

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Ural Link Ltd. v. Hennigar Trucking Limited*, 2025 NSSC 322

**Date:** 20251014

**Docket:** Hfx No. 536826

**Registry:** Halifax

**Between:**

Ural Link Ltd. carrying on business as 2M7 Financial Solutions

*Plaintiff*

v.

Hennigar Trucking Limited, Drew Hennigar, and Gregory Lee Hennigar

*Defendants*

**Judge:** The Honourable Justice John A. Keith

**Heard:** By Correspondence

**Counsel:** Sarah Dobson, for the Plaintiff

**By the Court:**

**Introduction**

[1] The Plaintiff Ural Link Ltd. carrying on business as 2M7 Financial Solution (“**2M7 Financial**”) seeks an extension of time to serve its Statement of Claim on one of the named Defendants.

[2] This motion was brought within fourteen (14) months of the claim being filed and so Rule 4.04(2) applies. It states: “A plaintiff may make a motion to renew a notice of action for a second year by filing a notice of motion no more than fourteen months after the day the notice of action is filed.”

[3] 2M7 Financial also asks that this matter be determined under Rule 27.03(1)(g) which allows a motion to be made by correspondence where “...a judge permits”.

[4] For the reasons which follow:

1. Permission is granted to make this motion by correspondence; and
2. Respectfully, the submissions presented in favour of the motion to extend time are not in keeping with either the language or the underlying purpose of Rule 4.04. The supporting affidavit evidence is correspondingly insufficient. On an exceptional basis and in the interest of justice, leave is granted to file additional affidavits providing further details as to its efforts at service. I shall remain seized of this motion.

**Motion May be Made By Correspondence**

[5] I agree this matter may be made by correspondence. Motions to extend the time to notify/serve defendants are common. They can usually be processed more effectively, efficiently, and inexpensively through correspondence under Rule 27.03(1)(g). Exceptions will arise, but this is not one.

## **Motion to Extend Time to Serve**

[6] By way of background, on September 20, 2024, 2M7 Financial filed this action under Rule 57 (Action for Damages Under \$150,000) seeking repayment of debt in the amount of \$28,778.00 plus interest and costs.

[7] Within the first twelve (12) months of filing the action, 2M7 Financial notified by personal service two of the three named defendants:

1. Drew Hennigar on September 30, 2025; and
2. Hennigar Trucking Limited on October 12, 2024.

[8] 2M7 Financial followed this up with Default Judgment against both Hennigar Trucking Limited and Drew Hennigar on January 23, 2025 and then an Execution Order against these same Defendants on September 12, 2025.

[9] 2M7 Financial did not manage to personally serve the third and final defendant, Gregory Lee Hennigar.

[10] Under Rule 4.04(1), the action against Gregory Hennigar was deemed to have expired on September 20, 2025.

[11] Under Rule 4.04(2), a plaintiff may renew an otherwise expired action by “filing a notice of motion no more than fourteen months after the day the notice of action is filed.” On October 1, 2025 (i.e. within fourteen months after this action originally being filed), 2M7 Financial filed the requisite notice of motion under Rule 4.04(2). The motion is supported by a solicitor’s affidavit sworn September 29, 2025 which simply states:

Attempts were made to serve [the Defendant] Gregory Lee Hennigar between September 30, 2024 and October 12, 2024. Mr. Hennigar was not located. The Defendant Gregory Lee Hennigar has therefore not been served in this action.

The affidavit provides no further detail is provided. Reviewing the file, it might be supposed that 2M7 Financial attempted to serve Gregory Hennigar on the same days they served the other two defendants. However, this is an assumption.

[12] 2M7 Financials’ written submissions do not engage with the affidavit evidence regarding service because, it contends, a motion under Rule 4.04(2) places

“... no onus on the Plaintiff to show, for example, that reasonable effort [at personal service] have been made.” The basis for this argument is that:

Rule 4.04 makes a distinction between motions for renewal made within 14 months of the filing of the action, and motions for renewal made outside the 14-month window. In the latter context, certain conditions must be met in order for an action to be renewed.

[13] The implication is that relief under Rule 4.04(2) is effectively unconditional and ought be routinely granted virtually as of right – regardless of whether anything was done to advance the action during the first twelve (12) months following the original filing (i.e. before the action expires under Rule 4.01(1)).

[14] Respectfully, I disagree. There is scant caselaw on Rule 4.01(2). A brief decision explaining my concerns is warranted.

