

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *STA Building Technologies v. Vancouver  
Aviation College Inc.*,  
2025 BCSC 1525

Date: 20250807  
Docket: S219550  
Registry: Vancouver

Between:

**1149213 B.C. Ltd d.b.a. STA Building Technologies**

Plaintiff

And

**Vancouver Aviation College Incorporated, Mostafa Khosrowtaj and Pitt  
Meadows Airport Society**

Defendants

Before: The Honourable Justice Laurie

## **Reasons for Judgment**

### **In Chambers**

Counsel for the Plaintiff: L. Karr

Counsel for the Defendants: R. Dueckman

Place and Date of Hearing: Vancouver, B.C.  
July 7, 2025

Place and Date of Judgment: Vancouver, B.C.  
August 7, 2025

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**OVERVIEW AND BACKGROUND**

[1] The defendants Vancouver Aviation College Incorporated (“VAC”) and Mostafa Khosrowtaj (the “Applicants”) apply to dismiss the claim of the plaintiff, STA Building Technologies, for want of prosecution. In the alternative, the Applicants seek the removal of the certificate of pending litigation in this action (the “CPL”) pursuant to s. 252 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA].

[2] The defendant Pitt Meadows Airport Society (the “Society”) takes no position in the application.

[3] The plaintiff is in the business of supplying and installing windows, doors, and frames for commercial purposes.

[4] The defendant Society is the registered owner of lands located in the city of Pitt Meadows and legally described as:

PID: 000-719-595

Lot 59 Except: Part on Plan BCP9734 Sections 2, and 3 and parts of Sections 9, 10, 11 and 14 Block 5 North Range 1 East New Westminster District Plan 42375

(the “Property”).

[5] On October 18, 2020, the plaintiff and the defendant VAC entered into an agreement in which the plaintiff agreed to supply and install exterior windows, commercial doors, exterior glasses, interior doors and stair railings to an improvement that was being constructed on the Property (the “Agreement”).

[6] The defendant Mr. Khosrowtaj is the director and CEO of VAC.

[7] The plaintiff filed a Notice of Civil Claim (“NOCC”) on November 8, 2021 and registered a CPL against the Property the following day. In brief, the NOCC allege that VAC and Mr. Khosrowtaj breached the Agreement by refusing or neglecting to pay the amount of \$38,250 for part of the work performed by the plaintiff.

[8] The Applicants filed a response to the civil claim and counterclaim on November 29, 2021. The counterclaim also named the principal shareholder of the plaintiff, Hyang Soon Kim a.k.a. Damien Kim, as a defendant.

[9] The response and counterclaim allege that the action is premature because the dispute resolution process required in the Agreement had not been attempted. It also alleged, among other things, that the plaintiff misrepresented its ability to perform the agreed upon work, breached the Agreement by abandoning the project at a critical point without the Applicants' knowledge and consent, and that the Applicants overpaid the plaintiff for work performed and incurred substantial damages and loss of opportunity including the opportunity to sell the Applicants' business and property at an advantageous price.

[10] The relief sought in the counterclaim includes dismissal of the action as being premature, as well as payment of over \$1.2M representing amounts for damages, loss of income and profits, overpayments, and additional project costs.

[11] The plaintiff and Mr. Kim filed a response to the counterclaim on December 21, 2021. The response stated that the allegations of "premature" timing of the action are solely caused by VAC's conduct in filing a "21-Day Notice" immediately after the plaintiff filed a builders lien in the amount owed by the defendants. The 21-Day Notice forced the plaintiff to commence the action forthwith in order to preserve its claim of lien.

[12] The defendant Society filed a response on February 1, 2022.

[13] Two years later, on February 2, 2024, the plaintiff served a Notice to Mediate. The defendants did not respond to this Notice.

[14] On February 20, 2024, the Applicants filed a Notice of Appointment or Change of Lawyer.

[15] On February 27, 2024, counsel for the Applicants sent a letter to plaintiff's counsel requesting the plaintiff's list of documents by March 15, 2024.

[16] On June 18, 2025, counsel for the Applicants sent a letter to plaintiff's counsel advising of its intention to bring the present application.

[17] On June 19, 2025, the plaintiff provided its list of documents. Counsel for the Applicants refused to accept it.

[18] The Applicants filed its notice of the present application on June 20, 2025.

## **DISCUSSION**

### **Should the Action be Dismissed for Want of Prosecution?**

#### ***Legal Framework***

[19] The court's power to dismiss an action for want of prosecution is found in Rule 22-7(7) of the *Supreme Court Civil Rules*, which provides:

#### **Dismissal for want of prosecution**

(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.

