CITATION: Cherry v. Nubury, 2025 ONSC 6670
COURT FILE NO.: CV-13-00489544-0000
DATE: 20251202

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALMA CHERRY, Plaintiff

– and –

NUBURY PROPERTIES LIMITED, CARE PEST MANAGEMENT INCORPORATED, ECOSMART TECHNOLOGIES LTD., and BIOSWEEP CANADA CORPORATION, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Alma Cherry*, on her own behalf

Maya Kanani, for the Defendant, Nubury Properties Limited

Alexander Paul, for the Defendant, Care Pest Management Incorporated

Navid Ghahraei, for the Defendant, Ecosmart Technologies Ltd.

Bonnie Clarke, for the Defendant, Biosweep Canada Corporation

Paige Miraglia, for Novex Insurance Company (Defendant in companion Action No. CV-12-464327)

HEARD: December 1, 2025

MOTION TO DISMISS FOR DELAY

[1] The Defendants move under Rule 24.01 of the *Rules of Civil Procedure* to dismiss the action for delay. They are collectively of the view that this action will never be in a position to actually go to trial, and that, if it does go to trial, they will have been prejudiced by the Plaintiff's excessive delay.

[2] The Plaintiff is of the view that the delay is for the most part the Defendants' fault and, at earlier stages of the action, her own former lawyers' fault. She also tends to fault the Court administration, Intake office, and Transcript office for their procedures in filing materials, ordering transcripts, and other matters, which she says has added to her setbacks.

[3] The claim is based on allegations of harm that the Plaintiff pleads are the result of pest control extermination at her residence using a product manufactured by the Defendant, Ecosmart Technologies Ltd. ("Ecosmart"), and carried out by the Defendant, Care Pest Management Incorporated ("Care Pest"), on September 27, 2011, along with a follow-up detoxification procedure by the Defendant, Biosweep Canada Corporation ("Biosweep"), on March 12, 2012. The Defendant, Nubury Properties Limited ("Nubury"), is the Plaintiff's landlord that contracted for these services.

[4] The chronology of the action is long and, frankly, tedious. While there are some instances where delay could be blamed on the Defendants – the Plaintiff emphasizes one instance in 2019 when an Associate Justice, in a handwritten endorsement, admonished the Defendants for being unnecessarily adversarial and prolonged in their procedures. But, with respect, those instances could be characterized as the Defendants strenuously standing on their legal rights – sometimes more strenuously than is called for – with respect to discoveries and production. The Plaintiff also faults counsel for certain of the parties for not attending at case conferences, although this seems to have occurred where their interest was only as Third Parties in the companion Action and it was their assessment that their client's role was not on the conference's specific agenda.

[5] The Plaintiff further faults opposing counsel, as well as opposing deponents, for being argumentative and rude at discoveries – in fact, she characterizes them as abusive. However, I see no sign of any impropriety from Defendants' counsel; and while the Plaintiff specifically complains about the attitude and language of the deponent for Ecosmart, my impression is that this was born of impatience with the Plaintiff conducting a laborious examination – e.g. he said that in continuously complaining about his answers she was "berating" him and going through a "song and dance", and at one point he said she was acting like a "baby". The Plaintiff seems to take umbrage at such colloquialisms, but I have seen nothing in the transcript that reflects vulgar, threatening, or otherwise abusive language. The Defendants' deponents are employees, or former employees, of companies from long ago who sometimes show their annoyance at the process, but that is as high as I would put it.

[6] Likewise, I do not think that the Court administration, the Civil Intake office, or the Transcript office can be faulted for the Plaintiff's difficulties; the court's digital upload and filing system may not be perfect, but it is not, as the Plaintiff sometimes seems to suggest, aimed specifically at her. And as for the court's administrative personnel, the Plaintiff's difficulties seem to revolve around their expectation that she follow the procedures that every other litigant follows.

[7] In short, the majority of the delay has been caused by the Plaintiff's own need for continuous rescheduling, her ever-increasing production requests, her desire for timetable changes, her motions for adjournments, and her failure to meet agreed-upon and court-ordered deadlines. The chronology of the case at paragraph 18 below illustrates the pattern that the action has come to reflect.

[8] I sympathize with the Plaintiff as a self-represented litigant. She has struggled to stay within the Rules and to assert her procedural rights. She has also advised me that she is struggling

with health issues which are the reason for some of her inability to cope with the pressures of litigation.

