IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pioneer Inn Holdings Ltd. v. Pier Side Landing Hotel Ltd.,* 2025 BCSC 1228

Date: 20250618
Docket: S1810215
Registry: Vancouver

Between:

Pioneer Inn Holdings Ltd.

Plaintiff

And

Pier Side Landing Hotel Ltd. and 0997329 Tourism Services Limited Partnership

Defendants

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	C. Philip
Counsel for the Defendants:	E. Richards (by videoconference)
Place and Date of Hearing:	Vancouver, B.C. May 28, 2025
Place and Date of Judgment:	Vancouver, B.C. June 18, 2025

Introduction

[1] **THE COURT:** The defendants apply to dismiss this action for want of prosecution, based on the plaintiff having taken no steps to prosecute its claim since December 2018. The plaintiff recently retained new counsel who has made efforts to move the action forward on a relatively accelerated basis.

Background

[2] The plaintiff owns and operates a hotel at 8405 Byng Road in Port Hardy, BC.

[3] The plaintiff claims that, on or about June 14, 2016, the defendant 0997329 Tourism Services Limited Partnership ("099 TLP") contracted with it regarding provision of accommodations on an on-demand basis for the personnel of various contractors and consultants who were carrying out renovations to a competing hotel in Port Hardy which was owned by the general partner of 099 TLP.

[4] The plaintiff says that on or about June 15, 2016, it agreed to provide hotel services as requested commencing on June 18, 2016. The defendants agreed to pay $115 per room per night inclusive of applicable taxes. It provided these services between June 18, 2016 and September 19, 2016, and duly invoiced the defendants for same. It initially alleged that, as of September 20, 2016, there was a net balance owing of $58,457.40.

[5] In their response to civil claim, the defendants admit they entered into a hotel services agreement with the plaintiff. They allege generally that they have paid all amounts properly owing to the plaintiff under that agreement. In the alternative, they say the charges include ones for which services were not provided by the plaintiff to the defendants, they were incurred without authorization from the defendants, they were not supported by proper invoices, that the charges were unreasonable and disproportionate to the services provided and contrary to the terms of their agreement. They also deny agreeing to pay contract interest on overdue amounts.

Procedural history

[6] On September 19, 2018, the plaintiff filed its notice of civil claim in the Vancouver Registry. This was the last day to start the action before the two-year limitation period would have expired. At the time, the plaintiff was represented by Mr. Shrimpton, a lawyer whose practice was located in Whistler, BC.

[7] On November 22, 2018, defendants' counsel wrote to plaintiff's counsel asking that no steps be taken in default without prior notice. Plaintiff's counsel agreed to this the same day.

[8] On December 6, 2018, the defendants filed a response to civil claim. Thereafter, the action sat idle for an extended period.

[9] Between January 2019 and August 2019, original plaintiff's counsel provided informal document disclosure to defendants' counsel. After review, the plaintiff acknowledged there were some erroneous duplicate charges in the accounting and volunteered that the net balance owing should be reduced by ($9,076.40) to $49,381.00.

[10] On March 3, 2025, new counsel for the plaintiff filed a notice of change of lawyer and a notice of intention to proceed, pursuant to Rule 22-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. On March 4, 2025, these were served on the defendants.

[11] Rule 22-4(4) provides that:

> In a proceeding in which judgment has not been pronounced and no step has been taken for one year, a party must not proceed until
>
> > (a) the expiration of 28 days after service, on all parties of record, of notice in Form 44 of that party's intention to proceed, and
> >
> > (b) a copy of … proof of its service has been filed [with the court].

[12] In this case, the 28-day waiting period appears to have ended on or about April 1, 2025.

[13] On April 7, 2025, the defendants wrote to the plaintiff advising they intended to apply to dismiss the action for want of prosecution.

[14] On April 10, 2025, the plaintiff served its list of documents on the defendant. This was the first formal list of documents which the plaintiff had produced.

[15] On April 30, 2025:

(a) the defendants filed an application returnable May 27, 2025, asking that the action be dismissed for want of prosecution; and

(b) the plaintiff filed an amended notice of civil claim and an application for a summary trial also returnable May 27, 2025, seeking judgment against the defendants for $49,381 jointly and severally.

