Date: 20240531
Docket: CI 11-01-75092
(Winnipeg Centre)
Indexed as: Smith v. The City of Winnipeg
Cited as: 2024 MBKB 78

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

GODWIN SMITH,	)	Godwin Smith
	)	on their own behalf
applicant,	)	
- and -	)	
	)	Kalyn B. Bomback
THE CITY OF WINNIPEG,	)	for the respondent
respondent.	)	
	)	JUDGMENT DELIVERED:
	)	May 31, 2024

LANCHBERY J.

INTRODUCTION

[1] In 2011, Godwin Smith (Smith), a self-represented litigant, filed an action against the City of Winnipeg (Winnipeg). In 2019, his claim was amended seeking:

(a) An injunction enjoining and restraining Winnipeg from taking title to the Balmoral Property until the determination of this action;

(b) An injunction enjoining and restraining Winnipeg from further inspecting the Balmoral property until the determination of this action;

(c) general damages;

(d) special damages in an amount to be determined at the trial of this action;

(e) punitive and or aggravated damages;

(f) such further and other action and relief this Honourable Court will allow; and

(g) costs on a solicitor and own-client basis.

[2] This claim began as a long and storied history of actions, and an application filed by Smith against Winnipeg.

[3] Winnipeg denies all the allegations and seeks costs against Smith.

[4] In 2023, I permitted Winnipeg to seek summary judgment for all the applications and actions filed by Smith.

[5] Mr. Smith and Winnipeg cite rule 20.01 of the Manitoba, ***Court of King's Bench Rules***, MR 553/88. This rule, and the case law on summary judgment, was set out in ***Bibeau et al v Chartier et al***, 2022 MBCA 2. The Court of Appeal summarized the applicable law as follows:

> [52] In ***Hryniak v Mauldin***, 2014 SCC 7, Karakatsanis J, writing for the Supreme Court of Canada, described when summary judgment is appropriate (at para 49):
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> > There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

> [53] Effective January 1, 2018, r 20 of the MB, *Court of Queen's Bench Rules*, MR 553/88, which governs summary judgment, was amended to incorporate the above principles (see *Court of Queen's Bench Rules, amendment*, Man Reg 130/2017, section 8). Current r 20.03(1) (which was numbered r 20.07(1) when these summary judgment motions were first argued before the judge) states:
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> > **Granting summary judgment**
> > **20.03(1)** The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[6] As outlined by this court in ***Dakota Ojibway Child and Family Services et al v. MBH***, 2019 MBCA 91, the persuasive (legal) burden is on the moving party to establish, on a balance of probabilities, that summary judgment should be granted.

[7] In ***Dakota***, the test for summary judgment, pursuant to the above rule, was articulated as follows (at paras. 108-9):

> At the hearing of the motion, the moving party must first satisfy the motion judge that there can be a fair and just determination on the merits (i.e., that the process will permit him or her to find the necessary facts and to apply the relevant legal principles so as to resolve the dispute, and that proceeding to trial would generally not be proportionate, timely or cost-effective). In so doing, the moving party bears the evidential burden of establishing that there is no genuine issue requiring a trial.
>
> If those requirements are met, the responding party must meet its evidential burden of establishing "that the record, the facts, or the law preclude a fair disposition" (*Weir-Jones* [*Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49] at para 32; and *Stankovic v 1536679 Alberta Ltd*, 2019 ABCA 187 at para 22; see also *Stankovic* at para 29) or that there is a genuine issue requiring a trial (e.g., by raising a defence). In other words, the responding party must establish why a trial is required (see *Hryniak* at para 56). If the responding party fails to do so, summary judgment will be granted.

[8] Under the amended summary judgment rule, courts are clearly entitled to make findings of credibility. Rule 20.03(2) (previously numbered rule 20.07(2)) states:

> **Powers of judge**
> **20.03(2)** When making a determination under subrule (1), the judge must consider the evidence submitted by the parties and he or she may exercise any of

> the following powers in order to determine if there is a genuine issue requiring a trial:
>
> (a) weighing the evidence;
> (b) evaluating the credibility of a deponent;
> (c) drawing any reasonable inference from the evidence;
>
> unless it is in the interests of justice for these powers to be exercised only at trial.

