

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen
Madam Justice Lori T. Spivak

BETWEEN:

	)	<i>V. R. Jhanji</i>
	)	<i>on their own behalf</i>
<i>7602678 MANITOBA LTD. and</i>)	
<i>VIBHU RAJ JHANJI</i>	)	<i>R. H. Kravetsky</i>
	)	<i>for the Respondent</i>
<i>(Plaintiffs) Appellants</i>	)	<i>The Law Society of</i>
	)	<i>Manitoba</i>
<i>- and -</i>)	
	)	<i>A. W. Boumford</i>
<i>6399500 MANITOBA LTD.</i>	)	<i>on a watching brief</i>
	)	<i>for Landmhel Real</i>
<i>(Defendant) Respondent</i>	)	<i>Estate Services Inc.</i>
)	
<i>- and -</i>	)	<i>No appearance</i>
	)	<i>for the Appellant</i>
<i>LANDMHEL REAL ESTATE SERVICES</i>	)	<i>7602678 Manitoba Ltd.</i>
<i>INC.</i>)	
	)	<i>No appearance</i>
<i>(Defendant)</i>	)	<i>for the Respondent</i>
	)	<i>6399500 Manitoba Ltd.</i>
<i>- and -</i>)	
	)	<i>Appeal heard:</i>
<i>THE LAW SOCIETY OF MANITOBA</i>	)	<i>January 20, 2025</i>
)	
<i>(Intervener) Respondent</i>	)	<i>Judgment delivered:</i>
	)	<i>March 12, 2025</i>

On appeal from: *7602678 Manitoba Ltd v 6399500 Manitoba Ltd* (12 September 2022), Winnipeg CI 20-01-28994 (MBKB) [the *main appeal*];
7602678 Manitoba Ltd v 6399500 Manitoba Ltd, 2023 MBCA 78 [the *interlocutory appeal*]

SPIVAK JA

[1] These two appeals stem from an action brought by the plaintiffs, Vibhu Raj Jhanji (Mr. Jhanji) and 7602678 Manitoba Ltd. (760), against the defendants, and an associate judge's decision (the associate judge) striking Mr. Jhanji as a party to the action and barring him from representing 760 (see *7602678 Manitoba Ltd v 6399500 Manitoba Ltd*, 2022 MBQB 16 [the *representation order*]). The Law Society of Manitoba (the LSM) was granted intervener status to address the issue of Mr. Jhanji's standing to represent 760 in the Court of King's Bench (see *7602678 Manitoba Ltd v 6399500 Manitoba Ltd*, 2021 MBQB 110).

[2] More particularly, the first appeal concerns the plaintiffs' appeal of a motion judge's order (the motion judge's order) denying an extension of time to file an appeal brief to perfect their appeal of the *representation order* (see the *main appeal*).

[3] The second appeal is an appeal of an interlocutory order within the main appeal made by a chambers judge of this Court (the chambers judge) (see the *interlocutory appeal*). The chambers judge denied the plaintiffs' motion seeking to stay proceedings in the Court of King's Bench, disqualify counsel for the LSM and find him in contempt, and add the Attorney General (AG) as a party to this proceeding.

[4] The LSM's position is that these appeals should be dismissed as being moot or an abuse of process since, prior to the hearing of these appeals, 760's statement of claim against the defendants was struck and the action is at an end.

[5] For the reasons that follow, I would dismiss the appeals.

Background

[6] Some detailed background is required to understand the complicated history of the proceedings and the nature of the issues in these appeals.

[7] Mr. Jhanji is a suspended lawyer, having been found incompetent to practise law by a discipline panel of the LSM. The action underlying these appeals concerns a statement of claim filed by Mr. Jhanji and 760 in respect of a failed transaction to purchase a gas station between 760 as buyer; the defendant, 6399500 Manitoba Ltd. (639), as vendor; and Landmhel Real Estate Services Inc. (Landmhel) as listing agent. Mr. Jhanji is described in the statement of claim as 760's agent. As of the date of the *representation order*, Mr. Jhanji's son, Daksh Jhanji, and Mr. Jhanji were both shareholders, directors and officers of 760 but, in April 2024, Mr. Jhanji became the sole director, officer and shareholder of that company.