[16] On May 5, 2025, the plaintiff issued an amended list of documents and requested that the defendants deliver their list of documents by no later than May 26, 2025.

[17] On May 7, 2025, the defendants filed an application to adjourn the hearing of the plaintiff's summary trial application.

[18] On May 13, 2025, the plaintiff served a notice to admit on the defendants.

Internal Developments Highlighted By The Defendants

[19] The defendants say that K'awat'si Economic Development Corp. (“KEDC”) is the sole shareholder of the defendant Pier Side Landing Hotel Limited (“Pier Side”), and of 0997329 B.C. Ltd., which is the company which acts as general partner for 099 TLP. As of 2020, Pier Side no longer provides public hotel services. It now provides temporary accommodations to KEDC employees who are relocated to Port Hardy. 099 TLP continues to operate, but does so under new management and staff.

[20] As of March 2025, KEDC has 215 employees. Its current CEO was hired in December 2019. Any KEDC or defendant employees who are alleged to have

received hotel services have since left their roles with the companies. They say KEDC does not have contact with or contact information for any of the contractors and consultants whom the plaintiff alleges received hotel services which are the subject of this action. Currently, there is no one at the organization who has first-hand knowledge of the disputed events.

Plaintiff's Reasons for Delay

[21] The plaintiff says there were several events which contributed to its delay in prosecuting the action. These include:

(a) On or about June 4, 2018, the plaintiff's former shareholders received an offer to purchase their shares in the plaintiff, which they accepted. The shares were transferred to the current shareholders on or about August 15, 2018;

(b) On May 19, 2018, the former shareholders had to start a petition proceeding seeking an order to cancel a 2006 mortgage which had been registered on title to the hotel property by the immediately preceding shareholders to secure the balance owing to them for the acquisition of their shares. This had been paid in full, but the mortgage had not been discharged from title. On August 14, 2019, the former shareholders obtained an order allowing them to post interim security of $96,800.96, in order to cancel the 2006 mortgage from title. On October 28, 2019, they obtained a second order that the interim security be released back to them;

(c) Between August 2018 and March 2020, the former shareholders continued to assist the new shareholders with transition of the hotel's operations, including acting as agent to instruct original plaintiff's counsel regarding adjustments (i.e. reduction) of the outstanding net invoice amount alleged;

(d) Starting in March 18, 2020 to June 8, 2020, the court's normal operations were suspended pursuant to COVID-19 pandemic related administrative notices;

(e) On or about September 18, 2020, original plaintiff's counsel advised, due to the COVID-19 pandemic, any deadlines/limitation periods were extended. The plaintiff says it understood this to mean that any deadlines for steps in the present action were suspended until further notice (i.e. indefinitely);

(f) Between June 2020 and March 2022, the plaintiff's hotel was intermittently closed to guests or was being operated at minimal guest capacity due to BC Government Emergency Orders relating to the COVID-19 pandemic and/or inadequate staff being available to operate it. This led to cashflow issues, such that the plaintiff lacked sufficient financial resources to advance the action;

(g) In or about December 2021, original plaintiff's counsel informed the plaintiff that he intended to wind down his practice and would retire once he found a new lawyer to assume conduct of his clients' files;

(h) In or about March 2022, one of the former shareholders inquired with a friend, a retired lawyer, regarding the plaintiff getting a referral to the law firm Hunter Litigation Chambers, with a view to having them assume conduct of the action for the plaintiff;

(i) On February 1, 2023, original plaintiff's counsel notified defendants' counsel that the plaintiff intended to retain new counsel with Hunter Litigation Chambers and proceed with the action. This was framed as a threat that the action was about to become active and an invitation that the defendants present a settlement offer, so as to avoid this. Defendants' counsel indicated he would seek instructions. Plaintiff's original counsel followed up about whether a settlement offer would be forthcoming on March 14, 2023 and May 8, 2023. On May 10, 2023, defendants' counsel said he did not have instructions, was doing his

best to obtain them and hoped to have them soon. However, the defendants never did respond with a settlement proposal;

(j) In or about July 2023, original plaintiff's counsel retired from practice. It appears he did not take steps to formally withdraw as counsel of record; and

(k) On or about January 30, 2025, the plaintiff retained current counsel to assume conduct of the action. A request was made for the file, which took roughly a month to be transferred. On or about March 3, 2025, new counsel filed a notice of change of lawyer and notice of intention to proceed.

