Court of King's Bench of Alberta

Citation: Peters v Countryside Masonry Inc., 2025 ABKB 713

Date: 20251205
Docket: 1601 01848
Registry: Calgary

Between:

Robert G. Peters, Ruth Peters, and Rocky Mountain Ranches Ltd.

Applicant

- and -

Countryside Masonry Inc.

Respondent

Reasons for Judgment
of the
Honourable Justice N.E. Devlin

Overview

[1] In 2003-2004, Jamie Fry began doing masonry work on the home of the Plaintiffs, Ruth Peters and her late husband Robert, through his company, the Defendant Countryside Masonry. The work was done under subcontract to the general contractor for the project, Knightsbridge Homes, and carried out by Fry and his right-hand man, John Terry.

[2] Countryside's part of the project was completed at the latest on June 30, 2007. Nine years later, in February of 2016, the Peters sued Countryside, along with their general contractor, architect, and others, alleging a host of recently discovered deficiencies with the masonry work.

[3] In January of 2024, Countryside applied to dismiss the action, which was still years away from any potential trial, for long delay pursuant to Rule 4.31 of the *Alberta Rules of Court*, Alta Reg 124/2010. The learned Applications Judge dismissed Countryside's application, leading to a *de novo* 'appeal' to this Court, on a supplemented record. For the reasons that follow, the appeal is allowed and the action dismissed.

History of the litigation

[4] This suit was filed on February 4, 2016. It named Countryside, multiple Knightsbridge corporate entities, their principals in their personal capacities, and numerous other individuals and their corporations. While dressed in many guises, the claim at its heart was a simple allegation that the masonry work had been done incorrectly and in a substandard manner, leading to its premature deterioration and water damage to the home.

[5] The Claim further contained a gossamer-thin allegation of fraudulent concealment, consisting of an allegation that that Defendants had failed to tell the Peters that their work was poorly done. In reality, the limitations issue apparent in this case would come down to a question of the interplay between any implied, industry-standard warranties and discoverability.

[6] The Plaintiffs filed an Amended Statement of Claim on September 9, 2016. Countryside filed its responding Statement of Defence less than two weeks later, on September 22, 2016, with the other Defendants filing shortly thereafter. The Plaintiffs provided their Affidavit of Records on December 21, 2016. The major Defendants provided their Affidavits of Records by February 2, 2017. Countryside served its Affidavit of Records on June 5, 2017.

[7] No questionings took place until March of 2018, when the corporate representative of the Knightsbridge Defendants was deposed. Little else of substance happened in 2018, save for discontinuances being filed against various of the peripheral Defendants in May.

[8] By the time this suit was commenced, Countryside had been inactive for many years and was struck from the corporate registry. Jamie Fry was retired and living on Vancouver Island. John Terry was in ill health and had been living in Thailand since 2008.

[9] Jamie Fry flew to Calgary in May 2018 for questioning. This was cancelled by the Plaintiffs at the last minute. He again returned to Calgary for questioning on December 11-12, 2018. This was again cancelled at the last minute by the Plaintiffs, which Countryside's counsel strenuously opposed.

[10] As a result, the man who was directly responsible for the allegedly defective work has never been questioned about it, by the Plaintiffs' own choosing. He is now battling a high-risk cancer and has lived abroad since 2021.

[11] In the only evidence filed on this application by the Plaintiffs, their now-former counsel gives no explanation for these repeated cancellations, save that it afforded a "significant and material advantage to the plaintiffs".

[12] The Defendants questioned Mrs. Peters in November of 2019. It took until August 2020 for her undertakings to be fully delivered.

[13] Following the initial questioning of Mrs. Peters, there was, as the Applications Judge aptly summarized, "a long period of time when there was an insurance coverage dispute and there were discussions about insurance." Settlement discussions and conversations regarding a Peringer agreement ran all the way into early 2022. Throughout the time from 2018-2022, months often elapsed without concrete advancement of the litigation, in particular against Countryside.

[14] In that interregnum, Mr. Peters passed away without ever having been questioned, despite likely being the most important Plaintiff witness. Jamie Fry describes him as "the driving force"

behind the project, someone who preferred to do business without written contracts, and who insisted on many variations in the work that compromised functionality for aesthetic reasons.

[15] The Plaintiffs' original expert witness also passed away during this time. Countryside's expert also took ill in August of 2022, and a replacement was promptly found who made a site visit later that month.