[20] In *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473, a five-member division of the Court of Appeal revised the existing test for applications to dismiss for want of prosecution. The revised framework requires the following questions to be answered:

1. Has the defendant established that the plaintiff's delay in prosecuting the action is inordinate?
2. Is the delay inexcusable?
3. If the answers to the first two questions are yes, is it in the interests of justice for the action to proceed despite the inordinate and inexcusable delay?

*Giacomini* at paras. 69-70.

[21] Under this framework, the prejudice to the defendant's ability to defend the action remains a relevant and important consideration, however it is not a prerequisite to an order dismissing a claim for want of prosecution: *Giacomini* at para. 72.

[22] The following are a non-exhaustive list of factors relevant in assessing the interests of justice:

- a. The prejudice the defendant will suffer defending the case at trial;
- b. The length of the delay;
- c. The stage of the litigation;
- d. The impact of the delay on the defendant's professional, business, or personal interests;
- e. The context in which the delay occurred, in particular whether the plaintiff delayed in the face of pressure by the defendant to proceed;
- f. The reasons offered for the delay;
- g. The role of counsel in causing the delay; and
- h. The public interest in having cases that are of genuine public importance heard on the merits; and
- i. The merits of the action.

*Giacomini* at paras. 66, 71.

***Application to this Case***

***i. Has the defendant established that the plaintiff's delay in prosecuting the action is inordinate?***

[23] Inordinate delay is delay that is immoderate, uncontrolled, excessive and out of proportion to the matters in question: *Weigert v. Rogers*, 2019 BCCA 334 at para.

32. The question of whether delay is inordinate is “not just a question of temporal arithmetic” but requires consideration of the circumstances of the case: *Sun Wave Forest Products Ltd. v. Xu*, 2018 BCCA 63 at para. 25. As the Court of Appeal explained 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; *Giacomini* at para. 38.

[24] The delay is typically assessed from the date of commencement of the action. It must be considered holistically and not in piece-meal fashion: *Weigert* at para. 32.

[25] In the present case, it has been approximately 3.5 years since the NOCC was filed.

[26] The Applicants submit that this delay is inordinate given that the action involves a simple debt claim in a modest amount (i.e. about \$38,000), and the plaintiff has not done anything to advance the litigation since filing its response to the counterclaim in December 2021. It is the Applicants’ position that the plaintiff’s Notice to Mediate should not be considered in the assessment of delay as it did not constitute a “step” in the action.

[27] In my view, the Applicant’s position with respect to the Notice to Mediate is unduly restrictive and inconsistent with the holistic approach required in this type of an application. In assessing a want of prosecution application, the court is not limited to considering only formal steps in a proceeding but is required to consider all of the circumstances: *British Columbia Securities Commission v. Pasquill*, 2023 BCSC 2150 at paras. 136-140; *MacKenzie Delta Industrial Ltd. v. North American Enterprises Ltd.*, 2022 BCSC 16 at para. 44.

[28] In my view, the Notice to Mediate forms part of the overall circumstances and is a relevant consideration. In particular, it is an initiative taken by the plaintiff directed at a potential resolution of the action. Although there was a delay of over

two years between the plaintiff's response to the counterclaim and the Notice to Mediate, viewing the matter holistically, I am not persuaded that the overall delay here is inordinate.

***ii. Is the delay inexcusable?***

[29] Even if the delay was inordinate, I am satisfied on the record that it is excusable.

[30] The plaintiff has tendered an affidavit from its former counsel who took full responsibility for the delay in prosecuting the action. The evidence from the plaintiff's former counsel includes the following:

- a) Although Mr. Kim was in regular contact with his office regarding the status of the litigation, counsel failed to prioritize the advancement of the plaintiff's claim due to other pressing commitments in his legal practice;
- b) In 2023 and 2024 respectively, counsel instructed an assistant to prepare a list of documents, however he failed to follow-up to ensure that it was done;
- c) After issuing the Notice to Mediate in February 2, 2024, and not receiving a response, counsel failed to follow up. He explained that this was, in part, due to his receipt on February 22, 2024 of a Notice of Change in Solicitor on behalf of the defendants and his assumption that new counsel would require some time to get up to speed on the file;
- d) Although it was his understanding that the plaintiff intended to pursue the action, through oversight, he did not file a Notice of Intention to Proceed;
- e) He never advised the plaintiff's principal shareholder that there was a risk attached to taking too long to prosecute his claim or that there was a risk that an application might be brought for want of prosecution.