Applicable Law

[22] Rule 22-7(7) of the *Supreme Court Civil Rules* provides:

> (7) If, on application by a party, it appears to the court that there is want of prosecution in a proceeding, the court may order that the proceeding be dismissed.

[23] The test for dismissal for want of prosecution was modified in *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [*Giacomini*] at paras. 69-72:

> **The revised test**
>
> [69] For clarity, I will summarize the revised framework of analysis that, in my view, should govern applications to dismiss actions for want of prosecution in British Columbia. The first two questions are:
>
> > (1) Has the defendant established that the plaintiff's delay in prosecuting the action is inordinate?
> >
> > (2) Is the delay inexcusable?
>
> [70] These two questions are to be answered in accordance with the law that has developed in British Columbia under the existing test. If both questions are answered in the affirmative, the court should move to the third and final question:
>
> > (3) Is it in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay?
>
> [71] The non-exhaustive list of factors set out at paragraph 45 of International Capital Corporation provides a useful starting point for assessing the interests of justice. To that non-exhaustive list, I would add one further factor: the

> merits of the action. While a judge should not engage in any searching examination of the merits on an application to dismiss for want of prosecution, if the action is bound to fail then the interests of justice favour its dismissal: *Ed Bulley* at para. 62.
>
> [72] Under this framework of analysis, the prejudice to the defendant's ability to defend the action remains a relevant, and indeed important consideration. However, prejudice to the defendant is not a pre-requisite to an order dismissing a claim for want of prosecution. At the interests of justice stage, the court should look to all relevant circumstances rather than prioritizing the impact of delay on trial fairness.

[24] The court noted that it is not helpful to characterize dismissal for want of prosecution as "Draconian", see *Giacomini* at para. 74:

> [74] First, in my view, it is not helpful to characterize the remedy of dismissal for want of prosecution as "Draconian", to the extent this label implies the remedy is excessively harsh or punitive. It must be remembered that a plaintiff faces the risk of dismissal of an action only once they are guilty of inordinate and inexcusable delay. Undue litigation delay undermines public confidence in the justice system, and should not be countenanced. Generally speaking, a plaintiff who has filed a civil claim should be expected to get on with it. If, having regard to the circumstances, it is not in the interests of justice to allow an action characterized by such delay to continue, then the remedy of dismissal is not excessively harsh or punitive. Rather, it is justified.

Analysis

[25] I now consider the factors identified in *Giacomini*.

1. Is the plaintiff's delay in prosecuting the action inordinate?

[26] Inordinate delay is summarized in *Giacomini* at paras. 38-39:

> **Inordinate delay**
>
> [38] An inordinate delay is one that is uncontrolled, immoderate, excessive and out of proportion to the matters in question: *Wiegert v. Rogers*, 2019 BCCA 334 at para. 32. The question of whether delay is inordinate is "not just a question of temporal arithmetic", but rather requires consideration of the circumstances of the case: *Sun Wave Forest Products Ltd. v. Xu*, 2018 BCCA 63 at para. 25. As explained by Saunders J.A. in *Sun Wave*, "some cases by their nature are susceptible of faster carriage or by the nature of the allegations call for more expeditious prosecution than others": at para. 25. For example, a court may be less forgiving in assessing litigation delay where the allegations impact the defendant's personal reputation, such as where fraud is alleged: *Sun Wave* at para. 25.
>
> [39] The date of the commencement of the action is typically identified as the point from which delay is measured: *Wiegert* at para. 32. Delay must be

> considered holistically; the question is whether the overall delay is inordinate: *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52 at para. 38.

[27] Exchanges of correspondence or communications do not constitute steps. Filing a notice of change of lawyer or a notice of intention to proceed does not constitute a step in the proceedings: see *Kelly v. Dyno Noble Canada Inc.*, 2016 BCSC 1601, at paras. 19-21 and *DEB Construction Ltd. v. Mondiale Development Ltd.*, 2023 BCSC 1167 at para. 26.

