

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mousa v. Thurber Engineering Limited*,
2025 BCSC 2247

Date: 20251114
Docket: S083999
Registry: Vancouver

Between:

Abdul M. Mousa

Plaintiff

And

Thurber Engineering Limited and Brian Nakai, P. Eng

Defendants

Before: The Honourable Justice E. McDonald

Reasons for Judgment

The Plaintiff, appearing in person:

A.M. Mousa

Counsel for the Defendants:

S.S.J. Kim

Place and Date of Hearing:

Vancouver, B.C.
November 4, 2025

Place and Date of Judgment:

Vancouver, B.C.
November 14, 2025

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Overview

[1] In the 17 years since this action was commenced in June 2008, there have been long periods of inactivity. In 2019 and 2020, the parties exchanged lists of documents and since then, no examinations for discovery or other steps have been taken.

[2] The defendants seek dismissal of the action for want of prosecution. The plaintiff submits that he was working diligently to mitigate his damages and to salvage the development project underlying the claim. He also submits that if there was delay, there is a reasonable explanation, and it would not be in the interests of justice to dismiss the action.

[3] For reasons that I will explain, I have determined the action should be struck for want of prosecution.

Background

[4] The action was commenced June 5, 2008. On July 9, 2008, the defendants filed a defence. The corporate defendant is a firm of engineers, and the individual defendant is a professional engineer who was employed by the corporate defendant.

[5] The action seeks damages for professional negligence respecting geotechnical engineering services that the defendants provided to the plaintiff for his land development project.

Should the Action be Dismissed?

[6] In *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [*Giacomini*], the court provides a revised test for dismissal for want of prosecution. The revised analytical framework governing applications to dismiss actions for want of prosecution involves asking:

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

- ii. Is the delay inexcusable?
- iii. If the first two questions are answered affirmatively, is it in the interests of justice for the action to proceed despite inordinate and inexcusable delay?

[7] Taking a “step” in the litigation has been interpreted to mean a “formal step expressly permitted or required by the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]”, not including correspondence and communications between counsel or counsel and party: *Callan v. Cooke*, 2021 BCSC 2481 [*Callan*], at para. 27, citing *Easton v. Cooper*, 2010 BCSC 1079 at para. 13.

[8] “Inordinate Delay” has been defined as “uncontrolled, immoderate, or excessive”: *Callan* at para. 28, citing *Azeri v. Esmati-Seifabad*, 2009 BCCA 133 at para. 9.

There is Inordinate Delay

[9] As mentioned, the action was commenced by a writ and statement of claim on June 5, 2008. Having filed a claim, the plaintiff was expected to “get on with it”: *Giacomini*, para. 74.

[10] Instead of getting on with it once the pleadings had closed in 2008 and lists of documents were exchanged, the plaintiff took no steps until 2019 and 2020, when he delivered an additional list of documents. Technically, the last step in the litigation was taken by the defendant, Thurber, when it served its amended list of documents on July 14, 2020.

[11] Following the exchanges of further lists of documents in 2019 and 2020, the plaintiff took no further steps. When viewed cumulatively and holistically, and while delay is not just a temporal arithmetic question, the delay in the present circumstances is approximately 17 years, with the last period of delay being approximately five years.

[12] The plaintiff denies that there has been a delay in advancing the action. To mitigate his loss, the plaintiff submits that he devoted his time and attention to

reviving the development project that the defendants were hired to work on. In other words, he focussed his efforts on mitigation rather than advancing the action.

[13] However, the duty to mitigate does not change the expectation that once the claim is filed, the plaintiff must get on it with. This is especially so when undue litigation delay is recognized as undermining public confidence in the justice system: *Giacomini*, para. 74.

[14] I was referred to authorities where the court has recently determined that delays in the range of four to six years from the start of litigation were inordinate: *Kyle v. Zimmer*, 2024 BCSC 500 at paras. 16-17 and *Weiser v. Marsh*, 2025 BCSC 459 at paras. 40-46.

[15] I find that the defendants have established that the plaintiff's delay in prosecuting the action is inordinate. From the last step taken, the delay is approximately five years and when viewed cumulatively, the lengthy delays between steps are in excess of a decade and a half. The delay is excessive and uncontrolled.

