

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre
Madam Justice Anne M. E. Turner

BETWEEN:

	)	<i>R. M. Beamish</i>
	)	<i>for the Appellant</i>
)	
	)	<i>K. T. Williams, K.C. and</i>
<i>NICOLE LINDE</i>	)	<i>J. M. Nordlund</i>
	)	<i>for the Respondent</i>
(Plaintiff) Appellant)	
	)	<i>Appeal heard:</i>
	)	<i>October 1, 2024</i>
- and -)	
	)	<i>Judgment delivered:</i>
	)	<i>February 11, 2025</i>
<i>MAX INSURANCE</i>)	
	)	<i>Motion under r 46.2 of</i>
(Defendant) Respondent	)	<i>the Court of Appeal Rules</i>
	)	<i>(Civil)</i>
)	
	)	<i>Decision pronounced:</i>
	)	<i>May 13, 2025</i>

PER CURIAM

[1] The plaintiff moves for an order pursuant to rule 46.2 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R, for a rehearing of her appeal, which was dismissed on February 11, 2025 (see *Linde v Max Insurance*, 2025 MBCA 13). No certificate of decision has been entered yet.

[2] The plaintiff filed a memorandum of argument on the motion and the defendant filed a memorandum in reply.

[3] For the following reasons, we are satisfied that oral argument on the motion for a rehearing is not required (see r 46.2(9)) and that the motion should be dismissed because the plaintiff has not met the heavy burden of establishing “exceptional circumstances, where the interests of justice manifestly compel” the Court to rehear the appeal (*Willman v Ducks Unlimited (Canada)*, 2005 MBCA 13 at para 9).

[4] By way of background, the plaintiff appealed the dismissal of her action that the defendant acted in bad faith in its handling of her insurance claim regarding fire damage to her property. She also asserted that the trial judge exceeded his jurisdiction when he addressed issues that had been determined by an umpire appointed pursuant to provisions of *The Insurance Act*, CCSM c I40.

[5] The plaintiff does not seek a rehearing regarding our decision that the trial judge did not commit any errors in concluding that the defendant did not act in bad faith.

[6] The plaintiff’s argument on the motion for a rehearing is a new submission that the umpire’s valuation of the property was a determination of the property’s actual cash value (ACV) that was binding on the trial judge.

[7] Appellate courts do not entertain new issues raised on appeal except in exceptional circumstances (see *Samborski Garden Supplies Ltd v MacDonald*, 2015 MBCA 26 at para 27).

[8] Leaving aside any concerns as to a new submission being raised for the first time after the appeal was decided, the argument has no merit. The difficulty with the plaintiff's position is that the umpire's report did not render a decision on the property's ACV. He clearly rendered a decision on the replacement cost value of the property when he wrote: "settlement for the building claim will be based on the cost to *rebuild from new*" [emphasis added]. The trial judge did not err in concluding, "the decision of the Umpire on *rebuilding* is not applicable to these facts" (*Linde v Max Insurance Company*, 2023 MBKB 74 at para 55) [emphasis added].

[9] In our view, the plaintiff's new argument does not meet the high threshold for the rehearing of an appeal. As stated in *Abraham v Wingate Properties Ltd*, [1986] 2 WWR 568 at 569-70, 1985 CanLII 3680 (MBCA):

[T]his court will not in the ordinary course grant an application for reconsideration unless there is a patent error on the face of the reasons delivered or a point for argument not raised at the hearing of the appeal and which arises out of the judgment delivered, which point could not reasonably have been foreseen and dealt with at the original hearing.

[10] We are not persuaded that there is a need for a rehearing; therefore, the plaintiff's motion is dismissed with costs.

Mainella JA

leMaistre JA

Turner JA