

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Freda M. Steel
Mr. Justice William J. Burnett
Mr. Justice Christopher J. Mainella

BETWEEN:

<i>LAURA PEARSON and NANCY THOMAS</i>	)	<i>No appearance</i>
	)	<i>for L. Pearson</i>
)	
	)	<i>N. G. Thomas</i>
<i>(Applicants) Appellants</i>	)	<i>on her own behalf</i>
)	
	)	<i>V. F. Y. Li</i>
<i>- and -</i>	)	<i>for the Respondent</i>
	)	<i>The City of Winnipeg</i>
)	
<i>THE CITY OF WINNIPEG, FENTRESS</i>	)	<i>K. D. Toyne</i>
<i>THOMAS ANDREW MARQUESS, GEM</i>	)	<i>for the remaining</i>
<i>EQUITIES INC., 6165347 MANITOBA INC.</i>	)	<i>Respondents</i>
<i>and 7138793 MANITOBA INC.</i>)	
	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Respondents) Respondents</i>	)	<i>March 11, 2019</i>

MAINELLA JA (for the Court):

[1] This is an appeal of an order dismissing an application for judicial review and other relief that challenged a land deal between the City of Winnipeg (the City) and the other respondents (the land developer). The applicants describe themselves as concerned citizens. While the City and the land developer acknowledge the applicants’ right to lawful dissent, they argue that there is no merit to the application and the judge properly dismissed it. We agree for the following reasons.

[2] By way of background, pursuant to a resolution of City Council on July 22, 2009, the City and the land developer exchanged lands including property known as the Parker Lands, which the land developer desires to turn into a transit-orientated development. The applicants disagree with who should own the Parker Lands and how it should be used. Protest by them and others led to an occupation that ended on September 14, 2017, when an interlocutory injunction was granted preventing them and others from trespassing on, and interfering with access to and from, the Parker Lands.

[3] On September 20, 2017, the applicants filed the application for judicial review challenging the 2009 land deal, seeking an extension of time under *The Limitation of Actions Act*, CCSM c L150 (the *Act*), if necessary, to commence the judicial review; and an order compelling the City to inspect the Parker Lands, enforce any contravention as to development and issue a stop-work order until a complete development plan is approved by the City.

[4] The judge dismissed the application for judicial review on a preliminary motion by the City and the land developer. He decided that the application to compel the City to take certain actions relating to the Parker Lands was procedurally flawed, as it should have been commenced by an action and not an application. He also said there was an insufficient factual foundation to support the claim. The judge concluded that the applicants lacked public interest standing to challenge the land deal and, in any event, they had failed to adduce sufficient evidence to meet their onus under either sections 14(1) or 15(2) of the *Act* to be granted an extension of time to commence the judicial review, despite the three-month limitation period under section 465(1) of *The City of Winnipeg Charter*, SM 2002, c 39.

[5] On appeal the applicants allege several errors of the judge relating to his duty to provide assistance to them as they are self-represented; refusing to adjourn the hearing because one of the applicants, Ms Pearson, chose not to attend; denying them standing as public interest litigants; dismissing the request for an extension of time under the *Act*; and refusing a request to convert the application into an action.

[6] Each of the judge's decisions in his reasons that the applicants ask this Court to review are discretionary. An appellate court will not lightly interfere with such a decision absent a misdirection or a decision that is so clearly wrong as to amount to an injustice (see *Perth Services Ltd v Quinton et al*, 2009 MBCA 81 at paras 24-28; *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paras 35-37; and *The Director of Child and Family Services v JG and KB*, 2017 MBCA 27 at para 7).

[7] In our view, there is no merit to the appeal. The record satisfies us that the judge treated the applicants with fairness and balance (see *Dewing v Kostiuk et al*, 2017 MBCA 22 at para 18; and *Wong v Grant Mitchell Law Corporation et al*, 2017 MBCA 118 at para 9). He exercised his discretion to refuse the adjournment judicially. Ms Pearson chose not to appear despite having proper notice. The refusal to grant the applicants public interest standing was reasonable as the request lacked a proper factual foundation. Moreover, the judicial review application was statute-barred and it was reasonably open to him to conclude that the applicants had not presented sufficient evidence to satisfy the requirements of either sections 14(1) or 15(2) of the *Act*. Finally, we see no error in how the judge dealt with the applicants' failure to commence part of their claim by the correct civil procedure.

[8] In the result, the appeal is dismissed with one set of costs to the City and another set of costs to the land developer against Ms Thomas only on a Tariff B basis, plus an additional \$500 in throw-away costs to the City and the land developer for the adjournment of this appeal on a prior date at the request of the applicants.

Mainella JA

Steel JA

Burnett JA