stay, no payments on account of the advances were required before October 15, 2010.

[14] By letter dated November 30, 2010, MLCA advised Bezan Cattle that the Minister had granted a second stay effective October 1, 2010, for an 18-month period. The letter identified $300,000 plus interest as owing by Bezan Cattle to MLCA. To qualify for the stay, MLCA’s letter asked that the Bezans read the enclosed acknowledgement of the stay, and that before December 31, 2010, one of them sign and return it with a $500 cheque. On December 20, 2010, Mr. Bezan signed the acknowledgement and returned it to MLCA with a $500 cheque drawn on Bezan Cattle’s bank account and signed by Ms. Bezan.

[15] The terms of the second stay required Bezan Cattle to negotiate an amended repayment agreement with MLCA before May 31, 2011, or to rollover part of the outstanding balance to the current production period. While Bezan Cattle sought to rollover a portion of the outstanding advance, it did not provide all of the required documentation. By letter dated November 1, 2011, MLCA asked Bezan Cattle to execute and return an enclosed settlement agreement under which the outstanding

$300,000 advance plus interest would be repaid over a five-year period, with monthly payments commencing in August 2012. The Bezans signed the settlement agreement on behalf of Bezan Cattle and monthly payments were made until July 2013, but then stopped.

[16] On May 30, 2014, MLCA asked the Minister to repay the amounts owing to it and informed Bezan Cattle it had done so. MLCA received payment on August 13, 2014, and the Minister thereby became subrogated to MLCA's claims against Bezan Cattle and the Bezans. Failing to obtain payment from them, on June 18, 2019, the Minister brought an action in the Federal Court to recover the amount owing and, approximately one year later, brought a motion for summary judgment.

II. The Motion before the Federal Court

A. *Positions of the Parties*

[17] Before the Federal Court, the Minister submitted that there was no genuine issue for trial and judgment should be granted against Bezan Cattle and the Bezans.

[18] Bezan Cattle and the Bezans argued both the summary judgment motion and the action against them should be dismissed, or alternatively, that the matter should be sent to trial.

[19] In the Bezans' submission, the agreements in relation to the advances were void because MLCA made unilateral and material changes to them without their consent, including changing the amount of the emergency advance and changing the applicant from BFI to Bezan Cattle for the continuous flow advance. This, they asserted, was fraudulent. Alternatively, they submitted, the contracts should be considered void because they had been executed under duress and were unconscionable.

[20] The Minister contended that the Bezans had consented to the changes to the application forms and that, in any event, the agreements were valid and enforceable under the contract law doctrines of offer, acceptance and consideration. The Minister asserted that the application forms constituted offers and the modifications were counter-offers which Bezan Cattle and the Bezans accepted by their subsequent conduct.

[21] The Bezans also asserted, whatever the liability of Bezan Cattle, their obligations under the Joint and Several Guarantee were unenforceable under section 31 of *The Saskatchewan Farm Security Act*, S.S. 1988–89, c. S-17.1 (SFSA). Under section 31, a guarantee as there defined has no effect unless certain formalities are satisfied when it is executed. In particular, the individual must appear before a lawyer or notary public who must be satisfied that the individual is aware of the contents of the guarantee and understands it. If satisfied, the lawyer or notary must issue a certificate that must be attached to, or noted on, the guarantee. The Bezans asserted they had not sought or been given legal advice in connection with the Joint and Several Guarantee.

[22] Paragraph 31(1)(b) of the SFSA defines guarantee for this purpose as follows:

> **Limits and acknowledgment of guarantees**
>
> **31**(1) …

(b) **"guarantee"** means a deed or written agreement whereby an individual enters into an obligation to answer for an act, default, omission or indebtedness of a farmer in relation to farm land or other assets used in farming, but does not include guarantees entered into prior to the coming into force of this Act;

[23] The Minister argued that section 31 did not apply because the Bezans' obligation was not a guarantee, but an indemnity. That is, the Bezans—like Bezan Cattle—were primary obligors, not guarantors. Secondly, said the Minister, the default was not in relation to assets used in farming because the advances related to Bezan Cattle's cattle which were not assets used in farming but rather products derived from using other assets.

B. *The Federal Court Decision*

[24] The Federal Court concluded that there was no genuine issue for trial. In its view, Bezan Cattle and the Bezans raised no credibility issues that would preclude summary judgment and the evidentiary issues they raised did not present any issue of fact or law that could not be determined with confidence on the record. The Federal Court was satisfied that it had the evidence necessary to adjudicate the dispute fairly and justly on the record.

[25] In doing so, the Federal Court recognized that it had to accept the Bezans' evidence that they did not authorize the changes to the application forms. However, it found no inconsistency in accepting that evidence while concluding that the Bezans' subsequent actions caused Bezan Cattle to accept legal responsibility for the two advances, such that Bezan Cattle was contractually responsible for repayment (citing *Saint John Tug Boat Co. v. Irving Refining Ltd.*, [1964] S.C.R. 614, 46 D.L.R. (2d) 1 (*Saint John Tug Boat*); *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29, [2020] 3 S.C.R. 247 (*Strata Owners*); *Ehler Marine & Industrial Service Co. v. M/V Pacific Yellowfin (Ship)*, 2015 FC 324, 477 F.T.R. 7; *Blais v. Canada (Attorney General)*, 2004 FC 1638, 263 F.T.R. 151; and *Trans Tec Services Inc. v. Lyubov Orlova (The)*, 2001 FCT 958, [2001] 4 F.C. D-45).

[26] In particular, the Federal Court found no evidence either party considered BFI as responsible for repaying the advances (reasons, at paragraph 73) and that the Bezans took many positive steps to affirm that Bezan Cattle had the obligation to repay both advances, stating at paragraph 64:

> In the present case, the evidence demonstrates much more than the acquiescence that gave rise to contractual obligations in *Saint John Tug Boat*. The Bezans took action themselves – positive steps – that affirmed that it was [Bezan Cattle's] obligation to repay the total amounts owed to the plaintiff under the [two advances]. There is clear and unequivocal, repeated evidence over a long period of time demonstrating that both parties reasonably expected, and [Bezan Cattle] agreed in substance, that [Bezan Cattle] would be legally responsible to repay (as discussed further below). In addition, the defendants did not raise any issue as to the amount owing or whether [Bezan Cattle] was the correct borrower before the commencement of this proceeding, despite many opportunities to do so….

[27] The Federal Court highlighted the events that supported its conclusion and the absence of any contrary evidence: reasons, at paragraphs 65–74. It rejected the assertion that the alterations constituted a fraud, there being no debate that the funds

were advanced and no evidence that the alterations were made for the financial benefit of MLCA.

[28] The Federal Court then addressed the assertion that the contracts were void or unenforceable under the principles of duress or unconscionability. The Bezans pointed to the power imbalance in the negotiations, the alteration of the documents, and the wording in the agreements that, if outside section 31 of the SFSA, could put farmers into financial ruin. The Federal Court was not persuaded that the evidence supported a finding of economic duress or that the agreements should not be enforced due to unconscionability.

[29] Accordingly, the Federal Court concluded there was no genuine issue for trial with respect to Bezan Cattle's liability and granted the motion for summary judgment against it.

[30] Turning to the action against the Bezans, the Federal Court said that to determine whether the Joint and Several Guarantee qualified as a guarantee for purposes of section 31 of the SFSA, three elements of the definition required analysis (reasons, at paragraph 108):

- an obligation to answer for an act, default, omission or indebtedness,
- the definition of a "farmer", and
- whether the obligation arises in relation "other assets used in farming."

[31] Addressing the first element, the Minister submitted that notwithstanding the use of the word guarantee in the heading, the text of the Joint and Several Guarantee and the terms of the AMPA made the Bezans primary obligors, not guarantors. The Federal Court disagreed, concluding the Joint and Several Guarantee created obligations only after default, so that the first condition of the definition of guarantee was satisfied: reasons, at paragraphs 109–113.

[32] The Federal Court viewed the second and third elements as "related" and thus considered them together. It first observed that, for purposes of section 31, a farmer is defined to mean a mortgagor. It then noted that mortgagor is defined "to include a purchaser under an agreement for the sale of farm land, a personal representative, successor or assignee of such a purchaser or a mortgagor, and a person claiming through such a purchaser or mortgagor": reasons, at paragraph 115, emphasis of the Federal Court. Although it observed that the three descriptions of a mortgagor relate to real property, it also noted that the definition is not exhaustive, such that farmer as used in section 31 could mean more than those three descriptions.

[33] The Federal Court then stated that *Prairie Centre Credit Union Ltd. v. River Ridge Cattle Corp*., 2010 SKQB 135 (CanLII), 353 Sask. R. 300 (*Prairie Centre*) had considered this issue and "concluded that 'farmer' in s. 31 does have an expansive meaning beyond real property and that 'farming' includes the raising of livestock": reasons, at paragraph 117. The Federal Court agreed with the reasoning in *Prairie Centre* and therefore concluded that, under section 31 "a 'farmer' is a form of mortgagor (not necessarily a real property mortgagor) who grants security over assets (other than real property) used in 'farming', a term that includes the raising of livestock": reasons, at paragraph 118.

[34] The Federal Court was satisfied that Bezan Cattle was engaged in raising cattle, the Bezans were principally occupied in the farming operation, and Bezan Cattle had granted MLCA a security interest over its cattle. On the basis of these conclusions, the Federal Court determined that the Joint and Several Guarantees executed by the Bezans were guarantees as defined in paragraph 31(1)(b) of the SFSA, and in the absence of any evidence that the formalities required by section 31 were met, were unenforceable against them. Accordingly, the Federal Court dismissed the action against the Bezans: reasons, at paragraphs 119–120. It did not separately address whether Bezan Cattle's cattle were assets used in farming.

