IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Louie v. Security National Insurance Company,* 2025 BCSC 1315

Date: 20250711
Docket: S173977
Registry: Vancouver

Between:

Cheryl Louie

Plaintiff

And

Security National Insurance Company, TD Insurance Direct Agency Inc., and Belfor (Canada) Inc.

Defendants

And

Belfor (Canada) Inc.

Third Party

Before: Associate Judge Bilawich

Reasons for Judgment

Appearing for the Plaintiff:	C. Louie B. Nowak (as “Advocate”)
Counsel for the Defendants Security National Insurance Company and TD Insurance Direct Agency Inc.:	K. Chiarot (by videoconference)

No other appearances.

Place and Date of Hearing:	Vancouver, B.C. June 24, 2025
Place and Date of Judgment:	Vancouver, B.C. July 11, 2025

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Introduction

[1] The defendants Security National Insurance Company ("Security National") and TD Direct Insurance Agency Inc. ("TD Direct") apply to dismiss this action for want of prosecution, based on the plaintiff Ms. Louie having taken no steps to prosecute her claim since September 2018.

[2] Ms. Louie opposes the application. She was assisted at the hearing by Mr. Nowak, who described himself as her "Advocate". He is a friend who is a former lawyer (1977-1989) and subsequently the CEO of a nationwide environmental consulting and contracting firm, as well as President of a nationwide developer of contaminated sites / remediator of contaminated buildings.

Background

[3] On or about late April 2015, Ms. Louie's home at 4534 West 4th Avenue, Vancouver, BC experienced a flood originating on the top (fourth) floor of her home, which went on to flood the lower three floors. A broken water line to a toilet was apparently the source. She was not home when this occurred. She describes the residence as a 100-year-old home with lathe, plaster and insulation behind the walls on the bedroom (third) floor and main (second) floor. The roof deck and ground floors were newer construction.

[4] Ms. Louie submitted a claim under her home insurance policy to Security National / TD Direct. On or about May 6, 2015, they accepted her claim and appointed the defendant Belfor (Canada) Inc. ("Belfor") to undertake appropriate restoration work. Ms. Louie argues that Belfor was agent for Security National and TD Direct. Between about May 6 and July 2015, multiple people attended the property to inspect the damage. She and her daughter had to move out of the home for a time.

[5] In or about July or August 2015, Belfor began restoration and remediation work at the home. She raises numerous concerns about how the work progressed. The work was continually being reduced without her being consulted. It is her

position that the work was never completed satisfactorily. She also complains that valuable art and other items were damaged, lost or stolen. In summer 2016, she and Mr. Nowak attempted to persuade Belfor that the restoration had not been completed, but it refused to do any further work.

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Procedural History

[6] On April 28, 2017, Ms. Louie filed her Notice of Civil Claim. She did not have counsel of record at the time, but Mr. Nowak had one of his litigation counsel assist by drafting it. The initial intention at the time was to stop the tolling of the relevant limitation period for her claim.

[7] On June 1, 2017, LDR Engineering, a firm which Mr. Nowak retained on Ms. Louie's behalf, delivered a report which concluded that there was un-remediated moisture damage in her home, with a risk of mould and air quality contamination occurring as a result. Ms. Louie obtained estimates of the cost to complete remediation from non-party contractors and forwarded them to Security National and TD Direct. He subsequently acted as project manager and helped her hire trades to remediate the remaining damage. Ms. Louie says this work cost about $220,000. She also says she suffered a loss of income and is seeking damages for lost or damaged artwork and other household effects.

[8] Mr. Nowak attempted to engage Security National and TD Direct in settlement discussions on Ms. Louie's behalf, without success.

[9] Ms. Louie retained Mr. J. Kenneth McEwen, Q.C. of the law firm McEwan Cooper Dennis LLP ("McEwan") to assume conduct of her action. On January 16, 2018, he filed a Notice of Appointment of Lawyer. A junior lawyer, Ms. Doi, was also involved. Ms. Louie says she provided all documents in her possession to counsel.