[9] With all of that, moving the action forward seems to have presented her with an insurmountable challenge. I know whereof I speak when I say that it is not for want of the court accommodating her.

[10] I note that the parties' last court appearance before the within motion was before Associate Justice Josefo on October 27, 2025 for the Plaintiff's own motion for answers to refusals and undertakings. The endorsement from that appearance relates, in part:

> A case-conference ("CC") was held today to ostensibly schedule a motion which plaintiff seeks to bring to pursue undertakings and refusals ("undertakings"). Originally, the plaintiff sought a Long Motion ("LM") for this purpose, which LM was assigned to me. In response, the plaintiff was last mid-June 2025 invited to contact my Assistant Trial Coordinator to schedule the LM. Yet the plaintiff did not do so. Only on or about September 26, 2025 did she initiate the requisite contact with my ATC.
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> As defendants have a pending motion, previously adjourned by plaintiff yet now definitely proceeding on December 1, 2025 before Morgan, J., I offered several October dates for a CC to discuss and schedule plaintiff's undertakings motion, one of which date was scheduled but later postponed by the plaintiff. Yet ultimately, the CC proceeded today.
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> . . .
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> Ultimately, the one date I had for a motion before December 1st which was available to all counsel and me was November 24, 2025. I offered to add this matter to my Regular Motions ("RM") list for that day, and to have this motion heard in person subsequent to my other matters that day which are scheduled to be heard via Zoom.
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> The plaintiff was, however, unable to today commit to that date. She explained that a recent medical diagnosis (a thyroid condition) may well lead to further testing and, perhaps soon, to surgery which she believes will be curative of her condition. Given that possibility of further testing and/or surgery, she is currently unsure if she will be available on November 24th. In the meantime, she explained that the deep fatigue which she often experiences stems from her medical condition, and it slows her down. Plaintiff also expressed concern about being ready for the December 1st motion in addition to a motion on November 24th.
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> I noted to the plaintiff that it was her decision to proceed or not with her undertakings motion…

[11] I am advised that the Plaintiff never did proceed with her motion before the Associate Justice. I am also advised by the Plaintiff that she has not had any specific medical procedures since the appearance, although she did come to the hearing, as she has for many of her court appearances, with a doctor's letter describing a number of chronic symptoms which she indicated make it difficult to meet the time demands of a motion – including a motion such as this one, that was scheduled some 10 months ago and adjourned at the Plaintiff's request 4 months ago.

[12] That said, the Associate Justice's experience is a typical one. One can see from the endorsement that he made every effort to meet the Plaintiff's needs, but that the Plaintiff currently, and for the indefinite future, is simply not in a position to move the matter forward.

[13] During the past several years as case management judge for the present action and the Plaintiff's companion Action against Novex Insurance Company ("Novex"), I, along with the several judges and associate Judges who have handled aspects of this case, have attempted to accommodate and encourage the Plaintiff in various ways – e.g. granting a series of adjournments and rescheduling hearings at her request; requiring Defendants' counsel to spend hours holding down motions to accommodate her lateness at several court appearances; readjusting court-ordered timetables when she has failed to adhere to them; compelling all counsel to accede to the Plaintiff's request to attend court in person instead of on Zoom even for short and informal case conferences; allowing her to run considerably overtime in each of her appearances where she has made submissions; where possible requiring Defendants' counsel to combine efforts so that the Plaintiff has only one record and factum to respond to rather than several; taking frequent breaks any time she feels tired or otherwise requests one in court; permitting her to email materials directly to my assistant when she has had difficulties filing or uploading materials to the court in the way all other parties do; etc.

[14] To be clear, neither I nor anyone else in the judicial system have begrudged or held these various accommodations against the Plaintiff. She has her reasons for requiring them, and those reasons are sincere.

[15] Unfortunately, the net effect of these efforts has been to prolong the action rather than to assist the Plaintiff in moving it toward trial. I do not perceive any manipulativeness or malintent on the Plaintiff's part; but the fact is that the more the delays are forgiven and accommodated, the more the delays have proliferated. The litigation has become an endless cycle of motions and adjournments, discovery dates and non-appearances, from which the Plaintiff does not appear able to extricate herself.