III. The Appeal and Cross-Appeal

[35] The Attorney General appeals the decision to dismiss the action against the Bezans asserting that the Federal Court erred in concluding that section 31 of the SFSA applies to the Joint and Several Guarantee.

[36] Bezan Cattle cross-appeals the decision to grant summary judgment against it alleging the Federal Court erred in deciding there was no genuine issue for trial given the differences in the evidence regarding the changes to the applications for advances. Moreover, says Bezan Cattle, the Federal Court erred in holding Bezan Cattle liable for the funds applied for and advanced to BFI.

[37] While the appeal and cross-appeal arise out of the same factual background, and a successful cross-appeal would have implications for the appeal, in many ways the issues are entirely distinct. Because I would dismiss the cross-appeal, I have decided to address the appeal first.

[38] The appellate standard of review applies to the appeal and cross-appeal. Thus, questions of law are to be determined on the correctness standard, and questions of fact or mixed fact and law (excluding extricable questions of law) are to be determined on the standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

[39] For ease of reference, the text of the statutory provisions I specifically refer to in these reasons is reproduced in an attached appendix. Because the SFSA has not been enacted in French, only the English text is authoritative and has been reproduced: see subsection 2-18(1) of *The Legislation Act*, S.S. 2019, c. L-10.2. Moreover, with the exception of the provisions from the AMPA, the appendix reflects the current version of the provisions. Although amendments were made to the other statutes after the Minister's subrogation claim arose, none of the amendments are relevant to the appeal or cross-appeal.

IV. The Appeal

[40] The parties agree that the appeal turns on whether the Joint and Several Guarantee constitutes a guarantee as defined in section 31 of the SFSA.

[41] The Attorney General's memorandum of fact and law and submissions at the hearing of the appeal focused on establishing that the Federal Court erred in concluding that section 31 applied because (i) the Bezans are primary obligors, not guarantors, and (ii) the advances made by MLCA were not in relation to assets used in farming.

However, for reasons that will become apparent, it is unnecessary to address these arguments.

[42] Following the hearing of the appeal, this Court sought submissions from the parties on the proper interpretation of farmer as it is used in section 31. The Attorney General reviewed several provisions in the SFSA in support of its position that farmer in section 31 "must mean a party (whether it be an individual, a corporation, a partnership or other legal person) that has granted a mortgage of farm land."

[43] The Bezans submitted that, for purposes of section 31, "a farmer should be defined as is [*sic*] an individual or corporation who pledges or gives security in relation to real or personal property used in farming", essentially agreeing with the Federal Court and adopting the analysis in *Prairie Centre*.

[44] *Prairie Centre* was an application to the Saskatchewan Court of Queen's Bench to determine three questions of law, including whether the defendant in that case was a farmer for purposes of section 31. The plaintiff in *Prairie Centre* argued that mortgagor means only a mortgagor of farm land. The Saskatchewan Court disagreed.

[45] In doing so, it observed that "farmer" is defined as mortgagor for purposes of section 31 and that the SFSA definition of mortgagor is not an exhaustive one. Thus, the Saskatchewan Court asked itself "what type of 'mortgagor'? Is a mortgagor to mean only a mortgagor of farm land? Or can the word 'mortgagor' have a broader meaning?": *Prairie Centre*, at paragraph 11.

[46] After looking at the definition of mortgagor, and section 31 itself, that Court concluded that "a farmer is a form of a mortgagor (that can be different than a real property mortgagor) who grants security over other assets used in farming (again other than or [in] addition to farm land)": *Prairie Centre*, at paragraph 25. In the case before us, the Federal Court came to the same conclusion, adopting and agreeing with the analysis in *Prairie Centre*.

[47] In my view, the Federal Court erred in doing so. I have concluded that only a person who has granted a secured interest (mortgage) over farm land, or is otherwise specifically described in the definition of mortgagor in section 2 of the SFSA, qualifies as a mortgagor, and so a farmer for purposes of section 31 of the SFSA.

[48] Let me explain why I come to that conclusion.

A. *Principles of Statutory Interpretation*

[49] The words of a statute must be read in their entire context and ordinary sense harmoniously with the scheme of the legislation, its object, and the intention of the legislators: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 (*Canada Trustco*), at paragraph 10. Saskatchewan has codified this principle in section 2-10 of *The Legislation Act*.

[50] The relative effects of ordinary meaning, context and purpose in the interpretive process vary. When the words of a provision are precise and unequivocal, their ordinary meaning may play a dominant role. On the other hand, where the words are capable of

supporting more than one reasonable meaning, the ordinary meaning of the words will play a lesser role: *Canada Trustco*, at paragraph 10.

[51] As the Supreme Court recently stated in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [at paragraphs 117–118]:

> A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations: see, e.g., *Interpretation Act*, R.S.C. 1985, c. I-21.
>
> This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: [R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014)], at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker….

[52] I now turn to applying these principles to determine the meaning of mortgagor as it is used in the SFSA. I focus on the proper interpretation of mortgagor because, for purposes of section 31, a farmer means a mortgagor: SFSA, paragraph 3(c).

B. *Text: Ordinary Meaning*

[53] Section 2 in Part I (Title and Interpretation) of the SFSA contains a number of definitions that apply for purposes of the SFSA as a whole. Mortgagor is defined in paragraph 2(1)(q).

[54] The Federal Court correctly observed that the SFSA "defines 'mortgagor' … to include a purchaser under an agreement for the sale of farm land, a personal representative, successor or assignee of such a purchaser or a mortgagor, and a person claiming through such a purchaser or mortgagor" [emphasis in original] and that each of those descriptions of a mortgagor relates to real property. It then observed that the definition is not exhaustive and thus a farmer, as used in section 31, could mean more than the three specific descriptions in the definition: reasons, at paragraphs 115–116.

[55] I have no disagreement with this analysis.

[56] However, neither the Federal Court nor the Court in *Prairie Centre* observed that the three specific inclusions only describe persons that fall outside the ordinary meaning of mortgagor (that is, a person who grants a mortgage). Moreover, neither considered the language of the definition beyond the use of the word "includes" and the three specific inclusions.

[57] Notably, the definition does not describe the ordinary meaning of mortgagor; the definition merely states "mortgagor includes" and then lists three specific inclusions.

Thus, in the definition, “includes” operates to extend, but not displace, the ordinary meaning of mortgagor: *R. v. A.D.H.*, 2013 SCC 28, [2013] 2 S.C.R. 269, at paragraph 28; and *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795, at paragraph 36.

[58] However, the definition does not tell us which ordinary meaning applies. As both the Saskatchewan Court in *Prairie Centre* and the Federal Court observed, the ordinary meaning of “mortgagor” might support more than one interpretation—a mortgagor of land or the grantor of a chattel mortgage.

[59] The term “mortgagor” is thus imprecise and equivocal. In these circumstances, the text of the definition is both insufficient for, and unlikely to play a dominant role in, determining whether the legislators intended mortgagor to be interpreted as including a person who grants a chattel mortgage.

C. *Context*

[60] So what does the context tell us about the meaning of mortgagor?

[61] Context includes not only the surrounding language (i.e., the language of the specific provision) but also the broader context of the related provisions and the statute as a whole.

[62] Starting with the definition of mortgagor, as the Federal Court and Saskatchewan Court observed, the text of the specific inclusions suggests a focus on interests in land, but I agree that is not conclusive.

[63] Because the relevant context extends beyond the language of the specific provision, other related provisions and the SFSA as a whole also must be considered. Importantly, in my view, the SFSA expressly distinguishes between secured interests in land (mortgages) and in personal property in multiple ways. The terms mortgagor, mortgagee and mortgage play an important role in drawing that distinction.

[64] I start by examining related definitions and then examine how these definitions are used in the SFSA.

(i) *Related Definitions: Mortgage and Mortgagee*

[65] In ordinary parlance, a mortgagor grants a mortgage to a mortgagee. Not surprisingly then, section 2 of the SFSA also defines mortgage and mortgagee in paragraphs 2(1)(o) and (p), respectively. Reading the three definitions together, it is difficult to discern any intention that the term mortgagor include a chattel mortgagor.

[66] The definition of mortgagee is parallel to the definition of mortgagor. Like that definition, it makes no attempt to describe the ordinary meaning of mortgagee but rather states a “mortgagee includes” followed by a list of three specific inclusions. Those inclusions concern the same relationships as found in the definition of mortgagor, but viewed from the other perspective.

[67] Thus, mortgagee includes a vendor under an agreement for the sale of farm land, a personal representative, successor or assignee of such a vendor or a mortgagee, and a person claiming through such a vendor or mortgagee. As in the

definition of mortgagor, “includes” operates to expand the ordinary meaning of mortgagee to persons who would be outside that ordinary meaning. (Except to the extent that the specific inclusions in the definitions of mortgagor and mortgagee form part of the context, they are not relevant to this appeal. Although I therefore may not specifically refer to them, persons described in the inclusions clearly are mortgagors and mortgagees, as applicable, for purposes of the SFSA.)

[68] In contrast, the definition of mortgage in paragraph 2(1)(o) is exhaustive: “‘mortgage’ *means* any mortgage of farm land, including” [emphasis added]; the definition then contains a list of specific inclusions in subparagraphs (i) to (iv).