[10] On February 23, 2019, Security National and TD Direct filed a Response to Civil Claim and Third Party Notice, claiming contribution and indemnity against Belfor.

[11] On May 11, 2018, Ms. Louie filed an Amended Notice of Civil Claim setting out further particulars of her claim against the defendants.

[12] On June 8, 2018, Belfor filed a Response to Civil Claim and a Counterclaim against Ms. Louie for unpaid invoices.

[13] On June 29, 2018, Ms. Louie filed a Response to Counterclaim.

[14] On July 12, 2018, Ms. Louie served her List of Documents.

[15] On July 17, 2018, Belfor served its List of Documents.

[16] On July 18, 2018, Belfor filed its Response to Third Party Notice.

[17] On August 9, 2018, counsel for Ms. Louie issued an Appointment to Examine for Discovery to Mr. Mel Flinkman as representative of Belfor, for a discovery to be held on September 19, 2018. That same day, counsel also wrote to counsel for the applicant defendants requesting their respective lists of documents and asking they identify who their clients were nominating as their discovery representatives. He also inquired about their availability for an examination in early September.

[18] On August 27, 2018, Security National and TD Direct served their List of Documents.

[19] On September 17, 2018, Ms. Louie served an Amended List of Documents.

[20] On September 19, 2018, Mr. McEwen examined Mr. Flinkman for discovery as representative of Belfor. It lasted 2 hours, 36 minutes. At least fourteen requests for additional information were left with Mr. Flinkman.

[21] On September 20, 2018, counsel for Belfor wrote to counsel for Ms. Louie requesting production of further documents.

[22] On January 23, 2019, counsel for Security National and TD Direct wrote to counsel for Ms. Louie to follow up on Belfor’s document demand of September 20, 2018. There was no response.

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[23] On February 20, 2019, counsel for Security National and TD Direct emailed counsel for Ms. Louie to again follow up on Belfor's document demand. There was no response.

[24] On January 9, 2025, Security National and TD Direct filed their application to dismiss the action for want of prosecution.

[25] On February 18, 2025, Ms. Louie filed a Notice of Intention to Act in Person.

[26] Ms. Louie has not yet filed a Notice of Intention to Proceed. No trial date has been scheduled.

[27] Security National and TD Direct say that since September 2018, there has been no communication from Ms. Louie or her counsel, and she has not taken any steps to prosecute her claim.

Plaintiff's Explanation for Delay

[28] Ms. Louie says she is retired but generating some consulting income from contacts she made during her former career as a senior marketing executive with a financial institution and professor at the Sauder School of Business. She was forced to retire due to a diagnosed sleep disorder and restless leg syndrome.

[29] She says she received over $40,000 in legal bills between late 2016 and September 19, 2018. She has limited income and struggled to keep the accounts up to date. Mr. Nowak assisted by paying some accounts.

[30] She says she was not asked for further instructions following the discovery of Mr. Flinkman. She was not aware that counsel for the defendants had requested additional documents or that her counsel had not been responsive to those requests.

[31] On June 21, 2019, Ms. Louie received a letter from McEwan indicating they intended to withdraw as counsel. They referred to unanswered correspondence sent in January 2019, which she says she did not receive. They attached a Notice of Intention to Withdraw as Lawyer. She says Mr. Nowak challenged certain aspects of

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their accounts. She complains her counsel did not advise her about what would happen if they withdrew or tell her to either retain new counsel or file a Notice of Intention to Act in Person. She interpreted the June 2019 letter to be a threat to get her to pay legal bills which were disputed. McEwen did not file a Notice of Withdrawal of Lawyer, so they remained counsel of record.