[16] In August of 2022, Countryside questioned Mrs. Peters on her answers to undertakings, and also questioned a key former employee of the Plaintiffs. It then took almost a year, until May of 2023, for her full and final undertaking responses to be delivered. This was a case involving masonry work, done by a subcontractor, without a written agreement. There is no explanation for why the initial answers to undertakings, much less supplemental ones, took this long to answer.

[17] Beyond a request for dates for a JDR – the utility of which would have been distinctly questionable at this ironically 'early' point in the litigation (with no questioning of the Defendants or exchange of expert reports having occurred) – nothing happened to advance the litigation between May of 2023 and the bringing of this motion by the Plaintiffs in January of 2024.

[18] The Plaintiffs retained new counsel in June of 2023, and transfer of the file appears to have taken five months, until November of 2023.

[19] Countryside brought the present Application on the eight-anniversary of the litigation. The case remains far from trial. Neither of the people who actually did the allegedly deficient work have been questioned. Both are elderly, live in Thailand, and are unwell. Their affidavit evidence suggests they will never be available for trial in person in Canada.

[20] The principal individual who directed and paid for the work, Mr. Peters, can never be questioned, as he has passed away. Final expert reports have not been exchanged. No JDR process has taken place. Self-evidently, no trial dates have been booked.

[21] The Respondent's new counsel argues that the matter can now be moved forward to trial within a relatively short time, especially if the Court's new Civac (Civil Appearance Court) process is pursued, together with the robust procedural management that brings. She also initiated and completed a *de bene esse* virtual questioning of Mr. Fry in 2025.

The Applications Judge's Ruling

[22] The Applications Judge agreed with Countryside that "a trial will not be scheduled until 2027 or 2028", and found delay in the case, but declined to characterize it as inordinate. Rather, she concluded that more steps had occurred in this litigation than in similar matters of equal agedness. She also based her decision in part on the basis that it is "difficult for the Court to second guess" how long it should have taken for the matter to be reduced to a single defendant, particularly during the Covid-19 pandemic.

[23] Ultimately, she concluded that "there has been delay in the action proceedings but I find it was not inordinate in the circumstances given all of the additional matters that were being dealt with."

The governing law

[24] The parties agree that adjudication of long delay applications under Rule 4.31 are governed by the six-step analysis articulated by the Court of Appeal in ***Humphreys v Trebilcock***, 2017 ABCA 116 at paras 151-156, as expanded upon in ***Transamerica Life Canada v Oakwood Associates Advisory Group Ltd***, 2019 ABCA 276. With the onus of proof resting on the applicant, the Court must consider the following:

i. Has the plaintiff failed to advance the action at a reasonable pace?

ii. Is the delay significant enough to qualify as unreasonable?

iii. If inordinate, is there an explanation for the delay? If so, does this explanation justify the inordinate delay?

iv. If the delay is inordinate and inexcusable, has it been significantly prejudicial to the moving party so as to justify dismissal?

v. If the moving party relies on the presumption of significant prejudice, has the non-moving party rebutted the presumption?

vi. If the moving party has satisfied all the conditions under Rule 4.31, is there any compelling reason not to dismiss the action?

[25] The objective of the exercise is to determine whether the delay is inordinate, inexcusable, or otherwise has caused significant prejudice to the defendant: ***Transamerica*** at para 21. Courts have also recognized that there is no mandatory formula for the determination of long delay applications, as each piece of litigation has its unique facts and context: ***Condominium Corporation, 052 058 (o/a The Tradition at Southbrook) v Carrington Holdings Limited***, 2022 ABKB 623 at para 106. What is a reasonable pace falls to be determined by the nature and complexity of the issues and the evidence, as well as the history of the litigation: ***Jordan v De Wet***, 2024 ABKB 462 at para 50.

[26] Whatever approach is found best to analyze the instant case, Rule 4.31 dictates the following: ***EMM Energy Inc v Canadian Natural Resources Limited***, 2025 ABKB 620 at para 14:

- applicants in a delay application have the onus to prove, on a balance of probabilities that the delay has resulted in significant prejudice;
- if an applicant establishes that the delay is inordinate and inexcusable, the delay is presumed to have resulted in significant prejudice;
- the respondent can attempt to rebut the presumption of significant prejudice;
- however, in the end, the decision whether to dismiss for delay remains within the Court's discretion.