[9] The case of ***Hryniak*** addressed the issue of credibility under a comparable Ontario summary judgment rule (see Ontario, *Rules of Civil Procedure*, RRO 1990, Reg 194), commenting (at para. 44):

> The new powers in Rules 20.04(2.1) and (2.2) expand the number of cases in which there will be no genuine issue requiring a trial by permitting motion judges to weigh evidence, evaluate credibility and draw reasonable inferences. [footnote omitted].

(See also ***Business Development Bank of Canada v Cohen***, 2021 MBCA 41 at paras. 48-52)

THE FACTS

[10] In 2005, Smith purchased 562 Balmoral Street, in the City of Winnipeg, Manitoba (562). Prior to Smith purchasing 562, the previous owner installed fire suppression equipment as the owner operated a rooming house on the property. Although the building at 562 was vacant, Smith never deactivated the fire suppression equipment as was permitted.

[11] As a multi-unit residential building, Winnipeg had the right to inspect the premises and any active fire suppression equipment located therein. (Affidavit of Marsh Collins affirmed June 29, 2023)

[12] Mr. Smith's intention was to convert 562 so he could relocate his business, construct a residential suite for his personal use and develop additional residential suites on the top floor of 562. Smith described working with a "dedicated team" to assist him in obtaining all the necessary permitting and approvals. (Supplementary Affidavit of Godwin Smith sworn February 27, 2023)

[13] Mr. Smith financed the purchase of 562. He started the lengthy process of applying to Winnipeg for various permits and approvals necessary to complete his plans.

[14] On September 4, 2009, Smith was issued a Boarding Permit No. 09 149742 000 00 H0 for the renovated building (Exhibit A, Supplementary Affidavit of Godwin Smith sworn February 27, 2023). The permit was issued pursuant to the Vacant and Derelict Buildings By-law (VDBB) for a period of six months, expiring March 5, 2010. The permit stated that in accordance with VDBB By-law 35/2004, in order to extend the boarding permit, Smith must apply to the Standing Policy Committee on Property and Development requesting approval for an additional permit in accordance with the requirements of articles 15(1) and 15(2) of the bylaw. Smith never sought an extension for the boarding permit.

[15] Mr. Marsh Collins (Collins) is a Fire and Building Inspector for Winnipeg. In 2009, Collins began inspections of 562. Smith alleges that Collins and Joe Chan (Chan) approached Smith with the intention of purchasing 562. Smith alleges Chan, in his capacity as a special assistant to Councillor Harvey Smith, was a developer active in the Balmoral Street area who received "lot of grants from the city programs". Smith never had any discussion with Chan or Collins at any time after this alleged discussion.

[16] Mr. Smith alleges Collins, "... started harassing me with daily inspections and violations: and told me that if I refuse to sell my building to Mr. Joe Chan and his friends, he would make me do extensive and expensive renovations that, he knew, I would not have the money to fix or renovate". (Supplementary Affidavit of Godwin Smith sworn February 27, 2023, at para. 10)

[17] Mr. Smith alleges he was issued a permit prior to the renovation work, which began on April 15, 2011.

[18] On May 31, 2011, Collins entered 562 to conduct an inspection, which Smith states he was not served with the required Notice of Inspection. Winnipeg (via Affidavit of Marsh Collins affirmed June 29, 2023) states Collins visited Smith at his business and living premises on May 31, 2011 telling Smith he was conducting an inspection of 562. Smith's business is located across the street from 562.

[19] Receiving no response, Collins went across the street and found the building's entrance doors to be open. Smith averred he observed Collins walk into his building. Collins stated there was a worker present in 562; Collins then proceeded to conduct an inspection.

[20] Smith alleges Collins carried a hammer when he entered the business. Smith argued he felt intimidated by Collins carrying the hammer, making him afraid to respond. Collins' evidence is he was carrying a flashlight. (Affidavit of Marsh Collins affirmed November 10, 2020)

[21] Mr. Collins, during the inspection, noted there was work being undertaken in the front porch of 562, no improvements were undertaken in the interior of the building, and

the north wall foundation was visibly pushed into the basement showing obvious signs of damage. (Affidavit of Marsh Collins affirmed April 24, 2023)

[22] Mr. Collins' evidence is he advised Smith numerous times he would be inspecting the property prior to May 31, 2011.