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[32] On January 9, 2020, McEwen apparently wrote to Mr. Nowak and Ms. Louie requesting instructions and indicating that if no instructions were provided, they would close their file. She says she did not receive this letter either. Mr. Nowak indicates he received no communication from McEwan from January 2020 until February 2025. Ms. Louie says she first saw the letter in February 2025, when she picked up her file from McEwen's office.

[33] Ms. Louie says the Covid-19 pandemic later intervened, which she suggests covers March 2020 to early 2022. She says she was not able to meet with McEwen or engage new counsel during this period. She also notes that some court operations were interrupted during this period.

[34] Following Covid-19, she began experiencing health problems and also became one of the primary caregivers to her 97-year-old mother. This litigation was not front and center in her mind. She says she was not aware that steps needed to be taken in the action.

[35] On January 13, 2025, Security National and TD Direct delivered their application to dismiss to McEwen. On January 15, 2025, McEwen apparently made efforts to forward this, but both Ms. Louie and Mr. Nowak say they did not receive anything at that time. On January 28, 2025, a lawyer with McEwen emailed Ms. Louie to advise that Security National and TD Direct were applying to dismiss her action for want of prosecution. She received that email but says they did not include a copy of the application materials with the email.

[36] On January 29, 2025, someone with McEwen appeared in court to request an adjournment of the application, which was granted. Ms. Louie says she was not

aware that someone from McEwen was attending, and no one had contacted her for instructions.

[37] Ms. Louie says that on February 7, 2025, a lawyer with McEwen told her she could represent herself for the application to dismiss. She demanded her file, which she received on February 14, 2025. She says the file she received did not include a copy of the application materials. On February 18, 2025, she filed a Notice of Intention to Act in Person. She first received a copy of the application materials on February 19, 2025, when a copy was handed to her in court.

[38] Ms. Louie says she does not have the financial resources necessary to retain another lawyer. She intends to represent herself going forward. She says she was not aware that the *Supreme Court Civil Rules* permitted her action to be dismissed if steps were not taken in the litigation. Had she been made aware of that possibility, she would have found a way to move the matter forward.

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Applicable Law

[39] Rule 22-7(7) of the *Supreme Court Civil Rules*, B.C Reg. 168/2009 (“*SCCR*”) 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.

[40] The dismissal for want of prosecution test 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

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> 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.

[41] The court stated 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

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

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

[43] 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.

[44] Generally, exchanges of correspondence or communications do not constitute steps in the action. Filing a notice of change of lawyer (and presumably a notice of intention to act in person) likewise does not constitute a step: 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.

[45] In this case, the last step taken by or on behalf of the plaintiff was the September 19, 2018 examination for discovery of Mr. Flinkman. Counsel for Belfor wrote demanding production of additional documents by Ms. Louie, but this did not receive any substantive response. The gross delay is thus about 6 years + 4 months, up to the date that the application to dismiss for want of prosecution was filed. Since then, the plaintiff has not filed or delivered a notice of intention to proceed, which is necessary before she can take any further steps to advance the action.

[46] Delays of 4 years or more are generally considered to be inordinate: see *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).

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[47] Security National and TD Direct argue that the subject matter of this action is not complex and the facts are not complicated. In view of the straight-forward nature of the claim, they say the delay is disproportionate, immoderate and excessive. Ms. Louie agrees the litigation is relatively straight-forward.

[48] I conclude that Ms. Louie's net delay of 6 years + 4 months in advancing her claim does constitute "inordinate delay".

2. Is the delay inexcusable?

[49] The considerations when assessing whether delay is excusable are set out 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.

[50] The defendants were not aware of any reason for the plaintiff's delay up to the time when they filed their application to dismiss. They also note that the plaintiff has not yet provided a substantive response to their January 23, 2019 and February 20, 2019 follow-ups to Belfor's demand for additional documents. They say the delay is thus inexcusable.