[16] In *Armstrong v. McCall*, 2006 CanLII 17248, at para. 12, the Court of Appeal indicated that "[i]n order to succeed on a motion to dismiss a plaintiff's claim for delay the defendant must establish that the delay has been unreasonable in the sense that it is inordinate and inexcusable and that there is a substantial risk that a fair trial will not be possible for the defendant at the time the action is tried if it is allowed to continue." While the Plaintiff has a form of excuse for each of the many missed and delayed steps during the course of this action, the delay taken in totality is as inexcusable as it is interminable.

[17] Ultimately, I must agree with the Defendants that the Plaintiff simply cannot, or will not, advance this action so that it can get to trial. The lapse of 14 years since the events giving rise to the litigation took place, and 13 years since the commencement of litigation with discoveries still not completed, has caused the Defendants irreparable prejudice.

[18] The following is a chronology not of every event in this action, but of the pleadings, court appearances/adjournments, and discoveries/non-attendances leading up to the present motion:

* September 26, 2012 – Plaintiff issues the companion Action against Novex, her insurer under a Tenant's Comprehensive Policy.

* September 26, 2013 – Plaintiff issues a Notice of Action in the present action.

* October 24, 2013 – Plaintiff issues the Statement of Claim in the present action.

* July 4, 2014 – Care Pest's Statement of Defence and Crossclaim and Jury Notice is served.

* September 4, 2014 – Biosweep's Statement of Defence and Crossclaim is served.

* September 16, 2014 – Nubury's Statement of Defence and Crossclaim is served.

* October 17, 2014 – Ecosmart's Statement of Defence and Crossclaim is served.

* October 21, 2016 – Novex issues a Third Party Claim in the companion Action, naming Nubury, Care Pest, Ecosmart and Biosweep as Third-Party Defendants.

* June 12, 2014 – Plaintiff serves Notice of Change of Lawyer from Lawrence Fine to Allan Blott.

* August 26, 2015 – Defendants obtain a Certificate of Non-Attendance as a result of Plaintiff's failure to attend at discoveries.

* November 2, 2015 – Court order is issued removing Alan Blott as Plaintiff's counsel of record and requiring Plaintiff to retain new counsel within 120 days.

* December 16, 2015 – Plaintiff serves Defendants with the order removing her counsel.

* December 18, 2015 – upcoming discoveries adjourned on consent to allow Plaintiff time to retain new counsel.

* January 22, 2016 – Nubury serves Notice of Motion to dismiss claim for failure of Plaintiff to adhere to the time frame contained in the November 2, 2015 order.

* February 12, 2016 – Nubury serves its motion record for dismissing the action.

* February 24, 2016 – Plaintiff delivers a Notice of Intention to Act in Person. Nubury withdraws its motion to dismiss.

* August 29, 2016 – Defendants again obtain a Certificate of Non-Attendance due to Plaintiff's failure to attend scheduled discoveries.

* October 21, 2016 – Plaintiff serves Notice of Appointment of Lawyer, naming David Myers and Mandy Nwobu as her counsel.

* November 16 2016 and December 12, 2016 – examinations for discovery held for Care Pest and Biosweep. Examination of the Plaintiff commenced but not completed. Continued examination of the Plaintiff and examinations of Ecosmart and Nubury adjourned by agreement to June 13, 2017.

* April 24, 2017 – Plaintiff again served a Notice of Intention to Act In Person..

* June 13, 2017 – Plaintiff again fails to attend at discoveries. Defendants obtain a Certificate of Non-Attendance.

* October 3, 9 and 10, 2017 – at Plaintiff's request, Defendants provide the Plaintiff with copies of their Affidavits of Documents and Schedule A productions that she could not obtain from her own former counsel.

* October 16, 2017 – counsel for Defendants serve Notices of Examination on Plaintiff for November 29, 2017, with correspondence stating that she had failed to provide her availability for a new discovery date.

* November 21, 2017 – lengthy correspondence is exchanged in which Plaintiff advises that she will not be attending at upcoming discoveries and states that the claims of privilege in several of the Affidavits of Documents were improper and complaining that the copies of the Affidavits of Documents were unsworn.

* November 29, 2017 – Defendants again obtain a Certificate of Non-Attendance in respect of the Plaintiff's failure to attend at discoveries.

