

CITATION: *Lina Delellis Executor of the Estate of the Late Paolina Ferrari v. Dave Sukhram et al.*, 2025 ONSC 6062
COURT FILE NO.: CV-18-00136332-0000
DATE: October 28, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Lina Delellis Executor of the Estate of the late Paolina Ferrari

Plaintiff

AND:

Dave Sukhram also known as David Sukhram, Re/Max Ultimate Realty Inc., and Daniela De Medeiros and Re/Max Platinum Limited Brokerage

Defendants

BEFORE: The Honourable Justice S. Mathai

COUNSEL: P. Di Monte, counsel for the Plaintiff

J. Juda, counsel for Re/Max Ultimate Realty Inc. and Daniela De Medeiros

HEARD: August 6, 2025

ENDORSEMENT

- [1] The plaintiff seeks to set aside the Registrar’s dismissal order dated October 10, 2024. The defendants, Re/Max Ultimate Realty Inc. and Daniela De Medeiros oppose the motion.
- [2] For the reasons that follow, I dismiss the plaintiff’s motion to set aside the Registrar’s dismissal order.

A. Nature of Claim

- [3] The action arises from a failed agreement of purchase and sale (“APS”). The plaintiff’s statement of claim alleges that on March 28, 2017, the defendant, Dave Sukhram, agreed to purchase a property from Paolina Ferrari. The purchase price was \$1,000,000. At that time, Ms. Ferrari’s son, Frank Ferrari, was acting for her under a power of attorney.

- [4] Pursuant to the APS, Mr. Sukhram provided a deposit of \$20,000.00 which was made payable to the defendant, Re/Max Platinum Limited, Brokerage (“Re/Max Platinum”). The plaintiff’s statement of claim alleges that Mr. Sukhram breached the APS by failing to close on the closing date. The residence was subsequently sold for \$850,000.
- [5] Re/Max Ultimate Realty Inc. and Ms. De Medeiros (collectively, the “Re/Max Defendants”) represented Mr. Sukhram during the purchase of the property.
- [6] The plaintiff’s statement of claim seeks damages against Mr. Sukhram, the Re/Max Defendants and Re/Max Platinum in the amount of \$192,241.69. The plaintiff also seeks the release of the \$20,000.00 deposit being held by Re/Max Platinum, plus costs and interest.
- [7] As against the Re/Max Defendants, the plaintiff pleads “gross negligence” and “misleading representations.”

B. Analysis and Findings

- [8] The test for setting aside an action under Rule 48.14(1) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, requires a motions judge to consider the following four factors, often referred to as the *Reid* factors (see *Piedrahita v. Costin*, 2023 ONCA 404, at para. 8):
- i) have the plaintiffs provided a satisfactory explanation for the litigation delay;
 - ii) have the plaintiffs led satisfactory evidence to explain that they always intended to prosecute the action within the applicable time limits but failed to do so through inadvertence;
 - iii) have the plaintiffs demonstrated that they moved forthwith to set aside the dismissal order as soon as the order came to their attention; and
 - iv) have the plaintiffs convinced the court that the defendants have not demonstrated any significant prejudice in presenting their case at trial as a result of the plaintiffs’ delay or as a result of steps taken following the dismissal of the action?
- [9] In evaluating the *Reid* factors, a court should not take a rigid approach. Rather, a contextual approach is required. The contextual approach requires the court to consider and weigh all relevant factors to determine an order that is just (see *Costin*, at para. 9; *Scaini v. Prochnicki*, 2007 ONCA 63, 85 O.R. (3d) 17; *Prescott v. Barbon*, 2018 ONCA 504, 141 O.R. (3d) 616, at paras. 13-15; *Marché d’Alimentation Denis Thériault Ltée v. Giant Tiger Stores Ltd.*, 2007 ONCA 695, 87 O.R. (3d) 660, at paras. 20-21).
- [10] In *Hamilton (City) v. Svedas Koyanagi Architects Inc.*, 2010 ONCA 887, 104 O.R. (3d) 689, Laskin J.A. observed that the overriding objective is to achieve a result that balances the interests of the parties and takes account of the public’s interest in the timely resolution

of disputes. The *Reid* factors provide a structured approach to achieving this result (see also *Prescott*, at para. 15).