[28] In this case, the plaintiff filed the notice of civil claim on September 19, 2018. The defendants filed the response to civil claim on December 6, 2018. Thereafter, the plaintiff took no formal steps to prosecute the action until April 10, 2025, when it delivered a list of documents. The gross delay is thus about 6 years + 4 months.

[29] One year of this period fell during the COVID-19 pandemic. Normal running of time was formally suspended for a period of one year between March 26, 2020, and March 25, 2021. Two ministerial orders and one regulation were issued under the *Emergency Program Act*, R.S.B.C. 1996, c. 111. This included: on March 26, 2020, Ministerial Order M086, the *Limitation Period (COVID-19) Order*; on April 8, 2020, Ministerial Order M098, the *Limitation Period (COVID-19) Order No. 2*; and on August 4, 2020, B.C. Regulation 199/2020, the *COVID-19 (Limitation Periods in Court Proceedings) Regulation*. On December 20, 2020, Order in Council 655/2020 was issued which provided that the suspension of limitation periods ended effective March 25, 2021.

[30] In *Etcheverry v. Bhatti*, 2024 BCSC 1222 [*Etcheverry*], at paras. 6 and 10, the court indicated that one year of the delay in that particular case was excused by the COVID-19 pandemic. That is also appropriate here. The net delay in the present case is accordingly reduced to 5 years + 4 months.

[31] The defendants argue that delays of 4 or more years have generally been considered to be inordinate, referring to *Krist v. British Columbia*, 2024 BCSC 1925, at para. 23:

> [23] A delay of over four years, in which nothing has occurred, is inordinate, and should not be normalized by the court: *Trinity Western University v. Johnson Controls LP*, 2022 BCSC 1632 at para. 13. Actions have been dismissed for delays of comparable length, especially when the plaintiff has failed to take any real steps to advance the action - see e.g. *Trinity* (four years); *Mangat v. Hehar*, 2022 BCSC 480 (five years); *Unrau v. McSween*, 2013 BCCA 343 (three years); *Drennan v. Smith*, 2021 BCSC 1302 (five years).

[32] The defendants also say the delay in this case is wildly disproportionate, considering that the claim is a relatively straightforward breach of contract claim for roughly $50,000.

[33] The plaintiff acknowledges the delay does appear to be inordinate and instead focuses its argument on whether the delay is excusable and whether the interests of justice warrant dismissal.

[34] There is no hard and fast rule for how much delay constitutes “inordinate delay”. Each case must be considered on its individual facts and context. In *Etcheverry*, the court found that an unexcused delay of 3-1/2 years was inordinate. In the present case, I am satisfied that the plaintiff's net delay of 5 years + 4 months in prosecuting the action qualifies as “inordinate delay”.

2. Is the delay inexcusable?

[35] The considerations for whether a delay is excusable are summarized in *Giacomini* at para. 40:

> **Delay is inexcusable**
>
> [40] Whether the reason offered by the plaintiff for the delay amounts to an excuse also depends on the circumstances. As a rule, unless a credible excuse is offered, the natural inference is that inordinate delay is inexcusable: *Irving* at para. 8. The evidence led to explain delay may go to the issue of whether the delay was intentional and tactical, or whether it was the result of “dilatoriness, negligence, impecuniosity, illness or some other relevant cause”: *0690860 Manitoba Ltd. v. Country West Construction Ltd.*, 2009 BCCA 535 at para. 27. A party who intentionally delays the prosecution of an action may be said to assume the risk of dismissal. Where the delay is also tactical, in the sense of intended to prejudice the defendant, this will weigh more heavily against the plaintiff in the analysis: *Ralph’s Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120 at para. 47. Where the reason for the delay is a lack of diligence on the part of plaintiff’s counsel, this

> might amount to a reasonable excuse in some cases, but in others it might not: *0690860 Manitoba Ltd.* at para. 29; *Wiegert* at para. 33.

[36] The defendants say the plaintiff did not take any steps to advance the action throughout the delay period. There was never any basis for the plaintiff to hold a reasonable belief that the dispute would be resolved through informal negotiation. To the extent there may have been opportunities to settle out of court, the plaintiff did not diligently pursue them. The plaintiff was aware of the delay and solely responsible for failing to advance the action.

