

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Madam Justice Freda M. Steel
Mr. Justice Richard J. Chartier

BETWEEN:

<i>GINA TAPPER and</i>)	
<i>ALBERTUS HOLDINGS INC.</i>)	<i>T. E. Bock and</i>
)	<i>T. K. Reimer</i>
<i>(Applicants) Respondents</i>)	<i>for the Appellants</i>
)	
<i>- and -</i>)	<i>M. G. Finlayson</i>
)	<i>for the Respondents</i>
<i>LAWRENCE TAPPER, RANCH</i>)	
<i>HOLDINGS LTD., ALLOWAY</i>)	
<i>INVESTMENTS LTD. and OXBOW</i>)	<i>Appeal heard and</i>
<i>HOLDINGS LTD.</i>)	<i>Decision pronounced:</i>
)	<i>April 10, 2012</i>
<i>(Respondents) Appellants</i>)	

CHARTIER J.A. (for the Court):

1 Lawrence Tapper, Ranch Holdings Ltd., Alloway Investments Ltd. and Oxbow Holdings Ltd. (the brother) applied under Rule 49.09 of the Queen’s Bench Rules for an order that an offer to settle had been accepted by Gina Tapper and Albertus Holdings Inc. (the sister). The motions judge dismissed the application. It is from that order that the brother appeals.

2 The brother submits that the motions judge erred in assessing what were the essential terms of the agreement. He argues that the motions judge misapprehended the evidence when he identified, as “essential,” terms which were not intended to be terms of the settlement agreement. The brother

contends that the agreement was simply that he would buy the shares in exchange for the sister agreeing not to proceed with her allegation of oppressive conduct and asserts that both the brother and the sister agreed that they would “work out” the share valuation method at a later date.

3 The sister submits that the motions judge committed no palpable and overriding error, that his decision was an exercise in judicial discretion and that appellate interference is not warranted.

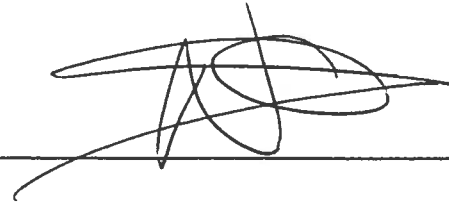
4 In his reasons, the motions judge correctly stated the legal principles to be applied when determining whether an offer to settle has been accepted. After considering the evidence, he concluded that the brother had not met his onus of satisfying him that the parties had agreed upon the essential terms of the settlement agreement.

5 Key to his decision was his finding that there had been “no agreement as to the process that would be followed for determining the value of the shares and the price to be paid for those shares.” Implicit in his finding was that the brother had not satisfied him that the parties had agreed that the process to determine the value of the shares was not an essential term of the settlement agreement. The fact that counsel for the brother states in his affidavit that there had been agreement on process is not evidence of a mutual agreement.


6 In the end, we remain unconvinced that the motions judge misdirected himself on the law or on the application of the facts to the law. Moreover, his decision is not wrong, let alone so clearly wrong, as to amount to an injustice.

7

The brother's appeal is dismissed with costs.


_____ J.A.


_____ J.A.


_____ J.A.