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1. Extending the Limitation Period: C.A.

In [Winnipeg Condominium Corp. No. 30 v. The Conserver Group Inc. et al.](#), 2008 MBCA 20 (CanLII) the court considered an appeal from the dismissal of an application for leave to file a claim after the expiry of the applicable limitation period, pursuant to s. 14(1) of [The Limitation of Actions Act](#), C.C.S.M., c.L150. In finding in favour of the appellant, the court stated that:

There will be situations wherein it will be evident that given facts lead to a conclusion of potential liability against a putative defendant but I do not consider the facts of this case to be of such a nature. It was both reasonable and prudent that the appellant would wish to obtain evidence that would not only clearly identify the problem it was facing but that would also identify who was responsible for the creation of the problem.

I do not, by any stretch, wish to state that in every case the requirements of s. 14(1) of the Act require that a putative plaintiff obtain expert evidence to buttress its position, but in this case it was necessary to satisfy the "decisive character" requirement of the Act.

2. Obligations of a Mortgagee: C.A.

The Court of Appeal in [Neusitzer v. GFK Capital Base Corp. et al.](#), 2007 MBCA 128 (CanLII) considered the obligations of a mortgagee in the context of determining whether the lower court correctly ordered the defendant mortgagee to account for proceeds of sale of a property it had taken possession of by transfer from the defaulting mortgagor. The court stated that:

The appellants were unable to convince me that the trial judge made a palpable and overriding error in finding that the subsequent transfer of land was a continuance or progression of the initial mortgage transaction. On the strength of the reasoning in *Smith*, the transfer of land, in the circumstances of this case, was a "carefully devised" expedient that served to circumvent the Act and to shirk the mortgagee's responsibility to account to the mortgagor. That measure defeated the purpose and intent of the statutory procedural safeguards of the Act intended to protect mortgagors.

I hasten to add that nothing said here should be construed to imply that a mortgagor cannot enter into an agreement with a mortgagee for the transfer back of mortgaged property in consideration for an extinguishment of the mortgage debt. What makes this case so unique is the judicial finding that the mortgagee abused its position and

took advantage of the mortgagor.

In the circumstances of this case, the protections that were the subject of Duff J.'s observations in *Smith* (to protect the mortgagor against oppression or unfairness or mere carelessness on the part of the mortgagee with respect to the sale of mortgaged property), remained in effect....

3. QB Rule Amendment

Effective February 1, 2008, Queen's Bench Rule 19 was amended to add a new Rule 19.01.1. The new Rule, published in Manitoba Regulation [13/2008](#), sets out circumstances in which a defendant is not required to file and serve a statement of defence until 20 days after the defendant's motion to strike have been finally determined.

4. Significant Damages and Significant Costs: Q.B.

The court in [*The Manufacturers Life Insurance Company \(formerly North American Life Assurance Company\) v. Pitblado & Hoskin et al.*](#), 2008 MBQB 11 (CanLII) considered the quantum of costs to be awarded to the successful plaintiff and payable by the defendant City of Winnipeg where the judgment against the defendant Winnipeg exceeded \$4.7 million. The court applied the reasoning from its' earlier decisions in [*Dinney v. Great-West Life et al.*](#), 2007 MBQB 76 (CanLII) and *Apotex Fermentation Inc. v. Novopharm Ltd.*, [1997] 6 W.W.R. 88, 1997 CarswellMan 158 (Man. QB) and ordered costs on a party and party basis at \$800,000 plus taxes and disbursements.

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