[69] Although the definitions of mortgagor and mortgagee do not restrict their ordinary meaning, the ordinary meaning of mortgage is restricted to a mortgage of farm land, albeit supplemented by the specific inclusions in subparagraphs (i) to (iv). Consistent with the definitions of mortgagor and mortgagee, some specific inclusions are outside the ordinary meaning of mortgage (for example, an agreement for the sale of land in subparagraph (ii)), but none suggests an intention to include a chattel mortgage. All are capable of being read as restricted to mortgages or other agreements concerning land and nonetheless being fully operative.

[70] While the meanings to be attributed to mortgage, mortgagor, and mortgagee are sometimes modified for specific provisions in the SFSA, none of the modifications suggests a focus on anything other than farm land (see, for example, SFSA, paragraphs 21(7)(b), (c) and (d), 43(b)). Moreover, as discussed in paragraph 133 below, these terms are used exclusively in Part II [ss. 3–42.1] and Part III [ss. 43–44] of the SFSA, which are concerned only with secured interests in land and the rights of creditors and farmers with respect to those secured interests.

[71] In my view, because the definitions of mortgagor and mortgagee operate only to expand their meaning beyond the ordinary meaning in a specific and limited way, their intended ordinary meaning must be gleaned from their context and purpose. The definition of mortgage, and its focus on farm land, is particularly informative context. It suggests that a person qualifies as a mortgagor within the ordinary meaning only if that person has granted a mortgage on farm land.

[72] Subsection 2-27(1) of *The Legislation Act* [as am. by *The Legislation Amendment Act, 2022*, S.S. 2022, c. 19, s. 7] states that if a word or expression is defined in an enactment, other parts of speech or grammatical forms of the same word or expression have corresponding meanings. While mortgagor and mortgagee are defined, their definitions do not indicate which ordinary meaning applies. In my view, given the definition of mortgage, the principle in subsection 2-27(1) supports adopting a corresponding meaning for the ordinary meaning of mortgagor—a person who has granted a mortgage on farm land.

(ii) *Definitions Related to Security over Personal Property*

[73] However, those three clearly related definitions are not the only ones of relevance. Other definitions in section 2, and in other Parts of the SFSA, further demonstrate a clear intention to distinguish between secured interests in real property (mortgages) and secured interests in personal property.

[74] The terms “purchase money security interest” defined in paragraph 2(1)(v), “secured party” defined in paragraph 2(1)(y), “security agreement” defined in paragraph 2(1)(z), and “security interest” defined in paragraph 2(1)(aa) are all exclusively concerned with personal property. All, like mortgage, are defined exhaustively.

[75] A security interest *means* an interest in *personal property* that secures payment or performance of an obligation. A purchase money security interest *means* a security interest of a vendor to secure payment of the sale price of *personal property*. A secured party *means* a person with a security interest. A security agreement *means* an agreement that creates or provides for a security interest.

[76] Under these definitions, a chattel mortgage is a security agreement that creates a security interest in favour of a secured party. However, a mortgage of land does not create a security interest and is not a security agreement; a mortgagee under a mortgage of land is not a secured party.

[77] As discussed in paragraphs 82 and 95 below, security interests in personal property are the subject of Part IV [ss. 45-64] of the SFSA.

(iii) *Definitions of Farmer: Distinction between Secured Interests in Land and in Personal Property*

[78] Section 31 only applies if the default, act, omission or indebtedness is that of a farmer, which is defined for this purpose as a mortgagor. But that is not the only definition of farmer in the SFSA.

[79] Parts II, III, IV and V [ss. 65-75] of the SFSA have their own definitions of farmer applicable in the Part (unless modified for a particular provision within the Part). Thus, farmer is defined eight times: see subsection 2(2), paragraphs 3(c), 21(7)(b), 27.1(b), subsection 39(1), paragraphs 43(a), 45(a) and section 65.

[80] Parts II and III of the SFSA each define farmer as a mortgagor: SFSA, paragraphs 3(c) and 43(a). As discussed in more detail below at paragraphs 91 to 94, these Parts are focused on real property, that is, farm land and the homestead, respectively. Consistent with that focus, the terms “mortgage”, “mortgagee” and “mortgagor” are used only in these two Parts of the SFSA.

[81] While by its terms the definition of farmer in paragraph 3(c)—a mortgagor—applies for purposes of Part II (including section 31), certain provisions in Part II modify that definition, albeit for limited purposes. In particular, paragraph 21(7)(b) and subsection 39(1) expand the definition to include an owner of farm land or a lessee, but again the focus is on interests in land. Paragraph 27.1(b) narrows the definition for limited purposes; to qualify as a farmer the person must be a mortgagor and satisfy certain other conditions. However, in all cases the focus remains on interests in land.

[82] In contrast, Part IV of the SFSA is concerned with security interests in personal property, and Part V is concerned with exemptions from seizure under secured obligations or judgment enforcement. For those purposes, farmer is defined without any reference to mortgagor, referring instead to a producer or agricultural corporation with payment or other obligations to be performed in connection with a secured obligation,

as well as an execution debtor in the case of Part V: SFSA, paragraph 45(a) and section 65.

[83] Defining farmer as a mortgagor in those Parts of the SFSA that are concerned with real property, but using an entirely different definition in those Parts that are concerned with indebtedness incurred in respect of personal property or judgment enforcement, is further contextual support for the conclusion that mortgagor is intended to mean a person who has granted a mortgage on real property.

[84] Notably, for purposes of the definition of homestead in paragraph 2(1)(h), "'farmer' means 'farmer' as defined in Part II, III or V, as the case may be": SFSA, subsection 2(2). A homestead is defined as the house and buildings occupied by a *farmer* as their bona fide residence and the farm land on which they are situated to a maximum area of approximately 160 acres. Homesteads benefit from special protections in Parts II, III and V of the SFSA.

[85] By virtue of Part II, where a mortgagee obtains an order of foreclosure on farm land that includes the homestead, the mortgage is apportioned by the court between the homestead and the farm land that is not a homestead, and the debt on the former is preserved: SFSA, section 26. Part III stays the operation of a final order of foreclosure or order for possession that affects a homestead, for as long as the homestead continues to be a homestead: SFSA, section 44. In these contexts, the security in question is a mortgage so that defining farmer as a mortgagor is appropriate.

[86] However, the focus of Part V is exempting farmers' property, including a homestead, from seizure in connection with secured obligations or judgment enforcement. Thus, in determining whether a property is a homestead of a person for purposes of Part V, the definition of farmer in Part V is used, ensuring that a judgment creditor is precluded from seizing the homestead of a farmer (as there defined), notwithstanding that the farmer is not a mortgagor.

[87] But adapting the definition of farmer for purposes of determining whether a particular property is a homestead serves only one purpose, and does not change the meaning of farmer for purposes of Part II, III or V. This adaptation provides further contextual support for treating debt secured by a mortgage on farm land as entirely distinct from any other debt for which a farmer is responsible.

[88] *Lyle Harvey Trimble (Re)*, 2017 SKQB 59 (CanLII), [2017] 8 W.W.R. 815 explains it this way at paragraphs 29–31:

> The general definition section in the SFSA refers to the term "farmer" with reference to the definition of "homestead", stating in s. 2(2) that: "In clause 2(1)(h), "farmer" means "farmer" as defined in Part II, III or V, as the case may be". Thus suggesting that the category of farmer who is eligible for homestead protection under each of the Parts depends on the Part-specific definition of the term "farmer".
>
> The courts have interpreted the legislative intention behind each category of farmer-debtor protection with consideration for similar policy concerns, in most of the cases. Only a handful of the cases note that the breadth of protection will depend on the category of farmer defined in the applicable Part of the SFSA.
>
> Part II and Part III of the SFSA both provide protection for mortgagor-farmers, Part IV provides protection for farmer-debtors in reference to secured transactions and Part V

provides protection for farmer-debtors in reference to secured transactions and for judgement-debtor-farmers. A brief reference to each of the different definitions may be of assistance to understand the distinctions between the categories of farmers. [Emphasis added.]

[89] While section 31 has its own definition section, it does not define farmer, nor modify the definition of farmer in any way. It does not state that in applying it farmer means farmer as defined in Part II, Part III or Part IV, as the case may be, as subsection 2(2) of the SFSA does for the purposes of homestead. It seems clear that had the legislators intended farmer to mean something other than mortgagor in section 31, they would have said so—as they have done elsewhere in the SFSA, including in three other provisions in Part II. Because they did not, the relevant definition of farmer must be that in section 3—"a mortgagor".

(iv) *Architecture of the SFSA: Distinction between Secured Interests in Land and Personal Property*

[90] The architecture of the SFSA is entirely consistent with the distinction between security over real property (mortgages granted by mortgagors to mortgagees) and over personal property (security interests, including personal property security interests, granted to secured parties) that the definitions suggest. The rights and obligations of farmers and creditors with respect to these two categories of security are addressed in entirely separate parts of the SFSA.

[91] Part II of the SFSA is titled "Farm Land Security". Consistent with that title, its stated purpose is "to afford protection to farmers against loss of their farm land": SFSA, section 4. Put another way, because for purposes of Part II a farmer is defined as a mortgagor, the purpose of Part II is to protect *mortgagors* against the *loss of their farm land*. Not surprisingly, given that purpose, the focus of the provisions in Part II is exactly that.

[92] Action is defined as an action in court with respect to farm land by a mortgagee, or for purposes of section 25, an action with respect to farm land or a mortgage: SFSA, paragraph 3(a) and subsection 25(1). A mortgagee can commence an action seeking foreclosure or recovery of money owing under the mortgage only after it applies to the Saskatchewan Court of King's Bench for an order permitting it do so: SFSA, sections 9 and 11. It can apply only 150 days after serving notice of its intention to do so on both the farmer and the Farm Land Security Board [Board]: SFSA, subsection 12(1). Mediation is a precondition to that application, and the farmer, the mortgagee and the Board have obligations in connection with the mediation: SFSA, section 12. In some circumstances, a farmer may obtain a court order for supervised mediation: SFSA, section 15.

