

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Christopher J. Mainella  
Madam Justice Jennifer A. Pfuetzner  
Madam Justice Janice L. leMaistre

***BETWEEN:***

<b><i>ENSSAF GHAZALI</i></b>	)	<b><i>G. R. Champagne</i></b>
	)	<b><i>for the Appellant</i></b>
<i>(Plaintiff) Respondent</i>	)	
	)	<b><i>M. Zacharias and</i></b>
<i>- and -</i>	)	<b><i>R. Swan</i></b>
	)	<b><i>for the Respondent</i></b>
<b><i>GHADY GUISTI</i></b>	)	
	)	<b><i>Appeal heard and</i></b>
<i>(Defendant) Appellant</i>	)	<b><i>Decision pronounced:</i></b>
	)	<b><i>March 3, 2025</i></b>

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

[1] This is an appeal of an order granting the plaintiff summary judgment on her claim that she is entitled to vacant possession of a residential property in Winnipeg she had purchased in 2004; that the defendant, her niece, has been trespassing on as of April 15, 2022; and that the plaintiff is also entitled to damages of \$50,700, as well as tariff costs.

[2] We are not persuaded that there is any merit to the defendant's challenges to the plaintiff's title to the property in question or that she was not properly served with the motion for summary judgment.

[3] The defendant's main argument on this appeal is an entitlement to ownership of the property based on the doctrine of adverse possession. This is a new issue raised for the first time on appeal. Despite there being no exceptional circumstances for us to entertain this assertion, we can say there is no risk of an injustice here. In our view, this submission is entirely misguided. The doctrine was effectively abolished in Manitoba long ago by statute save for circumstances that do not arise here (see *The Real Property Act*, CCSM c R30, s 61(2); *Stall v Yorosz* (1964), 43 DLR (2d) 255, 1964 CanLII 582 (MBCA)).

[4] The defendant also disputes the award of damages and the order of costs. We are not satisfied that there is any basis to interfere with either exercise of discretion by the judge.

[5] The plaintiff has requested solicitor and client costs of this appeal. Such costs are normally not available simply because an appeal lacks merit. We are not convinced that there are exceptional circumstances to warrant costs in excess of the tariff.

[6] In the result, the appeal is dismissed with costs.

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Mainella JA

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Pfuetzner JA

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leMaistre JA