[31] Whether the reason offered for the delay amounts to an excuse depends on the circumstances. Lack of diligence on the part of plaintiff's counsel may amount to a reasonable excuse in some cases: *Giacomini* at para. 40; *0690860 Manitoba Ltd., v. Country West Construction Ltd.*, 2009 BCCA 535 at para. 29; *West Terra v. Myhill*, 2020 BCSC 1913 at para. 1.

[32] I accept that the delay in this case was caused by the lack of attention and diligence on the part of plaintiff's former counsel. In the circumstances, I do not attribute fault to the plaintiff. Based on the record, I am satisfied that the delay is excusable.

[33] I do not accept the Applicants' submission that the delay here is tactical and that the plaintiff's intention all along was to pursue mediation while using the CPL on the Property to apply pressure. Among other things, this assertion is inconsistent with the evidence including that of Mr. Kim who deposed that at all times he wished the matter to be set down for trial should mediation prove to be unsuccessful.

***iii. Despite the inordinate and inexcusable delay, is it in the interests of justice for the action to proceed?***

[34] In light of my findings that the delay in this case was neither inordinate nor inexcusable, it is not necessary to embark on the next part of the test as set out in *Giacomini*. However, I will say that even if the delay was inordinate and inexcusable, the non-exhaustive list of factors relevant to the assessment of the interests of justice in this case weigh in favour of allowing the action to proceed.

[35] In my view, the combination of the following factors militate against depriving the plaintiff of its presumptive entitlement to an adjudication of its claim on the merits:

- a) Although the delay is significant, this is not a case where, as the Court described at para. 81 of *Giacomini*, the plaintiff filed an action and left it dormant for years with no apparent intention to move the matter forward. As noted above, the plaintiff served a Notice to Mediate in February 2024

in an attempt to resolve the dispute, and in June 2025, it produced a list of documents which was refused by the Applicants.

- b) While there is no obligation on the part of a defendant to take steps to move the plaintiff's case forward, this is not a case where the plaintiff delayed in the face of pressure from the defence to move the litigation along. As the Court in *Giacomini* observed, there are avenues available to defendants concerned about the pace of the litigation including setting timelines for pre-trial steps through a case plan order. In certain cases, the defendant's inaction in the face of lengthy delay by the plaintiff may weigh against dismissal of the action: *Giacomini* at para. 76. In my view, these comments apply equally to the case at bar.
- c) Further, in my view, the Applicants' own inaction in prosecuting their counterclaim is also part of the context and a relevant consideration weighing against dismissal of the action: *Murrin Construction Ltd. v. All-Span Engineering and Construction Ltd.*, 2012 BCCA 251 at para. 9. Although the Applicants advised the Court in oral submissions that they would withdraw their \$1.2M counterclaim if the plaintiff's claim was dismissed, as in *Murrin*, in my view this submission does not tip the scale in the Applicants' favour.
- d) I also find that the Applicants have not sufficiently established prejudice resulting from the plaintiff's delay. There was no specific evidence tendered that the Applicant's ability to defend the action has been prejudiced. Although Mr. Khosrowtaj deposed in an affidavit that the Applicants have suffered and continue to suffer losses, very little detail and no supporting documentation was provided. In the circumstances, I do not give the Applicants' assertion of prejudice much weight.
- e) In terms of the merits of the claim, based on the record before me, I am not able to find that the action is bound to fail such that the interests of justice would favour its dismissal: *Giacomini* at para. 71.

[36] For all of the above reasons, the application to dismiss the action for want of prosecution is dismissed.

**Should the CPL be cancelled?**

[37] I now turn to the Applicant's alternative position that the CPL should be cancelled pursuant to s. 252 of the *LTA*.

***Legal Framework***

[38] That section provides:

**Cancellation of certificate of pending litigation**

**252** (1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

[39] In *GMC Properties Inc. v. Rampart Estates Ltd.*, 2023 BCCA 172 at para. 43, the Court stated that the continued presence of a validly registered CPL is presumptively prejudicial to a property owner. For this reason, a claimant is obliged to prosecute their claim diligently. Section 252 of the *LTA* is intended to ensure that claimants do so without undue delay. Its underlying purpose is to keep property from being tied up in dormant litigation.

[40] The test to be applied on a s. 252(1) application is less onerous than the test on an application to dismiss a claim for want of prosecution: *GMC* at para. 46 citing *Kultak Financial Inc. v. Grewal*, 2018 BCCA 94 at para. 35.