[93] The farmer (mortgagor) benefits from certain presumptions regarding ability to repay, with the mortgagee bearing certain burdens of proof: SFSA, sections 13 and 18. Farmers (that is, mortgagors) have a right of first refusal to purchase farm land lost to a creditor under foreclosure or quitclaim: SFSA, subsections 27(1) and (2).

[94] Part III of the SFSA is titled "Home Quarter Protection" and it, together with provisions in Part II, provide special protections for the homestead, as discussed above at paragraphs 84 and 85. Notably, a homestead does not include any personal property.

[95] Part IV of the SFSA is titled “Possession of Equipment” and addresses rights of farmers and limitations on the rights of persons with security interests (including purchase money security interests) in personal property under security agreements. It contains provisions dealing with repossession or surrender of “article[s]” and “implement[s]”, restricted to personal property acquired or used by a farmer for use in farming: SFSA, subsection 46(1) and paragraph 2(1)(i). These restrictions apply to a secured party including a vendor under a purchase money security interest.

[96] Part V, titled “Exemptions”, exempts property of a farmer from seizure. As noted above, for this purpose, farmer is defined as a producer who owes payment or other performance of the obligation secured whether or not they own or have rights in the goods or who is an execution debtor: SFSA, section 65. The term “execution debtor” typically refers to a person required to pay money pursuant to a judgment of a court.

[97] Thus, Part V is concerned with claims for payment under secured obligations in relation to goods or judgments for payment of money, not judgments of foreclosure, quitclaim, or possession of real property—all dealt with in Part II.

[98] The exemptions from seizure in Part V relate primarily to personal property, including clothing, jewelry, household furnishings, utensils, equipment and appliances, livestock, farm machinery and equipment, tools, seed grain and crops or produce, all within certain limits: SFSA, section 66. However, a homestead, and certain rights the farmer has with respect to real estate, are also exempt, because, absent an exemption, they presumably could be seized under judgment enforcement: SFSA, paragraphs 66(h), (k), (l), (m) and (n).

[99] With the exception of the definition of creditor in section 31 discussed below at paragraphs 110 to 118, the only provision of the SFSA that expressly deals with both mortgages and security agreements is section 41. It deals with application of payments made by a farmer where a mortgage (or security agreement) secures more than one debt. However, it too recognizes the distinction between secured interests in real property (mortgages) and secured interests in personal property (security interests including purchase money security interests).

[100] It is evident that the focus of Parts II and III of the SFSA is obligations secured by real property (that is, mortgages), the focus of Part IV is obligations secured by personal property, and the purpose of Part V is protecting certain assets of the farmer from seizure to satisfy secured obligations for goods or under judgment enforcement. The terms used in these Parts, including the definitions of farmer that differ as appropriate to the context, are entirely consistent with maintaining a distinction between secured interests in real property (mortgages) and other security interests and payment obligations.

[101] This distinction has been recognized by the Court of Appeal for Saskatchewan in *Dietz v. Bank of Montreal*, 1996 CanLII 4903, 107 W.A.C. 263 (Sask. C.A.), where it stated at paragraph 9:

> …. The debt as restructured clearly maintains the distinction between the chattel mortgages and the equitable land mortgages. Indeed, the [SFSA] specifically separates these two kinds of security by providing a process for enforcement of the land mortgage in Part II and for enforcement of a chattel mortgage under Part IV. There is no suggestion that

> where one is collateral to another both must be subject to the prerequisites to enforcement. To read such a provision into the *Act* would be to significantly amend the legislation…. [Emphasis added.]

See also *Kovlaske v. Canadian Imperial Bank of Commerce*, 2002 SKQB 434 (CanLII), 226 Sask. R. 200, at paragraph 19.

(v) *Context and* Prairie Centre

[102] In determining the meaning of mortgagor, the Court in *Prairie Centre* did not consider how the context, other than section 31, informed the interpretation to be given to farmer or mortgagor. Rather than look at the overall context, the Saskatchewan Court said that section 31 "itself best answers the question of how broad or narrow the definition of mortgagor should be": *Prairie Centre*, at paragraph 17.

[103] With respect, I cannot agree.

[104] The starting point in the interpretation analysis is the definition of mortgagor itself; it expressly applies for all purposes of the SFSA. Absent an express statement that the section 2 definition does not apply or should be modified, or context that clearly implies it is not intended to apply for some particular purpose, the same meaning should be attributed to the word throughout the statute: *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, at paragraph 29. See also subsection 2-27(2) of *The Legislation Act* [as am. by S.S. 2022, c. 19, s. 7].

[105] Moreover, while used more than 50 times in the SFSA, the word mortgagor is not used in section 31. Yet, in assessing the meaning of mortgagor, the Saskatchewan Court restricted its contextual analysis almost entirely to section 31. In my view, this was an error; its contextual analysis was incomplete.

[106] The Saskatchewan Court relied on three observations to support its conclusion that mortgagor in section 31 included a chattel mortgagor.

[107] First, notwithstanding that section 31 is in Part II, the Saskatchewan Court expressed the view that it "is really a stand alone section" and that "[i]t would have been more convenient … if the section pertaining to guarantees was put under its own autonomous part of the *Act*": *Prairie Centre*, at paragraphs 12 and 18. But, section 31 was not put in its own Part; nor was it included in either of the two Parts of the SFSA that contain provisions of general application, Parts I (Title and Interpretation) and VII (General Provisions). Rather, it is found in the Part of the SFSA titled "Farm Land Security" with a stated purpose of protecting against loss of farm land: SFSA, section 4. Notably, the Saskatchewan Court did not mention section 4 or consider its implications for the interpretation of section 31.

[108] Secondly, the Saskatchewan Court noted section 31 contains its own definition section, and includes a definition of creditor: "'creditor' includes a mortgagee and a secured party": SFSA, paragraph 31(1)(a). Finally, it observed that the definition of guarantee in section 31 refers to "indebtedness of a farmer in relation to farm land or other assets used in farming".

[109] I will address my reasons for disagreement with the Saskatchewan Court on the significance of these latter two observations in more detail.

(a) *Definition of Creditor*

[110] After citing the definition of creditor in section 31, the Saskatchewan Court in *Prairie Centre* stated at paragraph 20:

> Therefore … the drafters appear to have purposely expanded creditor to include more than a mortgagee. A secured party is added. Logically if a creditor is meant to be more than a mortgagee and includes a secured party then conversely a debtor must include not only a mortgagor in the real property sense but also the grantor or a debtor arising out of a security agreement.

[111] I agree that a creditor includes more than a mortgagee but I disagree with the conclusion that the Saskatchewan Court draws from that definition.

[112] First, notwithstanding that it has its own definition section, section 31 does not define or use the term debtor. Indeed, the term debtor is not used anywhere in the SFSA except in two headings in Part V, and in each case the text of the provision refers to a farmer, not a debtor: SFSA, sections 71 and 73.

[113] Second, creditor is not used in the definition of guarantee, the only place in section 31 where farmer appears.

[114] The Saskatchewan Court continued [at paragraphs 21 and 22]:

> The word creditor is found again in s. 31 under s. 31(6)(b):
>
> **31**(6)(b) accepted in good faith by the **creditor**;
>
> [Emphasis added]
>
> Accordingly I have to ask myself why would the drafters include the definition of creditor (i.e. a secured party) and the use of the word again in s. 31(1)(6)(b) if they had not intended s. 31 to apply to more than farm land mortgage situations? It appears apparent on the wording of the section that the requirement for independent advice was intended in the situation of granting of security (such as the case here) beyond land mortgages. [The emphasis in this passage is that of the Saskatchewan Court.]

[115] The Saskatchewan Court looked at only one use of the term creditor in section 31—in paragraph 31(6)(b). That provision imposes a condition that must be satisfied before the certificate issued by the lawyer or notary public is admissible as conclusive proof of compliance with the formalities of section 31 with respect to a guarantee.

[116] But, creditor is found in two other places in section 31—in the definitions of lawyer and notary public, neither of which *Prairie Centre* considered. Why is it found in those definitions? Because a lawyer or notary public qualifies to provide advice to an individual proposing to execute a guarantee, and to issue the certificate confirming that advice, only where the lawyer or notary public "has not prepared any documents on behalf of the creditor relating to the transaction" [emphasis added]: SFSA, paragraphs 31(1)(c) and (d).

[117] My answer to the question the Saskatchewan Court posed in paragraph 22 of its reasons is: because the drafters decided that a lawyer or notary public who prepares documents for a mortgagee or a secured party of a farmer (mortgagor) in a transaction cannot be considered independent. But that does not mean that a person who grants a

chattel mortgage to a creditor is a mortgagor. And, if a person is not a mortgagor, they are not a farmer.

[118] I accept that a creditor other than a mortgagee (that is, a secured party) may rely on a guarantee, but that does not necessitate concluding that a mortgagor includes a chattel mortgagor. In paragraphs 122 to 124 below, I give some examples where that might arise. However, in my view, the definition of creditor in section 31 has no bearing on the interpretation of farmer or mortgagor.

