IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre

B E T W E E N :

GINA GUERTIN	)	
	)	
(Applicant) Appellant	)	
	)	
- and -	)	***R. L. Tapper, Q.C.***
	)	*for the Appellant*
VALLEY BUILDERS OF MORRIS (2010) INC. and 3837158 MANITOBA LTD. formerly known as VALLEY BUILDERS OF MORRIS INC.	)	***G. J. Orle, Q.C.***
	)	*for the Respondents*
(Respondents) Respondents	)	
	)	
- and -	)	
	)	*Appeal heard and*
JEA GUERTIN	)	*Decision pronounced:*
	)	***June 14, 2017***
(Applicant)	)	
	)	
- and -	)	
	)	*Written reasons:*
HANUSCHAK CONSULTANTS INC. and GARY DAVID FRIESEN	)	***July 5, 2017***
	)	
	)	
(Respondents)	)	

On appeal from 2016 MBQB 144

MAINELLA JA (for the Court):

[1] This is an appeal of an order refusing leave to extend the limitation period and to commence an action in contract and tort against a builder in

relation to the construction of a balcony on a new home that was completed in 2006 and an order of costs in excess of the tariff.

[2] We have not been persuaded that the application judge erred in principle, misapprehended the facts or reached a decision that is so clearly wrong as to amount to an injustice by concluding that the applicant ought to have known all material facts of a decisive character upon which the claim was based in the summer of 2013, approximately 15 months before the application to extend the limitation period was filed (see section 14(1) of *The Limitation of Actions Act*, CCSM c L150; and *McIntyre v Frohlich et al*, 2013 MBCA 20 at para 49).

[3] The record reasonably supports the application judge's decision on when the applicant should have been aware of her causes of action (see *Fawley et al v Moslenko*, 2017 MBCA 47 at para 22). The applicant moved to California in about 2010 and the home was listed for sale off and on between 2010-2014. In the summer of 2013, the applicant was made aware that hundreds of stone tiles on the balcony had cracked. Given the unusually large size of the balcony and the fact it was only seven years old, this should have put the applicant on notice that there was a significant problem with the balcony that needed investigation before the home could be sold. Instead, the applicant sought only a cosmetic repair of the tiles by a mason.

[4] Additionally, in our view, the application judge did not err in principle and her decision is not plainly wrong in awarding costs in excess of the tariff (see *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27). In her reasons, she weighed the relevant factors under r 57.01(1) of the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, and decided that

an elevation from the tariff was appropriate due to the complexity of the claim and the fact that multiple parties were involved up until just before the hearing of the application.

[5] In the result, the appeal is dismissed with costs.

Mainella JA

Monnin JA

leMaistre JA