[15] An interpretation that would not require the plaintiff to make any reasonable efforts to notify or otherwise engage with the defendant within the first twelve (12) months distorts the proper interpretation of the applicable Rules; is unfair and potentially, unnecessarily prejudicial; and fails to fulfill the promise of either Rule 1.01 or the Supreme Court of Canada’s call for interpreting *Civil Procedure Rules* in a way that promotes efficient and proportionate proceedings (*Hyrniak v. Mauldin*, 2014 SCC 7).

[16] My reasons include:

1. Commencing a civil action against a defendant is a serious matter. A civil action levels factual allegations against the named defendant(s) in pursuit of a judicial remedy. If granted, the remedy is reduced to a Court Order. The plaintiff might then call upon the state to assist in enforcing that Order against the defendant. Given the serious implications, the defendant is entitled to expect to be notified under the Rules – and that the plaintiff will make reasonable efforts to effect such notice.

The integrity of the process is also dependent on relatively timely notice. A defendant who is unaware of an outstanding claim may lose or inadvertently destroy relevant evidence thus undermining both its own interests and the presumption for full disclosure under Rule 14.08.

At the same time, plaintiffs should be given a reasonable opportunity to notify defendants and advance their claims. A rule that places undue urgency on notification or imposes an overly draconian penalty for failure to immediately provide notice is equally unjust.

Rule 4.04 reflects a compromise position which balances these competing concerns. The plaintiff is given twelve (12) months to notify the defendant before the action is deemed to have expired. To further ensure a result that does not precipitously or unfairly deny a plaintiff's access to justice, the evidentiary standard for renewal under Rule 4.04(2) that is relatively low. I return to this issue below. Suffice it to say that a plaintiff may not have to do much to justify relief under Rule 4.04(2). However, the plaintiff cannot do nothing.

2. In my view, 2M7 Financials' interpretation in this case does not properly align with the wording and spirit of Rule 4.04; and leads to avoidably negative results. Consider the following:
  - a. Rule 4.04(1) confirms that that an action "...expires one year after the day it is filed, unless a defendant is notified of the action in accordance with Rule 31 – notice". This Rule ensures that an action allowed to is not left to languish, with the defendant being entirely unaware of it. It deems the action to be dead (or expired) if the defendant is not notified under Rule 31. The focus on notification within the first twelve (12) months in Rule 4.04(1) is inconsistent with an alleged presumption that no reasonable steps to notify the defendant need be taken within that same period of time;
  - b. If the Plaintiff's interpretation prevails, a plaintiff could conceivably do virtually nothing to advance the claim for the first twelve (12) months; file a perfunctory motion under Rule 4.04(2) before the fourteenth (14th) month expires; and then languidly wait almost 10 more months to advance the action. Put differently, a plaintiff could virtually do nothing for twenty four (24) months. For clarity, I am not suggesting that this is what the Plaintiff in this action has done or intends to do. My point is simply that this interpretation may encourage unreasonable delay. Plaintiffs are not entitled to file actions and then, for no apparent reason (and no reason to give a reason),

do nothing for almost two years. The defendant, the public and the Court are entitled to more;

- c. Rule 4.04(6) states that an action may be renewed after fourteen (14) months if either of these two conditions are met:
  - i. Rule 4.04(6)(a): Reasonable efforts to notify the defendant of the action by effecting personal service; those reasonable efforts were unsuccessful; and the plaintiff will make a motion for a substituted method of giving notice as soon as possible; or
  - ii. Rule 4.04(6)(b): Inadvertence led to the expiry, the plaintiff will suffer serious prejudice if the proceeding is terminated, and no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

As to Rule 4.04(6)(a), the wording is mandatory and clear: the plaintiff must have made reasonable efforts to effect personal service which proved unsuccessful and the plaintiff must also make a motion for substitute service as soon as possible. The language clearly implies that the plaintiff made prior efforts at personal service sufficient to satisfy the requirements of Rule 31.10 (“Order for substituted method of giving notice of proceeding”). Otherwise, there would be no need to mention (let alone oblige the plaintiff to immediately bring) a motion for substituted service.

Consider how 2M7 Financials’ arguments would impact the interpretation of that Rule 4.04(6)(a) for plaintiffs who made no reasonable efforts at personal service in the first twelve (12) months. If 2M7 Financials’ interpretation is accepted, Rule 4.04(6)(a) would only benefit plaintiffs who made no reasonable efforts within twelve months, obtained a renewal, and were given a second chance to try and effect service. Those other plaintiffs who also made no reasonable efforts at personal service within twelve (12) months but failed to obtain a renewal wouldn’t qualify for relief because they could not meet the requirements of Rule 4.04(6)(a). In other words, 2M7 Financials’ interpretation rewards the inaction and delay of some plaintiffs but not others who were arguably guilty of the

same sin. In my view, this interpretation undermines the rule's intent and fairness. Instead, Rule 4.04 places upon all plaintiffs the same obligation to make reasonable personal service efforts within the first twelve (12) months - and similarly treats all plaintiffs (not some) in a comparatively fair and equal manner should they fail to do so.