(b) *Other assets used in farming*

[119] I turn now to the third ground relied on in *Prairie Centre* to support its conclusion regarding the meaning of mortgagor: that the definition of guarantee refers to "indebtedness of a farmer in relation to farm land or *other assets used in farming*" [emphasis added]. In this regard, the Saskatchewan Court stated [at paragraphs 23–25]:

> However, the clearest expression of the legislation's intent is found in the wording of s. 31(1)(b) itself:
>
> > **31**(1)(b) ... in relation to farm land **or other assets used in farming**, but does not include guarantees entered into prior to the coming into force of this Act; [Emphasis added]
>
> In my view the wording of the section clearly is meant to expand the use of guarantees beyond farm land situations to guarantees pertaining to non real property assets. There cannot be any other logical reason for including the words "or other assets used in farming" immediately after the word "land".
>
> Accordingly, putting all the above together I find that a farmer is a form of a mortgagor (that can be different than a real property mortgagor) who grants security over other assets used in farming (again other than or addition to farm land). [The emphasis in this passage is that of the Saskatchewan Court.]

[120] I disagree.

[121] Section 31 cannot be described as the clearest expression of the legislator's intent regarding the meaning of mortgagor. Mortgagor is not used in section 31—farmer is. While section 31 may extend beyond guarantees of mortgages on farm land, that does not necessitate extending the meaning of mortgagor—and so farmer—to include a chattel mortgagor. Three examples come immediately to mind.

[122] Assume a corporation engaged in farming borrows funds to purchase machinery and equipment for use in its farming operations and secures that indebtedness with a mortgage on its farm land and a guarantee from its individual shareholders. That corporation would qualify as a farmer (real property mortgagor) notwithstanding that the indebtedness secured by the mortgage is in relation to assets (other than farm land) used in farming.

[123] Alternatively, assume that a corporation borrows funds to purchase machinery and equipment and farm land, granting security for the two loans over all of the purchased assets. The shareholders agree to guarantee the loans. Again, the corporation would qualify as a farmer (real property mortgagor) notwithstanding that the

guaranteed indebtedness relates to farm land and other assets used in farming. In this case, the lender (creditor) would be both a mortgagee (with respect to the mortgage) and a secured party (with respect to the secured interest in the machinery and equipment). In fact, there might be two separate lenders for these loans—one a mortgagee and the other a secured party—each of whom seeks guarantees of indebtedness of a farmer—a corporation that has granted a mortgage on farm land and so is a mortgagor.

[124] As a third example, assume a corporation that previously granted a mortgage on its farm land seeks to borrow money from a third party to purchase farming equipment. As security for repayment of the loan, that lender seeks a security interest in the purchased equipment as well as a guarantee from the shareholders. Having granted a mortgage on its farm land, the corporation would be a mortgagor (and so a farmer) notwithstanding that the guaranteed loan relates to farming equipment.

[125] These are but three examples in which limiting the meaning of mortgagor to a person who has granted a mortgage over farm land gives ample meaning to the phrase "or other assets used in farming" in section 31. Protecting farmers under these mortgages would be entirely consistent with the stated purpose of Part II of the SFSA [at section 4] and the provisions in it, including section 31: "to afford protection to farmers [(mortgagors of farm land)] against loss of their farm land".

[126] In my view, the phrase "or other assets used in farming" has no bearing on the meaning of farmer (or mortgagor).

(vi) *Conclusion on Context*

[127] In my view, a contextual analysis supports only one conclusion. A person who has granted a chattel mortgage cannot thereby qualify as a mortgagor for purposes of the SFSA. To qualify as a mortgagor, the person must have granted a mortgage over farm land or be within one of the specific inclusions in the definition of mortgagor.

[128] I recognize that the Saskatchewan Court in *Prairie Centre* came to a different conclusion, and the Federal Court adopted that analysis. However, in my view, the contextual analysis in *Prairie Centre* was incomplete.

[129] While recognizing that the definitions of mortgage, mortgagee and mortgagor "appear to concentrate on real property situations" (*Prairie Centre*, at paragraph 13), the Saskatchewan Court did not address how that context, or the broader context of related provisions and the SFSA as a whole informed the meaning of mortgagor. The only context it considered is section 31 which, for reasons I have explained, has little if any bearing on the interpretation to be given to a term that is not used in section 31, is used in many other provisions in the SFSA, and has one definition that applies, except as expressly modified, for all of these provisions, including the definition of farmer in Part II.

[130] I also note that *Prairie Centre* did not refer to *Bank of Montreal v. Coutts* (1992), 99 Sask. R. 144, 87 D.L.R. (4th) 352 (Sask. Q.B.) (*Coutts*). While not concerned with section 31, the issue in *Coutts* was whether a mortgagee could pursue a guarantor in respect of a deficiency claim related to a farm land purchase loan. Under Part II of the SFSA, a creditor's claim against the mortgagor is limited to the real property. In *Coutts*,

the guarantor asserted this protection extended to him because he had guaranteed a mortgage for the purchase of farm land.

[131] The Saskatchewan Court observed that "[n]ot every person and not every debt comes within the purview" of the SFSA and Part II "limits the protection to only those debts incurred to purchase farmland and to those farmers who as mortgagors have incurred such debt" (at paragraph 7). In relation to the term "farmer", the Court in *Coutts* said at paragraph 21:

> In the instant case, I conclude that the defendant is not a farmer within the meaning of s. 3(c) of the Act because he is not a mortgagor. His farmland is not a part of or subject to the relevant mortgage. He is not in jeopardy of losing his farmland. This being so, he is not a person for whom the legislation was intended to provide protection….[Emphasis added.]

See also *Bank of Montreal v. Wakaw Enterprises Ltd. et al*. *(No. 2)*, 1990 CanLII 7409, 90 Sask. R. 17 (Q.B.).

D. *Purpose*

[132] To complete the statutory interpretation analysis, I must consider the purpose of the definition of "mortgagor". It is the purpose of that term, not the purpose of section 31, that is relevant both because the definition of mortgagor in section 2 applies for all purposes of the SFSA (except to the extent specifically modified) and because mortgagor is not used in section 31.

[133] The purpose of the term "mortgagor" is best determined by examining how it, and the related terms mortgage and mortgagee, are used. Mortgagor appears in the SFSA more than 50 times, mortgage more than 100 times, and mortgagee more than 80 times. With the exception of the definitions in Part I and section 109 (which authorizes the making of regulations), these terms are used exclusively in Parts II and III. Consistent with their titles (Farm Land Security and Home Quarter Protection) and, in the case of Part II, its stated purpose, the focus of these Parts is on rights and obligations concerning indebtedness secured by farm land including a farmer's homestead. The terms "mortgage", "mortgagor" and "mortgagee" serve to identify the parties to the form of agreement that provides the security that is the subject of these Parts—a mortgagor grants a mortgage over farm land to a mortgagee.

[134] For similar reasons, the terms associated with security interests in personal property—purchase money security interest, secured party, security agreement, and security interest—are used almost exclusively in Parts IV and V, the exceptions being sections 41 and 42, and the definition of creditor in section 31. Parts IV and V of the SFSA deal with secured debt other than mortgage debt and judgment enforcement and, consistent with that purpose, these terms identify the relevant parties and relationships—a producer (farmer) grants a security interest to a secured party under a security agreement.

[135] In my view, it is therefore clear that the purpose of the term "mortgagor" is to identify a person who has granted security in the form of a mortgage over real property that is farm land and/or a homestead.

E. *Conclusion on the Meaning of Farmer/Mortgagor*

[136] For purposes of section 31, a farmer is a mortgagor. In my view, applying a textual, contextual and purposive interpretation, a mortgagor is a person who has granted a mortgage over farm land or is otherwise described in the specific inclusions in the definition of mortgagor in section 2 of the SFSA. A chattel mortgagor is not a mortgagor for purposes of the SFSA.

F. *Conclusion on the Appeal*

[137] Because I would dismiss the cross-appeal, the only issue on this appeal is whether the Joint and Several Guarantee executed by the Bezans falls within the definition of guarantee in section 31 of the SFSA. In order to fall within that definition, Bezan Cattle must be a farmer as defined for that purpose.

[138] There is no genuine issue for trial if there is no legal basis for the claim based on the law or the evidence brought forward or if the judge has the evidence required to fairly and justly decide the dispute: *Manitoba v. Canada*, 2015 FCA 57, 470 N.R. 187, at paragraph 15, citing *Burns Bog Conservation Society v. Canada*, 2014 FCA 170, 83 C.E.L.R. (3d) 1, at paragraphs 35–36 and *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 (*Hryniak*), at paragraph 66. In my view, unless Bezan Cattle is a mortgagor, section 31 of the SFSA does not apply.

[139] The party seeking summary judgment has the onus of establishing that there is no genuine issue for trial. However, parties responding to such motions are also required to "'put their best foot forward'" in their response: *Milano Pizza Ltd. v. 6034799 Canada Inc.*, 2018 FC 1112, 159 C.P.R. (4th) 275 (*Milano Pizza*), at paragraph 34 and *Gupta v. Canada*, 2021 FCA 31, 77 Imm. L.R. (4th) 173 (*Gupta*), at paragraph 29. As this Court has said, this may be described as requiring a responding party to "'lead trump or risk losing'": *Gemak Trust v. Jempak Corporation*, 2022 FCA 141, [2023] 1 F.C.R. 461, at paragraph 67, citing *Milano Pizza*, at paragraph 35.

[140] There is no evidence on the record that Bezan Cattle is a farmer within the meaning of section 31 of the SFSA. Although the Bezans asserted the protection of section 31, they led no evidence that Bezan Cattle owned land or had granted a mortgage over land.

[141] Therefore, I would allow the appeal. In the circumstances I see no benefit in remitting the matter back to the Federal Court for determination. The evidence before the Federal Court is also before us. Accordingly, I would make the order the Federal Court should have made and grant summary judgment against the Bezans, as permitted by subparagraph 53(1)(b)(i) of the *Federal Courts Act*, R.S.C., 1985, c. F-7.

