

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Mr. Justice William J. Burnett
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

	)	<i>G. D. Lenko</i>
	)	<i>on his own behalf</i>
<i>GARY D. LENKO</i>)	
	)	<i>N. G. Thomas</i>
<i>(Plaintiff) Appellant</i>	)	<i>on behalf of the Appellant</i>
	)	<i>as a friend of the Court</i>
<i>- and -</i>)	
	)	<i>K. B. Bomback</i>
<i>THE CITY OF WINNIPEG</i>	)	<i>for the Respondent</i>
)	
<i>(Defendant) Respondent</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
	)	<i>May 10, 2019</i>

PFUETZNER JA (for the Court):

[1] The plaintiff appeals the trial judge’s order dismissing his claim against the defendant, the City of Winnipeg (the City).

[2] By way of background, the plaintiff had originally named the Canada Mortgage and Housing Corporation, the Manitoba Housing and Renewal Corporation, and the Government of Manitoba (the other defendants), as well as the City, as defendants in his statement of claim.

[3] The other defendants moved successfully for summary judgment with the result that the claim against them was dismissed (see *Lenko v The*

Government of Manitoba et al, 2014 MBQB 233). The order granting summary judgment was upheld on appeal to this Court (see 2016 MBCA 52).

[4] At the time of the trial, there was a pending appeal from a decision of Cameron JA, in chambers, denying an extension of time to pay into court security for costs in another appeal (see 2018 MBCA 28)—a decision that would be very difficult to overturn given the standard of review. Ultimately, the appeal of Cameron JA’s decision was dismissed by a full panel of this Court (see 2018 MBCA 129).

[5] The plaintiff was advised by Cameron JA that the practical effect of the continued stay of the other appeal would be to further delay this action which had been ongoing since 2008. She stated that the trial should proceed as scheduled.

[6] Subsequently, the case conference judge also made it clear that the trial would proceed as scheduled against the City and that the other defendants would not participate in the trial.

[7] On the first day of the trial, the plaintiff refused to proceed or to call evidence without the other defendants in attendance. The plaintiff maintained this position even after the trial judge cautioned him that he would dismiss the action if the plaintiff refused to proceed.

[8] The trial judge dismissed the plaintiff’s claim with costs and the plaintiff argues that the trial judge’s decision denied him procedural fairness, as a fair trial required the participation of the other defendants.

[9] In our view, there is no merit to this appeal. The plaintiff ought to have been aware that the trial would be proceeding as scheduled unless he took further steps.

[10] In the circumstances, the trial judge's decision was not so clearly wrong as to amount to an injustice (see *Homestead Properties (Canada) Ltd v Sekhri et al*, 2007 MBCA 61 at para 13).

[11] Therefore, the appeal is dismissed with costs.

Pfuetzner JA

Monnin JA

Burnett JA