* July 12, 2018 – Care Pest serves a Notice of Motion to compel answers to undertakings and refusals given by the Plaintiff in her still incomplete examination for discovery

* November 6, 2018 – Plaintiff serves a Notice of Motion returnable January 23, 2019 for an Order to prevent the Registrar's dismissal as the action had not been set down for trial by the fifth anniversary of its commencement.

* November 7, 2018 – Associate Justice Short adjourns motion for undertakings and refusals to January 4, 2019 due to Plaintiff encountering difficulties obtaining documents from her former counsel.

* January 4, 2019 – parties attend before Associate Justice Short and attempt to work out a consent resolution to the motion. The motion is further adjourned to March 15, 2019.

* March 10, 2019 – Plaintiff serves a Notice of Motion returnable May 14, 2019 for an Order to prevent the Registrar's dismissal of the action for failure to set it down for trial.

* March 15, 2019 – parties attended before Associate Justice Short who orders that Plaintiff's answers to undertakings and under-advisements are due by June 13, 2019, and further adjourns the balance of the motion to June 13, 2019.

* April 12, 2019 – counsel for Novex in the companion Action and the Plaintiff attend at Civil Practice Court. Justice Archibald orders a further one-hour discovery of the Plaintiff, and gives the Plaintiff until May 7, 2019 to retain counsel. The parties are ordered to re-appear on May 7, 2019.

* May 7, 2019 – Plaintiff and counsel for Nubury re-appear before Justice Archibald. The Plaintiff is provided a further extension until June 11, 2019 to retain counsel.

* May 14, 2019 – the parties appear before Associate Justice Brott on Plaintiff's motion to reverse the Registrar's administrative dismissal of the action. The Associate Justice endorsed a timetable for all remaining discoveries to occur by September 30, 2019, mediation to take place by March 30, 2020, and for the action to be set down for trial by June 30, 2020.

* June 11, 2019 – Plaintiff and counsel for Novex and Biosweep appear before Justice Archibald in Civil Practice Court. The Plaintiff sought to move the Novex action forward to trial and opposed its consolidation with the within action. Justice Archibald adjourned both actions to Civil Practice Court on August 13, 2019.

* June 13, 2019 – the parties again appear before Associate Justice Short, who gave the Plaintiff a further extension to August 15, 2019 to respond to the discovery questions taken under-advisement, and un-seized himself of the balance of the motion.

* August 13, 2019 – the parties again appear in Civil Practice Court before Justice Archibald, whose endorsement states: "These cases are to be tried together or one after the other; that issue to be resolved later in court; Ms. Cherry wants time to consider her position; Ms. Cherry is also attempting to retain counsel; Ms. Cherry to work out the schedule with counsel; timetable to be attached." Justice Archibald's timetable attached to his endorsement provides: (i) Plaintiff's motion for privilege on October 30, 2019; (ii) discoveries of Nubury and Ecosmart by February 28, 2020; (iii) continued discoveries of the Plaintiff by February 28, 2020 limited to 2 hours plus questions arising from answers to undertakings; (iv) answers to undertakings to be provided within 90 days of discoveries; (v) mediation to be held on February 26, 2020; (vi) matter to be set down for trial by July 31, 2020.

* February 19, 2020 – Plaintiff requests to reschedule the mediation due to a medical issue.

* November 18, 2020 – counsel for Biosweep seeks a chambers appointment as the mediation has not been arranged.

* February 14, 2022 – after much correspondence with Plaintiff regarding her medical issues, counsel for Nubury delivers a Case Conference Request Form to the Plaintiff.

* August 30, 2022 – the Court advises the parties that there is currently no judge available for a case conference.

* February 27, 2023 – the parties attend at a case conference before Justice Morgan. The Plaintiff is advised that she can bring a motion to strike the Defendants' pleadings if she thinks it is called for.

* May 1, 2023 – the parties attend a further case conference before Justice Morgan. A timetable is set down: (i) examinations for discovery of Nubury and Ecosmart to take place on September 29, 2023; (ii) Plaintiff's expert reports to be delivered by December 31, 2023; (iii) Defendants' expert reports delivered by March 31, 2024; (iv) mediation in Nubury action by a court appointed mediator to take place (or be scheduled by) November 30, 2023 (with attendance by all parties in both actions); (v) Plaintiff to serve the Trial Record in the Nubury action by May 15, 2024.

* May 12, 2023 – a mediator contacts all parties to schedule the mediation.

* May 23 2023 – Plaintiff writes to the mediator advising that she cannot schedule the mediation at this time.

