

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Barbara M. Hamilton
Madam Justice Jennifer A. Pfuetzner
Madam Justice Janice L. leMaistre

BETWEEN:

<i>CANAD CORPORATION OF MANITOBA LTD.</i>	)	<i>M. Newman and</i>
	)	<i>E. B. Eva</i>
	)	<i>for the Appellant</i>
)	
	)	<i>K. B. Bomback</i>
<i>(Applicant) Appellant</i>	)	<i>for the Respondent</i>
	)	<i>the City of Winnipeg</i>
<i>- and -</i>)	
	)	<i>J. D. Stefaniuk and</i>
<i>THE CITY OF WINNIPEG</i>	)	<i>S. E. W. Birse</i>
	)	<i>for the Respondent</i>
	)	<i>Keter Holdings Inc.</i>
<i>(Respondent) Respondent</i>)	
	)	<i>Appeal heard:</i>
<i>- and -</i>	)	<i>January 21, 2019</i>
)	
<i>KETER HOLDINGS INC.</i>	)	<i>Judgment delivered:</i>
	)	<i>March 11, 2019</i>
)	
<i>(Intervenor) Respondent</i>	)	<i>Supplemental reasons delivered:</i>
	)	<i>May 1, 2019</i>

LEMAISTRE JA

[1] These reasons are supplementary to this Court’s decision of March 11, 2019, in *Canad Corporation of Manitoba Ltd v Winnipeg (City of) et al*, 2019 MBCA 21, wherein we dismissed the applicant’s appeal. As costs had not been addressed, we determined that, in the absence of written submissions from counsel on the issue, costs would “follow on the success of

the appeal according to Tariff C” (at para 38). All three parties filed written submissions regarding costs.

[2] The parties agree that the respondent is entitled to costs according to Tariff C. However, the applicant argues that it should not be ordered to pay any costs to the intervenor. It relies on the general rule that intervenors are not entitled to costs (see *British Aviation Insurance Group v Coseco Insurance Co*, 2010 MBCA 56 at para 4; and *Fletcher v Manitoba Insurance Corp*, 2005 MBCA 53 at para 6) and contends that the intervenor’s involvement added nothing to the appeal and was unnecessary.

[3] The reviewing judge granted the intervenor’s motion for leave to intervene as a party pursuant to r 13.01(1) of the Manitoba, *Court of Queen’s Bench Rules*, Man Reg 553/88. He found that there were special circumstances as a result of action taken by the respondent during the course of the proceedings that was “clearly contrary to the interests of [the intervenor]”. His order permitted the intervenor “to advance its argument on the interpretation of and relationship between s. 247(3) of the *Charter* and s. 36 of the *Zoning By-law*.” These were important issues on the appeal.

[4] In my view, the intervenor had a significant interest in the issues on the appeal and contributed meaningfully to the outcome of the proceedings (see *Korsch v Human Rights Commission (Man) et al*, 2012 MBCA 108 at para 15). Accordingly, I would order costs on the appeal in favour of the intervenor according to Tariff C.

[5] The respondent points out that the reviewing judge has not yet determined costs in the Court of Queen’s Bench. It argues firstly that this Court ought to award costs arising from the proceedings in the Court below

or, alternatively, that the issue ought to be referred back to the reviewing judge for consideration.

[6] As there has been no determination of costs in the Court of Queen's Bench, I would refer the issue of costs in that Court to the reviewing judge if the parties are unable to agree.

leMaistre JA

I agree: Hamilton JA

I agree: Pfuetzner JA