(a) *The first factor: the plaintiff's explanation for delay*

(i) *Governing principles*

- [11] In evaluating this factor, I must consider the delay as a whole – from the initiation of the claim (i.e. June 15, 2018) to the date of the dismissal order (i.e. October 10, 2024) (see *Grillo Barristers P.C. v. Kagan Law Firm P.C.*, 2022 ONCA 303, at para. 6). The key question is whether the plaintiff has adequately explained the delay in the progress of the action.
- [12] In considering whether the plaintiff has put forward a satisfactory explanation for delay, the plaintiff is expected to put their best foot forward and present cogent evidence to support their explanations for delay. Bald assertions or delays caused by a parties' own actions are insufficient to discharge the onus (see *Reid v. Town of Bracebridge and Tatham*, 2025 ONSC 2535, at para. 62).
- [13] The jurisprudence has consistently confirmed that the primary burden of advancing an action to final disposition on its merits rests with the party who initiates the claim (see *Barbiero v. Pollack*, 2024 ONCA 904, at para. 6). As a result, it is the plaintiff's obligation to advance this action to both trial readiness and trial. The consequences of failing to do so rest at the plaintiff's feet unless the plaintiff demonstrates that the defendants resisted in advancing the litigation.
- [14] To evaluate this factor, it is important to set out the procedural history of this action.

(ii) *Procedural History*

- [15] The plaintiff's statement of claim was issued on June 15, 2018. Ms. Ferrari passed away prior to the commencement of the action. As a result, the claim was commenced by Ms. Ferrari's son, Frank Ferrari, as his mother's estate trustee.
- [16] The Re/Max Defendants served a Statement of Defence and Crossclaim on August 14, 2018, and served an affidavit of documents on August 21, 2018.
- [17] Neither Mr. Sukhram nor Re/Max Platinum delivered a Statement of Defence. On May 9, 2019, the plaintiff obtained an order for substituted service with respect to Mr. Sukhram. The order permitted the plaintiff to serve Mr. Sukhram by serving the claim on Mr. Sukhram's former counsel. The May 9th order was not served on the Re/Max Defendants. Mr. Sukhram's former counsel was served on July 3, 2019.
- [18] As a result of estate litigation, Mr. Ferrari was removed as estate trustee. Ms. Ferrari's daughter, Lina Delellis, was appointed as the estate trustee and took carriage of this action. The style of cause was amended to name Lina Delellis as the estate trustee.

- [19] On August 7, 2020, the Re/Max Defendants received a Notice of Change of Lawyer appointing Harrison Pensa LLP as counsel of record for the plaintiff.
- [20] On August 26, 2021, the Re/Max Defendants received another Notice of Change of Lawyer which again appointed Mr. Di Monte as lawyer of record for the plaintiff.
- [21] Mr. Sukhram was noted in default on February 22, 2024, and on March 6, 2024, Ms. Delellis assigned the claim to Mr. Ferrari.
- [22] On October 10, 2024, the Registrar issued an order dismissing the action for delay.
- [23] On December 3, 2024, the plaintiff served a motion record on the Re/Max Defendants. In the notice of motion, the plaintiff sought to amend the style of cause to name Mr. Ferrari as the estate trustee and requested default judgment against Mr. Sukhram. The motion record included the plaintiff's affidavit of documents. The Re/Max Defendants were not served with the plaintiff's affidavit of documents prior to receiving the motion record.
- [24] On January 24, 2025, the plaintiff amended the December 3rd notice of motion to seek an order setting aside the Registrar's dismissal order.