[37] The plaintiff offers the following reasons for delay:

(a) January 2019 to July 2019, (8 months) the plaintiff says it engaged in informal document disclosure and review of the plaintiff's guest records which led to acknowledging the ($9,076.40) reduction in the net amount owing in being appropriate. It says this demonstrates it had a reasonable belief the action could be settled informally during this period;

(b) May 8, 2020 onwards, suspension of B.C. Supreme Court's normal operations due to COVID-19 pandemic. I indicated above that this justified one-year of delay during the COVID-19 pandemic, which is basically March 26, 2020 to March 25, 2021. I have already credited this as excusable delay, see above;

(c) June 2020 to March 2022, (1 year plus + 9 months) the plaintiff's impecuniosity and restriction on the hotel's operations were such that it lacked financial means to pursue the claim. [I note that this date range overlaps in part with the COVID-19 pandemic delay addressed above];

(d) February 2023 to July 2023, (6 months) further settlement discussions between parties were such that the plaintiff reasonably believed the action could be settled informally;

(e) July 2023 to January 30, 2024, (7 months) a combination of the retirement of original plaintiff's counsel and efforts to retain new

counsel. [I note here that original counsel said he had actually retired in July 2023]; and

(f) January 30, 2025, to March 2, 2025, (1 month) delay while original counsel forwarded new counsel their file.

[38] The plaintiff argues that none of the delay was intentional or tactical in nature. By its calculations, the remaining "inexcusable delay" is thus only about 2 years + 4 months.

[39] The period of informal disclosure was arguably a somewhat productive use of time spent addressing merits of the action. It is puzzling that original counsel did not take the opportunity to list that informal disclosure in a formal list of documents, as it appears that would have involved minimal additional effort and represented a concrete step in advancing the action.

[40] With regard to the claim that the plaintiff's interrupted or reduced cashflow during the COVID-19 pandemic meant it did not have financial resources with which to pay counsel to move the action for a 1 year + 9 month period, the plaintiff tendered copies of financial statements which show cashflow during the relevant period. One was for the 2020-2021 fiscal year, showing it was cashflow negative. This evidence was tendered through one of the former shareholders, Mr. Kim, rather than a current shareholder. Mr. Kim simply states in his affidavit:

> "Due to the impacts of the COVID-19 pandemic on the hotel's operations and consequential cashflow issues, Mr. Lee advised me that the Plaintiff did not have the financial resources to pay the Plaintiff's former counsel to advance the action during this period."

[41] There is no evidence from Mr. Lee or other shareholders indicating they actually inquired with original counsel during this period about the cost involved to move the litigation forward. There is no evidence that current shareholders lacked personal financial resources with which they could have helped to fund the litigation. The defendants point to the fact that the financial statements show the plaintiff had significant retained earnings, which they argue could have been used for this purpose. While I accept generally that the COVID-19 pandemic had a significant

negative impact on the plaintiff's business, I do not consider the evidence tendered on this point to be adequate to establish the plaintiff actually considered moving the action forward during this period and had to abandon the idea due to a shortage of financial resources with which to pay counsel. In *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52, at paras. 43 and 49, one of the issues addressed was that, despite the appellant not having money within the company to pursue the action expeditiously, its principal, Mr. Bulley, did not say he lacked funds to either lend the company or to fund the litigation himself. Accordingly, resources available to shareholders in a small privately held company can be a relevant consideration.

[42] I also do not consider the 2023 email exchanges in which former plaintiff's counsel attempted to provoke the defendants into making a settlement offer to constitute a real settlement discussion or otherwise a valid reason for delay. Former counsel simply floated a vague threat that the plaintiff intended to retain new counsel, in an effort to provoke the defendants into making an offer. That was not successful, for an extended period of time. The plaintiff did not follow through and retain new counsel at that time. The threat proved to be an empty one. There may have been some wishful thinking on former plaintiff counsel's part, but there was no objective basis to believe the defendants had agreed to engage in meaningful settlement discussions. The plaintiff could have presented its own settlement offer, but there is no indication it did so at that time.

[43] There was a lengthy and largely unexplained delay between the date when original counsel first announced his intention to wind down his practice, which was December 2021, and when new counsel was actually retained, January 2025. There is some evidence of inquiries being made with other potential counsel, but it should not take 4 years to find a new lawyer.

