



[2] In the Court below, the presiding judge (the motion judge) ordered that the two actions be heard together for the purposes of a summary judgment hearing.

[3] The motion judge delivered written reasons for decision on January 23, 2020. One judgment was signed on January 31, 2020 and the other judgment was signed on February 20, 2020. I was told that the time limits for filing a notice of appeal expired on March 3 and 22, 2020 respectively.

[4] In this Court, the plaintiff filed two notices of motion seeking an extension of time to file a notice of appeal. In support of each motion, the plaintiff filed an affidavit affirmed November 9, 2020.

[5] The test for granting an extension of time to commence an appeal is well established. There are four factors to consider, namely, whether:

1. there was a continuous intention to appeal from a time within the period when the appeal should have been commenced;
2. there was a reasonable explanation for the delay;
3. there are arguable grounds of appeal; and
4. any prejudice suffered by the other party can be addressed.

Even if these criteria are not met, the Court may grant the extension of time if it is right and just in all of the circumstances to do so (see *Delichte v Rogers*, 2018 MBCA 79 at paras 16-17).

[6] I have carefully considered all of the materials and the oral submissions.

[7] The parties agree that the plaintiff received copies of both judgments and the two bills of costs no later than March 12, 2020. In his affidavit, the plaintiff says that he sought direction from this Court on or about March 3, 2020 and that he was told to wait until all of these documents were received and then file an appeal.

[8] On or about March 13, 2020, the plaintiff filed a motion (the stay motion) in the Court of Queen's Bench seeking "An Order to Stay in filing the Notice of Appeal by or on May 29<sup>th</sup>, 2020" and "An Order to Stay any Bill of Costs until there is a decision on the Appeal."

[9] The stay motion was to be heard on March 19, 2020, but was adjourned as a result of the ongoing COVID-19 pandemic and will now be heard on November 24, 2020.

[10] The plaintiff says that if the stay motion had been dealt with on March 19, 2020, this would have been sorted out earlier, and there would not have been a delay in filing the notices of appeal.

[11] While I have some reservations, I am satisfied that the first two factors have been met. I am also satisfied that there are arguable grounds of appeal, but that is largely because the threshold is low. The defendants did not argue that they have suffered actual prejudice.

[12] In the circumstances, I have been narrowly persuaded that leave should be granted extending the time to file a notice of appeal in relation to

each action. Those notices shall be filed within 30 days. There will be no order as to costs.

“Burnett JA”