[8] 639 and Landmhel filed motions to strike the statement of claim and 639 moved to strike Mr. Jhanji as plaintiff and bar him from representing 760. As already mentioned, the LSM sought and obtained intervener status to address Mr. Jhanji's ability to represent 760. Landmhel did not participate in 639's motion. On January 24, 2022, the associate judge struck Mr. Jhanji's personal claim on the basis that he was not properly a party to the action and precluded him from representing 760 in the Court of King's Bench. The associate judge concluded that allowing Mr. Jhanji to represent 760 would contravene *The Legal Profession Act*, CCSM c L107, given his suspension from the practice of law.

[9] The plaintiffs appealed the *representation order* and moved for a stay of the associate judge's decision pending appeal. The stay motion was dismissed by Chartier J who concluded that the plaintiffs "failed to make out an arguable case that the [associate judge] erred". As the appeal brief required for the plaintiffs' appeal of the *representation order* was not filed in time, the plaintiffs sought an order extending the time to perfect and revive the appeal of the *representation order*. The motion judge denied the plaintiffs' request, holding that the issue as to whether there was merit to the appeal was already decided by Chartier J and could not be re-litigated. As I previously noted, it is from the motion judge's order that the main appeal arises.

[10] After filing their notice of appeal in the main appeal, the plaintiffs moved for interlocutory relief before a chambers judge of this Court, seeking a stay of the Court of King's Bench proceedings; an order disqualifying counsel for the intervener, the LSM, and finding him in contempt; and an order adding the AG as a party to this proceeding. By reasons dated September 15, 2023, the chambers judge dismissed this motion, finding that there was no basis to grant any of the relief sought (see the *interlocutory appeal*).

[11] Meanwhile, the motions of 639 and Landmhel to strike the statement of claim in its entirety proceeded before the associate judge. On May 12, 2023, the associate judge granted the motions without leave to amend, finding that it was plain and obvious that 760's claim against the defendants failed to disclose a reasonable cause of action (see *7602678 Manitoba Ltd v 6399500 Manitoba Ltd*, 2023 MBKB 79).

[12] The associate judge's order striking the claim was then appealed to a Court of King's Bench judge. On November 1, 2023, McKelvey J endorsed the associate judge's decision and dismissed the appeal, concluding that 760's statement of claim failed to disclose a reasonable cause of action, was frivolous and vexatious, and was an abuse of process (see *7602678 Manitoba Ltd v 6399500 Manitoba Ltd*, 2023 MBKB 161 [the *striking order*]). She denied leave to amend the statement of claim, highlighting its "incomprehensible and prolix" nature (*ibid* at para 20). The *striking order* was then appealed by 760 by way of a notice of appeal filed in February 2024. Earlier, counsel for 639 was allowed to withdraw and 639 is no longer participating in the proceedings in this Court and, in fact, has been dissolved. As in the Court of King's Bench, Landmhel did not participate in the appeal of the *representation order* in this Court.

[13] Following directions given by the Chief Justice pursuant to MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R, r 37.1, a motion to permit Mr. Jhanji, as sole director, to act for 760 in the appeal of the *striking order* was heard by her on May 28, 2024. By reasons dated July 25, 2024, the Chief Justice denied the motion as she was not satisfied that Mr. Jhanji could properly advise 760 or conduct the appeal on its behalf (see *7602678 Manitoba Ltd v 6399500 Manitoba Ltd*, 2024 MBCA 59). Further, she stayed the appeal of the *striking order*, holding that no further court documents could be filed on behalf of 760 until it retained legal counsel. She also extended the time in which 760 could retain a lawyer to September 3, 2024, failing which the appeal of the *striking order* would be deemed abandoned. Her order also provided that Mr. Jhanji could not represent 760 in the appeals now at hand.

