

Court of King's Bench of Alberta

Citation: 26th Avenue River Holding Limited Partnership v Winspia Windows (Canada) Inc. 2025 ABKB 243

Date: 20250417
Docket: 2001 12080
Registry: Calgary

2025 ABKB 243 (CanLII)

Between:

**26th Avenue River Holdings Limited Partnership, Avenue River Investments Inc., and
Ledcor Construction Limited**

Respondents (Plaintiffs)

- and -

**Winspia Windows (Canada) Inc., Winspia Co. Ltd., and Han Min International Chemical
Inc.**

Appellants (Defendants)

**Reasons for Decision
of the
Honourable Justice C.L. Arcand-Kootenay**

Appeal from the Order by Applications Judge J.T. Prowse
Dated the 12th day of September 2024
(Docket: 2001 12080)

Introduction

[1] This is an appeal of a decision of Master Prowse, as he then was, which dismissed the Winspia Co. Ltd.'s (the "Appellant") application for an order to set aside two earlier decisions of his allowing two separate *ex parte* applications to extend the time for service of a Statement of Claim

[2] The first order extended time for service for three months pursuant to r 3.26 *Alberta Rules of Court*, Alta Red 124/2010 (the First Extension Order).

[3] The second order extended time for service for six months from January 8, 2022, pursuant to r 3.27 (the Second Extension Order).

[4] This appeal concerns whether service of the Statement of Claim should be set aside if there was insufficient evidence provided to support the *ex parte* application for the extension of the time for service pursuant to r 3.26 and r 3.27.

[5] To decide this appeal, I must consider whether there are factors relevant to exercising discretion to extend the time for service under r 3.26 and r 3.27.

Standard of review

[6] The standard of review of an appeal from an Applications Judge's decision is correctness and the review itself takes the form of a *de novo* application: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166 at para 3.

[7] The parties relied on the original factual record and the submissions as they did before the Applications Judge: see r 6.14(8). No new materials were filed by the parties.

[8] In *HOOPP Realty Inc v. Emery Jamieson LLP*, 2020 ABCA 159, at paragraph 41:

Where an appeal from a master's decision to a chambers judge involves the same record and the same submissions, it is not an error for chambers judge to summarily describe his or her analysis and conclusions with reference to the master's decision if he or she otherwise finds that it was correct in fact and law. In taking this approach, the chambers judge here did not defer to the masters' decision or apply any other standard of review.

[9] However both parties provided supplemental written briefs.

Issues

[10] The two issues before me are as follows:

- Should the First Extension Order under r 3.26 be set aside?
- Should the Second Extension Order under r 3.27 have been granted?

Background Facts

[11] The Plaintiffs filed a Statement of Claim on October 8, 2020, claiming negligent misrepresentation by the Defendants relating to the certification of the quality, the manufacturing and supply of insulating glass window products in a high rise project.

[12] The Defendants were Winspia Windows (Canada) Inc., Winspia Co. Ltd. and Han Min International Chemical Inc.

[13] The Defendant, Winspia Windows (Canada) Inc. (“Winspia Canada”), was a British Columbia corporation.

[14] The Defendant, Winspia Co. Ltd. (“Winspia Korea”) was a Korean corporation.

[15] The Defendant, Han Min International Chemical Inc., (“Han Min”) was a South Korean corporation.

[16] In the Statement of Claim, the Plaintiffs stated as far as is known to them Winspia’s products are manufactured in South Korea by Winspia Korea and sold and distributed in Canada by Winspia Canada.

[17] It is established law that the Plaintiff has the right to decide when to commence their action.

[18] A brief chronology of the procedural steps:

- October 8, 2020: Statement of Claim, filed
- September 28, 2020: Eric Gerlach’s Affidavit, *sworn*, in support of an application for an extension of time for service (the Gerlach Affidavit)
- September 29, 2021: Desk Application, *ex parte*, extension of time for service of the two defendants, Winspia Korea and Han Min, not yet served in Korea pursuant to r 3.26 (“Desk Application #1”)
- September 29, 2021: First Order allowing extending time for service of Winspia Korea and Han Min not yet served for 3 months; and allowing direct service *ex juris*
- October 2021: Order, Statement of Claim, Affidavit of Eric Gerlach, Model Forms Language are translated from English to Korean
- October 28, 2021: Plaintiff’s counsel couriers documents to Korean Central Authority (“KCA”) to serve Winspia Korea and Han Min in South Korea
- December 31, 2021: Plaintiffs counsel contacts KCA to confirm service on Winspia Korea, receive no response
- January 4, 2022: Desk Application *ex parte* and Affidavit of Kym Mensey, to extend time for service on Winspia Korea and Han Min by 6 months from January 8, 2022, pursuant to r 3.27(1)(c) (“Desk Application #2”)
- January 5, 2022: Second Extension Order, extending time for service by 6 months from January 8, 2022 granted
- January 24, 2022: Winspia Korea is served via the National Court Administration of the Republic of Korea
- May 5, 2022: Application of Winspia Korea filed to set aside First Order and Second Order
- June 4, 2024: Special Chambers Application before A.J. Prowse