As to the second possible condition (Rule 4.04(6)(b)), the evidentiary burden is more onerous. The plaintiff must now satisfy the judge that "inadvertence led to the expiry". The judge must also conclude that not only that the plaintiff will suffer a "serious" prejudice if the action is deemed expired but that the defendant will not suffer a "serious" prejudice that cannot be compensated for with costs. As a preliminary note, the action only expires because the defendant has not been notified of the claim (Rule 4.04(1)). Thus, while "inadvertence" may signify an innocent mistake or oversight, any such inadvertence, mistake, or oversight relates to a failure to personally serve the defendant or take reasonable efforts to advance the action. (*Langdale v. Register.com*, 2016 NSSC 171, ("**Langdale**"), at paras. 12 – 17) More substantively for the purposes of this motion, the additional evidentiary burden in Rule 4.04(6)(b) arises because, despite the passage of considerable time, the plaintiffs efforts at personal service have proven insufficient to support even a motion for substituted service under Rule 4.4(6)(a).

[17] In my view, the only fair and reasonable interpretation of Rule 4.04(2) is that the plaintiff must:

1. Bring a motion before the fourteenth (14th) month following the filing of the claim expires or, in other words, in the two months between the twelfth (12th) month (when the action expires under Rule 4.04(1) and the fourteenth (14th) month, when the right to bring a motion under Rule 4.04(2) expires. On this, I note that Rule 4.04(2) offers an additional two months to resurrect and renew an otherwise expired action because it avoids prematurely compelling plaintiffs to bring renewal motions before the claim expires after twelve (12) months. Put slightly differently, it allows plaintiffs a full twelve (12) months

- to advance the action and then offers some additional time and flexibility (i.e. another two months) to file a motion for renewal; and
2. Present evidence demonstrating reasonable efforts at advancing the action within the first twelve (12) months of the action being filed (i.e. before the action expires). This may include evidence detailing attempts at notification under Rule 31; or that a defendant must be aware of the existing action, even if personal service had not been formally achieved; or, subject to settlement privilege, evidence of reasonable and good faith attempts to engage with the defendant (including through the defendant's insurer, if applicable) for the purpose of resolution. Again, the threshold is low but it is not nothing.

[18] In my view, relief under Rule 4.04(2) is also available to a plaintiff who failed to take any reasonable steps to effect personal service or advance the action within the first twelve (12) months of filing the action. A plaintiff who quickly realizes that an action has expired under Rule 4.04(1) should not be required to wait until the action is fourteen (14) months old before seeking relief under Rule 4.04(6). However, where a plaintiff seeks relief under Rule 4.04(2) but has taken no reasonable steps to advance the action, the evidentiary burden changes and increases somewhat. The Court may consider the following factors, without limitation: whether the evidence reveals a reasonable explanation for the inadvertence; whether the plaintiffs have taken other steps to move the matter forward (i.e. the action has not simply laid fallow); and the plaintiff's plan to move the matter forward.

[19] The burden is not as onerous as Rule 4.04(6) where, for example, the Court considers the competing prejudices of the plaintiff and defendant. (see *Gale v. Morash*, 2015 NSSC 316, *Tam Hampson 20/20 Design Inc. v. Kreuger-Naug*, 2016 NSSC 217; *Langdale*; and *Thornton v. RBC General Insurance Co. / Cie d'Assurance Generale RBC*, 2014 NSSC 215). This is because the plaintiff has moved under Rule 4.04(2) – not Rule 4.04(6). As such, the underlying delay is not as significant. In addition, the plaintiff has demonstrated somewhat greater vigilance by moving relatively quickly after the action expired. At the same time, as indicated, the somewhat increased burden reinforces and impresses upon delinquent plaintiffs the importance of taking steps to advance the action before it expires under Rule 4.01.

[20] Applying the law in this case, I do not have sufficient evidence to properly assess the plaintiff's renewal request. That said and as mentioned, the jurisprudence surrounding Rule 4.04(2) is comparatively scant. In the circumstances, it is

appropriate to provide the Plaintiff with an opportunity to file further affidavit material and submissions describing in greater detail the efforts at serving the third Defendant (Gregory Hennigar) or, alternatively, evidence at engaging this third Defendant. I ask that this additional material be filed on or before October 22, 2025.

I will remain seized of the matter in the interim.

Keith, J.