IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre

B E T W E E N :

GLENWOOD LABEL & BOX MFG. LTD.	)	
	)	
(Plaintiff) Appellant	)	***F. J. Trippier*** *and*
	)	***I. Vakurova***
- and -	)	*for the Appellant*
	)	
BRUNSWICK LABEL SYSTEMS INC.	)	
	)	***R. I. Holloway***
(Defendant) Respondent	)	*for the Respondent*
	)	
- and -	)	
	)	*Appeal heard and*
HERB MICHAELIS, RONALD BENOIT and JAMES QUENNEVILLE	)	*Decision pronounced:* ***February 6, 2019***
	)	
(Defendants)	)	

On appeal from 2017 MBQB 177

MAINELLA JA (for the Court):

[1] This is an appeal of an order dismissing the plaintiff's action for delay (see Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, r 24.01).

[2] The history of proceedings between the commencement of the action in 1996 and the filing of the motion to dismiss it in 2015 are set out in detail in the motion judge's reasons and need not be repeated. In reaching her

decision, the motion judge found that the nature of the claim was a relatively straightforward allegation of the poaching of key employees of the plaintiff to obtain confidential information and property. She concluded that the delay to bring the matter to trial was inordinate, particularly as a five-week trial was adjourned by consent just two weeks before it was set to commence in 2010, at the plaintiff's request, for it to pursue an attaching motion (see *The Court of Queen's Bench Act*, CCSM c C280, section 60; and r 46), which was ultimately abandoned in 2014. Finally, she decided that a fair trial was unlikely because of actual and inherent prejudice; the litigation was not document-dependent and several key witnesses had died, suffered a debilitating illness or had truly disappeared.

[3] The plaintiff argues that the motion judge failed to exercise her discretion on a proper understanding of the facts and relevant legal principles. It says that there is no causal connection between the lengthy delay in the litigation and the prejudice suffered by the corporate defendant. We disagree.

[4] Dismissal of an action for delay is a discretionary decision that is entitled to deference on appeal (see *Dubois v Manitoba Lotteries Corporation et al*, 2009 MBCA 108 at para 16; *Simeonidis v Manitoba Public Insurance Corp*, 2011 MBCA 48 at para 2; *McIntyre v Frohlich et al*, 2013 MBCA 20 at para 49; and *Beardy et al v Merrill Lynch et al*, 2018 MBCA 111 at para 4). We have not been persuaded that the motion judge made a reversible error of fact or law, or that her decision was so clearly wrong as to yield a truly unjust result. She reviewed and balanced the relevant facts and the correct legal principles and, in our view, it was reasonably open to her to conclude, considering the entire context, that the essential justice of the matter required that the action be dismissed for delay.

[5] We agree with the motion judge that there is a "strong public interest in promoting the timely resolution of disputes in our civil justice system" (at para 30). In our judgment, the late adjournment of the lengthy trial dates in 2010 (on what was already a very dated claim) to pursue an unrelated remedy, later abandoned (without explanation), while a trial of the merits was not advanced by the plaintiff in the ensuing five years, was an unreasonable departure from the expected standard of proportionate, timely and cost-effective civil litigation (see *Hryniak v Mauldin*, 2014 SCC 7 at paras 28-29; and *Janz et al v Janz et al*, 2016 MBCA 39 at paras 46-47).

[6] The appeal is dismissed with costs.

Mainella JA

Cameron JA

leMaistre JA