[23] The order issued by Collins was in keeping with the intent and spirit of the VDBB and the Neighbourhood Liveability By-law No. 1/2008 (NLB).

[24] Shortly after Collins' inspection on May 31, 2011, Smith's contractor at that time approached him requesting the agreed amount for their verbal contract be increased from $35,000 to $45,000. The reason for the increase in price was based on an open-ended timeline for completion would be reduced to three weeks from May 31, 2011. This contractor's evidence is the increase in price was related to the shortened time to complete the work as he would need to bring additional persons to the job site. Smith refused to pay the requested additional monies and terminated the contract. (Supplementary Affidavit of Godwin Smith of February 27, 2023, Exhibit E)

[25] Mr. Smith requested a quotation from another contractor to complete the work which came in at $42,677.33. Smith refused to hire this contractor (Supplementary Affidavit of Godwin Smith of February 27, 2023, Exhibit F). No other contractors were hired by Smith to complete the repairs to 562 at any time in the years that followed up to including the hearing of this summary judgment motion.

[26] Mr. Collins' inspection report was forwarded to Winnipeg's Standing Policy Committee. The committee advised Smith he had 90 days to complete the repairs, failing which Winnipeg would take steps to seize 562. Smith evidence suggesting the work

needed to be complete within a three-week timeline was in fact 90 days from the date of the letter. This order was made at least five weeks after Collins' inspection of May 31, 2011. Although an extended timeline was now in place, Smith did not contact any other contractors to have the work completed.

[27] On September 23, 2011, Winnipeg issued a FINAL NOTICE in the amount of $1,000 for the Vacant Buildings By-law 79/2010 inspection fee. Smith paid this invoice in full on November 1, 2011.

[28] Mr. Smith filed his claim in November of 2011. On March 22, 2012, Associate Judge Berthaudin (formerly Master Berthaudin) issued an order preventing Winnipeg from seizing 562 until such time as the 2011 claim was heard. To date, Winnipeg has not taken any steps to seize 562.

[29] Since 2012, Winnipeg took enforcement steps as is authorized under various by-laws of Winnipeg and its *Charter*. In 2016, Winnipeg served Smith with five Common Offence Notices under Vacant Building By-law 79/2010 (the successor By-law to the 2004 By-law) as follows:

(a) March 21, 2016 – Fail to Maintain Fire Protection System;

(b) March 21, 2016 – Fail to Maintain Exterior Walls;

(c) March 21, 2016 - Storing Combustibles in Building without approval;

(d) June 28, 2016 – Fail to Comply with an Order/VB By-law;

(e) August 4, 2016 – Fail to pay Inspection Invoice.

[30] Mr. Smith was convicted of all five offences. The summary conviction appeal judge denied Smith's appeal and leave to the Court of Appeal was denied. (Affidavit of Andrea Trupish affirmed April 26, 2023)

[31] On August 8, 2016, Smith filed an application naming Winnipeg, Community By-Law Enforcement Services (CBES) and inspector Greg Wahl (Wahl) as respondents. Winnipeg filed a motion to strike the application against CBES and Wahl. The motion was granted.

[32] Mr. Smith attempted to requisition the application back onto the contested list twice in 2018. Both requisitions were denied. (Affidavit of Andrea Trupish affirmed April 26, 2023, Exhibits I, J and K)

[33] On August 19, 2020, Smith filed a new application (Affidavit of Andrea Trupish affirmed April 26, 2023, Exhibit L). Winnipeg filed a motion to strike the application. On February 8, 2021, the application and motion were heard by Suche J. Madam Justice Suche granted Winnipeg's motion and struck the application (Affidavit of Andrea Trupish affirmed April 26, 2023, Exhibits M, N, and O). Madam Justice Suche found, notwithstanding Smith's position, Associate Judge Berthaudin's order prevented Winnipeg from seizing 562 under the 2011 caveat, and Winnipeg's authority to continue to enforce its by-laws remained. No appeal has been taken from that judgment.