[51] Ms. Louie offered the following reasons in an effort to justify or shift blame for the delay in the period after the action was commenced:

(a) She says the litigation was diligently pursued in the period up to September 2018;

(b) From October 2018 to January 2020, her counsel failed to do their job and failed to keep her informed of that;

(c) From March 2020 to early 2022, the Covid-19 pandemic intervened. [As noted above, I have concluded that 1 year of delay during the pandemic is excusable. This has already been credited];

(d) From early 2022 onward, her counsel did not withdraw as her counsel of record, so she says they remained responsible for prosecuting her claim. They did not contact her for instructions or warn her that if steps were not taken to advance the action, there was a risk that the defendants would eventually be in a position to apply to have the action dismissed for want of prosecution. She also argues that she was never given the opportunity to represent herself.

[52] With respect to delay during the Covid-19 pandemic, roughly normal running of time / limitation periods was suspended for a period of one year between March 26, 2020 and March 25, 2021. In *Etcheverry v. Bhatti*, 2024 BCSC 1222 at paras. 6 and 10, the court found that one year of the delay could be excused due to the Covid-19 pandemic. That is appropriate here as well. The net delay in this case is thus reduced to 5 years + 4 months.

[53] Ms. Louie appears to have been generally aware that her action was not being actively prosecuted September 2018. There was an unresolved fee dispute with her counsel. She was not being contacted for instructions and was not receiving progress reports. She admits she lacked the financial resources to keep up with the legal expenses which had accrued by September 2018.

[54] She also argues that she was not able to focus her time and attention on the litigation due to personal health issues and her need to help care for her elderly mother. She argues that roughly two years of delay should be excused on this basis. It was not entirely clear from her material what her heath issues involved. At the

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hearing, Mr. Nowak disclosed that she was dealing with a sleep disorder and high blood pressure. Unfortunately, there was no detailed evidence indicating how these conditions caused or contributed to her inability to focus on the litigation. There was also no evidence describing how caring for her elderly mother had contributed to the situation.

[55] Ms. Louie acknowledged that there was a roughly two-year period prior to the applicants filing their application about which they can legitimately complain, but she places the blame for that at the feet of her former counsel. I note there was no affidavit evidence tendered from Ms. Louie's former counsel. I will address the role of counsel under the third step of the *Giacomini* test, set out below.

[56] While I am sympathetic to Ms. Louie's financial, health and family circumstances generally, I do not have sufficiently detailed or persuasive evidence with which to conclude she should be excused for the failure to prosecute her claim during the 5 years + 4 months period of "inordinate delay" found in the previous section. I accept that Ms. Louie's delay was not intentional or tactical in nature.

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

[57] 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 are 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

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[58] Security National and TD Direct rely on the presumption of prejudice which flows from the finding that there has been inordinate delay. They also say it has been roughly 10 years since the date of the flood. It is reasonable to expect that some relevant and/or material evidence may no longer be available. Further, any work done to remediate the allegedly substandard remediation work performed by Belfor will now be more than six years old and have been subject to wear and tear, making it impossible to determine the nature and extent of the remediation work. They also make a general argument that prolonged litigation has caused them unnecessary expenses. All of the foregoing has caused serious prejudice to their ability to mount a defence if the action is allowed to proceed to trial.

[59] The applicant defendants did not take me to specific examples of documents or other evidence which has actually or likely been lost due to delay. It may be fair to speculate that witness memories have degraded to some extent with the passage of time. I note however that Mr. Flinkman, who is one of the persons sent to assess the flood damage post-incident, was examined for discovery as Belfor’s representative on September 19, 2018. His evidence has been preserved to that extent. Assessment and remediation work done by Belfor or by consultants is presumably documented to some extent by photographs, notes, reports, correspondence and invoices. Ms. Louie arranged to have an expert to review and assess Belfor’s work, which was presumably documented to some extent. A report was provided to the defendants around the time it was issued. Mr. Nowak was involved throughout this period. Further remedial work was performed by non-party contractors retained by Ms. Louie. Presumably this work was documented to some extent and invoiced.

