ABQB USES *MGA* DEFENCES TO DISMISS APPEAL

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In *Kowalchuk v. Blanchard*, et al., (unreported), the Court of Queen's Bench recently applied the statutory defences under the *Municipal Government Act* to summarily dismiss the appeal of an unsuccessful amendment application.

In *Kowalchuk*, the plaintiff bought a house from the defendant sellers in 2012. Prior to closing, the plaintiff arranged for three independent inspections of the property. Those inspections revealed several deficiencies in the property. Nonetheless, the plaintiff closed the deal and moved in. For two years, the plaintiff noticed further deficiencies and kept a log book. The plaintiff then issued a claim against the sellers in 2014. Two years later, the plaintiff sought to add the realtors and the municipality as defendants to the action by way of an amendment application. While the evidentiary threshold for such an application is low, a Master dismissed the application stating the amendments were hopeless and outside the prescribed limitation period. The plaintiff appealed to a Justice.

Justice deWit heard the appeal and dismissed it. He found the amendments as against the realtors and the municipality were hopeless and brought outside the limitation period.

Specifically, Justice deWit found the claims against the municipality were hopeless because section 529 and 530 of the *Municipal Government Act*, as well as section 12 of the *Safety Codes Act* precluded a liability finding against the municipality. Section 529 of the *Municipal Government Act* states that a municipality is not liable for exercising discretion in good faith. Section 530 of the *Municipal Government Act* states that a municipality is not liable for damage caused by a system of inspection or the manner in which inspections are to be performed or the frequency, infrequency, or absence of such inspections. Finally, section 12 of the *Safety Codes Act* provides municipalities with immunity for their actions if those actions were done in good faith.

The plaintiff alleged the municipality owed a duty of care to carry out inspections of the renovations that took place at the sellers' home prior to the sale. The plaintiff tried to argue that since deficiencies were found, it followed that no inspections took place or that permits were improperly issued in bad faith. However, the plaintiff was unable to provide any evidence that suggested negligent inspection, that there was a duty to inspect the renovations, or the municipality acted in bad faith.

Specifically, Justice deWit pointed to the fact that inspections of the property before the renovations took place had been completed by the municipality. There was no evidence that showed the inspections were not done in good faith. The plaintiff was asked to offer any evidence to support his allegations and he answered, "the evidence is that there is no evidence."

Justice deWit found in the circumstances, that there was no evidence that the municipality did not act in good faith when discharging their duties to inspect or issue permits with respect to the property in question. In his view, there was no doubt that the protection of the *Municipal*

Government Act and the *Safety Codes Act* would apply to the municipality and thus the application to add the municipality as a defendant to the action was hopeless.

The log book that the plaintiff kept also indicated a level of knowledge that warranted bringing a proceeding against the municipality existed well outside the limitation period. Accordingly, Justice deWit dismissed the application to add the municipality to the action as a defendant because the limitation period to do so had expired.

Kowalchuk is one of the more recent cases from the Alberta Court of Queen's Bench to effectively apply the defences under the *Municipal Government Act* and the *Safety Codes Act* to prevent a finding of bad faith and to preclude liability for damages allegedly caused by a system of inspection. While the case in *Kowalchuk* related to property damage, the writer is of the view that the reasoning in *Kowalchuk* could protect a municipality in an occupiers' liability case, where the implementation and the adherence to a reasonable system of maintenance and inspection serves as a defence.