

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Mr. Justice Marc M. Monnin
Madam Justice Janice L. leMaistre

BETWEEN:

VITERRA INC.)	
)	
(Applicant) Respondent)	D. G. Douglas
)	<i>for the Appellants</i>
- and -)	
)	D. R. M. Jackson
DAVID WILLIAM MCIVOR and)	<i>for the Respondent</i>
MARGARET VERNA JOAN MCIVOR)	
)	I. Vakurova
(Respondents) Appellants)	<i>for the Intervener</i>
)	
- and -)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
NOVENTIS CREDIT UNION LIMITED)	March 8, 2019
)	
<i>Intervener</i>)	

CHARTIER CJM (for the Court):

[1] After securing summary judgment, the applicant Viterra Inc. (Viterra) proceeded to have certificates of judgment filed against farmlands of which the respondent David McIvor was either sole owner or were co-owned with his respondent wife, Margaret McIvor (collectively, the McIvors). Viterra then applied for an order for judgment sale and for partition or sale of Mr. McIvor’s interest in the farmlands that were co-owned. The McIvors, in turn, asked that Viterra’s application be adjourned pending the conclusion of their action against the intervener Noventis Credit Union Limited (Noventis), the secured creditor of the farmlands whose security ranks ahead of Viterra.

The request for the adjournment was denied by the application judge and the order for judgment sale was granted.

[2] The McIvors now appeal against the refusal to grant their request for an adjournment of Viterra's application for an order for judgment sale. It is important to note that they do not take issue with the substance of the order for judgment sale.

[3] In her reasons, the application judge reviewed at some length the evidence filed by way of affidavit. It is clear that she understood the factual issues arising from the evidence, including that, by refusing the adjournment and ordering the judgment sale of the farmlands, this may lead to Noventis realizing on its security indirectly when it could not do so directly. Key to her decision was her finding that it would prejudice Viterra to hold its application in abeyance awaiting a resolution of the unrelated Noventis litigation that the McIvors had not meaningfully advanced since 2011 while the equity in the farmlands continues to dissipate.

[4] A decision to grant or refuse an adjournment is a discretionary decision that is owed a high degree of deference. Assuming there have been no reversible errors on fact or law, we are not to usurp the application judge's role in deciding such matters, barring a decision so clearly wrong as to yield a truly unjust result. Despite the able argument of counsel, we are not convinced that the application judge erred in her decision. To the contrary, we are of the view that this was a proper exercise of judicial discretion.

[5] The appeal is dismissed with costs.

Chartier CJM

Monnin JA

leMaistre JA