[60] The litigation was relatively active early on. The defendants had full access to Ms. Louie’s home immediately following the flood and during Belfor’s remediation efforts. If they wished to inspect the home after her additional remediation, they

could have done so. There is no indication that the applicant defendants have recently inspected the home, so there appears to be no evidentiary basis for their speculation regarding the current state of the remediated areas of the home.

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[61] The reference to prolonged litigation causing them unnecessary expense does not appear to represent prejudice to their ability to muster a defence to Ms. Louie's claim. It is also unclear how their costs escalated when their primary complaint is that Ms. Louie was not taking steps to prosecute her action. There is no evidence of what activity generated expense during the delay period. They were not pressing Ms. Louie or her counsel to move the case forward. In any event, even if unnecessary expense had been caused by Ms. Louie, that can be addressed through an appropriate award of costs.

[62] While I do accept that there may be a reduction in the quality of some witnesses' ability to recall events, I am not persuaded that this necessarily rises to the level of seriously impairing the applicant defendants' ability to mount a defence to Ms. Louie's claim and for there to be a fair trial, if the action is permitted to proceed.

[63] Overall, this factor favours allowing the action to proceed.

b) Length of the inexcusable delay

[64] As noted, the inexcusable delay is 5 years + 4 months. This is significant delay, particularly in the context of what should be a relatively straightforward breach of contact of insurance and negligent remediation claim involving an amount in or around $220,000 for repairs. It is not clear what the anticipated quantum of the loss of income or damage to / loss or artwork and personal effects claim is. Overall, 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 significantly more time-consuming overall.

[65] This factor generally favours dismissal.

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c) Stage of the litigation

[66] 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.

[67] This action is at a moderately advanced stage. The parties have exchanged lists of documents. At least one expert report has been produced. I was not taken through what, if any, expert assessments / reports were generated in the course of Belfor's assessment and remediation efforts. Mr. Klinkman, as representative of Belfor, has been examined for discovery and there are outstanding information requests. There have been no examinations for discovery held of Ms. Louie or a representative of Security National / TD Direct. There are outstanding demands for additional documents to which Ms. Louie has not responded. Ms. Louie has not yet issued a Notice of Intention to Proceed, which is necessary before she can resume prosecuting her action. No trial date has been scheduled.

[68] This factor generally favours allowing the action to proceed.

d) Impact of the inexcusable delay on the defendants

[69] 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.

[70] This is a relatively straightforward breach of contract of insurance and negligent remediation claim. There are no allegations which appear to unduly impact the applicant defendants' reputation or livelihood.

[71] This factor is neutral.

e) Context in which the delay occurred

[72] Ms. Louie complains she was never warned that failing to take steps to prosecute her action would eventually put her at risk of having the action dismissed for want of prosecution. She was or should have been aware her former counsel was not taking steps to advance her claim after September 2018.

[73] Ms. Louie also says she was not given the opportunity to prosecute the claim herself. I do not find this point persuasive. She appears to admit she could not afford to have her original counsel continue. Other obvious alternatives were (a) try to find new counsel (b) self-represent (presumably with Mr. Nowak’s assistance) or (c) discontinue the action.

[74] Ms. Louie suggested that her struggles with her own health issues and demands associated with caring for her elderly mother prevented or interfered with her ability to prosecute her action. The evidence addressing these points was lacking and vague.

[75] It is also relevant that the applicant defendants did not provide any notice or warning to Ms. Louie that they intended to seek dismissal of her action if she failed to take steps to prosecute her action. The defendants had no obligation to provide such a warning, but their failure to press her to advance her claim beyond the two letters following up on Belfor’s document demand is a relevant consideration. Lack of such pressure has been found to weigh against dismissal: 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

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> 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.

[76] Overall, this factor marginally favours allowing the action to continue.

f) Reasons offered for the delay

[77] I addressed this issue above. The period of inexcusable delay appears to arise due to Ms. Louie's inattention to the claim after the September 2018 examination for discovery.