[41] In an application pursuant to s. 252(1), where the applicant has shown that no step has been taken in the proceeding for one year, the court retains a discretion to disallow the remedy. However, prejudice to the landowner is presumed and the respondent must show that the prejudice is either not serious or outweighed by other factors that would make it unjust to cancel the CPL. Factors relevant to the exercise of the court's discretion include: (a) whether the respondent has given an acceptable explanation for the delay in prosecuting the claim; (b) whether, despite the presumed

prejudice, no actual prejudice would be incurred by the application if the order was not granted; and (c) whether the respondent's claim for an interest in land has a reasonable prospect of succeeding: *GMC* at para. 46 citing *Wiest v. Middlekamp*, 2005 BCSC 1626 at paras. 12-13; *Lang v. Lang*, 2021 BCSC 2401 at para. 30 citing *Dhillon v. Dasta*, 2019 BCSC 729 at para. 17.

[42] In *GMC* at para. 57, Dickson, J.A. described the court's discretion on a s.252(1) application as follows: "where the statutory pre-conditions provided for in s.252 are met, the Court has a discretion to refuse to cancel a CPL based on *whether, in all of the circumstances, cancellation is in the interests of justice*" (emphasis added).

### **Positions of the Parties**

[43] The Applicants submit that it has been over three years since the CPL was placed on the Property and no steps have been taken since then. The Applicants emphasize that the term "step" refers to a formal step in the litigation either required or permitted by the Rules that moves the action forward towards trial or resolution. They submit that the plaintiff has not met its duty to pursue the action diligently, therefore the CPL must be cancelled.

[44] The plaintiff submits that the CPL should not be removed at this time because:

- a) The delay in the past year was caused by a combination of failure by the Applicants' counsel to respond to the Notice to Mediate and the failure of the plaintiff's former counsel to follow-up;
- b) There is no evidence of actual prejudice to the Applicants if the CPL was not cancelled;
- c) The plaintiff's interest in the land arises from a claim of lien governed by section 2 of the *Builders Lien Act*, S.B.C. 1997, c. 45 [*BLA*]. Because the plaintiff performed work on the land that was not compensated, the plaintiff

has a valid interest in the land that has at least a reasonable prospect of succeeding.

[45] In the alternative, the plaintiff submits that to cancel the CPL without addressing the underlying builders lien will create a state of uncertainty if the action is allowed to proceed as the underlying claim of lien on the land would remain.

[46] In the further alternative, the plaintiff submits that the application to cancel the CPL be dismissed with liberty to the Applicants to re-apply with further evidence addressing the matter of prejudice to the Applicants.

### **Discussion**

[47] There is no dispute that the statutory requirements of s. 252(1) have been met in the case at bar. The issue is whether the Court should exercise its discretion not to cancel the CPL.

[48] For the reasons that follow, I conclude that the interests of justice weigh against cancelling the CPL at this time.

[49] In considering the factors relevant to the Court's discretion on a s. 252(1) application, on the first factor, I am satisfied that the plaintiff has provided an acceptable explanation for the delay in prosecuting its claim. As discussed earlier, I accept that the delay was caused by the lack of attention and diligence on the part of the plaintiff's former counsel, through no fault on the part of the plaintiff.

[50] In addition, I accept that the Applicants' failure to respond to the Notice to Mediate contributed to the delay. Even if the Applicants are correct that the Notice to Mediate was not a formal step in the litigation, the Court must still consider all of the circumstances including any informal steps in the proceedings taken by the plaintiff, in deciding whether it would be unjust to cancel the CPL: *GMC* at para. 87.

[51] With respect to the second factor relevant to the exercise of the Court's discretion, I am satisfied based on the record that despite the presumed prejudice to the Applicants, there is no evidence of actual prejudice to them if the CPL is not

cancelled. As I noted earlier, the evidence tendered by the Applicants with respect to the denial of a loan and other alleged losses, contained little detail and lacked supporting documentation, and I am unable to give it much weight.

[52] With respect to the third factor relevant to the exercise of the Court's discretion, based on the pleadings, I also accept that the plaintiff has a valid interest in land, arising from its claim pursuant to the *BLA*, that has at least a reasonable prospect of succeeding.

[53] In balancing the relevant factors, in my view, the cancellation of the CPL at this time would not be in the interests of justice.

[54] I would however accede to the plaintiff's fair suggestion that the Applicants be given leave to re-apply to remove the CPL with further evidence addressing the issue of prejudice, similar to the decision in *West Terra* at para. 7.

**CONCLUSION**

[55] In summary:

- a) I dismiss the application to dismiss the action for want of prosecution;
- b) I dismiss the application to remove the CPL pursuant to s. 252(1) of the *LTA*;
- c) The Applicants have liberty to re-apply pursuant to s. 252(1) of the *LTA* if there is further evidence addressing prejudice to the Applicants.

[56] I am not seized of any further applications in this action.

[57] Costs shall be in the cause.

“Laurie. J”