[44] I find that the bulk of the delay in this case is inexcusable, which I calculate to be the 5 years + 4 months, less the 8 months spent on the informal document

exchange which I have found was excusable. So, the total of inexcusable delay is thus 4 years + 8 months.

3. Is it in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay?

[45] For the purposes of assessing interests of justice, the court in *Giacomini* approved the non-exhaustive list of factors set out in *International Capital Corporation v. Robinson Twigg & Ketilson*, 2010 SKCA 48 [*ICC*] at para. 45, and it added one additional factor. These can be summarized as follows:

(a) prejudice the defendant will suffer in mounting its case if the matter goes to trial;

(b) the length of the excusable delay;

(c) stage of the litigation;

(d) impact of the inexcusable delay on the defendant;

(e) the context in which the delay occurred;

(f) the reason offered for the delay;

(g) the role of counsel in causing the delay;

(h) the public interest; and

(i) the merits of the action.

(a) Prejudice the defendants will suffer in mounting their case if the matter goes to trial

[46] The defendants argue they will suffer actual prejudice if the action is allowed to proceed:

(a) They say the operations of both defendants have changed significantly since the disputed events:

(b) None of the defendants or KEDC’s employees who were allegedly involved in the 2016 renovations are still employed with the relevant company;

(c) The defendants are not in contact with employees of the various contractors and consultants who are alleged to have availed themselves of the plaintiff's hotel services; and

(d) Even if they can be located and contacted, it is unlikely they would still remember relevant details regarding disputed events which occurred in mid-2016.

[47] The plaintiff argues that:

(a) The defendants were part of a sophisticated group of businesses that did have or could reasonably be expected to have administrative processes and trained personnel to preserve institutional memory, which reduces the possibility of prejudice generally;

(b) Prejudice due to employees with direct knowledge having moved on is minimal and can be mitigated by making efforts to try to contact them. Further, the plaintiff speculates that the reason the defendants might have difficulty obtaining testimony from some of their former employees is due to litigation that 099 TLP is or was involved in with several of these individuals. Any such prejudice cannot be attributed to the plaintiff, but rather to the defendants' own “human resources issues”;

(c) To the extent that memories may have faded since 2016, invoices and supporting guest folios were informally disclosed in 2019. They qualify as “business records” which were generated in the ordinary course of the plaintiff's business at the relevant times. They represent the best available evidence on the sole disputed issue which is quantum of the adjusted net outstanding invoice amount. There is little or no witness testimony which could add value, in terms of helping the parties and the court determine the disputed issues;

(d) The plaintiff is ready to have the action decided on its merits via its pending summary trial application. A hearing date of September 19, 2025, has been tentatively agreed to by the parties. The plaintiff complains that the application could have already been heard on its

> merits, but for the defendants' insistence that the dismissal for want of prosecution application be determined first.

[48] I do not agree with the suggestion that the change in the defendants' businesses constitutes a form of prejudice, in terms of the ability to mount their defence to the action if it were to go to trial.

[49] I do accept that the defendant has suffered some prejudice arising from the fact that everyone within KEDC's and the defendants' organizations who had direct involvement with the disputed events in 2016 has moved on from the company. It is not a surprise that personnel of the contractors or consultants who were involved in the renovations are out of contact, as that appears to be a project-specific involvement rather than an ongoing business relationship. Presumably, their involvement ended when the renovations were completed. It is also fair to infer the passage of time generally will have had at least some effect on memory of witnesses.

[50] What is not clear, based on the record before me on this application, is whether there is any prospect of tracking the various witnesses down. It does not appear any inquiries have yet been made in that regard. The defendants also have not produced their list of documents, so it is not clear how much, if any, documentation they have preserved which might assist in identifying the individuals involved.

[51] I do not accept the plaintiff's arguments suggesting that some of the former personnel can be assumed to be non-cooperative due to other disputes which may have arisen between them and the defendants. There is not a sufficient evidentiary basis to support such speculation.

[52] Overall, this factor favours dismissal.