- June 14, 2024: First Endorsement, dismissing Winspia Korea’s application
- September 3, 2024: Costs Endorsement in favour of the Plaintiffs
- September 12, 2024: The First Endorsement and the Second Endorsement were formalized into an Order, granted by A.J. Prowse, undated, but filed September 12, 2024 (the “Consolidated Order”)
- September 12, 2024: Notice of Appeal of the Consolidated Order *filed*.

A. Should the First Extension Order be set aside?

[19] At the end of September 2021, a month before the twelve-month deadline to serve the Statement of Claim, the Plaintiffs applied, *ex parte*, for an extension of three months to serve the Statement of Claim under r 3.26; and for an order authorizing service, *ex juris*, against certain foreign defendants including Winspia Korea under r 11.25, 11.26 and 11.34.

[20] In support of their application, they provided an Affidavit of Eric Gerlach, Vice President of Development, Ledcor Development LP, sworn September 28, 2021.

[21] On September 29, 2021, the Applications Judge granted an order as follows:

1 The Plaintiffs shall be granted an extension of time to serve the Statement of Claim filed in this actin on October 8, 2020 for a further three (3) months from October 8, 2021, being one year from the filing of the Statement of Claim, pursuant to Rule 3.26 of the *Alberta Rules of Court*.

2 Pursuant to Rules 11.25, 11.26, 11.34 and 11.35 of the *Alberta Rules of Court*, the Plaintiffs are granted leave to serve the Statement of Claim, *ex juris*, together with a copy of this Order and the September 28, 2021 affidavit of Eric Gerlach, and any further documents in the within Action, upon the Defendants, Winspia Co. Ltd. (“Winspia Korea”), and Han Min International Chemical Inc. (“Han Min”):

(b) In accordance with a method of service of documents under the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*; or...

[22] The Gerlach Affidavit was four pages in length and contained seven exhibits.

[23] Paragraph 8 of the Gerlach Affidavit stated:

Remedial work on the Window Products has been ongoing for more than three years and only recently concluded in mid-September 2021. The plaintiffs in this action filed the statement of claim in this action on October 8, 2020, in order to preserve a limitation date while remedial work was ongoing.

[24] The Plaintiffs maintained that the completion of the remedial work was relevant to the timing of the service of the Statement of Claim.

[25] The Gerlach Affidavit, further stated:

10. ...

(a) On September 27, 2021, Sabrina Delorme, a legal assistant at Gowlings, sent a copy of the Statement of Claim to the registered office of Winspia Canada by registered mail...

(b) On September 28, 2021, the Korea Trade-Investment Promotions Agency (“KOTRA”), the official trade office of South Korean Government, confirmed the respective addresses for both Winspia Korea and Han Min with Gowlings...

(c) Service of the Statement of Claim on Winspia Korea and Han Min, being South Korean entities, requires service in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the “Hague Convention”).

11. ...believe that the service requirements of the Hague Convention will be difficult to comply with prior to the expiry of the Statement of Claim on October 8, 2021.

[...]

13. I believe that Winspia Korea and Han Min are necessary parties to this action on the basis that:

[...]

(f) Winspia Korea is the controlling mind of Winspia Canada and was at the relevant time period as outlined in the Statement of Claim.

14. I make this affidavit in support of an application by the Plaintiffs to extend the time for service of the Statement of Claim pursuant to Rule 3.26, and for an order for service *ex juris* pursuant to Rule 11.25 of the *Alberta Rules of Court*.

[26] Time for service of Statement of Claim within the first year can be found in the *Alberta Rules of Court* at r 3.26(1) and (2):

3.26(1) A statement of claim must be served on the defendant within one year after the date that the statement of claim is filed unless the Court, on application filed before the one year time limit expires, grants an extension of time for service.