* September 28, 2023 – Plaintiff emails the Court to explain why she could not attend discoveries scheduled for September 29, 2023.

* October 18, 2023 – the parties attended another case conference before Justice Morgan., who re-schedules examinations for discovery for January 26, 2024.

* January 16, 2024 – Plaintiff seeks information from Ecosmart, a company that is no longer in business, as to who will be examined on its behalf, and also seeks an updated affidavit of documents.

* January 19, 2026 – counsel for Ecosmart provides the name of the deponent and provides a fresh copy of the Affidavit of Documents and Schedule A productions that have not changed since the previous one was served on her several years ago.

* January 25, 2024 – Plaintiff cancels discoveries booked for the next day, January 26, 2024. In follow-up correspondence the Plaintiff does not agree to re-book the discoveries.

* May 2, 2024 – Plaintiff serves a Notice of Motion seeking to dismiss the Third Party Claim in the Novex action. No supporting record has ever been served.

* July 4, 2024 – the present action is administratively dismissed for delay by the Court Registrar.

* July 26, 2024 – Justice Morgan issues an Endorsement stating: “There is good reason for the court office having issued its administrative Order. This action, with its companions, is more than a decade old and the parties have made no progress in moving it ahead. As case management judge I have twice set litigation timetables in which discoveries were scheduled by fixed dates, only to be advised later that they did not proceed... I feel it is incumbent on me to advise Ms. Cherry, as I have in the past, that it is the Plaintiff's responsibility to push the matter ahead which, importantly, means completing discoveries…Moving the matter along to trial is ultimately the Plaintiff's job…” Justice Morgan then overturns the administrative order, stating that “[a]ll discoveries in both actions must be completed by January 1, 2025” .

* October 1, 2024 – the parties appear at another case conference before Justice Morgan, whose endorsement notes that the Plaintiff failed to file any supporting materials for her motion and was now requesting an adjournment. The Plaintiff's motion to dismiss is adjourned to April 8, 2025 peremptory on the Plaintiff. Motions to dismiss the Plaintiff's action for delay were set for June 23, 2025.

* December 9, 2024 – representatives of Nubury and Ecosmart are examined by the Plaintiff.

* April 8, 2025 – the parties appeared before Justice Morgan for Plaintiff’s motion to dismiss but Plaintiff had not served or filed any motion materials. Despite having been peremptory on the Plaintiff, the motion was adjourned again to April 13, 2026. Justice Morgan indicated in his endorsement that the Defendants’ motions to dismiss the action could still proceed on June 23, 2025.

* April 17, 2025 – Defendants serve the Notice of Motion for the present motion to dismiss for delay.

* June 23, 2025 – Plaintiff seeks an adjournment of the present motion, and submits that she has ongoing health issues and feels overwhelmed by the materials contained in the Defendants’ motion record and will need at least 4 months to respond. The adjournment is granted.

* June 28, 2025 – Justice Morgan releases his endorsement in respect of the June 23, 2025 adjournment, in which he orders the Defendants not to serve any further material on the Plaintiff, including any reply material, as she is already having difficulty coping with the motion record.

* October 27, 2025 – the parties appear before Associate Justice Josefo to schedule the Plaintiff’s motion on undertakings and refusals. The Associate Justice offers to hear the motion on November 24, 2025. Defendants’ counsel indicates they are available, but Plaintiff cannot commit to the date due to her health concerns and fatigue. The Associate

> Justice issues an endorsement indicating he will hold the date open until November 23, 2025, by which time the Plaintiff must advise him if she intends to proceed with her motion.
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> * November 3, 2025 – the Plaintiff advises Associate Justice Josefo that she is not prepared to continue with her undertakings and refusals motion. The Plaintiff indicates that she requires a case conference in order to compel Ecosmart to provide a new affidavit of documents, this time from their insurer, AIG Insurance.
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> * November 4, 2025 – Associate Justice Josefo advises all parties that there is no need for a further case conference, and that if the Plaintiff seeks production that is contested by one of the Defendants it will be necessary for her to bring a motion with proper documentation and an opportunity for the Defendants to respond.