[34] In 2021, Smith filed two separate claims, court file numbers CI 21-01-31673 and CI 21-01-31721 (Affidavit of Andrea Trupish affirmed April 26, 2023, paras. 23-26). The claims seek damages from Winnipeg for the steps taken by it in enforcing its by-laws, including setting aside Winnipeg's tax sale.

[35] Mr. Smith refused and continues to refuse to pay the amounts added to his tax roll for by-law infractions. In accordance with *The City of Winnipeg Charter*, C.C.S.M. c.39, if outstanding amounts assessed under the VDBB and NLB remain unpaid, they are added to the tax roll. In this case, the amounts were added to the taxes for 562.

[36] Beginning in 2017, Smith stopped paying the real property taxes on 562. He did not contest the amounts added to the tax roll by Winnipeg even though there is an appeal process available to him. 562 went into tax sale in 2019. The taxes, penalties and interest remain outstanding on 562. The tax sale process was complete by 2022, but Winnipeg has elected not to take title to 562 until these actions/applications are heard.

ANALYSIS

[37] As the moving party, Winnipeg has satisfied me there can be a fair and just determination on the merits based on the material filed and therefore, there is no genuine issue for trial.

[38] Winnipeg filed the following affidavits in support of its motion:

The City of Winnipeg

(a) Affidavit of Phillip Joseph sworn March 21, 2012;

(b) Affidavit of Karla Ibarra Herrera affirmed January 18, 2019;

(c) Affidavit of Andrea Trupish affirmed October 26, 2020;

(d) Affidavit of Marsh Collins affirmed November 10, 2020;

(e) Affidavit of Greg Wahl affirmed November 13, 2020;

(f) Affidavit of Kelly Happychuk affirmed January 5, 2023;

(g) Affidavit of John Lorbis affirmed January 6, 2023;

(h) Affidavit of Tim Austin affirmed January 6, 2023;

(i) Affidavit of Andrea Trupish affirmed April 5, 2023;

(j) Affidavit of Marsh Collins affirmed April 24, 2023;

(k) Affidavit of Andrea Trupish affirmed April 26, 2023;

(l) Affidavit of John Lorbis affirmed April 26, 2023;

(m) Affidavit of Tim Austin affirmed April 26, 2023;

(n) Affidavit of Jean-Paul Marion affirmed April 26, 2023;

(o) Affidavit of Marsh Collins affirmed June 29, 2023;

(p) Affidavit of John Lorbis affirmed June 28, 2023.

[39] The affidavit evidence and the cross-examination of Collins and Jean Paul Marion are sufficiently clear the employees of Winnipeg acted with professionalism in dealing with Smith. Winnipeg's evidence demonstrates by the time Collins was cross-examined on his affidavit, a level of animosity existed between he and Smith. However, I find Collins' answers at the examinations for discovery were both credible and reliable. I understand Collins' frustration given Smith's attack on his honesty and integrity. It is not unusual in such circumstances for there to be some animosity.

[40] I find Winnipeg has satisfied me the facts necessary and the relevant legal principles are clear to resolve this dispute in a proportionate, timely and cost-effective manner.

[41] The evidence demonstrates Winnipeg conducted inspections of 562 in accordance with the Winnipeg *Charter* and its by-laws. Winnipeg further demonstrates it added taxes to the costs of the inspections on 562 as permitted by its by-laws. Further, Smith failed

to pay the Winnipeg real property taxes causing 562 to fall into tax arrears. Winnipeg properly placed 562 into tax sale. The tax sale process is complete, and Winnipeg acted in good faith in not taking title to 562 until this action was adjudicated.

[42] Considering all the affidavits filed by Smith and Winnipeg, the facts are clear. I am able to make the required determinations as to credibility.

[43] I find Winnipeg's affiants in support of this application to be credible. The various inspections were conducted in accordance with the *Charter* and by-laws of the City of Winnipeg. The tax sale was also conducted in accordance with its *Charter* and by-laws.

