Court of Appeal for Saskatchewan

Docket: CACV4508

Citation: *Anderson v Moose Jaw (City)*, 2025 SKCA 100

Date: 2025-10-08

Between:

Vernon Lester Anderson

Appellant
(Applicant/Respondent)

D-S Automotive Ltd.

Appellant
(Applicant/Respondent)

And

Moose Jaw (City)

Respondent
(Respondent/Applicant)

Before:	Leurer C.J.S., Tholl and Bardai JJ.A.
Disposition:	Application granted; appeal quashed
Written reasons by:	The Honourable Justice Naheed Bardai
In concurrence:	The Honourable Chief Justice Robert W. Leurer The Honourable Justice Jerome A. Tholl
On application from:	KBG-MJ-00103-2022 and KBG-MJ-00124-2024 (Sask), Moose Jaw
Application heard:	September 5, 2025
Counsel:	Vernon Anderson for himself and for D-S Automotive Ltd. Whitney Mosley for the Respondent

Bardai J.A.

[1] Vernon Anderson and his closely held company, D-S Automotive Ltd. [D-S], appeal from a decision of a Court of King's Bench judge, made in Chambers, *Anderson v City of Moose Jaw* (10 February 2025) Moose Jaw, KBG-MJ-00103-2022; KBG-MJ-00124-2024 (Sask KB) [*Decision*]. The respondent, City of Moose Jaw [City], has applied to quash this appeal under Rule 46.1 of *The Court of Appeal Rules* on the basis that it is manifestly without merit. I agree with the City that the appeal must be struck on that basis.

[2] The dispute between the parties concerns ownership of lands legally described as Lots 21-31/Par 125 Plan OLD96, Extension 0, on which a commercial building is located [the Property]. Until December 3, 2021, D-S held title to the Property but, on that date, title to the Property was transferred to the City pursuant to *The Tax Enforcement Act*, RSS 1978, c T-2 [*TEA*], after D-S failed to pay property taxes for a number of years.

[3] As background to the City obtaining title to the Property, in 2016 the Property was assessed as having a value of $1,724,100.00. This was a substantial increase from the previous assessment of $542,300.00. D-S disagreed with the new assessment and demanded that it be redone. D-S refused to pay taxes based on the assessment, resulting in the City registering a tax lien against the Property on August 29, 2018.

[4] Mr. Anderson and D-S appealed the property assessment but were ultimately unsuccessful in their challenge.

[5] For several years, D-S did not pay its property taxes and the amount owing accumulated. When payment was not made, the City began proceedings under the *TEA* which included obtaining consent pursuant to *The Provincial Mediation Board Act*, RSS 1978, c P-33, and giving notice that if the tax arrears were not paid within 30 days, the City would be taking title to the Property. The City gave notice to D-S on May 19, 2021, and a second notice in October of 2021. On December 3, 2021, the City took title to the Property.

[6] On January 11, 2022, Mr. Anderson attended at the office of the City to pay the property tax arrears totalling $155,737.76, which payment was accepted by City staff, who were unaware that title to the Property had already passed to the City. Upon recognizing its employee's error, the

City attempted to return the funds to Mr. Anderson, which Mr. Anderson refused to accept, taking the position that the taxes were now paid, and he was entitled to the Property. D-S occupied the Property between December 2021 and the spring of 2025 despite the title to the Property having been transferred to the City.

[7] These events prompted the proceeding by Mr. Anderson and D-S, brought by way of an originating application, seeking a declaration from the Court of King's Bench that taxes had been paid and that they should be allowed to remain in possession of the Property. The City responded by applying for summary judgment dismissing Mr. Anderson and D-S's application and granting it an order for possession of the Property.

[8] The dispute came before a judge in Chambers. The Chambers judge was asked to determine (1) whether the application of Mr. Anderson and D-S could be summarily decided; (2) whether the arguments of promissory estoppel and laches advanced by Mr. Anderson and D-S raised triable issues; and (3) whether the City was entitled to possession of the Property.

[9] The Chambers judge found there was no genuine issue requiring a trial and there was no dispute on the evidence as to what transpired such that summary determination was appropriate.

[10] The Chambers judge framed the claim of Mr. Anderson and D-S in promissory estoppel. Referring to *AlumaSafway Inc. v The International Association of Heat & Frost Insulators and Asbestos Workers, Local 119*, 2022 SKCA 99 at para 77, [2023] 6 WWR 74, the Chambers judge held that, to succeed Mr. Anderson and D-S must establish that:

(a) a representation was made to one or both of them by the City;

(b) the representation was intended to induce a course of conduct on their part;

(c) the representation was intended to affect the legal relationship between them and the City;

(d) the representation was clear, unequivocal, precise and unambiguous; and

(e) the representation was made in the context of an existing legal relationship between either of them and the City.

[11] The Chambers judge found that several of these elements were absent. In this regard, he held that there was no intention on the part of the City to affect its legal relationship with Mr. Anderson or D-S as the City's acceptance of the January 11, 2022, payment was done in error. Further, there was no intention on the part of the City to induce a course of conduct by Mr. Anderson or D-S. Finally, the Chambers judge found that by the time Mr. Anderson made the payment, title to the Property was already in the name of the City and there was no legal relationship between Mr. Anderson, D-S and the City in respect of the Property. The Chambers judge concluded that promissory estoppel cannot be used to ground the formation of a contract. Accordingly, Mr. Anderson and D-S could not succeed in their claim of promissory estoppel.