[14] On August 6, 2024, Mr. Jhanji personally attempted to file, on behalf of 760, a notice of appeal of the Chief Justice's order. This was rejected by the Court of Appeal registry as no lawyer had been retained by 760. To this date, 760 has not retained a lawyer to act on its behalf.

[15] Having reviewed these protracted proceedings, I turn to the issues in these appeals.

Analysis

The Main Appeal

[16] As previously explained, the main appeal relates to the *representation order* that prohibited Mr. Jhanji from representing 760 in the Court of King's Bench and struck his personal claim against the defendants. It arises from the motion judge's order denying an extension of time to file an appeal brief to perfect the appeal of the *representation order*.

[17] The LSM submits that this appeal is either moot or an abuse of process as 760's statement of claim has been struck for failing to disclose a reasonable cause of action, being frivolous and vexatious, and being an abuse of process, and an appeal from the *striking order* is deemed abandoned because 760 did not retain a lawyer. Accordingly, it argues that, since the issues raised relate to a pleading that has been struck and an action that consequently no longer exists, a determination of this appeal is pointless.

[18] As I will now explain, I agree. In doing so, I will separately address the two aspects of the *representation order* to which the main appeal pertains: (1) the barring of Mr. Jhanji from representing 760, and (2) the striking of his

personal claim against the defendants. While I have reached the same conclusion regarding each, I do so for slightly different reasons.

The Representation of 760

[19] Mootness is an aspect of a general policy or practice that a court may decline to decide a case that raises a merely hypothetical or abstract question and where the decision of the Court will have no practical effect on the rights of the parties (see *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353, 1989 CanLII 123 (SCC) [*Borowski*], cited with approval in *Gateway Bible Baptist Church v Manitoba*, 2023 MBCA 56 at para 21).

[20] Given that 760's claim has been struck and been deemed abandoned, the issue of Mr. Jhanji's entitlement to represent 760 is moot. The main appeal seeks to revive an appeal of the *representation order* and is therefore about whether Mr. Jhanji can represent 760 in an action that has been struck. With 760's action against the defendants now at an end, there is no ongoing proceeding involving 760 and no live controversy relating to Mr. Jhanji's representation of that company. Put another way, the substratum of the appeal in this regard has disappeared (see *Borowski* at 357).

[21] My view of the mootness of the appeal as it relates to 760's representation is unaltered by Mr. Jhanji's attempt to appeal the Chief Justice's order, which deemed the appeal of the *striking order* abandoned. The Chief Justice's order was an order of this Court that continues in force and applies even when a party attempts to appeal that very order (see *Green v University of Winnipeg*, 2020 MBCA 2; *Klippenstein v Winpark Dorchester Properties*, 2016 MBCA 53). Consequently, for 760 to take any further steps in the appeal of the *striking order*, which includes appealing the Chief

Justice's order that prohibited Mr. Jhanji from representing 760 in this Court, it requires a lawyer to do so on its behalf. 760 did not retain a lawyer to seek a stay, extend the time to appeal or file an appeal of the Chief Justice's order. Therefore, it remains that the issue of the representation of 760 concerns an action that has been extinguished and is accordingly moot.

The Striking of Mr. Jhanji's Personal Claim

[22] As for the appeal of the *representation order* as it relates to the striking of Mr. Jhanji's personal claim, while the absence of mutuality of the parties may not make this issue technically moot, it would be an abuse of process to allow this aspect of the appeal to proceed.

[23] The doctrine of abuse of process is broad and flexible in nature. It is concerned with "a waste of the time and resources of the litigants and the court and an erosion of the principle of finality so crucial to the proper administration of justice" (*Solomon v Smith*, 1987 CarswellMan 233 at para 46, 1987 CanLII 117 (MBCA)). In *MRF v KD*, 2005 MBCA 58 at para 23, this Court commented on this doctrine, explaining:

Notwithstanding that the issues, the parties and even the court may not be identical, where there is a sufficient identity of issues that the matter would be considered repetitious and a waste of the time and resources of the litigants and the court, that may be sufficient to successfully invoke the plea of abuse of process.

[24] Such is the case here.

