

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Madam Justice Holly C. Beard  
Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella

***BETWEEN:***

<b><i>BTW INC.</i></b>	)	<b><i>F. J. Trippier and</i></b>
	)	<b><i>J. Dobrucki</i></b>
	)	<i>for the Appellant</i>
	)	
<i>(Plaintiff) Appellant</i>	)	<b><i>S. M. Hamm and</i></b>
	)	<b><i>R. M. Otto</i></b>
<i>- and -</i>	)	<i>for the Respondent</i>
	)	
<b><i>CARGILL LIMITED</i></b>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Defendant) Respondent</i>	)	<b><i>November 7, 2025</i></b>
	)	
	)	<i>Written reasons:</i>
	)	<b><i>November 13, 2025</i></b>

**MAINELLA JA** (for the Court):

[1] The plaintiff appealed an order dismissing its action for breach of contract for delay pursuant to both rules 24.01(1) and 24.02(1) of the MB, *King's Bench Rules*, Man Reg 553/88 [the *KB Rules*]. In our view, the appeal can be disposed of on the basis of the motion judge's decision in relation to rule 24.01 without any comment as to his decision under rule 24.02. After hearing the appeal, we dismissed it with reasons to follow, which now do.

[2] By way of background, the action, filed in 2018, arises from canola seed and fertilizer contracts between the parties made in 2012 and 2013. Much of what is in dispute in the action pertains to alleged oral conversations about the terms of these contracts that involve former employees of the defendant or documents that were in possession of both parties, but no longer exist for reasons unconnected to the litigation.

[3] Examinations for discovery took place in 2021. Partial answers to undertakings were provided by each of the parties in 2024. In the fall of 2024, a pre-trial conference was held, and the defendant filed its motion for delay (the motion).

[4] On the motion, the plaintiff did not contest that there had been inordinate and inexcusable delay under rule 24.01, which engaged the presumption of significant prejudice (see the *KB Rules*, r 24.01(2)). Its position was that the presumption was rebutted by the evidence before the Court. On appeal, it submits that the defendant did not suffer any significant prejudice due to the delay. It says that the determination of prejudice begins with the filing of a statement of claim, such that prior events are not considered. It further argues that the fact key witnesses are no longer employed by the defendant is of no moment because they are compellable.

[5] In our view, the motion judge took the requisite functional approach to determine whether the plaintiff had rebutted the presumption of significant prejudice on the balance of probabilities. The record before the motion judge—a long delay in bringing the action, delay in prosecuting it, and the prospect of the trial of the issues in dispute being conducted without key witnesses and important real evidence—strikes as a classic example of

litigation prejudice to the defendant such that there is a substantial risk that a fair trial will not be possible on the issues in dispute (see *Parkinson v Winnipeg Regional Health Authority*, 2025 MBCA 82 at paras 147-56 [*Parkinson*]; *The Workers Compensation Board v Ali*, 2020 MBCA 122 at para 81).

[6] We are not persuaded there is any basis in fact or law to interfere with the motion judge’s discretionary decision to dismiss the action for delay pursuant to rule 24.01(1) (see *Parkinson* at paras 54-56, 159).

[7] The appeal was dismissed with costs.

\_\_\_\_\_ JA

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