[12] Mr. Anderson and D-S also advanced an argument of laches before the Chambers judge. The Chambers judge found that the mere passage of time on its own was not sufficient to invoke laches as the City had proceeded to enforce the tax arrears in the ordinary course pursuant to the *TEA* and was not the author of any unreasonable delay. Further, the Chambers judge found that the City had not acquiesced to Mr. Anderson and D-S retaining title. Finally, the Chambers judge determined that Mr. Anderson and D-S did not reasonably rely on any conduct by the City. Accordingly, the Chambers judge found that the doctrine of laches did not apply.

[13] The Chambers judge noted that the City was entitled to use the procedure set out in the *TEA* to obtain title to the Property. The tax assessment and the valid transfer of title were part of the context before the Chambers judge but were not the subject of the *Decision*.

[14] Mr. Anderson and D-S's action was ultimately dismissed and the City's request for an order for a writ of possession was granted by the Chambers judge. Mr. Anderson and D-S appealed the *Decision*.

[15] The notice of appeal was filed on March 3, 2025. It contends that the Chambers judge erred in the following respects (as written):

> 1. No transcript, no inspection, no standing
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> 2. Michael Zlipko affidavit failed to mention my contest to the Provincial Mediation Board. Affidavits missing info.
>
> 3. No response to letter stamped by the City of Moose Jaw. August 24, 2021.
>
> 4. No Response from anyone, so I had to go with self defence #35 *Criminal Code*.
>
> 5. Judge failed to mention any of my concerns about no inspection & no standing.

> 6. The writ of possession was tried before the inspection. November 5, 2024. Judge Wempe wanted the reverse.

[16] Mr. Anderson and D-S applied for a stay of the *Decision* pending the outcome of their appeal but were unsuccessful in that application.

[17] The City's application to quash the appeal is brought under Rule 46.1(1)(c) of *The Court of Appeal Rules*, which allows the Court to make an order quashing an appeal if it is "manifestly without merit".

[18] The test for quashing an appeal under this Subrule is set out in *Jardine v Hyggen*, 2018 SKCA 38, [2018] 7 WWR 713:

> [19] First, the threshold for quashing an appeal as being manifestly without merit is high. The *Shorter Oxford English Dictionary*, 6th ed, defines "manifestly" as meaning "evident to the eye or to the understanding" or "plainly revealed". In the present context, an appeal that is manifestly without merit is one where it is entirely clear the appeal is destined to fail and where, conversely, there is no possibility that any ground of appeal might succeed.
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> [20] Second, and relatedly, the authority to quash an appeal as being manifestly without merit should be exercised only exceptionally.
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> [21] Third, the Court must guard against being drawn into a practice where applications to quash become a substitute for hearing appeals on their merits. More particularly, the Court must be cautious about quashing an appeal in circumstances where the required assessment of its merits involves being drawn into transcripts or other aspects of the evidence.

[19] Mr. Anderson, on his own behalf and on behalf of D-S, advanced three arguments before us as to why the appeal should go forward. None have merit.

[20] The first argument is that the assessment of the Property was not undertaken by a qualified person. In this regard, he argued that the Property is in shambles, is unsafe, has a buckling wall and does not meet basic fire code requirements. Mr. Anderson says that the Property is simply not worth $1.7 million and the 2016 assessment is just "plain wrong". Secondly, Mr. Anderson asserts that, while late, he did in fact pay his taxes. And thirdly, he says that his repeated requests to the City for a new appraisal went unanswered. I treat these submissions as supplementing the issues set out in the notice of appeal.

[21] This Court sits in appeal of the *Decision* of the Chambers judge. No other decision, process or proceeding is before this Court. This is not an appeal of the original assessment, and it is not an

appeal of the process before the Provincial Mediation Board. As such, we are limited to assessing Mr. Anderson and D-S's grounds of appeal as against the *Decision* of the Chambers judge only.

[22] At root, the fatal defect in Mr. Anderson and D-S's appeal is that nowhere in either the notice of appeal or through the additional arguments advanced do they allege even a single error of law or error of fact on the part of the Chambers judge, which might even arguably justify the intervention of this Court. Nowhere do the appellants identify a mistake on the part of the Chambers judge in the application of the law pertaining to promissory estoppel, laches or the granting of a writ of possession once title issued under the *TEA* or in the making of any finding of fact.

[23] The appellants' complaints largely relate to the process followed by the City in its assessment of the Property in 2016, the manner in which they dealt with the appellants during the *TEA* process, and how their concerns were handled when the matter came before the Provincial Mediation Board. As to the argument that taxes were paid, there is no question that Mr. Anderson attempted to do so. The problem is that by the time he tried to pay, it was too late and title to the Property had already passed to the City.

[24] The appellants have not raised any error with the analysis of the Chambers judge. Their grounds of appeal are destined to fail. In this regard, I appreciate that the City acquired title to a property it assessed as having a value of $1,724,100.00 because of tax arrears of $155,737.76, but it did so using the statutory process set out in the *TEA* after years of non-payment by Mr. Anderson and D-S. I would add, for completeness, that the issues of whether the Property was properly assessed or whether the City was entitled to take title under the *TEA* were simply not before the Chambers judge and were not issues that were decided by him.

[25] This is an exceptional case because none of the issues raised in the appeal or in argument before this Court relate to or arise from the *Decision* of the Chambers judge now under appeal. For this reason, I would grant the City's application and quash the appeal.

[26] This was a simple application requiring minimal materials to be filed and only brief argument. In the circumstances of this case, I would decline to make any award of costs in

connection with any aspect of this appeal, including for this application and for the stay application, the costs of which were reserved to this panel.

"Bardai J.A."

Bardai J.A.

I concur. "Leurer C.J.S."

Leurer C.J.S.

I concur. "Tholl J.A."

Tholl J.A.