

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Richard J. Chartier  
Mr. Justice Michel A. Monnin  
Madam Justice Freda M. Steel

***BETWEEN:***

<b><i>LEONTINA DA CONCEICAO SOARES</i></b> )	
<b><i>AGUIAR</i></b> )	<b><i>G. M. Wood</i></b>
)	<i>for the Appellants</i>
<i>(Plaintiff) Respondent</i> )	
)	<b><i>C. J. Cook</i></b>
<i>- and -</i> )	<i>for the Respondent</i>
)	
<b><i>5026113 MANITOBA LTD., DAYLIGHT</i></b> )	<i>Appeal heard and</i>
<b><i>CAPITAL CORPORATION and</i></b> )	<i>Decision pronounced:</i>
<b><i>RICHARD BOON</i></b> )	<b><i>April 23, 2019</i></b>
)	
<i>(Defendants) Appellants</i> )	

On appeal from 2018 MBQB 70

**CHARTIER CJM** (for the Court):

[1] The plaintiff issued a statement of claim against the defendants claiming that a transaction relating to her home was unconscionable. The plaintiff then applied for relief, by way of summary judgment, seeking to remove encumbrances filed against the title to her home by the defendant 5026113 Manitoba Ltd. The defendants, for their part, moved for an order dismissing the plaintiff's action for delay.

[2] The motion judge dismissed the defendants' delay motion and, for the most part, granted the relief sought by the plaintiff. The defendants appeal both

decisions.

[3] With respect to the motion judge's discretionary decision to dismiss the delay motion, the defendants have not demonstrated that they suffered any prejudice and, for that reason, appellate intervention is unjustified.

[4] We now turn to the decision of the motion judge to grant most of the relief sought by the plaintiff by way of summary judgment. From his reasons, it is clear that the motion judge was very much alive to the defendants' argument that, because of the parties' different versions of events, this case should not be determined by way of summary judgment. The motion judge rejected this argument. He found that, while there were significant differences in the evidence with respect to the plaintiff's fraud allegations, this was not the case with respect to the evidence on whether there had been compliance with the agreements entered into between the parties and what their impact would be. The motion judge decided that this case could be determined by way of summary judgment. Key to his decision was a favourable assumption he made in favour of the defendants. The motion judge assumed, without deciding, that the plaintiff signed and understood all of the documents relied upon by the defendants.

[5] After reviewing at length the evidence filed by way of affidavit and correctly stating the legal principles, the motion judge concluded that, not only had the defendants not performed their side of the bargain, their scheme ran afoul of *The Unconscionable Transactions Relief Act*, CCSM c U20.

[6] We are all of the view that the finding that the transaction as a whole was unconscionable was clearly open to the motion judge. There was an unequal bargaining position and the transaction was obviously improvident. It

is not disputed that the plaintiff was a recent widow in financial difficulty; that she is an immigrant with limited verbal or written knowledge of English; and that the defendant, Richard Boon, is an experienced businessman. As noted by the motion judge, the transaction itself was complicated and structured in an unusual way. The evidence also clearly established that, had the transaction been allowed to proceed, the defendants would have received the plaintiff's home for less than a third of its value.

[7] In the end, the motion judge was satisfied that there was no genuine issue requiring a trial with respect to the defendants' defence and granted summary judgment in favour of the plaintiff. We see no reason to intervene. The defendants have not convinced us that the motion judge erred in principle or made any palpable and overriding error with respect to the facts and the evidence referred to in his analysis.

[8] As a result, the appeal is dismissed with costs.

Chartier CJM

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Monnin JA

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Steel JA

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