(2) The extension of time for service under this rule must not exceed 3 months.

[...]

[27] In *Padget Estate (Re)*, 2014 ABQB 750, [*Padget Estate*] Justice Greckol stated:

[25] Whereas Rule 3.26 contemplates extensions “before the one year time limit expires,” Rule 3.27 provides that “[t]he Court may, *at any time*, grant an extension of time for service of a statement of claim” (emphasis added). Therefore, while Rule 3.26 extensions are limited to applications made before the expiry of one year, Rule 3.27 applications may be granted at any time.

[26] The threshold is higher under Rule 3.27: the guidelines to be used are more elaborate as canvassed by Read J in *Sanderson Estate v Potter*, 2012 ABQB 593, 550 AR 33 at paras 27 to 32...

[...]

[28] The threshold for an application under r 3.26 is lower than an application under r 3.27. In *Padget Estate*, Justice Greckol enumerated the principles to determine if the threshold for granting an extension under r 3.26 was met:

[33] The decision in *Wardill* uses the following principles for Rule 3.26 extensions (paras 9 – 10):

- a. there should be some evidence showing attempts to serve;
- b. ideally, there should be some explanation for why the defendant has not been served;
- c. the purpose of renewal cannot be to delay (*Franssen v Thule Towing Systems LLC*, 2012 ABQB 657, 84 Alta LR (5th) 316, also requires sufficient information to know that an extension would not constitute a delay tactic); and
- d. there should be no prejudice arising to the defendant.

[29] The Court of Appeal in *Scott v Westwind Communities*, 2021 ABCA 30 generally agreed with the reasoning of *Padget Estate*: see *Scott* at para 36. In *Scott* the Court of Appeal provided a non-exhaustive list of the general principles for a r 3.26 application, these include:

1. A Rule 3.26 application calls upon a court to exercise its discretion. The Rule does not provide a plaintiff with a unilateral right to a three month extension.
2. The Rule is not only for the benefit of the plaintiff, as identified in Oberg , but also the defendant. It is for the benefit of the defendant in that it establishes a further type of limitation period, over and above the *Limitations Act*, RSA 2000, c L-12, to know if one must prepare to defend against a claim and assemble a defence. The passage of time can make this more difficult.
3. The application must be supported by an affidavit or other evidence. See Rules 6.3 and 6.11.
4. The affidavit or other evidence should set out what attempts, if any, have been made to serve the defendant and explain the reason or reasons for the lack of service within the 12 months. This does not mean there is an absolute rule that some attempt to serve must be made before bringing an application under Rule 3.26. We agree with the observations of Master Smart at para 5 of *Wardill* that: "Simply put the evidence provided should state 'why you need it and what have you done?' . . . It makes no sense to have a deadline for service within 12 months if extensions are granted as a matter of course with not even the barest threshold of evidence required."
5. The purpose of the renewal cannot be a stalling tactic.
6. Prejudice to the defendant, if any, is a factor to consider.

see Scott at para 37

[30] Those same principles are applicable to these circumstances.

a. Some evidence showing attempts to serve

[31] In this case, there was no evidence showing attempts to serve Winspia Korea directly.

[32] However, the principles to follow are not mandatory, there does not need to be an attempt at service: see *Wardill v Peebles*, 2012 AB QB 303 [*Wardill*] at para 9. The plaintiff is entitled to wait to serve a defendant, the threshold may be low but the cavalier approach often taken is dangerous when considering the consequence of failing to effect service in time: see *Wardill* at para 10.

[33] The evidence does indicate that the Plaintiffs did reach out to counsel for Winspia Windows (Canada) Inc and ask if they were able to accept service for Winspia Korea. They were not. This resulted in the Plaintiffs needing to take subsequent steps to effect service under the Hague Convention. These service in this matter was not straightforward.

b. There should be some explanation for why the defendant has not been served

[34] In the Gerlach Affidavit there was an explanation for why Winspia Korea were not served earlier: the Plaintiffs in this action filed the statement of claim on October 8, 2020, to preserve a limitation date while remedial work was ongoing.

[35] The Plaintiffs also maintained that the completion of the remedial work was relevant to the timing of the service of the Statement of Claim.

[36] The Plaintiffs wanted a full record before they served the defendant in a multimillion-dollar claim in a foreign county.

[37] I find this to be a reasonable explanation.

c. The purpose of renewal cannot be to delay

[38] The Plaintiffs also maintained that the completion of the remedial work was relevant to the timing of the service of the Statement of Claim is also relevant to this issue.