(iii) Application of Governing Principles

- [25] The plaintiff's motion record leaves much to be desired. Mr. Ferrari's affidavit does not explicitly address the *Reid* factors as it was not prepared for the purpose of setting aside the dismissal order. Despite amending his notice of motion on January 24, 2025, Mr. Ferrari did not file a supplementary affidavit nor were any additional affidavits filed in support of the new relief sought.
- [26] Nevertheless, the record provides a partial explanation for some of the litigation delay. Specifically, from June 2018 to July 2019, the plaintiff had difficulty serving Mr. Sukhram and obtained an order for substituted service. This provides a partial explanation for just over a year of delay.
- [27] The service issue is only a partial explanation for this year long delay because the plaintiff has not explained why the action was not prosecuted more diligently as against the Re/Max Defendants or Re/Max Platinum. The Re/Max Defendants served a pleading and an affidavit of documents within two months of the issuance of the statement of claim. From August 2018 to July 2019, the plaintiff did not take any steps to prosecute the action as against the Re/Max Defendants. Also, the plaintiff took no steps to note Re/Max Platinum in default during this period.
- [28] Most importantly, the plaintiff has not explained the delay from July 2019 to February 2024, when the plaintiff noted Mr. Sukhram in default. That is just over 4.5 years of delay that has been left unexplained.

- [29] In the plaintiff's factum, he argues that some of the delay is explained by the estate litigation that led to Ms. Delellis being appointed as the estate trustee and Harrison Pensa taking carriage of the action.
- [30] The problem with the plaintiff's submission is the lack of evidence from Ms. Delellis or counsel from Harrison Pensa that explains why no litigation steps were taken when Ms. Delellis became the estate trustee until August 2021, when Mr. Di Monte again took carriage of the action. If there was a reason for this delay, it was incumbent on the plaintiff to lead that evidence.
- [31] The record before me establishes there was estate litigation that led to Ms. Delellis and Harrison Pensa taking carriage of this action. That said, there is no evidence before me that explains *why* the estate litigation prohibited *any* litigation steps from being taken during this period of time. In the absence of such evidence, I find that there is no adequate explanation for the delay from July 2019 to August 2021.
- [32] Mr. Di Monte took carriage of the action on August 26, 2021. The record does not include any explanation for why no litigation steps were taken from August 16, 2021, to February 24, 2024. In his factum, the plaintiff explains this delay as follows:

The Estate litigation did not immediately settle and the next period of delay to 2024 until March 6, 2024 is because Frank Ferrari had to obtain by negotiation and litigation an assignment of the cause of action. Lina Delellis had conditions on the assignment of the chose in action.

- [33] Once again, the plaintiff has not filed any evidence to explain why Ms. Delellis did not pursue this action from August 26, 2021, until the date of the assignment to Mr. Ferrari on March 6, 2024. I note that before the assignment, Mr. Di Monte took steps to note Mr. Sukhram in default. This suggests that Ms. Delellis was prepared to give instructions to Mr. Di Monte.
- [34] At the time of the Registrar's dismissal order, the action was over 6 years old. In that time, the only concrete steps taken in the litigation were as follows: (a) the Re/Max Defendants served a Statement of Defence and Crossclaim; (b) the Re/Max Defendants served an affidavit of documents; and (c) the plaintiff noted Mr. Sukhram in default. While the plaintiff provided a partial explanation for a year of the delay, there is simply no satisfactory explanation for the remaining delay.
- [35] In light of the above, I find that the first *Reid* factor strongly favours dismissing the Plaintiff's motion.
- (b) The second factor: the plaintiff always intended to prosecute the action within the applicable time limits, but inadvertently failed to meet the deadlines under the Rules***
- [36] As noted above, the evidence established that the plaintiff was the primary author of the delay in this case and there is no adequate explanation for this delay. Since the action was

commenced, the plaintiff has only taken one step to move this action forward prior to the Registrar's dismissal order: noting Mr. Sukhram in default.