[27] This process of analysis is guided by the principles aptly outlined and applied by Mandziuk J in ***Carrington Holdings*** at paras 79-168. The highlights of these include that:

- the Foundational Rules state that the *raison d'être* of our civil litigation system is to provide *timely* and *cost-effective* dispute resolution;

- parties *must* conduct themselves according to this prime directive;
- the plaintiff bears the onus to move the action forward;
- delay is not the same as total inaction – the case must move forward substantively;
- the core concern of Rule 4.31 is to prevent prejudice;
- the moving party bears the burden to show prejudice unless inordinate or unreasonable delay is established;
- the concept of unreasonable delay is contextual to each case;
- "inordinate" or unreasonable delay lies in the delta between the pace of the case at bar under scrutiny and what would be acceptable in a similar matter;
- the time-window for measurement is from filing of the claim to the filing of the application to dismiss;
- where there is delay but it has not crossed the threshold to become unreasonable, the onus lies on the moving party to prove prejudice arising from it;
- prejudice is presumed where inordinate or unreasonable delay is established;
- relevant prejudice can relate both to the litigation and to collateral impacts flowing from stress, reputational damage, or financial harms;
- the onus lies on the respondent to justify inordinate or unreasonable delay;
- the onus lies on the respondent to rebut the presumption of prejudice where it is presumed on account of inordinate or unreasonable delay;
- the ultimate age of the events at issue is relevant to prejudice;
- an action will only be struck where there is significant prejudice;
- plaintiffs will not lightly be deprived of their right to a decision on the merits, and remedies under Rule 4.31 remain discretionary; and
- the conduct of the moving party is a relevant factor in fashioning a just remedy.

[28] With these principles in mind, one turns to the question of whether there has been delay, and whether it has reached the point of being inordinate or unreasonable.

Application of the principles

Is there delay that has become inordinate?

[29] I agree with the Applications Judge that there is delay in this case. We part company only on the question of whether it has reached the point of unacceptability.

[30] Inordinate delay simply means delay "much in excess of what was reasonable having regard to the nature of the issues in the action and the circumstances of the case": ***Kuziw v Kucheran Estate***, 2000 ABCA 226 at para 31. This is a very case specific analysis, but certain factors will always, or often, be relevant. These include: the complexity of the case; the number

of witnesses; the scope of documents; the number of experts; and the length of time elapsed since the events in question.

[31] I agree with the Application's Judge that this is "a fairly straightforward residential construction dispute." The Defendants did masonry work at the Plaintiffs' home, which they say was defective. The fact that they apparently did quite a lot of it does not change the basic, factual and legal matrix of the matter.

[32] The only complicating feature was the need to narrow the group of potential defendants while maintaining access to them for potential recovery. There was, however, never any real doubt about where the action lay in this case: Countryside's work and the experts' assessments of it. Forward motion on the core of the case (against Countryside) need neither have ground to a halt while the other parties were dealt out, nor moved so slowly otherwise.

[33] This matter is not high on the scale of complexity. The core questions to be answered in the litigation were clear from day one: (i) was this work substandard; (ii) if so, are there reasons it was done in a defective manner that shifts liability to other parties; (iii) if liability is established, what damages are proven to have flowed from the deficient work; and (iv) can the Plaintiffs factually overcome significant limitations difficulties.

[34] The cast of witnesses relevant to these core questions is small. By tranches of their apparent importance per the record before me, they are: Mr. Peters (the person who called the shots) and Jamie Fry (the person doing and supervising the masonry work for him); the two respective experts; Mrs. Peters and John Terry (the understudies to Mr. Peters and Mr. Fry); the Peters' staff member who supposedly discovered and witnessed the problems; and the representative of Knightsbridge who may be able to corroborate what others say about the underlying contracts, the instructions given, and the circumstances of the work.

[35] Of this list, neither of the tier-one principles will be available for trial. Mr. Peters is sadly deceased and was never questioned, and Jamie Fry's *de bene esse* testimony, secured only recently by new counsel, came into existence after the initial hearing of the Rule 4.31 motion and does not factor into the delay analysis.[1] He will almost certainly be unavailable to attend trial personally, and may well not be able to attend even virtually, based on the uncontested affidavit evidence. Mrs. Peters has been questioned, but Mr. Terry has not and will, on balance of probabilities, also not be available for trial. The final expert reports have not been exchanged. Only the bottom tier of witnesses have been fully questioned.