G. *Other Grounds of Appeal*

[142] Given this conclusion, it is neither necessary nor desirable to address the other arguments advanced by the Attorney General in support of the position that section 31 does not apply. Those arguments are best left for another case. However, my silence should be viewed as only that. I express no view about whether the Federal Court erred in its analysis of the other interpretive elements of section 31 it identified, as described in paragraph 30 above.

V. The Cross-Appeal

[143] Having dealt with the appeal, I turn now to the cross-appeal.

[144] The Federal Court granted summary judgment against Bezan Cattle, concluding that it had sufficient evidence to determine the relevant facts, there were no credibility issues, and there was no genuine issue for trial.

[145] Bezan Cattle asserts that the Federal Court erred in deciding there was no genuine issue for trial and in holding Bezan Cattle liable for the funds applied for and advanced to BFI. It asks that the judgment against Bezan Cattle be set aside and the action against it be dismissed in its entirety or alternatively that the matter against it be determined by trial.

[146] The Attorney General says the Federal Court made no errors and the cross-appeal should be dismissed.

A. *No Genuine Issue for Trial*

[147] Whether there is a genuine issue for trial for the purposes of a motion for summary judgment is a question of mixed fact and law: *Badawy v. Igras*, 2019 FCA 153, at paragraph 6. Thus, absent an extricable error of law, the conclusion there is no genuine issue for trial is reviewable on a standard of palpable and overriding error: *Hryniak,* at paragraph 81.

[148] Bezan Cattle does not suggest that the Federal Court identified the incorrect test for determining whether there is a genuine issue for trial. Rather, says Bezan Cattle, the Federal Court erred in concluding that it had the evidence necessary to make the necessary findings of fact because the Minister did not present the necessary evidence.

[149] Bezan Cattle's submission in support of this position rests on the Minister's failure to submit an affidavit of Jim Juacalla, the MLCA representative with whom the Bezans engaged in connection with the applications, but whose employment with MLCA ended prior to the motion for summary judgment. This, says Bezan Cattle, led the Federal Court to incorrectly prefer the Minister's evidence concerning the changes to the applications, although that evidence was not firsthand, over the firsthand evidence of the Bezans. Instead, Bezan Cattle asserts, the Federal Court should have drawn an adverse inference from the Minister's failure to provide Mr. Juacalla's evidence.

[150] The Federal Court did not prefer the Minister's evidence. Rather, it expressly accepted the Bezans' evidence "so far as it goes". However, in its view, accepting that evidence was not inconsistent with concluding that the Bezans' actions subsequent to 2008 caused Bezan Cattle to accept legal liability for the two advances: reasons, at paragraph 84.

[151] While the nature of the adverse inference Bezan Cattle sought does not appear to have been articulated to the Federal Court (see reasons, at paragraph 51), Bezan Cattle now explains it is that Mr. Juacalla would confirm the Bezans' evidence that they did not authorize changes to the applications. Because the Federal Court accepted that evidence, any failure to draw that adverse inference is irrelevant to the result.

[152] Bezan Cattle has not persuaded me that the Federal Court erred in concluding that there is no genuine issue for trial.

B. *Did the Federal Court Err in Holding Bezan Cattle Liable for Both Advances?*

[153] Bezan Cattle also asserts that the Federal Court erred in concluding that Bezan Cattle was liable for the funds applied for and advanced to BFI. In particular, it argues the Federal Court:

(i) incorrectly pierced the corporate veil, failing to treat BFI as a separate entity from Bezan Cattle;

(ii) incorrectly failed to recognize the absence of consideration for any agreement by Bezan Cattle to be responsible for the advance made to BFI; and

(iii) incorrectly concluded that the actions of Bezan Cattle and the Bezans constituted their acceptance that Bezan Cattle would be liable for the advance made to BFI.

[154] I see no merit to these claims.

[155] In support of the first point, Bezan Cattle points to a single phrase from paragraph 78 of the Federal Court's reasons, that "the defendants received the [emergency advance] and the [continuous flow] Advance," pointing out that BFI is not a defendant. With respect, that statement is not the foundation of the Federal Court's analysis; it appears in the context of the Federal Court distinguishing a case relied on by Bezan Cattle and the Bezans in support of their submissions that the alterations to the agreements were fraudulent. Reading the Federal Court's reasons as a whole, there is no doubt that the Federal Court understood that BFI and Bezan Cattle were separate entities.

[156] As to the second point, Bezan Cattle asserts that it cannot be liable for amounts advanced to BFI because it received no consideration for assuming that liability. I see nothing on the record suggesting this argument was advanced before the Federal Court. Ordinarily a new issue may not be raised on appeal, although an appellate court may depart from this general rule where the interests of justice require it and where the Court has a sufficient evidentiary record and findings of fact to do so: *Quan v. Cusson*, 2009 SCC 62, [2009] 3 S.C.R. 712, at paragraphs 36–39. I am not satisfied this is a case where we should depart from the general rule.

[157] Nothing in the affidavits filed by the Bezans refers to a lack of consideration. Ms. Bezan's affidavit states some of the money advanced to Bezan Cattle was used to pay BFI's accounts receivable (although I think this must mean accounts payable). Beyond that, there is next to no information about financial or other arrangements between the two corporations or between the two corporations and the Bezans, or what arrangements the two corporations might have had concerning the two advances. As the Federal Court observed, "[p]arties responding to motions for summary judgment are required to 'put their best foot forward' in their response": reasons, at paragraph 44, citing *Gupta*, at paragraph 29 and *Milano Pizza*, at paragraph 34.

[158] As to the third point, the Federal Court considered *Saint John Tug Boat* and *Strata Owners*. It then reviewed in detail what it described as the "clear and unequivocal, repeated evidence over a long period of time demonstrating that both parties reasonably expected, and [Bezan Cattle] agreed in substance, that [Bezan

Cattle] would be legally responsible to repay": reasons, at paragraph 64. Relying on the principles from *Saint John Tug Boat* and *Strata Owners*, the Federal Court was satisfied that Bezan Cattle, through its conduct, agreed to repay the advances in accordance with the terms of the repayment agreements.

[159] Bezan Cattle asserts its case is distinguishable from *Saint John Tug Boat* because, in that case, there was no dispute concerning the parties to the contract. Moreover, it says the Federal Court should have concluded that the Bezans and Bezan Cattle had a reasonable expectation that the agreement with MLCA would not be "unilaterally altered without their consent". In substance, these arguments are the same as those addressed in paragraphs 149 and 150 above.

[160] Again, I have not been persuaded the Federal Court made any reviewable errors in coming to its conclusion that Bezan Cattle was liable for the two advances.

C. *Conclusion on the Cross-Appeal*

[161] Having found the Federal Court did not make any reviewable error in granting summary judgment against Bezan Cattle, I would dismiss the cross-appeal.

VI. Conclusion

[162] I would allow the appeal, set aside the judgment of the Federal Court dismissing the application against the Bezans and, making the order the Federal Court should have made, issue summary judgment against the Bezans.

[163] I would dismiss Bezan Cattle's cross-appeal.

[164] The Attorney General seeks costs on the appeal and the cross-appeal. As the Attorney General was entirely successful on both, and the issues were sufficiently distinct, I would award the Attorney General costs for both the appeal and cross-appeal.

RENNIE J.A.: I agree.

ROUSSEL J.A.: I agree.

APPENDIX

Agricultural Marketing Programs Act, S.C. 1997, c. 20 as in force May 15, 2014

Eligibility requirements for producers

10 (1) For a producer to be eligible for a guaranteed advance during a production period,

…

(d) if the producer is a corporation with two or more shareholders, a partnership, a cooperative or another association of persons,

…

(ii) each of the shareholders, partners or members, as the case may be, must agree in writing to be jointly and severally, or solidarily, liable to the administrator for any liability of the producer under section 22 and must provide any security for

the repayment of the advance that the administrator may require;

…

Liability of defaulting producer to administrator

22 A producer who is in default under a repayment agreement is liable to the administrator for

(a) the outstanding amount of the guaranteed advance;

(b) the interest at the rate specified in the repayment agreement on the outstanding amount of the advance, calculated from the date of the advance; and

(c) costs incurred by the administrator to recover the outstanding amount and interest, including legal costs approved by the Minister.

Payments to be made by Minister

23 (1) If a producer is in default under a repayment agreement and the Minister receives a request for payment from the administrator or lender to whom the guarantee is made, the Minister must, subject to any regulations made under paragraphs 40(1)(g) and (g.1), pay to the lender or the administrator, as specified in the advance guarantee agreement, an amount equal to the Minister's percentage of

(a) the amounts mentioned in paragraphs 22(a) and (c); and

(b) the interest at the rate specified in the advance guarantee agreement on the outstanding amount of the advance, calculated from the date of the advance.

Subrogation

(2) The Minister is, to the extent of any payment under subsection (1), subrogated to the administrator's rights against the producer in default and against persons who are personally liable under paragraphs 10(1)(c) and (d).