(b) Length of the inexcusable delay

[53] As noted above, the inexcusable delay in this case is 4 years + 8 months. This is significant delay, particularly in the context of what should be a relatively straightforward breach of contact claim involving a relatively modest amount, under $50,000. This is not a case in which the complexity of the issues or dynamics of the claims warrants an expectation that the litigation will be more time-consuming overall.

[54] This factor generally favours dismissal.

(c) Stage of the litigation

[55] In *ICC* at para. 45(c), the Saskatchewan Court of Appeal commented as follows:

> (c) The stage of the litigation – In general terms, a court should be less inclined to strike an action which is well advanced than one which is in its early stages. The interests of justice will normally weigh in favour of getting a case to trial if it has somehow stalled just short of that mark. On the other hand, by way of illustration, an action which has never progressed beyond the pleadings stage, and in which the parties have invested little time or resources, might be easier to strike.

[56] This action is at a relatively preliminary stage. Prior to the lengthy delay, the parties had only reached the point of closing pleadings. The plaintiff did not deliver its list of documents until early April 2025, after the 28-day waiting period after service of the notice of intention to proceed had expired. The defendants have not yet delivered their list of documents. There have been no examination for discovery conducted by either side. No trial date has been set, albeit there is an attempt to set down a summary trial application.

[57] Since being informed that the defendants intended to apply to dismiss the action for want of prosecution, new counsel for the plaintiff has engaged in a flurry of activity, in an effort to move the matter forward as much as possible. This includes issuing a list of documents, an amended list of documents, a notice to admit and delivering materials for a summary trial application. I note that the summary trial

application materials were issued without the benefit of having received and reviewed the defendants' list of documents or conducting any examinations for discovery. I would normally expect that at least document discovery would be obtained from the other side before one would expect the plaintiff to commit itself to a final form of summary trial materials. It appears this may have been somewhat of a rush job, in an effort to fend off dismissal for want of prosecution. I intend no criticism of new counsel by saying this. He is trying to do his best for the plaintiff in difficult circumstances.

[58] The fact that the plaintiff now suggests the case can be made ready for a final determination via a summary trial application with relatively little effort highlights the straightforward nature of the claim. It also begs the question why none of this was done much earlier in the life of this proceeding.

[59] This factor generally favours dismissal.

(d) Impact of the inexcusable delay on the defendants

[60] In *ICC* at para. 45(d), the Saskatchewan Court of Appeal says this refers to something other than just litigation prejudice, in terms of the ability to present one’s case at trial. It refers to the impact on the livelihood and reputation of the defendants. In *ICC* at para. 45(d):

> (d) The impact of the inexcusable delay on the defendant – The court should be sensitive to the impact of claims which put in question the professional, business or personal reputation of the defendant, which put the livelihood of the defendant at risk or which involve significant or ongoing negative publicity for the defendant. In circumstances of those sorts, the court should be alert to the damage that can be caused by a plaintiff’s failure to proceed with reasonable dispatch and, at least in general terms, should be less inclined to tolerate inexcusable delay.

[61] This is a relatively straightforward breach of contract claim. There are no allegations which appear to unduly impact the defendants' reputation or livelihood.

[62] This particular factor is neutral.

(e) Context in which the delay occurred

[63] The plaintiff complains that prior to April 7, 2025, the defendants had not provided any notice or warning they intended to seek dismissal for want of prosecution if the plaintiff failed to take steps to advance the action. The defendants had no obligation to provide such a warning, but their failure to pressure the plaintiff to advance his claim is a relevant consideration which has been found to weigh against dismissal in some cases. See *Giacomini* at para. 76:

> [76] Third, it should not be forgotten that there are avenues available to defendants concerned about the pace of litigation, including setting timelines for pre-trial steps through the terms of a case plan order. Put simply, the plaintiff's delay does not tie the hands of a defendant who is motivated to bring the case to its conclusion. There is, of course, no obligation on the defendant, who has involuntarily been brought into a lawsuit, to take any steps to move the plaintiff's case forward. However, the defendant's inaction in the face of lengthy delay by the plaintiff may weigh against dismissal of the action at the interests of justice stage of the analysis.

[64] In this case, the plaintiff's delay occurred in the context of the defendants being inactive and not pressing the plaintiff to advance the litigation.

[65] This factor favours allowing the action to continue.