[36] This state of readiness for/proximity to trial, after eight years, over a relatively simple residential construction dispute, is not reasonable. It is hard to understand why this case could take more than three-to-four years to be ready for trial, if pursued with dispatch. This is confirmed by one of the comparator cases offered in argument, where a home construction action involving a large number of parties filed in 2007 reached trial in 2011: ***Vargo v Canmore (Town)***, 2011 ABQB 649, var'd ***Vargo v Hughes***, 2013 ABCA 96. Making allowances for the efforts to rationalize the chain of named Defendants in this case, a year could be added to those timelines, and they would remain reasonable.

[37] That said, this case does involve allegations of fraudulent concealment. Courts have been clear that allegations involving moral turpitude of that sort demand reasonably expeditious

[1] May factor into the prejudice and remedy issues discussed below.

prosecution — more so than case which do not allege fraud or similar intentional dishonesty: ***Humphreys*** at para 167; ***Recycling Worx Solutions Inc v Hunter***, 2023 ABKB 51 at para 64.

[38] Turning to some of the periods of delay in the present case, it is difficult to rationalize how it took ten months to produce the Plaintiffs' Affidavit of Records, two years to reach the first questioning, most of 2018 for the Plaintiffs to produce a supplementary Affidavit of Records, from November 2019 to August 2020 to provide Mrs. Peters' answers to undertakings, and from August of 2022 to May of 2023 for Mrs. Peters' undertakings to be prepared for her follow-up examination on her first set of undertakings, and for nothing else to happen thereafter until this motion was brought in 2024.

[39] Beyond highlighting the dysfunctionality of the current *Rules* on documentary production and questioning, and in particular the manner in which they are employed, this pace of litigation does not comport with the *foundational* Rule on timely dispute resolution, which states:

> **1.2(1)** The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective manner. [emphasis added]

[40] Beyond the slow pace of the steps that were taken, it is also striking how little was actually accomplished to reach trial readiness over the eight years this case has been extant.

[41] In particular, I respectfully conclude that the Applications Judge was mistaken in excusing what she accurately characterized as "a long period of time when there was an insurance coverage dispute and there were discussions about insurance." On the timelines provided by the Plaintiffs, this endeavour consumed a year from December 2018 to November 2019, and a second year from September 2020 to August 2021. The later period she described (again accurately per the Respondent's Counsel's affidavits) as one in which "discussions and legal research" took place, all regarding a party other than the Appellant.

[42] Litigation often spawns side-quests and may proceed on numerous tracks simultaneously. That, however, does not relieve the Plaintiffs of their duty to drive the main litigatory steps forward. This principle was well explained in ***Carrington Holdings*** at paras 181-186, in disposing of the argument that a lot of "discussions" and "informal discoveries" going on in the background during periods where few obvious litigation steps took place. There, Mandziuk J explained that:

> [t]he filing of a Statement of Claim is not an invitation to a business meeting, or an agenda carefully crafted to spark a conversation.
>
> ...
>
> It follows that parties must continuously move their matter forward on the "litigation spectrum.
>
> ....
>
> Notwithstanding informal indulgences and processes, formal *Rules*-based steps must occur in tandem with any informal activities. Parties must focus on either settling their matter or going to trial: those are the only outcomes once the litigation route has been chosen. Everything that is done must be utterly concentrated on those outcomes.
>
> [emphasis added]

[43] That manifestly did not happen in this case. Nor did the plaintiffs seek an agreement to pause the litigation clock on the main action as contemplate under Rule 4.32

[44] At the time this application was brought, the parties would have been hard pressed to reach trial in 2027, more than ten years after the action was commenced. Numerous basic and fundamental steps had not been taken. Most egregiously, the principal human being with knowledge and responsibility for the Defendant's actions (Jamie Fry) had not been questioned, despite having come to Calgary *twice* for this purpose.

[45] It is an aggravating factor that both of those scheduled questionings were adjourned at the Plaintiffs' insistence for a collateral tactical advantage. This was a clear example of "games over getting on with it".

[46] While this suit was never entirely stalled for more than six or eight months, and it is true that the lawyers for the Plaintiffs did do *something* fairly regularly, albeit on and off, this case was run in a manner antithetical to this Court's admonition that "litigation must be driven by compulsion and urgency": ***Carrington Holdings*** at para 184, and the Court of Appeal's warning that "[t]he mere taking of steps is no guard against a finding of inexcusable delay if those steps accomplish little to advance the proceeding": ***Municipal District of Foothills No 31 v Alston***, 2023 ABCA 46 at para 27, leave to appeal to SCC refused, 2023 CanLII 85857.

[47] This case was simply drifting down the lazy river of business as usual.

