

COURT OF APPEAL FOR ONTARIO

CITATION: Dale v. Toronto Real Estate Board, 2025 ONCA 476

DATE: 20250630

DOCKET: M55893 (COA-25-CV-0161)

Pepall J.A. (Motion Judge)

BETWEEN

Lawrence Mark Dale, Stephen Moranis*, Fraser Beach, and Realtysellers
(Ontario) Limited as assignor

Plaintiffs (Appellant/Moving Party*)

and

The Toronto Real Estate Board*, Maureen O'Neill, Tom Lebour, Dorothy Mason,
Deborah Abraham, Ron Abraham, Stuart Braund, Larry Cerqua,
Paul Etherington, Heather Fuller, Ann Hannah, William Johnston, Garry Lander,
Ken McLachlan, Rosalind Menary, Joseph Shum, Richard Silver,
John DiMichele, Don Richardson, Phil Soper, David Brown, Wendy Carroll,
Keith Tarswell, and Tom Bosley, Defendants

Defendants (Respondent/Responding Party*)

Stephen Moranis, acting in person

James Beesley, for the respondent/responding party, The Toronto Real Estate
Board

Heard: June 16, 2025

ENDORSEMENT

Background

[1] The moving party, Stephen Moranis, is self-represented. He seeks an order extending the time to perfect his appeal until at least August 31, 2025. The moving

party has been involved in the residential real estate brokerage business for many years.

[2] On March 19, 2009, the moving party and his co-plaintiffs issued a statement of claim against the responding party, the Toronto Real Estate Board (“TREB”), and others for \$540 million in damages. The claim primarily concerned allegations by the moving party that TREB and others conspired and improperly denied the plaintiffs access to TREB’s Multiple Listing Service (“MLS”) system. At that time, the moving party and the plaintiffs were represented by counsel.

[3] On October 16, 2009, the moving party and his co-plaintiffs commenced a second action against TREB and others that was similar to the first statement of claim except that the damages claimed now amounted to \$750 million.

[4] On July 29, 2013, the parties to the second action entered into a settlement agreement pursuant to which that action was dismissed by way of a consent dismissal order dated August 1, 2013. Under the settlement, among other things, the moving party could apply to become a member of TREB or to become an unlicensed assistant at a brokerage on the same terms and conditions as are required for any other prospective member or unlicensed assistant. In addition, he would be granted the status of “Retired Honourary Life Member”.

[5] On February 25, 2015, the moving party assigned his interest in the first action to one of his then co-plaintiffs. TREB and the other defendants subsequently

moved to dismiss that action for delay. This motion was heard by Cavanagh J. on March 24, 2023, who determined that the moving party was no longer able to oppose the motion as he had assigned his interest in the action to one of his former co-plaintiffs. See *Dale et al. v. The Toronto Real Estate Board et al.*, 2023 ONSC 3738. Cavanagh J. also dismissed the action for delay.

[6] On March 23, 2023, relying on r. 49.09 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the moving party brought a motion to set aside the agreement to settle the second action based on an allegation that TREB had breached the agreement. That same day, the moving party commenced a third action against the same defendants seeking “the same set of reliefs sought” in the second action, which itself was similar to the first action which had been dismissed. The moving party continued to be represented by counsel, Mr. Eli Karp.

[7] TREB first learned of the third action on October 20, 2023. TREB moved to dismiss the third action as an abuse of process and to dismiss the moving party’s motion to set aside the settlement agreement.

[8] The parties attended a case conference on November 1, 2023. In advance of the case conference, the moving party states that he submitted a case conference brief that contained his full motion record in support of his set aside motion. At the case conference, Glustein J. directed that TREB’s motion to dismiss the moving party’s motion and the third action be heard before the moving party’s

set aside motion. He established a timetable in which the moving party was to deliver his responding motion record on or before April 30, 2024 and his factum by November 15, 2024. He did not set the moving party's motion down for hearing but agreed to remain seized of any scheduling issues.

[9] The motion judge (not Glustein J.) who ultimately heard TREB's motions held a case conference with counsel on December 9, 2024. The moving party's counsel acknowledged that the moving party had not delivered a responding motion record or a factum as directed by Glustein J.

[10] The motion judge heard TREB's motion on December 13, 2024. At some stage which is unclear from the record before me, r. 2.1 was raised against the moving party. The motion judge removed Mr. Karp as counsel of record for the moving party with no objection from the moving party. In his endorsement, the motion judge stated that he advised the moving party that he had reviewed the statement of claim in the second action and his motion to set aside the order and settlement of the first action. (It was the second action that had been formally settled and there was no motion to set aside any order and settlement of the first action.)

[11] The motion judge gave the moving party the opportunity to submit written submissions by December 27, 2024, which the moving party did. Having reviewed them, the motion judge declined to dismiss the third action and the motion under

r. 2.1, stating “the notice of motion to set aside the settlement, standing alone, is not obviously frivolous and vexatious. The frivolousness, vexatiousness, and abusive nature of Mr. Moranis’s litigation is only revealed when it is considered in light of the material delivered by [TREB].”

[12] He went on to dismiss the moving party’s set aside motion for four reasons: (i) the moving party filed no evidence that provided any basis to set aside the settlement agreement—the only evidence was from TREB, which stated it had complied with the terms of the settlement; (ii) only some of the beneficiaries sought to set aside the settlement agreement; (iii) the motion was an attempt to re-litigate the issues in the first action which had been dismissed as well as those in the second action which had been settled; and (iv) the moving party had assigned his interest in the subject matter of the first action, and given the overlap between the first and second actions, the motion judge did not think that the moving party had standing to set aside a settlement agreement relating to claims he had assigned.

