

CITATION: Cherry v. Nubury, 2026 ONSC 335
COURT FILE NO.: CV-13-00489544-0000
DATE: 20260116

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: Cost submissions in writing

COSTS ENDORSEMENT

[1] Nubury Properties Limited, Care Pest Management Incorporated, Ecosmart Technologies Ltd, and Biosweep Canada Corporation (the “Defendants”), were successful in having this action dismissed for delay: *Cherry v. Nubury*, 2025 ONSC 6670.

[2] The delay was extreme. The action was commenced in September 2013 and has not progressed past discoveries. A chronology of the steps in the action, listing all of the adjournments, re-schedulings, and non-attendances, took up 5 ½ single spaced pages. The Plaintiff failed to adhere to at least 7 court orders or timetables during the course of the action. The Defendants have endured over a decade of unproductive litigation in which the Plaintiff has not been capable of moving the matter forward. They deserve costs.

[3] In their cost submissions, counsel for the Defendants have been remarkably generous. They state that their respective clients have incurred upward of \$100,000 each in legal expenses in defending this action. I would surmise that after more than a dozen years, even that figure is something of an underestimate. And yet, Defendants' counsel seek the rather modest sum of \$5,000 for each Defendant, for a total of \$20,000 all-inclusive. In the context of this case, that request is more of a symbolic acknowledgment of their efforts than it is an actual reimbursement of legal expenses.

[4] The Plaintiff has been unresponsive to this initiative by the Defendants. Instead, her responding cost submissions have replayed her approach to the litigation. In 24 paragraphs, she complains of a myriad of mistakes and oversights in my reasons for decision. Most of her points focus exclusively on the nature of her own ailments and the justified nature of her accommodations and adjournments.

[5] The Plaintiff uses the vehicle of cost submissions to express her complaint that my decision did not fully articulate the specific reasons she needed accommodation. Thus, for example, where I said that she was accommodated due to her serious health issues, she has gone out of her way in her costs response to spell out her precise medical diagnoses. She does not contend that she was insufficiently accommodated in respect of her health matters; rather, she complains that those matters were not sufficiently expounded upon in the decision, as if it is her health, and not the legal process, that was the actual subject matter of the motion.

[6] Unfortunately, that has been typical of the Plaintiff's approach to the litigation. I and all of the other judges who have heard her motions sympathize with her and have accommodated her wherever possible, but the substance of the action is the rights and wrongs of the parties and not her medical concerns on any given motion day. The many accommodations and adjournments she has received are a sincere effort to help her move the matter forward. The Plaintiff, however, focuses on them to the exclusion of the merits of the action and moving it forward.

[7] As I indicated in my reasons for dismissing the action, nothing that the court has done, and none of the concessions made to her by the Defendants, have resulted in advancing the action. To the contrary, it has all resulted in a deflection of attention away from the claim itself and a cycle of delays and diversions that appears endless. The Plaintiff's cost submissions, in which she says that she cannot address costs until a lengthy list of changes are made in the reasons for decision, is a restatement and, in effect, a microcosm, of her overall approach to the litigation.

[8] In the one sentence in her cost submissions where she actually addresses the issue of costs, the Plaintiff says simply that she does not have \$20,000 to pay the Defendants. Her comment is dismissive and oblivious to the expense to which she has put the Defendants. At the same time, I believe her. She has had many problems in trying to move her case forward and has tended to bury herself in irrelevant or tangential detail, but she has not been dishonest. Although the Defendants have asked for a greatly reduced amount of costs, that amount is still likely to be beyond the Plaintiff's means.

[9] Costs are always discretionary under section 131 of the *Courts of Justice Act*. Under the circumstances, I am prepared to reduce the Defendants' cost request by another \$6,000, down to a total of \$14,000.

[10] The Plaintiff shall pay each of the Defendants costs in the amount of \$3,500, inclusive of all disbursements and HST.

Date: January 16, 2026

Morgan J.