[44] Therefore, Winnipeg has met its burden as outlined in ***Dakota.***

[45] Turning to whether Smith, the responding party, met its evidential burden of establishing "that the record, the facts, or the law preclude a fair disposition or that there is a genuine issue requiring a trial", I considered the affidavits and or briefs filed by Smith. As a self-represented person, I granted Smith leeway to consider everything he may have filed to be evidence. The material filed by Smith is as follows:

(a) Affidavit of Godwin Smith sworn February 23, 2023;

(b) Supplementary Affidavit of Godwin Smith sworn February 27, 2023;

(c) Additional Supplemental Affidavit of Godwin Smith sworn April 3, 2023 and Additional Supplemental Documents Supporting the Affidavit of Godwin Smith sworn April 3, 2023;

(d) Affidavit of Godwin Smith sworn May 30, 2023.

[46] Mr. Smith began his submission by referencing an alleged conspiracy by Winnipeg and its employees against him. I advised Smith I make decisions based on evidence not

conspiracy theories. As a self-represented person, I accept his use of "conspiracy" to be inelegant. I considered whether he submitted any evidence of the wrongdoing he alleges Winnipeg engaged in.

[47] I will repeat Smith's arguments and will make findings based on the totality of the evidence before me as to whether he demonstrated the record, the facts, or the law preclude a fair disposition, or that there is a genuine issue requiring a trial.

[48] Mr. Smith argued once the Standing Policy Committee ordered for him to remedy the condition of 562 within 90 days of July 6, 2011, the order caused his financial situation to deteriorate quickly. Smith argued his mortgagee, the Bank of Nova Scotia, was notified by Winnipeg he was at risk of losing his building. I take judicial notice the purpose of filing a caveat against any title alerts anyone who may take title to 562 in the future to the existence of Winnipeg's caveat protecting its interest in the property. There was nothing untoward in Winnipeg's action and certainly not to the level of a conspiracy.

[49] I do not accept Smith's characterization the actions of Winnipeg were designed to ruin his financial position, so the renovation project would fail, and Winnipeg could obtain title. This is one of the conspiracy theories advanced by Smith in support of his position.

[50] Mr. Smith argued his conviction in 2016 of five by-law infractions is also part of the conspiracy. The evidence Smith states is supportive of the conspiracy theory is Winnipeg only billed him for actions taken by the City of Winnipeg under its by-laws, and that was an active attempt by Winnipeg so it could seize 562.

[51] The evidence is Smith contested the charges but was convicted of the violations. The fines levied were eventually added to his real property taxes in accordance with the

by-laws. He appealed the decision to the summary conviction appeal judge who denied his appeal. Leave was sought by Smith to the Court of Appeal which was denied. Therefore, any suggestion by-law enforcement and/or adding fees to tax rolls was rejected by Suche J. effectively disposing of Smith's arguments at this summary judgment hearing.

[52] Smith's allegations that City Councillor, Harvey Smith, and a developer Joe Chan, conspired against him is without foundation. Joe Chan may have either worked or volunteered in Harvey Smith's office. Joe Chan was a developer converting existing buildings in the same neighbourhood for residential use.

[53] Mr. Smith failed to introduce any evidence supporting any business relationship existed between Harvey Smith and Joe Chan. Certainly, he advanced no evidence to connect these two gentlemen to Winnipeg actions. Winnipeg's tax sale application for 562 was as a result of Smith failing to pay his taxes. At best, Smith's evidence falls squarely into the rumour category. Any suggestion is without foundation and merit. I reject the unfounded allegations made by Smith against Harvey Smith and Joe Chan and find such suggestions to be scandalous.

[54] I reject Smith's evidence Collins intimidated him by slamming a hammer into his hand during their discussions of May 31, 2011. I accept Collins' evidence in his affidavit and cross-examination that he was holding a flashlight. A reasonable inference is in execution of Collins' duties as an inspector he was carrying a flashlight as opposed to a hammer. The only reasonable purpose for holding a hammer would be to destroy or

modify the buildings Collins was inspecting. This is contrary to what an inspector does. A flashlight, on the other hand, illuminates poorly lit areas.