Saskatchewan Farm Security Act, S.S. 1988-89, c. S-17.1

PART I

Title and Interpretation

…

Interpretation

2(1) In this Act:

…

(h) **"homestead"** means:

(i) the house and buildings occupied by a farmer as his or her bona fide farm residence; and

(ii) the farm land on which the house and buildings mentioned in subclause (i) are situated, not exceeding 160 acres or one quarter section, whichever is greater;

(i) **"implement"** means:

(i) any implement, equipment or machine that is used or intended for use by a producer on a farm for the purpose of farming;

(ii) a motor vehicle classified in regulations made pursuant to *The Traffic Safety Act* as a farm vehicle;

…

(o) **"mortgage"** means any mortgage of farm land, including:

(i) a mortgage granted to:

(A) the Agricultural Credit Corporation of Saskatchewan pursuant to *The Agricultural Credit Corporation of Saskatchewan Act*; or

(B) Farm Credit Canada continued pursuant to the *Farm Credit Canada Act* or any other corporation created by or pursuant to any other Act of the Parliament of Canada;

(ii) an agreement for the sale of land;

(iii) an agreement renewing or extending a mortgage or agreement for sale; and

(iv) any other mortgage or agreement that is prescribed in the regulations;

(p) **"mortgagee"** includes:

(i) a vendor under an agreement for the sale of farm land;

(ii) a personal representative, successor or assignee of a vendor mentioned in subclause (i) or a mortgagee; and

(iii) a person claiming through a vendor mentioned in subclause (i) or a mortgagee;

(q) **"mortgagor"** includes:

(i) a purchaser under an agreement for the sale of farm land;

(ii) a personal representative, successor or assignee of a purchaser mentioned in subclause (i) or a mortgagor; and

(iii) a person claiming through a purchaser mentioned in subclause (i) or a mortgagor;

…

(v) **"purchase money security interest"** means a security interest that is taken or reserved by a vendor to secure payment of all or any part of the sale price of personal property;

…

(y) **"secured party"** means a person who has a security interest and includes a recognized financial institution that has a security interest;

(z) **"security agreement"** means an agreement that creates or provides for a security interest;

(aa) **"security interest"** means an interest in personal property that secures payment or performance of an obligation;

…

(2) In clause 2(1)(h), **"farmer"** means "farmer" as defined in Part II, III or V, as the case may be.

PART II

Farm Land Security

Interpretation of Part

3 In this Part:

(a) **"action"** means an action in court with respect to farm land by a mortgagee for:

(i) foreclosure of the equity of redemption;

(ii) sale or possession of the mortgaged farm land;

(iii) recovery of any money payable under a mortgage;

(iv) specific performance or cancellation of an agreement for sale;

(v) sale or possession of the farm land sold under the agreement for sale; or

(vi) any other relief that may be granted under the agreement for sale;

…

(c) **"farmer"** means, except in sections 27.1 to 27.9, a mortgagor.

Purpose

4 The purpose of this Part is to afford protection to farmers against loss of their farm land.

…

Actions prohibited, continued or discontinued

9(1) Notwithstanding any other Act or law or any agreement entered into before, on or after the coming into force of this Act:

…

(d) subject to sections 11 to 21, no person shall commence an action with respect to farm land;

…

No action without court order

11(1) Where a mortgagee makes an application with respect to a mortgage on farm land, the court may, on any terms and conditions that it considers just and equitable:

(a) order that clause 9(1)(d) or section 10 does not apply; or

(b) make an order for the purposes of clause 9(1)(f).

(2) Where an order is made pursuant to subsection (1), the mortgagee may commence or continue an action with respect to that mortgage.

(3) Any action that is commenced without an order pursuant to this section is a nullity, and any order made with respect to an action or a proposed action without an order pursuant to this section is void.

Notice to board and farmer

12(1) Subject to subsection (14), a mortgagee may apply to the court for an order pursuant to section 11 but only after the expiry of 150 days from the date of service of a notice of intention on:

(a) the board; and

(b) the farmer.

(2) On receiving a notice of intention pursuant to subsection (1), the board shall provide a copy of the notice to the manager of mediation services appointed pursuant to section 8 who:

(a) shall designate a mediator for the purposes of this section; and

(b) forward to the mediator designated pursuant to clause (a) the copy of the notice.

…

(5) On receipt of the report mentioned in subsection (4), the mediator shall attempt to mediate between the farmer and the mortgagee.

...

Presumption of viability and sincerity

13 Where an application is made for an order pursuant to section 11, the court:

(a) shall presume that the farmer:

(i) has a reasonable possibility of meeting his or her obligations under the mortgage; and

(ii) is making a sincere and reasonable effort to meet his or her obligations under the mortgage;

…

Court supervised mandatory mediation

15(1) Where:

(a) an application for an order is made pursuant to section 11; and

(b) a mediator’s certificate is filed pursuant to subsection 12(7) with respect to the

application mentioned in clause (a) indicating that the mortgagee has not participated in mediation in good faith;

the farmer may request that the court order supervised mandatory mediation.

(2) On the request of the farmer pursuant to subsection (1), the court:

(a) shall order supervised mandatory mediation; and

(b) where it makes an order described in clause (a):

(i) shall require both parties to mediate in good faith for a period to be determined by the court but not to be more than 60 days; and

(ii) may make any additional orders that it considers necessary to effect good faith mediation.

…

Homestead

17(1) Where:

(a) an application for an order has been made pursuant to section 11; and

(b) the court is satisfied that:

(i) property which is the subject of the action is a homestead;

(ii) the mortgage relating to the homestead was entered into prior to the coming into force of this Part; and

(iii) the farmer is making a sincere and reasonable effort to meet his or her obligations under the mortgage;

the court shall dismiss the application with respect to the homestead.

(2) Notwithstanding section 20, where an application for an order pursuant to section 11 is dismissed pursuant to subsection (1), no further application for an order pursuant to section 11 or a notice pursuant to section 12 shall be made with respect to the homestead for a period of three years from the date the application for an order pursuant to section 11 is dismissed.

(3) Where an application for an order pursuant to section 11 is dismissed pursuant to this section, no further application may be dismissed pursuant to this section with respect to that homestead.

(4) Notwithstanding subsection (2), a mortgagee may apply to the court for leave to bring an application for an order pursuant to section 11 if:

(a) the homestead ceases to be the residence of the farmer;

(b) there has been a significant deterioration of the property through the farmer's neglect or wilful act; or

(c) the farmer is no longer making a sincere and reasonable effort to meet his or her obligations under the mortgage.

Burden of proof

18(1) Where an application for an order is made pursuant to section 11, in addition to any other burden of proof that lies with the mortgagee, the mortgagee has the burden of proof to establish that:

(a) the farmer has no reasonable possibility of meeting his or her obligations under the mortgage; or

(b) the farmer is not making a sincere and reasonable effort to meet his or her obligations under the mortgage;

and unless the court is satisfied that the burden of proof has been discharged, it shall dismiss the application.

(2) For the purpose of subsection 17(1), in addition to any other burden of proof that lies with the mortgagee, the mortgagee has the burden of proof to establish that the farmer is not making a sincere and reasonable effort to meet his or her obligations under the mortgage.

(3) For the purpose of subsection 17(4), in addition to any other burden of proof that lies with the mortgagee, the mortgagee has the burden of proof to establish that:

(a) the homestead has ceased to be the residence of the farmer;

(b) there has been a significant deterioration of the property through the farmer's neglect or wilful act; or

(c) the farmer is no longer making a sincere and reasonable effort to meet his or her obligations under the mortgage.

…

Writ of execution

21(1)…

(7) In this section and section 109 and, for the purposes of an application pursuant to this section, in sections 11 to 20:

(a) **"farm land"** includes farm land that is subject to judgment enforcement;

(b) **"farmer"** includes the owner of farm land;

(c) **"mortgage"** includes judgment enforcement; and

(d) **"mortgagee"** includes the judgment creditor under judgment enforcement.

…

Action on personal convenant

25(1) In this section, **"action"** means an action taken by any person, including a recognized financial institution, with respect to:

(a) a mortgage of farm land, whether legal or equitable;

(b) an agreement for the sale of farm land; or

(c) a mortgage given as collateral security;

for the purpose of securing the purchase price or part of the purchase price of farm land.

…

Effect of final order of foreclosure

26(1) Subject to subsections (2) and (3), every final order of foreclosure of a mortgage on farm land is deemed to operate in full satisfaction of the debt secured by the mortgage.

(2) Where a final order of foreclosure applies to a mortgage on farm land that includes a homestead, the court shall, when granting the final order of foreclosure, apportion the debt secured by the mortgage between:

(a) the farm land that is a homestead; and

(b) the farm land that is not a homestead;

and the debt secured by the farm land that is a homestead is preserved.

…

Right of first refusal

27(1) Notwithstanding any provision in this Act or in any other Act, but subject to subsection 27.2(22) where, after the coming into force of this Act:

(a) either:

(i) a farmer voluntarily agrees to transfer his or her farm land by quit claim or otherwise to a mortgagee; or

(ii) a mortgagee obtains a final order of foreclosure or cancellation of agreement for sale against farm land; and

(b) the mortgagee subsequently receives a bona fide offer for all or any portion of his or her interest in that farm land which he or she is willing to accept;

the mortgagee shall give to the farmer who voluntarily transferred the farm land by quit claim or otherwise or against whom the final order of foreclosure or cancellation of agreement for sale issued, written notice of the terms of the offer.

…

(2) A farmer described in subsection (1):

(a) is deemed to have the first right for a period of 15 days after the written notice has been received by the farmer to notify the mortgagee of his or her intention to exercise his or her right to purchase all the farm land that is the subject of the offer and for the purchase price stated in the offer; and

(b) if the farmer notifies the mortgagee of his or her intention to exercise his or her right and on the expiry of the 15-day period mentioned in clause (a), shall provide within a further 15 days either:

(i) the purchase price; or

(ii) an unconditional and unequivocal letter of commitment from a recognized financial institution to the mortgagee to finance within a reasonable period the farmer's purchase of the farm land that is the subject of the offer and for the price stated in the offer.

