

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner
Mr. Justice James G. Edmond

BETWEEN:

<i>GODWIN SMITH</i>)	<i>G. Smith</i>
)	<i>on their own behalf</i>
)	
<i>(Plaintiff) Appellant</i>)	<i>M. R. Merriott</i>
)	<i>for the Respondent</i>
- and -)	
)	<i>Appeal heard and</i>
<i>THE CITY OF WINNIPEG</i>)	<i>Decision pronounced:</i>
)	<i>February 4, 2025</i>
<i>(Defendant) Respondent</i>)	
)	<i>Written reasons:</i>
)	<i>February 12, 2025</i>

On appeal from *Smith v City of Winnipeg*, 2024 MBKB 78 [*Smith*]

MAINELLA JA (for the Court):

[1] This appeal is the latest chapter in a long-running dispute over the renovation of a derelict building in downtown Winnipeg. After hearing the appeal, we dismissed it with reasons to follow. These are those reasons.

[2] By way of background, in 2006, the plaintiff purchased the property, which had on it a multi-unit residential building (the building), with the plan of it being a home/office. A dispute arose between the plaintiff and the defendant (the City) over the renovation of the building. This dispute

culminated in 2011, with the plaintiff refusing the City access to the building to inspect the ongoing renovations. The City then took enforcement action under various by-laws against the plaintiff due to the long-standing poor condition of the building and the plaintiff's refusal to bring it to a habitable standard (see City of Winnipeg, by-law No 35/2004, *Vacant and Derelict Buildings By-law* (1 July 2004); City of Winnipeg, by-law No 1/2008, *Neighbourhood Liveability By-law* (1 November 2008); City of Winnipeg, by-law No 79/2010, *Vacant Buildings By-law* (21 July 2010); City of Winnipeg, by-law No 89/2010, *Taking Title to Vacant and Derelict Buildings By-law* (15 December 2010)).

[3] The City's actions resulted in several administrative and legal proceedings related to the renovation dispute. In 2011, the plaintiff commenced an action against the City as to its by-laws enforcement. In 2012, the plaintiff's appeal under the administrative process relating to the City's by-laws enforcement was dismissed. The plaintiff's judicial review of the administrative decision was struck in 2012. In 2018, the plaintiff was convicted of five by-law offences relating to the renovation of the building. The appeal of his convictions was unsuccessful, as was his application for leave to appeal to this Court (see *Winnipeg (City) v Smith*, 2019 MBCA 111). The plaintiff also commenced applications to challenge a tax sale of the property and the City's attempt to inspect the property to enforce the by-laws. These applications were both dismissed by a judge in 2021.

[4] In 2019, the plaintiff commenced two tort actions, which were consolidated in 2023 with his outstanding 2011 action, alleging a series of abuses of authority and corruption by municipal officials in relation to the renovation dispute.

[5] This appeal arises from the City successfully moving for summary judgment dismissing the consolidated claims (see MB, *King's Bench Rules*, Man Reg 553/88, r 20.03(1) [the *KB Rules*]).

[6] In our view, much of the plaintiff's appeal and submissions were an attempt to re-litigate issues, such as the adequacy of the notice the City provided to him during inspections of the building, that had been decided against him in other cases that have been concluded. This is inappropriate; a litigant is entitled to only "one bite at the cherry" (*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 18).

[7] One aspect of the appeal has sufficient merit to require some comment. The plaintiff says that there was a genuine issue requiring a trial such that the summary judgment judge should not have dismissed his claims without a trial by making credibility findings based on the record before him. We disagree.

[8] A judge hearing a motion for summary judgment has broad powers to fact-find to determine if there is a genuine issue requiring a trial (see the *KB Rules*, r 20.03(2)). The issue of whether a factual dispute can be resolved fairly and justly in a summary judgment motion, as opposed to a trial, is a question of mixed fact and law for the purposes of appellate review, absent an extricable legal question (see *Wong v Dyker Law Corporation*, 2024 MBCA 8 at para 14).

[9] The record before the summary judgment judge consisted of twenty affidavits, as well as the cross-examination of the plaintiff and City officials. The summary judgment judge rejected the plaintiff's allegations of unfair treatment, abuse of authority and corruption; in his view, the weight of the

evidence favoured an alternative reality—that the plaintiff was treated fairly and professionally by City officials and he did not meet his legal obligations under the by-laws to make the building habitable in a timely and legal manner.

[10] While the record before the summary judgment judge was voluminous, we agree with his conclusion that “the facts are clear” (*Smith* at para 42). The narrative of events was not complicated, the evidence was not technical and the plaintiff’s repeated lack of compliance with his legal obligation to make the building habitable in a timely way is undisputed. The summary judgment judge took the required hard look at the evidence before him and we are not persuaded that he committed a palpable and overriding error in deciding that credibility issues raised by the plaintiff did not raise a genuine issue requiring a trial.

[11] In the result, the appeal was dismissed with costs.

Mainella JA

Pfuetzner JA

Edmond JA