[39] The Gerlach Affidavit and subsequent Questioning provided ample reasoning as to why the renewal was required – this included why the Statement of Claim was filed and not served and the procedural steps required to serve the Defendants located in a foreign jurisdiction. I am satisfied that the purpose was not to delay.

[40] The Questioning of Eric Gerlach on his Affidavit occurred on June 10, 2022, (“**Questioning**”), the transcript of the Questioning showed the following:

- : “...Then the next winter season, more defects and failures were occurring, and then as a result of that next winter season – we were now into 2018 – the – an extensive testing program was undertaken to get a full handle as to what windows were being considered to be defective versus meeting their specified requirements.” : see Questioning at page 18, starting at line 19
- “Q: Okay. And what does that – what did that testing program involve? A: The – an outside third-party consultant. RDH Building engineering consultants were

retained. They're building scientists, obviously well adept at understanding the building envelope issues." And on p.20, starting at line 20: "They had tested the majority of the windows through 2018 and provided, then, a report from windows that they were able, then, to determine which were failing." : see Questioning at page 19, starting at line 24

- The RDH Report referred to in Mr. Gerlach in his examination is dated November 27, 2018. **Answers to Undertakings from the Questioning of Eric Gerlach held June 10, 2022 (Answer #4)**
- The defects and failure with the windows were known to the plaintiff on or about winter 2018, the remedial work took until September 2021. A period of three years, for "...roughly about 1,400 windows. So just over – just over 50 percent of the windows was deemed to be nonperforming": see Questioning at page 19, lines 3 – 5.
- Mr. Gerlach confirms that the plaintiffs would have ideally preferred to commence this action only after the remedial work was completed, so they would have the best information available when they proceeded with the claim: see Questioning at page 28 and 32.

[41] The information in paragraph 40, corroborate the evidence contained in the Gerlach Affidavit in paragraph 8.

[42] Unlike the issue in Justice Greckol's matter, which was described as a "...relatively small amount at stake in the lawsuit...", at para 40, *Padget Estate*, in the matter before me the claim is for \$5,350,000. This is a substantial amount being claimed in damages.

[43] Based upon the steps required by the plaintiff to advance their claim, I do not find there was significant delay in this matter nor an intention to delay the matter moving forward.

[44] The plaintiffs had just finished their remedial work, and the evidence indicated that serving the defendant in a foreign jurisdiction with one week left would be difficult especially with having to serve per the Hague Convention.

[45] I'm satisfied given the above noted evidence that the purpose of the extension was not delay.

d. There should be no prejudice arising to the defendant

[46] Further, the type of prejudice that must be shown to defeat an application for an extension of time brought within the year is prejudice caused by the three-month extension itself.

[47] The plaintiff bears the onus of demonstrating that the defendant would not be prejudiced by an extension.

[48] The Plaintiffs position was that the extension of time to serve the Statement of Claim would not give rise to a substantial risk that it will be impossible to have a fair trial.

[49] In the face of a general allegation of prejudice, the Plaintiffs cannot be expected to speculate on what witnesses or records might be relevant to the defence and then attempt to show that these witnesses and records are still available or that their unavailability will not cause prejudice. *Paterson v Lafleche*, [2004] OJ No 2029 at para 14.

[50] I find that the Plaintiffs have demonstrated that the Defendants will not be prejudiced by the extension.

B. Conclusion on First Extension Order

[51] Regarding the First Extension Order, r 3.26 exists because a plaintiff has not served a defendant earlier. An extension is not an automatic right, a plaintiff must apply, however the threshold is low.

[52] I find there was some evidence showing the Plaintiffs attempt at service, but on Winspia Windows (Canada) Inc. who would not accept service for Winspia Korea.

[53] I find there was an explanation for why the Defendants had not been served as the Plaintiffs were waiting to complete the remedial work and had filed the Statement of Claim the year prior so as not to miss the limitation period, Mr. Gerlach stated in questioning that ideally they would have preferred to wait until the remedial work was done to file the Statement of Claim.

[54] I find the purpose of renewal was not to constitute a delay tactic and there was no prejudice to the Defendants because of the extension.

[55] As such, I agree with A.J. Prowse, the Plaintiffs met the threshold under r 3.26 for extending the time to serve the Statement of Claim, the First Extension Order should not be set aside.