[48] In this regard, my divergence from the learned Application Judge's conclusion on the acceptability of the delay in this case is paradigmatic. While her conclusion on whether the nature and magnitude of delay seen in this case was inordinate may sadly reflect the *status quo* reality in far too many instances, I am firmly of the view that tacit judicial acceptance of slothful civil suits must end. Civil litigation must come to be treated as a *dispute resolution event*, rather than a chronic condition inflicted on its unfortunate victims.

[49] There is no universe in which it is reasonable that a basic residential construction case should be unable to see a trial on the horizon after eight years except, it seems, our own. We in Alberta, and Canadians more broadly, have lived in a culture of litigation delay for so long that it has ossified into normality.

[50] In its 2024 Phase One Report, Ontario's Civil Rules Review stated the problem bluntly:

> Civil justice reform requires a shift in litigation culture. The same culture of complacency that compelled the Supreme Court, in *R v Jordan*, to call upon all criminal justice system participants to contribute to meaningful change, plagues the civil justice system. Unacceptable delays have been tolerated for too long...

[51] These calls are repeated seemingly every decade, with thus far little obvious effect, as the present case illustrates. *Twenty years ago*, our Court of Appeal adopted the English courts' calls to action, holding that: "courts must get and keep control over the pace of litigation. A culture of delay, laissez-faire, mutual blindness by counsel, and continual forgiveness by judges, is fatal": ***Bains Engineering Corporation v 734560 Alberta Ltd***, 2005 ABCA 187 at para 3 [emphasis added].

[52] Every level of court in Canada has since decried the deleterious effects of a systemically sloth-like civil justice, including the Supreme Court. In ***Hryniak v Mauldin***, 2014 SCC 7 at para 25, the Supreme Court joined the chorus of calls for a culture shift on the part of all participants

and articulated the obvious reasons why chronic civil litigation delay is profoundly unhealthy for society as a whole. In that case, the Court unanimously held that "[p]rompt judicial resolution of legal disputes allows individuals to get on with their lives. But, when court costs and delays become too great, people look for alternatives or simply give up on justice."

[53] Our leading case of ***Humphreys*** at para 90 similarly outlined these harms, concluding that: "litigation delay is a corrosive force in a free and democratic state committed to the rule of law." Indeed, the Manitoba Court of Appeal just this year described the "failure to proceed promptly with a proceeding" as a "form of litigation misconduct": ***Parkinson v Winnipeg Regional Health Authority***, 2025 MBCA 82 at para 205.

[54] This is exactly what has led the Ontario Superior Court to lament the normalization of civil justice delay, recalling that "[o]ver the past number of years, there have been innumerable calls for a 'culture shift' in civil litigation and to focus on the merits of decisions": ***Athwal et al v 8529710 Canada Ltd et al***, 2024 ONSC 6967 at para 10.

[55] The Ontario Court of Appeal has similarly decried a "lax attitude toward delay" on the part of courts: ***Barbiero v. Pollack***, 2024 ONCA 904 at paras 11-16; see also ***Southwestern Sales Corporation Limited v Spurr Bros Ltd***, 2016 ONCA 590 at para 9; ***Moffitt v TD Canada Trust***, 2023 ONCA 349 at para 89.

[56] A first step towards a change of culture surrounding delay is for the courts to stop accepting a *decade-to-trial* timetable as tolerable for ordinary cases of low to moderate complexity. The fact that a letter was sent, or a document filed, or a small step taken every few months does not amount to timely, purposeful litigation.

[57] Indeed, in the recent case of ***WestJet v ELS Marketing Inc***, 2025 ABCA 115 at paras 30-31, our Court of Appeal upheld the case-management judge's dismissal of an action for long delay, notwithstanding his finding that there had been "a great deal of activity and arguments between counsel." In reaching this conclusion, the Court of Appeal commented that neither dormancy nor an "egregious" level of delay are pre-requisites for dismissal. To the contrary, where significant delay has already occurred, plaintiffs have "an obligation of formal action": ***1199096 Alberta Inc v Imperial Oil Limited***, 2025 ABCA 303 at para 26.

[58] In tension with these guiding principles, the present case was prosecuted as if getting to trial was a distant, unlikely, and even ultimately undesirable outcome.

[59] I find that the delay here is inordinate. I also find that the Appellants have not contributed to it in any measurable way. They responded to filings quickly, and replaced their ill expert with alacrity.

[60] In the aggregate, and in the specific factual context of this cases, the delay seen here was unreasonable.

