Citation: Viceversa Developments Inc v The City of Winnipeg, 2023 MBCA 52
Date: 20230602
Docket: AI22-30-09841

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Freda M. Steel
Madam Justice Diana M. Cameron
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

VICEVERSA DEVELOPMENTS INC.	)	***D. G. Hill***
	)	*for the Appellant*
(Plaintiff) Appellant	)	
	)	***M. G. Finlayson*** *and*
- and -	)	***G. C. Lisi***
	)	*for the Respondent*
THE CITY OF WINNIPEG	)	
	)	*Appeal heard and*
(Defendant) Respondent	)	*Decision pronounced:*
	)	***June 2, 2023***

On appeal from 2022 MBQB 169

STEEL JA (for the Court):

[1] The plaintiff, Viceversa Developments Inc. (Viceversa), alleges that the defendant, City of Winnipeg (the City), was negligent in not completing certain steps necessary to bring into force amendments to City of Winnipeg, by-law No 6400/94, *The Winnipeg Zoning By-Law* (17 December 2008), causing it damage.

[2] The trial judge held that, although the City was negligent, based on a careful review of all the surrounding facts, Viceversa would not have signed the required agreements even if the City had delivered them on time. Therefore, the City's negligence did not cause Viceversa any legally

compensable damage. Viceversa had to prove that it would have accepted the terms of the City's proposed required agreements. However, it would have been conditional on Viceversa's release of any claims it might have had in respect of certain roadways, something the trial judge concluded Viceversa was not prepared to give. In fact, even though Viceversa's principal, Alec Katz, testified that he would have indeed signed the agreements, the trial judge held that his testimony was not credible. As the trial judge found (at para 62):

> I find Mr. Katz's professed willingness at trial to execute the agreements and give up Viceversa's claims to Academy Road, Wellington Crescent and Wolseley Avenue West incredible. His evidence is completely at odds with the history of his claims against the City for trespass, which, as noted earlier, began in 2004, continued regularly thereafter, and were being litigated by October 2012.

[3] And again (at para 66):

> Thus, had the City presented a Zoning Agreement to Mr. Katz before February 23, 2013, I find he would have rejected it, because he could not accept it and preserve Viceversa's pending claims against the City for trespass. I find Mr. Katz considered it in Viceversa's financial interest, and, by extension, his own financial interest, to preserve and prosecute those claims, even if doing so resulted in the expiry of the Amended Zoning By-law.

[4] These are findings of fact. Absent palpable and overriding error, an appellate court ought not to interfere with factual findings made by a trial judge simply because it disagrees with the weight afforded to the underlying evidence (see *Housen v Nikolaisen*, 2002 SCC 33; and *Knock v Dumontier et al*, 2006 MBCA 99 at paras 21-24).

[5] Moreover, these are findings of fact with respect to credibility. If a trial judge's credibility assessment can be reasonably supported by the record, it cannot be interfered with on appeal (see *Beaulieu et al v Winnipeg (City of) et al*, 2022 MBCA 81 at para 50).

[6] In addition to making findings of fact and assessing credibility, trial judges are often required to draw conclusions or inferences from the facts. If those inferences can reasonably be supported by the evidence, the appellate court cannot reweigh the evidence by substituting its own inferences (see *HL v Canada (Attorney General)*, 2005 SCC 25).

[7] In this case, the trial judge's credibility assessments, factual findings and inferences from those facts were arrived at by a review of the entire record and were supported by the evidence. We see no palpable or overriding error in his reasons. The appeal is dismissed with costs.

JA

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