[37] On the record before me, the plaintiff has not satisfied me that either Mr. Ferrari or Ms. Delellis always intended to prosecute this action in accordance with the time limits in the *Rules* but failed to do so through inadvertence. The five years prescribed under r. 48.14(1) had already expired more than a year before the Registrar's dismissal. This action would have been dismissed earlier but for the suspension of administrative dismissals during the pandemic.

[38] In light of the above, I find that the second *Reid* factor also favours dismissing the plaintiff's motion.

(c) The third factor: the plaintiff moved forthwith to set aside the dismissal order as soon as the order came to their attention

[39] In his factum, the plaintiff states:

On January 24, 2025, the Plaintiff's solicitor received the Order Dismissing the Action for Delay from his process server, McRoberts Legal Services Ltd. (Ryan DaSilva).

[40] There is no evidence that supports this assertion. No one from Mr. Di Monte's office swore an affidavit addressing this issue.

[41] That said, I accept that Mr. Di Monte was not served with the Registrar's dismissal order. The Registrar served the order on Harrison Pensa and counsel for the Re/Max Defendants. Counsel for the Re/Max Defendants did not advise Mr. Di Monte about the order until February 2025.¹ As a result, I find that the plaintiff did not know about the dismissal order until January 2025 and moved immediately to set aside the dismissal order.

[42] Despite the lack of direct evidence on this point, I find that the third *Reid* factor favours setting aside the dismissal order.

(d) The fourth factor: Prejudice

(i) Governing Principles

[43] The fourth *Reid* factor requires the plaintiff to convince the court that the defendants have not suffered any significant prejudice (see *Prescott*, at para. 14).

[44] Prejudice is a key consideration on a motion to set aside a dismissal order (see *Finlay v. Van Paassen*, 2010 ONCA 204, 101 O.R. (3d) 390, at para. 28). The plaintiff is not required

¹ There is no evidence before me on whether Harrison Pensa advised Mr. Ferrari or Ms. Delellis of the Registrar's dismissal order. Harrison Pensa was not counsel of record for the plaintiff when the action was dismissed.

to adduce affirmative evidence to establish that the defendants will not suffer prejudice. Rather, the court must consider all the circumstances in evaluating whether the plaintiff has met their burden (*MDM Plastics Limited v. Vincor International Inc.*, 2015 ONCA 28, at para. 32).

- [45] In considering the fourth factor, I must answer two questions. First, has the plaintiff established that there will be no significant prejudice to the defendants' ability to defend the action? In this question, the court is only concerned with prejudice that arises from steps taken following dismissal or which would result from the restoration of the action, not the sheer passage of time (see *Carioca's Import & Export Inc. v. Canadian Pacific Railway Limited*, 2015 ONCA 592, at para. 5; *MDM Plastics Ltd. v. Vincor International Inc.*, 2015 ONCA 28, 124 O.R. (3d) 420, at para. 25; *Chrisjohn v. Riley*, 2015 ONCA 713, 391 D.L.R. (4th) 695, at para. 36).
- [46] Second, in light of the delay at issue, does the principle of finality and the defendants' reliance on the security of its position warrant upholding the dismissal order? (see *H.B. Fuller Co. v. Rogers*, 2015 ONCA 173, 386 D.L.R. (4th) 262, at para. 28; *Giant Tiger*, at paras. 36-40).
- [47] Ultimately, courts must balance any prejudice to the defendant against the prejudice to the plaintiff from having the case dismissed (see *Armstrong v. McCall* (2006), 28 C.P.C. (6th) 12 (Ont. C.A.), at para. 12). As Sharpe J.A. noted in *Giant Tiger*, at para. 34:

Expeditious justice must be balanced with the public interest in having disputes determined on their merits. Where, despite the delay, the defendant would not be unfairly prejudiced should the matter proceed for resolution on the merits, according the plaintiff an indulgence is generally favoured.