(f) Reasons offered for the delay

[66] I addressed this issue above. The inexcusable delay period in this case appears to arise due to the plaintiff's inattention to the claim or its decision to prioritize other aspects of its operations from time to time. The fact that current counsel presents the matter as being ready for summary trial after a relatively modest amount of effort highlights the case could and should have been advanced much earlier than it was.

[67] This factor favors dismissal.

(g) Role of counsel in causing delay

[68] Plaintiff's counsel has suggested generally that, to the extent some periods of delay may be attributable to certain acts or omissions of original plaintiff's counsel, the plaintiff should not be faulted for them.

[69] There is no direct evidence from former counsel or the plaintiff alleging that something original counsel did or did not do was a significant consideration. The plaintiff generally presented the delay on the basis that it was making efforts to negotiate an informal settlement at certain times, followed by disruptions and attributable to changes of ownership, COVID-19 pandemic delays, a general lack of financial resources within the company with which to fund the litigation, and disruption while the plaintiff sought new counsel. There was no vigorous suggestion that original counsel was the primary author of inordinate delay and acting contrary to the plaintiff's express instructions to move the matter forward promptly to a conclusion. That said, original counsel clearly did not move the matter forward when he had an obligation to do so.

[70] Even if original counsel does share some blame for a portion of the delay, when the delay is this extensive, at some point, the party has a responsibility to take action even in the face of counsel's delay. In *Dias v. Sabyan*, 2022 BCSC 1384 at para. 40:

> … no person acting reasonably who was anxious to have her case proceed would unquestioningly accept this kind of delay in a relatively straightforward case. Ms. Dias' responsibility as the plaintiff included a responsibility to maintain some degree of control over the process. It had to have occurred to her that Mr. Lund was ignoring her case and was mishandling the file. She had the responsibility to take action – either by giving clear instructions to Mr. Lund to proceed within a certain time, or seek other counsel, in order to protect her interests …

[71] Based on the evidence tendered, this is not a situation in which original counsel bears sole responsibility for inexcusable delay, to the exclusion of the plaintiff. The plaintiff appears to have been a significant source of, and to have been content with a substantial portion of the delay.

[72] This factor favours dismissal.

(h) Public Interest

[73] The defendants argue that the delay in this case is wholly inconsistent with the object of the *Supreme Court Civil Rules*, namely to secure the just, speedy, and inexpensive determination of proceedings on their merits, in ways that are proportionate to their complexity, the amount involved, and the importance of the issues in dispute. They say it is not in the interests of justice to allow the action to proceed.

[74] The plaintiff says the public interest favours allowing a small local Port Hardy business to pursue the action through to judgment. The amount claimed represents a significant amount to the plaintiff's business.

[75] With respect, this case is, at its heart, a relatively straightforward private dispute between the parties. There is no broader public interest component to the dispute, beyond the general public's interest in having disputes like this resolved in a just, speedy and inexpensive manner, on the merits, with the proceeding conducted in a manner which is proportionate to the amount involved, the importance of the issues in dispute, and complexity of the proceeding: see Rule 1-3 of the *Supreme Court Civil Rules*.

(i) Merits of the Action

[76] The plaintiff argues that its claim against the defendants is strong and is fully supported by the affidavit evidence it has tendered in support of the summary trial application.

[77] The defendants have not yet issued a list of documents and have not provided a response to the summary trial application. They took the position that this application should be decided before they were required to invest significant additional time and legal resources into preparing detailed responding materials.

[78] It appears the claim is not frivolous or bound to fail, but in the circumstances, I am not in a position to comment further on the relative merits. I note that the plaintiff has already acknowledged significant billing errors in its accounting process, leading to the voluntary reduction of ($9,076.40) from the original balance claimed as owing. This suggests that scrutiny of the plaintiff's business records was and may still be justified.

Conclusion - Interests of Justice

[79] After considering all of the foregoing factors, I conclude that it is in the interests of justice that the plaintiff's claim be dismissed for want of prosecution.

Order Made

[80] The defendant's application is granted. The plaintiff's claim is dismissed for want of prosecution.

[81] The defendants are entitled to their costs of the action from the plaintiff.

“Associate Judge Bilawich”