The Delay is Inexcusable

[16] The question is whether the delay is excusable in view of the reason given for it and the other circumstances: *Irving v. Irving* (1982), 38 B.C.L.R. 318 (B.C.C.A.) at para. 8. Unless the plaintiff offers a credible excuse, the natural inference will be that the inordinate delay is inexcusable: *Giacomini*, para. 40, citing *Irving*, para. 8.

[17] As I already mentioned, the plaintiff explains that after commencing the claim, he was required to focus his time and effort on mitigating his losses. I have already found that taking steps to mitigate do not relieve a plaintiff from the expectation that he get on with his claim.

[18] The plaintiff, who is a senior citizen, provided evidence of the health problems that he has faced, which he states are caused by the chronic stress associated with the development project and the defendants' impugned conduct. The plaintiff's

evidence includes details of the time and treatment that has been required to deal with his health problems.

[19] During his responding submissions, the plaintiff also referred to constant harassment and harm that he alleges is being caused by individuals whom he says are spying on him and targeting him and his spouse with harmful radiation. The plaintiff believes that agents of the government, including the police, are persecuting and attacking him. While I accept that the plaintiff genuinely believes these allegations, he did not adequately explain or provide evidence to show how the alleged conduct prevented him from taking steps in the litigation for so many years.

[20] Considering all of the evidence and the overall circumstances, I find that the delay is inexcusable and there is no credible explanation for the inordinate delay.

It is not in the Interests of Justice for the Action to Proceed

[21] The non-exhaustive list of factors for assessing the interests of justice includes:

- a) Prejudice to the defendants in mounting its case if the matter goes to trial;
- b) The length of inexcusable delay;
- c) The stage of the litigation;
- d) The impact of the inexcusable delay on the defendants;
- e) The context of the delay, for example, whether the delay happened where the defendants were pressuring to move ahead;
- f) The reasons offered for the delay;
- g) Role of counsel in causing delay;
- h) The public interest, for example, the narrow category of actions that involve issues of genuine public importance; and

- i) The merits of the action.

Giacomini, at para. 71, citing *International Capital Corporation v. Robinson Twigg & Ketilson*, 2010 SKCA 48 at para. 45.

[22] The prejudice to the defendants associated with mounting their defence if the action proceeded to trial is significant, given that the claim refers to events occurring approximately 20 years ago, i.e. in 2005 and 2006. Given the lengthy passage of time, with its obvious negative impact on the memory of witnesses, which would cause prejudice to the defendants' ability to mount a defence at trial, I find that the prejudice to the defendants and the length of delay are significant factors militating against allowing the action to proceed.

[23] The action remains stuck in the early stages. Documents were listed and produced, but no examinations for discovery have ever taken place. In other words, the standard procedures for ascertaining facts set out in Part 7 of the *Rules* have not completed, notwithstanding that 17 years have elapsed since the claim was commenced. This is another significant factor militating against allowing the action to proceed.

[24] The defendants submit that because the claim alleges professional negligence against a professional engineering firm and an individual engineer, the impact to professional, business and personal interests are high. I agree that alleging professional negligence engages professional, business and personal interests of the defendants. However, there is no direct evidence from the defendants to assist me with assessing the impact on those interests. Therefore, while I find that this is a factor, I am unable to give it much weight in the overall analysis.

[25] There is no evidence that the defendants pushed the plaintiff to move the action along. This factor does not weigh in favour of granting the relief sought by the defendants.

[26] Respecting the context for the delay and the fact that the plaintiff was apparently kept busy trying to salvage the project, I have already discussed that this does not provide a credible excuse for allowing the action to languish.

[27] I accept that there may be merit to the claim even though it is disputed. This is not a situation where the action is doomed to fail. However, I disagree with the plaintiff that the claim raises an issue of public importance.

[28] When I consider all the circumstances and the relevant factors, I find that it is not in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay.

Disposition

[29] The plaintiff's claim is dismissed for want of prosecution.

[30] The defendants are awarded costs of the action and application, to be assessed.

“E. McDonald J.”