C. Should the Second Extension Order be set aside?

[56] The Plaintiffs brought a subsequent, *ex parte*, Desk Application (“Desk Application #2”) to extend the time for service of the Statement of Claim by six months from January 8, 2022 under r 3.27.

[57] The relevant rule for extension of time for service of Statement of Claim outside the first year can be found in the *Alberta Rules of Court* r 3.27(1)(c):

3.27(1) The Court may, at any time, grant an extension of time for service of a statement of claim in any of the following circumstances:

[...]

(c) special or extraordinary circumstances exist resulting solely from the defendant’s conduct or from the conduct of a person who is not a party to the action.

[58] The threshold for a r 3.27 application is higher than for application under r 3.26.

[59] Desk Application #2 supported by the Affidavit of Kym Mesley, Paralegal sworn January 4, 2022 were heard by A.J. Prowse on or about January 5, 2022.

[60] The Desk Application indicated the following grounds for making the application:

...

4. The Plaintiffs diligently and expeditiously complied with the service requirements of the Hague Convention for service in the Republic of Korea, including obtaining certified translations of the requisite documents which required both time and significant expense.

5. On October 28, 2021 the Plaintiffs couriered service packages to the National Court Administration of the Republic of Korea (the “Korean Central Authority”) in accordance with the Hague Convention’s requirements for service in the Republic of Korea.

6. Despite receiving confirmation that service packages have successfully been delivered in Seoul, Republic of Korea, the Applicants have yet to receive any information from the Korean Central Authority as to the status of service on Winspia Korea or Han Min prior to the expiry of the time limit to serve the Statement of Claim pursuant to the Order.

7. Accordingly, a further extension of the 12-month deadline to serve the Statement of Claim is required, the specific grounds for which are follows:

- (a) It is highly unlikely that the Korean Central Authority will effect service of the Statement of Claim on Winspia Korea and Han Min within the service extension period mandated by the Order;
- (b) Special or extraordinary circumstances exist solely from the conduct of the Korean Central Authority or the Defendants;
- (c) The Plaintiffs have acted in a diligent and expeditious matter to effect service *ex juris* on the Korean Defendants in accordance with the Hague Convention, and any delay is not attributable to the Plaintiffs’ conduct;
- (d) The Plaintiffs have incurred significant expense to comply with the requirements of the Hague Convention, and a failure to grant a further extension to serve the Statement of Claim would prejudice the Plaintiffs;

...

[61] Ms. Mesley deposes to the above noted grounds in support of the Second Extension Order in paragraphs 9 to 16 of her Affidavit.

[62] On January 5, 2022, A.J. Prowse, granted the Second Extension Order which extended the time for service for a period of six months from January 8, 2022.

[63] The following is a brief chronology of the steps taken subsequent the First Extension Order:

- September 29, 2021: First Extension Order granted
- October 1, 2021: Plaintiffs counsel inquired of Language in Motion (“LIM”) about translation services and requested a quote
- October 5, 2021: Plaintiffs counsel requested LIM to translate the Statement of Claim, Gerlach Affidavit and First Extension Order
- October 20, 2021: LIM emailed plaintiffs counsel the translated documents
- October 21, 2021: Plaintiffs counsel realized the Model Form had not been included in the documents to be translated and forwarded to LIM

- October 25, 2021: LIM emailed plaintiffs counsel the translated Model Form
- October 28, 2021: Plaintiffs counsel couriered by Express Pack International the Statement of Claim, Gerlach Affidavit, the First Extension Order and Model Form to Korean Central Authority (“KCA”) for service on Winspia Korea
- November 4, 2021: Shipment arrived in Seoul, Korea at 4:43 p.m.

[64] Based on the timelines above, I do not find that the Plaintiffs delayed in moving towards service of these documents on a foreign defendant after the First Extension Order was granted.

[65] The Plaintiffs contacted LIM within two days of the First Extension Order, and had the translated documents couriered to the KCA within one month of the First Extension Order being granted.

[66] In the email correspondence between the Plaintiffs representative, Dane Patton, Associate, Gowling WLG, and the LIM representative on October 1st, 2021, Mr. Patton communicated that “We have until January 8, 2022 to serve the documents in Korea. We’d like to get these on the way to Korea the week of October 11 – 15, if feasible.”: see Plaintiffs Responses to Interrogatories of Winspia.

[67] On the same date, October 1st, 2021, the LIM representative responded, “We can definitely have them ready before the 15th”: see Plaintiffs Responses to Interrogatories of Winspia.

[68] The plaintiffs request indicated they were hoping to get the documents on the way to Korea by October 15th.