[55] Mr. Smith alleged, throughout his material, Winnipeg, or its employees, displayed a corrupt intention, which was entered into the record at the hearing to support the allegation notes made by Marsh Collins in his court brief dated May 26, 2010 (Supplementary Affidavit of Godwin Smith sworn February 27, 2023, Tab I, Page 2 of 2, lines 15-22; the lines on Tab I appear to be added by an unknown third party or Smith):

> This building has been on the City vacant and derelict buildings list since April 2005. The owner Godwin Smith has been cooperative with all my requests as an inspector. He lives in the neighbourhood and owns a small business in the neighbourhood. This owner appears to have good intentions and has a goal to renovate the property as a dwelling for himself. Unfortunately this is a large project and possibly will not be accomplished in any reasonable time frame if it is accomplished at all. A large fine would not be useful in this situation but it is necessary for the City to have a conviction in order to move having this derelict property either repaired or demolished.

[56] On March 7, 2011, Smith refused entry to Collins to conduct an inspection of 562, as was his right. On March 7, 2011, a Notice of Inspection was served by Collins. On May 31, 2011, Collins again approached Smith to conduct an inspection. I accept Collins' evidence, after requesting permission to enter 562, Smith was non-responsive. Collins inferred from Smith's silence that approval was granted.

[57] The *Charter*, and amendments thereto (sections 180-188), set out the manner inspections may be conducted.

[58] Section 181 of that *Charter* reads:

> 181 In an emergency, or in extraordinary circumstances, a designated employee or designated official need not give reasonable or any notice to enter land or a building and may do any of the things referred to in subsection 180(1) without the consent of the owner or occupier of the land or building and without a warrant.
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> [emphasis added]

[59] In summary, Collins could have obtained Smith's verbal consent. If Smith refused, Collins could serve Smith with a notice of the pending inspection, which in this case occurred. Smith did not consent to the inspection in March of 2011. Pursuant to the notice of pending inspection, Collins approached Smith on May 31, 2011.

[60] The *Charter* does not provide for approval to enter a building to be inferred. I do accept Collins' evidence he told Smith he was about to enter for the purpose of inspecting 562. I find Smith's acquiescence could be mistaken for permission. Smith, whose evidence confirms he could see Collins walking across the street to 562, took no action. I do not accept his evidence threats were made against him by Collins. Smith having explicitly denied Collins' entry on one occasion without retaliatory action being taken allows me to infer Smith always knew he could refuse entry. The City of Winnipeg levied an inspection fee in the amount of $1,000 as a result of the May 31, 2011. This fee is authorized under the DVBB. I find Smith, by not appealing the order authorizing the fee and by paying the $1,000 fee in November 2011, effectively consented to the inspection. His attempt now to contest the actions taken by Collins on May 31, 2011 is moot due to Smith's lack of action.

[61] Since May 2011, Smith took no steps to bring his building into compliance. He rejected his contractor's offer to continue to work for what amounted to an additional

sum of $10,000 to complete. Smith obtained a similar quote from another contractor to complete the required work, but failed to engage those services.

[62] I accept Smith's evidence that when Winnipeg filed the caveat confirming its notice of intent to seize 562, he chose to pay out his mortgage instead of using those funds to bring 562 into compliance.

[63] Mr. Smith's evidence the City of Winnipeg triggered financial problems is not in keeping with the evidence. Smith, of his own volition, chose to not spend the monies necessary to renovate. Smith's evidence is the mortgagee called his loan. His lender would not advance him any additional money to complete the renovations. All of this was without any statement from his lender, whether by letter or in affidavit form. I find Smith's financial ability to retire his mortgage to be indicative his finances were sound in July 2011. There is also no evidence he ever applied for a loan for the additional $10,000 to complete the work.

[64] Mr. Smith also chose not to continue the renovations at any time in the last 13 years. He allowed refuse to accumulate on 562. I accept his evidence unknown third parties in the neighbourhood threw refuse on his property, but he took no action to eliminate this risk by either installing fencing or removing the refuse that accumulated. His actions placed 562 in non-compliance with the VDBB and NLB resulting in Winnipeg taking the actions it did.

[65] Mr. Smith suggested the fees Winnipeg added to 562's tax roll may seem unreasonable, but Smith took no steps to dispute the fees charged, which was his right.

[66] Instead, Smith launched several applications and/or claims against Winnipeg, which were ultimately dismissed.

