

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

LEO KAI YEN WONG)	<i>L. K. Y. Wong</i>
)	<i>on his own behalf</i>
(Plaintiff) Applicant)	
)	<i>D. M. Cordingley</i>
- and -)	<i>for the Respondents</i>
)	
GRANT MITCHELL LAW)	<i>Chambers motion heard:</i>
CORPORATION, CYNTHIA LAZAR)	<i>April 13, 2017</i>
and TAYLOR McCAFFREY LLP,)	
BARRISTERS & SOLICITORS)	<i>Decision pronounced:</i>
)	<i>May 12, 2017</i>
(Defendants) Respondents)	

CHARTIER CJM

[1] On February 21, 2017, the plaintiff filed a notice of motion to extend the time to file a notice of appeal with respect to a judgment delivered on June 4, 2015. In order to be successful, the traditional criteria for granting an extension must be met. The plaintiff must demonstrate that: 1) he had a continuous intention to appeal from a time within the period when the appeal should have been commenced; 2) he has a reasonable explanation for the delay; and 3) there are arguable grounds of appeal.

[2] After reviewing the written material and after hearing from both the plaintiff and counsel for the defendants, I have not been convinced that any of the criteria have been met.

[3] The plaintiff did not have a continuous intention to appeal. The

record shows that, on numerous occasions, he was made aware of the 30-day appeal period. Instead of appealing, the plaintiff chose to pursue a new route. He filed a motion in the Court of Queen's Bench to amend, set aside, or vary the judgment pursuant to r 59.06 of the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88. Despite being told that his new motion did not suspend the 30-day appeal timeline, and that he could preserve his right to appeal by filing a notice of appeal, he chose not to do so.

[4] At the hearing before me, the plaintiff made clear that he only wanted to pursue either the appeal or the new r 59.06 motion. However, he was hesitant about which one he should choose. He candidly explained his choice was determined by a toss of the coin. The coin flip caused him to choose the new r 59.06 motion route and to abandon his right to appeal. In the circumstances of this case, the coin flip brought an end to the plaintiff's continuous intention to appeal.

[5] The plaintiff has also failed to provide me with a reasonable explanation for the delay in filing. The plaintiff followed the new r 59.06 motion route all the way to the Supreme Court of Canada after being unsuccessful at the Court of Queen's Bench and at the Court of Appeal. His application for leave to appeal to the Supreme Court of Canada was dismissed on February 9, 2017. While I understand that he wanted to wait until he had exhausted all his appeal avenues with respect to his motion before appealing the judgment, the August 11, 2015 transcript of proceedings shows that the plaintiff was aware that proceeding with the new motion did not suspend the 30-day appeal period.

[6] Appeal periods are intended to bring finality to proceedings. It

exists in the public interest so as to not have matters forever hanging over the heads of opposing parties. In the end, the plaintiff made a conscious and deliberate choice to not appeal and preserve his right of appeal. The plaintiff's argument, that he can now, 20 months later, revisit his decision because he was unsuccessful with respect to his r 59.06 motion, is simply unreasonable.

[7] Finally, the plaintiff has not established that there are arguable grounds of appeal. He raises numerous grounds which do not relate directly to any identifiable error in the judgment he seeks to appeal. His principal ground is in relation to an alleged error regarding the law of causation. I remain unconvinced that there is any arguable merit with respect to any alleged misdirection on the law or the facts on the causation issue.

[8] In the result, the motion to extend the time to file a notice of appeal is dismissed with costs.