[78] This factor favors dismissal.

g) Role of counsel in causing delay

[79] Ms. Louie argues that the majority of the delay is attributable to her former counsel and she should not be faulted for that. It is clear that there was a work stoppage following the September 2018 examination, apparently due to the disputed account and Ms. Louie's lack of financial resources. She says she was not aware her counsel was not being responsive to document requests. She says she did not receive various correspondence from her counsel. She also describes the defendants' approach to this litigation as maximizing her legal costs by making her counsel respond to numerous demands and by dragging out proceedings. She suggests they did so to exhaust her financial resources.

[80] 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 not in others: see *Giacomini* at para. 40. When the delay is lengthy, at some point, the party bears some responsibility to take action, even in the face of their own 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

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> 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 …

[81] Based on the evidence tendered, it does appear Ms. Louie was aware shortly after September 2018 that her ability to continue prosecuting her claim with original counsel was problematic based on their fee dispute and her limited financial resources. She should have eventually realized that unless she could find other counsel who was prepared to work within the financial means she had available, she would have to proceed without counsel. She has in Mr. Nowak the support of a friend who has both a legal and remediation background who has demonstrated a remarkable willingness to assist her. She now says she intends to represent herself, with his support, should she be successful in resisting this application. For his part, Mr. Nowak confirms he is ready, willing and able to help her prosecute her claim.

[82] Arguably, her former counsel could have been more clear about whether they were counsel of record or not, and if not, taken steps to formally remove themselves at least by the time they apparently indicated they intended to close their file. Appreciating that I have not heard their side of these issues, on the limited evidence currently available, it appears they share some responsibility for the post September 2018 delay.

[83] Overall, this factor marginally favours dismissal.

h) Public Interest

[84] The defendants argue that the delay in this case is such that allowing the case to continue would be inconsistent with the maintenance of public confidence that the courts are able to provide timely and cost-effective justice. Viewed holistically, the interests of justice demand that this action be dismissed for want of prosecution.

[85] Ms. Louie says insurers owe a legal, moral and ethical obligation to people to whom they sell their policies. In this case the applicant defendants have admitted that her policy covers the flooding loss and that remediation of her home was

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appropriate. She suggests this case is an example of insurers denying a claim in the hopes she does not have the financial resources required to pursue an appropriate remedy from the court. Allowing this to prevail would be offend the public interest.

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[86] I do not accept Ms. Louie's characterization of the applicant's motives in resisting her claim. I do agree that it is in the public interest generally that disputes which are placed before the court be resolved in a timely and cost-effective manner.

i) Merits of the Action

[87] The applicant defendants say Ms. Louie's case is weak and bound to fail. They did not provide a detailed analysis in support of this proposition.

[88] Ms. Louie argues that her claim is strong. Security National and TD Direct accepted her claim as being covered by her policy in 2015. They appointed Belfor to carry out the necessary remediation. She says Mr. Flickman also admitted during his discovery that he was acting as agent for these defendants and on their instructions. She rejects the suggestion that her appropriate remedy, if any, should be sought against Belfor only, not against them. She also argues that as insurers, they have a duty of good faith to act promptly and fairly when investigating, assessing and attempting to resolve claims made by an insured, that this includes an implied obligation to hire competent personnel to perform assessments and remediations, and to deal with her in good faith, which did not occur here. The insurers should not be excused from their obligations to her through not allowing her claim to be decided on its merits.

[89] It appears that Ms. Louie does have an arguable claim. I do not agree with the suggestion that it is bound to fail. This factor favours allowing the action to continue.

Conclusion - Interests of Justice

[90] After weighing all of the foregoing factors, I conclude that on balance it is in the interests of justice that Security National and TD Direct's application be dismissed.

<u>Order Made</u>

[91] The application is dismissed.

[92] Ms. Louie is entitled to costs of the application from Security National and TD Direct.

"Associate Judge Bilawich"

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