No Explanation

[61] The Plaintiffs filed only thin affidavits from their former counsel on the original application and for this appeal. This does not place them in a strong position to either defend or explain the pace of the litigation: ***Barbiero v Pollack***, 2024 ONCA 904 at para 23. In particular, there is no expansion on the idea that this is a 'document case', or accounting for why the Plaintiffs' production of documents and undertakings took so long, in a case where the *only*

evidence is that no written contracts existed and Mr. Peters gave oral instructions for the impugned building work.

[62] As discussed above, the intra-counsel steps taken to create the Peringer agreement did not excuse a failure to advance the suit against Countryside – always known to be the material defendant – during that lengthy period of time.

[63] The need to replace the Plaintiffs' initial structural expert was an unforeseen and potentially delaying factor. However, Countryside faced a similar problem and solved it quickly and without drama. As such, I attach little weight to this factor in the absence of concrete evidence as to why and how it accounted for much, if any, real delay.

[64] I would add that the Applications Judge appeared to presume that the Covid-19 pandemic accounted for some delay in this case. There was no evidence to that effect and, as the matter was nowhere near requiring in person court time, this presumption was unwarranted.

Prejudice

[65] Prejudice is presumed from long delay. I also find it to have been specifically proven. The idea that a seriously ill man of advancing age could *reliably* defend himself through the recall of conversations about building variations (the core of the defence plead as early as 2016) that occurred up to a quarter of a century ago is risible to anyone who has practiced litigation. Having to do so without corroboration from his working partner at the time is even less plausible. There is very real prejudice to the Appellant in this case. It has been exacerbated by the Plaintiffs' delay.

[66] In this regard, I adopt completely the words of my brother Justice Feasby in ***Moman v Bradley,*** 2024 ABKB 35 at para 5, that: "[d]elay is antithetical to the fair resolution of claims. With delay comes the inevitable erosion of witnesses' memories and the possibility that witnesses may relocate, become incapacitated, or die. "

[67] Where an action is commenced long after the events at issue, the Plaintiffs will almost invariably face a faster-ticking prejudice clock. This may not change what amounts to a reasonable pace of litigation, but most certainly heightens the risk that prejudice will be found if the key litigation steps are not expedited. That is the case here.

Conclusion

[68] Countryside has demonstrated inordinate delay and actual prejudice flowing from it. No satisfactory explanation, backed by factual specifics, has been offered as to why the Plaintiffs chose to move the matter so slowly. Critically examined, their claim that this is really a 'documents case' looks more like a tactical preference that this proceed on documents, rather than on the recall of the individuals whose reputations are being besmirched, and whose memories are fading daily.

[69] Exercising my discretion, and indeed obligation, to consider remedies short of a stay, I find no compelling reasons to allow this action to continue. The prejudice against Countryside is real and mostly irremediable. The delay has a flavour of tactical choice – and indeed is admitted to be such in respect of a key step directly related to the prejudice.

[70] It is also far from certain that the action will succeed, much less overcome its limitations challenges. The record contains evidence from the Plaintiffs' maintenance manager, who testified that a water leak beside one of the impugned fireplaces, and directly under the allegedly mis-installed terrace, took place in February 2012. This was four full years before the statement of claim was filed. Moreover, he testified that this was the last such water ingress he was aware of. Similarly, the principal of Knightsbridge testified that all of the work would have been subject to the industry standard one-year warranty.

[71] These observations on the superficial merits of the case serve solely to forestall the possibility that a great and obvious injustice will be wrought against the Plaintiffs if their aged action is dismissed. I am satisfied, from the cursory view afforded by the record, that the merits do not militate against dismissal.

[72] The matter remains quite far from trial, and active acquiescence in the delay is not alleged: ***Song v Her Majesty the Queen in Right of Alberta***, 2021 ABCA 361 at para 62; ***Fish v Boyd***, 2018 ABQB 190; ***422252 Alberta Ltd v Messenger***, 2019 ABQB 251 at para 24(4).

[73] Despite Ms. Mohr's outstanding advocacy in defence of a problem not of her making, the appeal is allowed, and the action is stayed for long delay. The parties may speak to costs in writing, within 30 days.

Heard on the 17th day of September 2025

Dated at the City of Calgary, Alberta this 5th day of December 2025.

N.E. Devlin, JCKBA

Appearances

Todd W. Kathol and John R. Gilbert
for the Appellant

Coralie J. Mohr
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