[67] Smith position is there is a genuine issue for trial is based in what he characterized as a conspiracy theory; Councillor Harvey Smith, Joe Chan and the Winnipeg inspection department conspired so Joe Chan could buy his building so they could profit off his misfortune. Other than the fact the parties do exist, Smith led no evidence supporting his allegations. I accept Joe Chan is a person who renovates buildings. (Supplementary Affidavit of Godwin Smith sworn February 27, 2023) The fact Chan may have worked some time for Councillor Harvey Smith as his special assistant does not prove the existence of a business relationship between Chan and Harvey Smith. Any suggestion this so-called relationship engaged in a conspiracy to seize 562 must be described as incredible. These allegations are an unfounded outlandish attack on a public figure, and a local businessperson. I am convinced Smith believes these allegations to be true, but such evidence is not credible or reliable.

[68] Mr. Smith alleges Greg Wahl (successor to Collins) was conspiring with Collins to continue the corrupt intention of Winnipeg. This was denied by Collins during cross-examination. I accept his denials as credible and reliable. It is incredible to believe that inspectors who are employed by Winnipeg would be engaged in such a conspiracy. I find no evidence connecting Collins or Wahl to Chan.

[69] Although not plead, I considered the tort of misfeasance in public office as opposed to the suggested conspiracy.

[70] In ***6165347 Manitoba Inc. et al. v. The City of Winnipeg et al.***, 2023 MBKB 114, Madam Justice McCarthy set out the test for misfeasance in public office as follows:

> [29] The Supreme Court of Canada first set out the test for misfeasance in public office in 1959 in the case of *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121. That case involved abuse of public office for a purpose.
>
> [30] The Roncarelli test has since been applied in Manitoba in *Gershman v. Manitoba Vegetable Producers' Marketing Board*, 1976 CanLII 1093 (MB CA), [1976] MJ No 129 (QL), at pp.123 and 125, where O'Sullivan J.A. stated:
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> > The principle that public bodies must not use their powers for purposes incompatible with the purposes envisaged by the statutes under which they derive such powers cannot be in doubt in Canada since the landmark case of *Roncarelli v. Duplessis* (1959), 1959 CanLII 50 (SCC), 16 D.L.R. (2d) 689, [1959] S.C.R. 121. Since that case, it is clear that a citizen who suffers damages as a result of flagrant abuse of public power aimed at him has the right to an award of damages in a civil action in tort.
>
> ...

[71] In ***Odhavji Estate v. Woodhouse***, 2003 SCC 69, Iacobucci J. stated:

> 22 What then are the essential ingredients of the tort, at least insofar as it is necessary to determine the issues that arise on the pleadings in this case? In *Three Rivers*, the House of Lords held that the tort of misfeasance in a public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. This understanding of the tort has been endorsed by a number of Canadian courts: see for example *Powder Mountain Resorts*, *supra*; *Alberta (Minister of Public Works, Supply and Services)* (C.A.), *supra*; and *Granite Power Corp. v. Ontario*, [2002] O.J. No. 2188 (QL) (S.C.J.). It is important, however, to recall that the two categories merely represent two different ways in which a public officer can commit the tort; in each instance, the plaintiff must prove each of the tort's constituent elements. It is thus necessary to consider the elements that are common to each form of the tort.
>
> 23 In my view, there are two such elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the

> plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.
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> …..
>
> 32 To summarize, I am of the opinion that the tort of misfeasance in a public office is an intentional tort whose distinguishing elements are twofold: (i) deliberate unlawful conduct in the exercise of public functions; and (ii) awareness that the conduct is unlawful and likely to injure the plaintiff. Alongside deliberate unlawful conduct and the requisite knowledge, a plaintiff must also prove the other requirements common to all torts. More specifically, the plaintiff must prove that the tortious conduct was the legal cause of his or her injuries, and that the injuries suffered are compensable in tort law.

