

CITATION: 3818187 Canada Inc. v. Corporation of the Township of Russell, 2025 ONSC 0006
COURT FILE NO.: CV-12-54106
DATE: 2026/01/05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 3818187 Canada Inc., Plaintiff

AND

Corporation Of The Township Of Russell, Defendant

BEFORE: The Honourable Justice C.T. Hackland .

COUNSEL: Nadia Authier, for the Plaintiff

Ron Peterson and Ifeanyi Nwokolo, for the Defendant (moving party).

HEARD: October 20, 2025

ENDORSEMENT

[1] At the close of argument in this matter, I advised that the motion would be dismissed for reasons to follow. These are the reasons.

[2] The defendant, Township of Russell sought an order pursuant to Rule 24.01 of the Rules of Civil Procedure (the “Rules”) to dismiss the plaintiff’s action for delay. This action was commenced by Statement of Claim issued on April 16, 2012. In its Statement of Claim, the plaintiff sought payment of the balance of contract funds and additional damages arising from delays encountered during the Russell Lagoon Project (the “Project”), which was a municipal sewer construction project. The Project was managed on the defendant’s behalf by an engineering firm, the Third Party Stantec, which has declined to take any position on this motion.

[3] After a series of delays, the fault for which can be and was debated at length in argument on this motion, the action passed into case management pursuant to the order of Beaudoin J. dated December 7, 2018 and was subsequently set down for trial on September 16, 2019. In my view, the delays were attributable to both parties and also, perhaps particularly to Stantec.

[4] However, since the action was set down for trial in September of 2019, the case has not yet been tried due to a series of factors that are not the fault of any of the parties and can be fairly characterized as a combination bad luck and institutional delay.

[5] Most recently, the action came on for trial before me on February 3, 2025. However, an adjournment was sought by plaintiff's counsel so she could attend the funeral of a parent. The defendant very fairly consented to the adjournment in the circumstances. The matter then returned before me on a case conference to set new trial dates. At the case conference defendants counsel advised he had received instructions to bring the within motion for dismissal for delay. Prior to this there were scheduled trial dates in February 2023 and again in January of 2024. Trial judges were not available on those dates, according to counsel.

[6] I find that this case has been ready for trial since it was set down for trial in September of 2019. I also note there has been a mediation and 3 judicial pre-trials, all unsuccessful. I accept the plaintiff's submission that in the circumstances of this case the only relevant period of delay that can or should be considered for delay analysis is the 5-year period following Justice Beaudoin's consent order in December of 2018 which brought the matter into case management and which established timing for the case to be set down for trial, which timing was complied with by the plaintiff. None of the delay since that point can properly be blamed on the plaintiff.

[7] The Court of Appeal in *Stokker v. Storoschuk*, 2018 ONCA 2 stated (at paras. 5-8):

The appeal judge held that the master erred in applying the first leg of the test by not considering the overall delay from the inception of the litigation. In our view, the master was correct to give focus to the period following the March 17, 2016 consent order and timetable. Where delay has been addressed in a prior court order, or consented to, it is any subsequent delay that requires explanation.

For this reason, in *Christie Corp. v. Lee*, 29 C.P.C. (4th) 181 (Ont. C.A.), this court confined the relevant period of delay in a r. 24 motion to dismiss for delay to the period of delay that occurred after a consent amendment to the plaintiff's statement of claim. Prior delay was implicitly excused by the defendant when they consented to the amendment. The same principle applies to a motions under r. 48 to restore an action to the trial list.

Thus, in *Gill v. Khindria*, 2016 ONSC 5057 it was held, correctly in our view, that in a r. 48.11 motion, the court should only consider delay subsequent to a consent order withdrawing a motion to dismiss.

The master did not err, therefore, in focusing on the period after the r. 48.14(4) consent order was made. Indeed, in this case there was no delay subsequent to the order, as the appellant had met the imposed deadline of August 18, 2016. The master was therefore correct to reinstate the action to the trial list.

[8] In summary, the proper disposition of this motion is to have it tried as soon as possible. I will order that it be placed on the trial list for the upcoming blitz in September 2026, which is a time both counsel advise they are available.

[9] If the plaintiff wishes to seek costs of this motion, it should provide a brief written submission within 3 weeks of the release of this endorsement and the defendant municipality may respond within 3 weeks of receiving the plaintiff's submission.

Justice Charles T. Hackland

Date: January 5, 2026

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Released: January 5, 2026