[19] The sheer extent of the above chronology speaks for itself. The Plaintiff has failed to adhere to at least 7 court orders or court ordered timetables; there are at least 6 different instances where the Plaintiff has sought to adjourn motions, including motions that were peremptory on her, and even more occasions when she has indicated she will be bringing a motion and requested a motion date but ultimately did not bring one. The Defendants have obtained 7 certificates of non-attendance for the Plaintiff, and discoveries are still not complete.

[20] While the Plaintiff no doubt has genuine health issues that impact on her ability to litigate, there is no sign that matters will improve. She tends to blame her adjournment requests and non-appearances on the Defendants, but the fact is that, overall, the Defendants' counsel have been remarkably patient and diligent in staying in touch with her over the years and prompting her to push the matter ahead. To the extent that the Plaintiff acknowledges that an adjournment or non-appearance is at her own instigation, she explains that her health issues make it impossible for her to adhere to a timetable or to meet a deadline.

[21] As indicated, the Plaintiff's health concerns have been accommodated wherever possible. At some point, however, accommodation of her health must be balanced against unfairness to the Defendants. One of the Defendant companies has gone out of business, the manager and owner of another is retired, the manager of the Plaintiff's landlord at the time of the incident is 80 years old. As counsel for Care Pest wrote on March 15, 2024, in response to one more request by the Plaintiff to adjourn discoveries:

> This matter has been dragging out for years to the extreme prejudice of my client (and the rest of defendants). This is your claim to prove, and a plaintiff cannot hold defendant(s) under the threat of litigation over an inordinate period.

[22] I expressed a similar thought in my endorsement of July 26, 2024 restoring the action after its administrative dismissal for delay. I advised her in as straightforward a way as I could, that discoveries must quickly proceed to completion. I further indicated that, "Moving the matter along to trial is ultimately the Plaintiff's job… [but] I am prepared to give it one more try."

[23] Despite this endorsement, discoveries have not yet been completed, and the Plaintiff has not been prepared to indicate when the next round might take place. Consequently, the action has

still not been set down for trial. There is little sign that the Plaintiff takes "one last chance" admonitions seriously; indeed, quite the contrary.

[24] For example, notwithstanding that it was peremptory on the Plaintiff, the present motion was adjourned at her request in June 2025. In that endorsement, I indicated in no uncertain terms that there would be no further adjournments:

> …Ms. Cherry has assured me that she understands that the motion must proceed on December 1st.
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> I note that Ms. Cherry herself has a summary judgment motion scheduled in a related action, Cherry v. Novex Insurance Company (Court File No. CV-12-464327), which will be heard by me on April 13, 2026. I understand that there may be an Associate Justice motion pending in that matter with regard to certain refusals given at discoveries. I only reference that in order to emphasize that nothing in the Novex action – neither the refusals motion before an Associate Justice nor the summary judgment motion before me – will impact on the timing of the present motion.

[25] In view of my endorsement, the Plaintiff did not seek any further adjournment of the present hearing. Instead, she spent some time pre-empting the moving party Defendants' submissions with a recitation of her health issues, explaining that it is difficult for her to draft and file materials in a timely fashion. I assured her that the Court has received all of her motion materials, including an audio file of one of the discovery sessions which she couriered directly to my attention. I further assured her that the late filing of materials has not prevented them from coming to my attention and being considered a proper part of the record.

[26] Turning more to the merits of the Plaintiff's claim, it is clear to me that after the passage of 14 years since the pesticide treatment of her residence, there is little hope of the Plaintiff producing the kind of evidence she will require for trial. The Statement of Claim alleges that the chemical compounds in the extermination product used in her premises caused her to become ill. She says that she has at home large piles of medical notes about her illnesses over the past 14 years. But as Defendants' counsel point out, there is no Rule 53.03 medical report supporting the Plaintiff's allegation that the Defendants have caused her health issues.

[27] Indeed, a decade and a half down the road it is unlikely that any medical report will be of much assistance on the causation issue. As the Plaintiff herself has indicated on numerous occasions, she has myriad health issues that have worsened over time and as she has aged. It would be surprising if the Plaintiff were now to produce an expert report establishing her causation claim; and if she did produce a report, it would be surprising if the Defendants could gather sufficient information on her past health status to properly counter it.