[13] The motion judge also dismissed the third action as an abuse of process since it was an attempt to re-litigate the issues raised in the prior two actions. He subsequently awarded TREB costs in the amount of \$30,000.

[14] In his Notice of Appeal, the moving party states that following the settlement, he became an unlicensed assistant and TREB provided him with an authorized user agreement which gave him access to TREB’s MLS system. From 2013 until

2020, he successfully applied annually for an authorized user agreement as an unlicensed assistant. However, in 2021, TREB advised that his application would be rejected. In his Notice of Appeal, the moving party asserts that this rejection constituted a breach of the settlement agreement that formed the basis of the dismissal of his second action.

[15] The only ground of appeal relied upon by the moving party is that the motion judge erred in finding that the moving party had filed no evidence to provide any basis to set aside the settlement agreement. He maintains that he had served a full motion record and that it had been submitted to and considered by the court in the case conference brief submitted to Glustein J. The moving party states that the motion record could not be filed due to the procedural requirement that a hearing date must be secured before a motion can be filed with the court. As Glustein J. had postponed the scheduling of the moving party's motion until after the disposition of TREB's motions, there never was a hearing date set for the moving party's motion.

Motion for an Extension of Time

[16] This court may order an extension or abridgment of time on such terms as are just: r. 3.02(1) of the *Rules of Civil Procedure*. The overarching principle is that an extension should be granted if required by the "justice of the case": *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at

para. 15. This court has generally considered the following factors in applying this principle:

1. whether the moving party formed a bona fide intention to appeal within the relevant time period;
2. the length of, and explanation for, the delay in filing;
3. the prejudice to the responding party caused, perpetuated or exacerbated by the delay; and
4. the merits of the proposed appeal.

[17] In the context of a motion for an extension of time to perfect an appeal, it is appropriate to consider whether the moving party formed and maintained an intention to appeal within the relevant time period: *Issai v. Rosenzweig*, 2011 ONCA 112, 277 O.A.C. 391, at para. 5.

[18] The lack of merits is a sufficient basis on which to deny a motion for an extension of time. When assessing the merits of an appeal, it is not with a view to determining whether the appeal will succeed, but with a view to determining whether the appeal has so little merit that the court could reasonably deny the important right of appeal: *Jodi L. Feldman Professional Corporation v. Foulidis*, 2025 ONCA 150, at para. 6.

Discussion

[19] The first issue to address is whether the moving party formed a bona fide intention to appeal within the relevant time period. He filed his Notice of Appeal within the prescribed time frame but failed to perfect his appeal on time. The Registrar advised the moving party that if the appeal was not perfected, it would be dismissed for delay. Prior to the deadline noted by the Registrar, the moving party brought a motion for an extension of time based on correspondence from his physician and other medical records. In the absence of any evidence from the responding party and given the deficiency of the moving party's materials, the motion was adjourned to give the parties the opportunity to file materials, which they both did; however, the responding party only filed a factum and did not file any evidence. I have no hesitation in concluding that the moving party formed a bona fide intention to appeal and maintained that intention to appeal within the relevant time periods.

[20] The length of delay in bringing the motion for an extension was modest and in light of his physician's correspondence, I am, at least for the purposes of this motion, prepared to accept the moving party's explanation for the delay. As for prejudice, the court is to focus on the prejudice caused by the delay itself: *D.G. v. A.F.*, 2014 ONCA 436, at paras. 11, 16; *Howard v. Martin*, 2014 ONCA 309, 42 R.F.L. (7th) 47, at paras. 26, 33-35. As mentioned, there was no evidence filed by the responding party and, although relied upon in its factum, the affidavit

of its representative, Mr. Mooibroek, was not before me. No prejudice arising from the delay in perfection is evident.

[21] Turning to a consideration of the merits of the moving party's appeal, I am to determine not whether the appeal will succeed, but whether it has so little merit that the moving party should be deprived of his right to appeal. Typically, it is not for a single judge to engage in a lengthy examination of the merits of an appeal; that is the role of a panel. That said, there are occasions when the appeal is so clearly meritless that granting an order for an extension of time is not justified.

[22] Although I have serious reservations that the moving party will ultimately be successful with his appeal, and indeed whether a claim for breach of the settlement agreement is properly framed as a r. 49.09 motion, I am not prepared to deny him the opportunity to appeal. It is the case that Glustein J. ordered the moving party to provide a responding motion record on or before April 30, 2024, and agreed to remain seized of any scheduling issues. The moving party failed to meet that deadline and failed to avail himself of Glustein J.'s offer. At that time, the moving party did have counsel who was permitted to get off the record on the eve of argument. While the moving party did not oppose the removal, he was left to rely on his own skills to respond to TREB's motions. Moreover, in his published reasons, although the motion judge stated that he had advised the moving party that he had reviewed the statement of claim in the second action and his motion to set aside the order and settlement of the first action, the moving party had not

brought such a motion. Rather, the second action was the subject matter of his motion. The motion judge also found that the notice of motion to set aside the settlement, standing alone, was not obviously frivolous and vexatious and had to be considered in light of the material delivered by TREB. However, I have no such material before me. The absence of any evidence from the responding party bolsters my conclusion that the moving party should not be denied the right to appeal. It follows that I conclude that the justice of the case warrants the granting of an extension to the moving party to perfect his appeal.

[23] That said, I am not prepared to extend the time to the end of August 2025 as requested. The moving party's appeal does not appear to be strong, and it is unfair to the responding party to provide the moving party so much time. I am mindful of the note from the moving party's physician, but it is dated and not very detailed. The moving party is granted an extension of time to perfect his appeal until August 1, 2025. He should not expect any further extensions or adjournments. Once perfected, the hearing of the appeal will be scheduled in the normal course. The costs of the motion are reserved to the panel hearing the appeal.

"S.E. Pepall J.A."