

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice William J. Burnett
Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

<i>THE NORTH WEST COMPANY LP</i>)	
)	
<i>(Plaintiff) Respondent</i>)	<i>R. M. Beamish</i>
)	<i>for the Appellant</i>
<i>- and -</i>)	
)	
<i>LEE ROBERT NUTTALL</i>)	<i>R. D. Savage and</i>
)	<i>P. A. Mueller</i>
<i>(Defendant) Appellant</i>)	<i>for the Respondent</i>
)	
<i>- and -</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>FAR NORTH CONSTRUCTION INC.</i>)	<i>January 27, 2020</i>
)	
<i>(Defendant)</i>)	

On appeal from 2019 MBQB 43

BURNETT JA (for the Court):

[1] The individual defendant appeals an order granting summary judgment in favour of the plaintiff for \$149,708.62, interest and costs.

[2] In essence, the defendant raises two issues, namely:

1. Did the motion judge err when he determined that a summary judgment process was appropriate; and

2. Did the motion judge err when he awarded relief on the basis of a disgorgement of profits.

[3] Both issues involve discretionary decisions by the motion judge and are entitled to deference, absent a reversible error of fact or law, or a decision that is so clearly wrong that it resulted in an injustice.

[4] As to the first issue, summary judgment was the appropriate method of adjudication. The credibility issue identified by the defendant had no bearing on the ultimate decision. This case turns on invoices and bank documents.

[5] As to the second issue, even if the motion judge erred—which he did not—the plaintiff was entitled to an award of damages in the same amount for breach of the employment contract.

[6] In our view, there is no merit to this appeal, and it is therefore dismissed with costs.

Burnett JA

Mainella JA

Pfuetzner JA