[28] In the same vein, the Plaintiff claims that the pesticides used in her residence caused the death of her pet cat. However, there is no evidence that any post-mortem examination of the cat was ever performed. The Plaintiff also indicated in her oral submissions that she had taken the cat

to a veterinarian shortly after the pesticide was deployed in her residence, and that the veterinarian had "botched" the procedures he had performed on the cat. She also indicated that the cat was cremated upon death, and there were no specimens preserved and no remains to be examined at this point. Again, no causation evidence has been produced by the Plaintiff, nor is any likely to be produced.

[29] Moreover, there is no evidence that the chemical compounds used on the Plaintiff's premises have been preserved or, if some have been preserved, have been analyzed before the passage of time led to their inevitable deterioration. The Plaintiff has never served an expert report from a toxicologist. Moreover, the company that performed the extermination, Ecosmart, is out of business and it is a serious burden on the retired owners of that company to now obtain the factual and expert evidence required to respond to any expert that the Plaintiff might obtain.

[30] The Court of Appeal in *Ticchiarelli v. Ticchiarelli*, 2017 ONCA 1, at para. 12, instructed that, "The court may derive its jurisdiction to dismiss an action for delay either from r. 24.01 of the *Rules of Civil Procedure*, or through its inherent jurisdiction to prevent an abuse of its own process." In the same paragraph, it elaborated on the circumstances that could give rise to such a dismissal:

> [A]n order dismissing an action for delay will be justified where the delay is inordinate, inexcusable, and prejudicial to the defendants in that it gives rise to a substantial risk that a fair trial of the issues will not be possible.

[31] The *Ticchiarelli* case entailed a delay of 11 years from its inception to the date of the motion to dismiss. The Court concluded, at paras. 13-14, that dismissal was justified, as the delay of over a decade – 3 years less than the delay in the present case – was inordinate and prejudicial:

> The motion judge found that the delay of over 11 years was inordinate, which the appellant had conceded. He rejected the appellant's arguments that the delay had been excused. And, he concluded that the appellant had not rebutted the inference of prejudice from the delay. Indeed, the respondents, in his view, suffered actual prejudice. The motion judge dismissed the action for delay, noting that he could do so on the basis of r. 24.01 or on the basis of the court's inherent jurisdiction.
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> The motion judge's order dismissing this action for delay is a discretionary order. It is entitled to deference from this court and will not be interfered with unless the motion judge exercised his or her discretion unreasonably or acted on a wrong principle.

[32] This language could equally describe the present case.

[33] Generally speaking, dismissal for delay is justified where a plaintiff "has done very little to advance this action in an expeditious manner": *Ali v. Fruci* (2014) 122 OR (3d) 517, at para. 14 (CA). In the present case, the Plaintiff has exerted much energy in chasing the Defendants, but with her lack of organization, her incessant tardiness, and her apparent need for more and more

production with diminishing returns, she has erected her own detours and ultimately been her own roadblock.

[34] As in other similar delay cases, the Plaintiff argues that the delay is really the Defendants' fault. Again, the Court of Appeal has anticipated this very argument, and seemingly answered the Plaintiff in advance in *Wallace v. Crate Marine Sales Ltd*., 2014 ONCA 671, at para. 18: "It is fair to say that neither side is free of fault in the conduct of this action, but as LaForme J. observed in *DeMarco v. Mascitelli,* [2001] O.J. No. 3582, 14 C.P.C. (5th) 384 (S.C.), at para. 22, the plaintiff is responsible for moving the action along. In this case the appellants manifestly failed to fulfill this responsibility."

[35] The Plaintiff has her personal issues, and I do not doubt her sincerity as to the difficulties which the litigation process poses for her. But the fact is that one cannot keep Defendants tied up in litigation indefinitely. Their life also must be allowed to go on, and 14 years of interminable motions and discovery is more than a Defendant should have to bear. The Court has been indulgent and accommodating of the Plaintiff, and the Defendants have tolerated the process but are at their wits' end.

[36] Discoveries are still incomplete, motions are planned and pending, and the Plaintiff shows no more sign of being ready for them than she has over the past number of years. Much as it is tempting to give her just one more chance, I am cognizant that she has been given one more chance on a number of occasions, to no avail. It would now be unfair to the Defendants to keep this protracted claim alive with no end in sight.

Disposition

[37] The action is dismissed.

[38] The parties may make written submissions on costs. I would ask counsel for the Defendants to email brief submissions to my assistant within two weeks of today and for the Plaintiff to respond with brief submissions emailed to my assistant within two weeks thereafter.

Date: December 2, 2025 **Morgan J.**