[69] A quote for the Certified Translation English into Korean was also included with the above, quote total was \$5,084.11.

[70] The translated documents were not received by the Plaintiffs until October 20th, 2021.

[71] The Model Forms request was made on October 21st, 2021, when the error was discovered. The Model Forms were received from LIM on or about October 25th, 2021.

[72] In any event, the October 15th date was not met for the Statement of Claim, Gerlach Affidavit and First Extension Order. These documents were received five days later than LIM suggested they could have them ready by.

[73] Even if you take the error in not sending the Model Form to LIM with the initial package of documents, and the number of days in receiving the translated Model Form back from LIM, this is only a period of four days.

[74] Counsel were being diligent in moving this matter forward towards effecting service on a foreign corporation.

[75] The four day “delay” would not have made a difference as Winspia Korea was not served until January 22, 2022, by the KCA.

[76] The First Extension Order required service by January 8, 2022.

[77] I do not find the timeframes to serve Winspia Korea unreasonable, considering the steps the plaintiffs were required to take to effect service on a foreign entity, specifically they had to obtain a registered address for Winspia Korea from the Korea Trade-Investment Promotions

Agency; then serve in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*.

[78] This was not a defendant living in the same city, province or even country as the Plaintiffs. Very specific steps had to be taken to effect service. I am mindful of those steps in my decision, and the time and financial cost for those steps.

[79] It is important to note that KCA was not under the control of the Plaintiffs, such as process server would be wherein, they could ask them to move quicker. Here the KCA was an uncontrollable party, and the only means to serve the foreign Defendants. This is not a situation where the Plaintiffs dragged their feet, they had to rely on unrelated third parties such as LIM to translate the documents and KCA to properly effect service.

[80] *Extraordinary circumstances* generally refers to unusual, unexpected, and uncontrollable events. Within days of being granted the First Extension Order, counsel for the Plaintiffs set the wheels in motion to get service effected upon the Defendants. As stated in *McGowan v Lang*, 2015 ABCA 217:

26 In this regard, it is instructive to bear in mind the comments of the Alberta Law Reform Institute Consultation Memorandum No. 12.14, in discussing changes to the former Rule 17 where it was stated as follows:

The potential problem with having such a general exception, is that judges may use it too loosely and grant extensions in less than exceptional circumstances, thereby undermining the legislative intent of Rule 11 to eliminate procrastination and delay. Any provision will have to be carefully worded to discourage that outcome.

[81] The issue remains whether special or extraordinary circumstances exist within the provisions of r 3.27 that support the granting of an extension. That determination is an individualized fact driven exercise in every case: see *Stremich v Prefanis*, 2017 ABCA 383.

[82] I am not making a blanket finding that all cases where there is service in a foreign jurisdiction will be exceptional circumstances, it is a case by case analysis. Given my finding that the Plaintiffs were diligent, this is a case where finding there are exceptional circumstances would undermine the legislative intent to eliminate procrastination and delay.

[83] The individualized fact driven exercises in this case leads to the conclusion that the Plaintiffs were not procrastinating or delaying the litigation and that extraordinary circumstances existed. These include: (1) KCA was the Hague Convention Central Authority for service; (2) KCA required official Korean translations of all documents to be served; (3) timelines for service by KCA were not precisely known; and (4) no response to query from KCA for an update on service.

D. Conclusion on the Second Extension Order

[84] I find there were special or extraordinary circumstances from the conduct of a person not a party to the action resulted in the Statement of Claim, Gerlach Affidavit, the First Extension Order and Model Form not being served in the timelines provided by the First Extension Order, thus requiring the Second Extension Order. The Second Extension Order should not be set aside.

[85] Accordingly, I am dismissing the Appellant's application.

Decision

[86] The Defendant's appeal is dismissed.

[87] Costs in favour of the Plaintiffs. If the parties cannot agree on costs they can make written submissions to me, no longer than two pages.

Heard on the 11th day of April, 2024.

Dated at the City of Calgary, Alberta this 17th day of April, 2025.

C.L. Arcand-Kootenay
J.C.K.B.A.

Appearances:

Andrew Wilkinson
Rose LLP
for the Winspia Co. Ltd.
Appellant/Defendant

Tom Brookes
Gowlings WLG (Canada) LLP
for the 26th Avenue River Holdings Limited Partnership, Avenue River Investments Inc.,
and Leducor Construction Limited
Respondents/Plaintiffs