(ii) Application of Governing Principles

- [48] I accept that the Re/Max Defendants have not suffered any actual prejudice following the dismissal of the action.² While Mr. Sukhram has not been located, the party's inability to obtain his evidence crystallized well before the Registrar issued the dismissal order. Ms. De Medeiros is available to provide evidence and affidavits of documents have been exchanged. The plaintiff has established that setting aside the dismissal order will not cause any actual prejudice to the Re/Max Defendants.
- [49] However, the absence of actual prejudice is not determinative of the fourth *Reid* factor. I must also engage in the balancing exercise described by Sharpe J.A. in *Giant Tiger*. In conducting that balancing, I find the Re/Max Defendants' reliance on the finality of the

² I have only considered prejudice to the Re/Max Defendants because Mr. Sukhram was noted in default and Re/Max Platinum has not participated in the action or this motion.

dismissal order outweighs the public interest in having the plaintiff's action decided on its merits. I come to this conclusion for two interrelated reasons.

- [50] First, at the time of the dismissal, the action was over 6 years old, and the plaintiff has provided little to no satisfactory explanation for the lengthy periods of time where no litigation steps were taken. While this is a restatement of my finding on the first *Reid* factor, I can rely on this finding when considering whether the finality principle weighs against setting aside the dismissal order. The *Reid* factors are not watertight compartments such that a finding on one factor cannot be considered for the purpose of another factor (see *Wellwood v. Ontario Provincial Police*, 2010 ONCA 386, 102 O.R. (3d) 555, at para. 79).
- [51] Second, although decided in the context of a motion to dismiss for delay, I find the reasons of Brown J.A in *Barbiero*, to be relevant. In that case, at paras. 11-15, Brown J.A. discussed the importance of changing the lens through which delay is viewed to one that focuses on prompt judicial resolution of legal disputes. Notably, Brown J.A. observed that the passage of time, on its own, can constitute sufficient prejudice to dismiss an action for delay. In so doing, Brown J.A. held that where the five-year deadline under the *Rules* has passed, the action moves into the field of “inordinate delay.” To be clear, the delay at issue in *Barbiero* was significantly longer than the delay at issue in this case. However, in the absence of a satisfactory explanation for over 5 years of delay (i.e. July 2019 to December, 2024), I find that the delay at issue in this case is “inordinate delay.”
- [52] In the context of this inordinate delay, the Re/Max Defendants would have reasonably relied upon the lengthy periods of inactivity as demonstrating the plaintiff's intention to allow the action to, “die on the vine.” As noted above, after the Re/Max Defendants served an affidavit of documents, the action did not move forward against them. After the motion for substituted service, the Re/Max Defendants next heard from the plaintiff in December 2024, when the plaintiff commenced its motion to amend the style of cause and for default judgment against Mr. Sukhram. Given this lengthy delay and inactivity, I find that the principle of finality outweighs the interest in having the action heard on its merits (see *Giant Tiger*, at paras. 39-40).

Conclusion

- [53] Having considered all the factors, I conclude that the Registrar's dismissal order should not be set aside. I come to this conclusion even though there is no actual prejudice to the Re/Max Defendants' ability to defend the action.
- [54] Key to my ruling is the fact that there is no satisfactory explanation for most of the litigation delay and no evidence establishing that the plaintiff missed the five-year deadline because of inadvertence. In the absence of this evidence, the finality principle outweighs the interest of having the action decided on its merits. The Ontario civil justice system cannot tolerate inordinate delay without adequate explanation.

[55] The plaintiff's motion is dismissed. Within 30 days, the plaintiff shall pay costs to the Re/Max Defendants in the amount of \$2,500.00 inclusive of H.S.T. and disbursements.

Date: October 28, 2025

The Honourable Justice Mathai