[72] In 2012, the British Columbia Supreme Court in ***Rocky Point Metalcraft Ltd. v. Cowichan Valley Regional District***, 2012 BCSC 756, the Honourable Fisher J. stated:

> [82] Bad faith covers a wide range of conduct in the exercise of local government authority. It includes dishonesty, fraud, bias, conflict of interest, discrimination, abuse of power, corruption, oppression, unfairness, unreasonable conduct, and conduct based on an improper motive or undertaken for an improper, indirect or ulterior purpose. Bad faith does not necessarily require wrongdoing or personal advantage on the part of any members …
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> [83] Unlawful discrimination may be found where a bylaw singles out one property without regard to valid and *bona fide* planning principles, or where there is an improper motive to favour or hurt one property without regard to the public interest…
>
> [84] Whether or not there is bad faith or discrimination is essentially a question of fact to be determined on the totality of the evidence in each case. In many cases, inferences of bad faith may have to be made …

[73] And most recently, in 2021 the Supreme Court of Canada in ***Ontario (Attorney General) v. Clark***, 2021 SCC 18, Abella J. stated:

> [22] The elements and proper scope of the tort of misfeasance are not disputed in this appeal. A successful misfeasance claim requires the plaintiff to establish that the public official engaged in deliberate and unlawful conduct in his or her capacity as a public official, and that the official was aware that the conduct was unlawful

> and likely to harm the plaintiff (*Odhavji Estate v. Woodhouse*, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, at para. 23, per Iacobucci J.).
>
> [23] The unlawful conduct anchoring a misfeasance claim typically falls into one of three categories, namely an act in excess of the public official's powers, an exercise of a power for an improper purpose, or a breach of a statutory duty (*Odhavji*, at para. 24). The minimum requirement of subjective awareness has been described as "subjective recklessness" or "conscious disregard" for the lawfulness of the conduct and the consequences to the plaintiff (*Odhavji*, at paras. 25 and 29; *Powder Mountain Resorts Ltd. v. British Columbia* (2001), 2001 BCCA 619 (CanLII), 94 B.C.L.R. (3d) 14 (C.A.), at para. 7; *Three Rivers District Council v. Bank of England (No. 3)* (2000), [2003] 2 A.C. 1 (H.L.), at pp. 194-95, per Lord Steyn).
>
> …..
>
> [34] In 2008, the Ontario Court of Appeal in *Ontario Racing Commission v. O'Dwyer*, 2008 ONCA 446, at para. 43 noted that public office is to be defined in "a relatively wide sense". In *Clark*, Abella J. used the term "public official". And in *Alevizos v. Manitoba Chiropractors Association et al*, 2009 MBQB 116, McKelvey J. stated at para. 118 that "[a] public official is one who has a duty imposed on him/her under an Act or regulation. This definition is wide enough to include those who hold public office or who act under a statutory authority…" and defines "public officer" to include any person in the public service of the government".

[74] I find Councillor Harvey Smith, Collins, and Wahl to be public officers. Relying on the cases cited above, there is no evidence Councillor Harvey Smith, Collins, or Wahl acted in excess of their respective powers (emphasis added). In fact, I find the evidence of Collins and Wahl supports they acted in the manner expected of them by their employer and the taxpayers of the City of Winnipeg as well. There is no evidence there was an exercise of power for an improper purpose. Smith's allegations are absent foundation. Finally, there is no evidence of "subjective recklessness" or "conscious disregard" on anyone's part.

[75] Conspiracy theories, in general, are without evidence and do not employ logic. For that reason, they are dangerous. Smith offered this was a conspiracy on behalf of a number of individuals. Conspiracy theories, without foundation, as alleged by Smith,

work against him. In fact, as a conspiracy theory being the foundation for all of Smith's arguments, the lack of evidence supports my findings he has not demonstrated the record, the facts, or the law preclude a fair disposition. The evidence before me is so overwhelming there is not a genuine issue requiring a trial.

[76] Therefore, I grant the motion for summary judgment to Winnipeg on all matters before me. The prior decision of Suche J. effectively disposed of all the applications and actions filed by Smith after her decision. Any applications and or claims filed by Smith after the date of Suche J.'s decision are hereby struck.

[77] Winnipeg filed an application to declare Smith a vexatious litigant. This application was placed in abeyance pending the resolution of this case. Winnipeg may wish to bring the matter before me some time in the future for determination.

[78] Costs are awarded in favour of the City of Winnipeg. If the parties cannot agree, they shall book an appointment before me.

_____ J.