[25] A review of the statement of claim reveals that, but for alleging that Mr. Jhanji was an agent of 760, his claim against the defendants is completely tied to that of 760's. There is no separate claim pled and no distinction made

between any purported causes of action asserted by the plaintiffs. Given the identical issues advanced in the statement of claim on behalf of both 760 and Mr. Jhanji, it would be an abuse of process to allow the appeal relating to Mr. Jhanji's personal claim to continue as it is based on a pleading that was struck for the reasons I have already outlined. Mr. Jhanji is seeking to be reinstated as a plaintiff in the same pleading that was already determined to disclose no reasonable cause of action, was frivolous and vexatious, and was an abuse of process. It is, in essence, an improper attempt to re-litigate a matter already decided.

[26] While it is not necessary to address the merits, I nonetheless would comment that the motion judge's denial of the extension of time to perfect the appeal of the *representation order* was a discretionary decision entitled to deference. I fail to see how his finding that there were no arguable grounds to Mr. Jhanji's appeal raises any reviewable error. As noted by the associate judge in his reasons for decision, Mr. Jhanji's claim against the defendants was on the basis that he was an agent for the purchaser, 760. He was not a party to the transaction and, therefore, not a proper party to these proceedings. Moreover, as McKelvey J concluded, 760's action upon which Mr. Jhanji's claim rests was prolix, illogical, confusing, used incomprehensible and incoherent language, and evidently failed to disclose a reasonable cause of action (see the *striking order* at paras 15-16).

The Interlocutory Appeal

[27] To recap, the appeal of the chambers judge's order relates to her dismissal of the plaintiffs' motion to stay further proceedings in the Court of

Kings Bench, disqualify counsel for the LSM and find him in contempt, and add the AG as a party to these proceedings.

[28] Having found that the main appeal should be dismissed as moot and an abuse of process, it follows that the appeal of an interlocutory motion within the main appeal should be similarly decided.

[29] As I have previously stressed, 760's action against the defendants has been struck and the appeal of that decision is deemed abandoned. As such, the motion judge's decision to deny an extension of time to perfect the appeal relating to the representation of 760 is no longer a live controversy. As a result, the motion for a stay of the motion judge's decision and relief relating to counsel for the LSM is moot since it pertains to 760's representation in an action that is not viable.

[30] While this is sufficient to dispose of the interlocutory appeal, I think it is important to add the following comments on the merits, which emphasize its futility. The chambers judge's order is entitled to deference. To the extent that it was discretionary in nature, an appellate court should only intervene where there is a misdirection or the decision is so clearly wrong as to amount to an injustice. As well, absent an extricable error of law, the standard of palpable and overriding error applies to questions of fact and questions of mixed fact and law (see *Forsythe v Johnson*, 2024 MBCA 104 at para 16).

[31] There is no coherent argument advanced as to any reviewable error made by the chambers judge. To the contrary, the chambers judge understandably held that, to the extent that the stay motion could be discerned as relating to the motion judge's order, it should be denied as failing to meet the test for that relief. As well, and significantly, she correctly considered that

Mr. Jhanji's allegations of misconduct regarding counsel for the LSM and Mr. Jhanji's repeated attempts to disqualify him have previously been examined and rejected by this Court and are without any evidentiary basis (see *Jhanji v The Law Society of Manitoba*, 2022 MBCA 78 at paras 54-62; *Jhanji v The Law Society of Manitoba*, 2020 MBCA 48 at para 31). Finally, regarding the attempt to add the AG as a party, the chambers judge properly noted that the AG had not been served with the motion materials and, in any event, there was no merit to this request.

Conclusion

[32] For all of these reasons, I conclude that these appeals should be dismissed. In the end, they amount to a waste of the time and resources of this Court in an attempt to expend further time and resources of the Court of King's Bench in a fruitless exercise. In accordance with the LSM's request for tariff costs of these appeals, I would so order, save for there should be only one fee for the LSM's appearance at this hearing. Costs are to be payable jointly by 760 and Mr. Jhanji.

Spivak JA

I agree: leMaistre JA

I agree: Simonsen JA