…

Interpretation of sections 27.11 to 27.9

27.1 In sections 27.11 to 27.9:

…

(b) **"farmer"**:

(i) means a mortgagor that is:

(A) a producer who:

(I) is a Canadian citizen or is a permanent resident as defined in the *Immigration Act* (Canada);

(II) is a resident person;

(III) has generated in the immediately preceding three years an average annual gross income from agricultural sales of at least $5,000 from his or her farming operations; and

(IV) is at least 18 years of age;

(B) an agricultural corporation:

(I) the majority of issued voting shares of which are legally or beneficially owned by a producer described in sub-paragraphs (A)(I), (II) and (IV); and

(II) that has generated in the immediately preceding three years an average annual gross income from agricultural sales of at least $5,000 from its farming operations; or

(C) a person prescribed in the regulations; and

(ii) includes an assignee named in an assignment made in accordance with subsection 27.21(1) and a devisee named in a will who is described in subsection 27.21(1);

…

Limits and acknowledgment of guarantees

31(1) In this section:

(a) **"creditor"** includes a mortgagee and a secured party;

(b) **"guarantee"** means a deed or written agreement whereby an individual enters into an obligation to answer for an act, default, omission or indebtedness of a farmer in relation to farm land or other assets used in farming, but does not include guarantees entered into prior to the coming into force of this Act;

(c) **"lawyer"** means a lawyer who has not prepared any documents on behalf of the creditor relating to the transaction and who is not otherwise interested in the transaction;

(d) **"notary public"** means:

(i) with respect to an acknowledgment made in Saskatchewan, a notary public in and for Saskatchewan;

(ii) with respect to an acknowledgment made in a jurisdiction outside Saskatchewan, a notary public in and for that jurisdiction;

who has not prepared any documents on behalf of the creditor relating to the transaction and who is not otherwise interested in the transaction.

(2) No guarantee has any effect unless the person entering into the obligation:

(a) appears before a lawyer or notary public;

(b) acknowledges to the lawyer or notary public that he or she executed the guarantee; and

(c) in the presence of the lawyer or notary public signs the certificate in the prescribed form.

(3) The lawyer or notary public, after being satisfied by examination of the person entering into the obligation that he or she is aware of the contents of the guarantee and understands it, shall issue a certificate in the form prescribed in the regulations.

(4) If a notary public issues a certificate pursuant to subsection (3), the notary public shall do so under his or her hand and seal.

(5) Every certificate issued pursuant to this section by a lawyer or notary public shall be:

(a) attached to; or

(b) noted on;

the instrument containing the guarantee to which the certificate relates.

(6) A certificate issued pursuant to this section that is:

(a) substantially complete and regular on the face of it; and

(b) accepted in good faith by the creditor;

is admissible in evidence as conclusive proof that this section has been complied with.

(7) Every guarantee shall specify the maximum financial obligation in sum certain plus interest from the date of the demand on the guarantor to which the guarantor is liable.

(8) A guarantee that does not comply with subsection (7) is null and void and of no effect.

…

39(1) In this section and section 40, **"farmer"** includes a lessee.

…

Application of moneys; more than one debt

41(1) Where:

(a) a mortgage or security agreement is held as security for more than one debt; and

(b) moneys are paid by the farmer or are realized by the mortgagee or secured party under the terms of the mortgage or security agreement;

the mortgagee or secured party shall immediately apply the moneys received or realized in or towards payment of one or more of the debts secured by the mortgage or security agreement, and, unless the farmer in exercise of any right has given directions as to the application of those moneys, the mortgagee or secured party shall notify the farmer of the debt in or towards payment of which the moneys have been applied.

(2) Any agreement, stipulation or covenant that is contrary to subsection (1) is null and void and of no effect.

Certain conditions prohibited

42(1) No security agreement or collateral agreement shall contain a provision the application of which depends merely on the opinion of the secured party that a circumstance or state of things exists which affects security.

(2) A provision in subsection (1) in an agreement mentioned is null and void and of no effect.

PART III

Home Quarter Protection

Interpretation of Part

43 In this Part:

(a) **"farmer"** means a mortgagor;

(b) **"mortgage"** does not include a mortgage:

(i) financed by a vendor:

(A) who is an individual; or

(B) that is a corporation with fewer than 10 shareholders; or

(ii) granted before the coming into force of this Act to Farm Credit Canada continued pursuant to the *Farm Credit Canada Act*.

Restriction on orders affecting homestead

44(1) The operation of:

(a) a final order of foreclosure; and

(b) an order for possession contained in an order mentioned in clause (a);

insofar as it affects a homestead, is stayed for as long as the homestead continues to be a homestead.

(2) Every final order of foreclosure of a mortgage shall contain a declaration by the court that the land described in the order:

(a) is not a homestead; or

(b) is a homestead.

(3) Where the final order of foreclosure of a mortgage affects a homestead and other land, the declaration shall describe:

(a) the land that is a homestead; and

(b) the other land affected by the order that is not a homestead.

(4) If at any time land ceases to be a homestead, the court may declare that final order of foreclosure made with respect to that land shall operate with full force and effect.

…

PART IV

Possession of Equipment

Interpretation of Part

45 In this Part:

(a) **"farmer"** means a producer who or agricultural corporation that owes payment or other performance of a secured obligation, whether or not he, she or it owns or has rights in the article, and includes a person appointed pursuant to subsection 49(1);

…

Vendor's rights restricted

46(1) In this section, **"article"** means any personal property that:

(a) is purchased by a farmer for use in farming; and

(b) has a selling price greater than $500.

…

PART V

Exemptions

Interpretation of Part

65 In this Part, **"farmer"** means a producer who:

(a) owes payment or other performance of the obligation secured whether or not he or she owns or has rights in the goods; or

(b) is an execution debtor.

Exemptions under executions

66 The following property of a farmer and his or her family is declared free from seizure under judgment enforcement:

(a) clothing, including jewelry, with a cumulative value that does not exceed the prescribed amount;

(a.1) medical and dental aids or other devices required or ordinarily used by the farmer or a dependant of the farmer due to physical or mental disability;

(b) household furnishings, utensils, equipment and appliances;

(b.1) domestic animals that are kept solely as pets with a cumulative value that does not exceed the prescribed amount;

(c) produce of a farm sufficient, when converted into cash, to provide food and fuel for heating purposes for the farmer and his or her family until the next harvest;

(d) all livestock, farm machinery and equipment, including one automobile or one farm truck, that are reasonably necessary for the proper and efficient conduct of the farmer's agricultural operations for the next 12 months;

(e) one motor vehicle, where it is necessary for the proper and efficient conduct of the farmer's business, trade, calling or profession, but only if that motor vehicle is not in addition to one mentioned in clause (d);

(f) the books related to any profession practised by the farmer;

(g) the tools and necessary implements and office furniture and equipment, used by the farmer in the practice of his or her business, trade, calling or profession with a value that does not exceed the prescribed amount;

(g.1) employment income in the amount set out in section 95 of *The Enforcement of Money Judgments Act*;

(h) the house and buildings occupied by the farmer as his or her bona fide residence and the lot or lots on which they are situated according to an approved plan to the extent of $32,000;

(i) seed grain chosen by the farmer, that is sufficient to sow all his farm land under cultivation to a maximum amount equal to the product of:

(i) two bushels per acre; and

(ii) the number of acres of farm land under cultivation by the farmer;

(j) the crop of the farmer to the extent that is sufficient, when converted into cash, along with any other means that he or she may have, to:

(i) pay all unpaid legitimate costs of harvesting the crop;

(ii) provide a necessary living allowance for the support of the farmer and his or her family until the crop of the following year is about to be harvested; and

(iii) provide necessary costs of his or her farming operations until that time;

(j.1) money, and property or income acquired through the investment of money:

(i) that can be separately identified as being received or as having been received by the farmer pursuant to a legal entitlement to compensation for physical or mental injury; and

(ii) that is being used or will be used to meet the reasonable and ordinary living expenses of the farmer and his or her dependants or to provide medical or other care facilities for the farmer or his or her dependants;

(j.2) prepaid funeral services for, or a burial plot intended for the interment of, the farmer, a dependant of the farmer or a member of the farmer's family;

(k) the homestead;

(l) any trailer that is:

(i) occupied by the farmer as living quarters; and

(ii) not in addition to the house and buildings protected from seizure under clause (h) or (k);

(l.1) property of the farmer that is of such a low value that the sheriff believes that the costs of seizure and sale are likely to be approximately equal to or greater than the amount of the proceeds that will be available for satisfaction of the amount recoverable;

(m) the right of first refusal mentioned in section 27; and

(n) the right to lease pursuant to sections 27.1 to 27.9.

…

Deceased debtor

71 Where a farmer dies, his or her property that would be exempt pursuant to this Part from seizure under execution and that is exempt pursuant to this Part from seizure under a security agreement mentioned in section 68 is exempt as against his or her personal representative if it is in the use and enjoyment of and is necessary for the maintenance and support of:

(a) the surviving spouse;

(b) the children; or

(c) the surviving spouse and children;

of the deceased farmer.

…

Absconding debtors

73 Sections 66 to 68 do not apply to cases in which a farmer:

(a) has absconded; or

(b) is about to abscond;

from Saskatchewan leaving no spouse or children behind.

The Legislation Act, S.S. 2019, c. L-10.2

DIVISION 3

Interpretation of Enactments

Acts and regulations remedial

2-10(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

(2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

…

Bilingual texts

2-18(1) The English and French versions of an enactment that is enacted in both languages are equally authoritative.

…

Defined terms

2-27(1) If a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.

(2) Definitions and other interpretation provisions:

(a) in an enactment, apply to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment;

(b) in an Act, apply to regulations made or continued pursuant to that Act, except to the extent that a contrary intention appears in the regulations.