

**CITATION:** *Helmer et al v. GRC Architects Inc et al* 2026 ONSC 1046  
**COURT FILE NO.:** CV-20-84430  
**DATE:** 2026/02/20

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** James Helmer and Shelley Ann Helmer, Plaintiffs

**AND:**

GRC Architects Inc., Goodkey, Weedmark & Associates Limited, Demarco Construction Limited, Ralco Masonry & Construction Ltd., Kelly Brickworks & Masonry Inc., 156652 Canada Inc. Db a Encore Steel, Waltex Wall Systems Inc., Khalid Issa Db a Waltex Wall Systems Inc., Rgz Cambridge Inc., Arrow Mech Plumbing Inc., Fireside Gas Products Inc., Maxi Power Electrical Services Inc., Fendor Glass & Aluminum (1993) Inc., Dpro Inc. Db a Dalmen Pro and Produits Dalmen Products Ltd. Db a Dalmen Pro, Defendants

**BEFORE:** Rees J.

**COUNSEL:** Kyle A. MacLean, for the Plaintiffs/Moving Parties

Ian B. McBride for the Defendant/Responding Party DeMarco Construction Ltd.

Andrew D. Ferguson for the Defendant/Responding Party RGZ Cambridge Inc.

**HEARD:** February 17, 2026

**ENDORSEMENT**

**Overview**

[1] The plaintiffs, James Helmer and Shelley Ann Helmer, move under r. 48.14(5) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for a status hearing to show cause why this action should not be dismissed for delay. They seek an order to extend the deadline to set the action down for trial.

[2] The defendant DeMarco Construction Limited opposes the relief sought by the plaintiffs. The other active defendants consent to the extension sought.

[3] For the reasons that follow, I am satisfied that an order extending the deadline to set the action down for trial should be made.

**Analysis**

[4] Subrule 48.14(1) requires the registrar to dismiss an action for delay if it has not been set down for trial, or otherwise terminated, within five years of its commencement. Under r. 48.14(5),

a party may bring a motion for a status hearing before that deadline. At a status hearing, the court may dismiss the action for delay under r. 48.14(7), or, if satisfied that the action should proceed, may impose a timetable for the remaining steps and set a new deadline for setting the action down for trial.

[5] Under r. 48.14(7), the plaintiff on a status hearing bears the onus of satisfying a two-part conjunctive test demonstrating: (1) that there is an acceptable explanation for the delay; and (2) that if the action is allowed to proceed, the defendant would suffer no non-compensable prejudice because of the plaintiff's delay: *Faris v. Eftimovski*, 2013 ONCA 360, 363 D.L.R. (4th) 111, at para. 42; *Southwestern Sales Corporation Limited v. Spurr Bros. Ltd.*, 2016 ONCA 590, 132 O.R. (3d) 794, at para. 13; and *1116227 Ontario Ltd. v. Telus Communication Company*, 2022 ONCA 287, at para. 2. See also *Lépine et al v. Bruce Marshall*, 2026 ONSC 531, for a recent and helpful synthesis of the applicable principles.

[6] The plaintiffs argue that there is a reasonable explanation for the delay and that DeMarco Construction will suffer no non-compensable prejudice because of the delay if the action were permitted to proceed.

[7] By contrast, DeMarco Construction argues that the plaintiffs have failed to provide any reasonable explanation for the extensive and prolonged delay in advancing the action. It contends that the delay is significant, inordinate, and inexcusable. DeMarco Construction also argues that the plaintiffs' delay has caused it substantial prejudice because Tom DeMarco—its primary and only witness with direct knowledge of the project—has died. It says that, as a result, its ability to meaningfully investigate, respond to, and defend against the claims advanced in this proceeding has been severely and irreparably impaired.

***The plaintiffs have provided an adequate explanation for the delay***

[8] First, I am satisfied that there is an acceptable explanation for the delay. The court should not become unduly focused on any particular period of delay but must consider the full context and the overall justice of the case. The court's ultimate task is to balance the policy objectives of adjudicating civil actions on their merits and ensuring that they proceed in a timely and efficient manner: *Lépine*, at para. 37. When I review the steps taken in this action holistically, the delay was not inordinate.

[9] As DeMarco Construction acknowledged at the hearing, this is a complex construction action which initially had 16 defendants. There are now six active defendants.<sup>1</sup>

[10] The timeline is as follows:

- On September 11, 2020, the Notice of Action was issued.

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<sup>1</sup> The defendant, Walltex Wall Systems Inc., was served with the notice of action and statement of claim but did not deliver a statement of defence. Walltex has been noted in default. Service was attempted but has not succeeded for the defendant, Khalid Issa dba Waltex Wall Systems Inc. Issa has not participated in this action.

- On October 9, 2020, the plaintiffs filed a Statement of Claim.
- On November 2, 2020, the plaintiffs discontinued this action as against 156652 Canada Inc. cba Encore Steel, Fireside Gas Products Inc., Maxi Power Electrical Services Inc., Fendor Glass & Aluminum (1993) Inc., DPRO Inc. dba Dalmen Pro, and Produits Dalmen Products Ltd. dba Dalmen Pro.
- On September 23, 2020, the defendant, Ralco Masonry & Construction Ltd., filed a notice of bankruptcy. The action remains stayed as against Ralco.
- Affidavits of documents were exchanged.
- Examinations for discovery were originally to be held from October 31 to November 4, 2022. They were rescheduled, except for the discoveries of Mr. DeMarco and the representative of Arrow Mech Plumbing Inc., which took place in September 2023.
- In April 2023, the discoveries of the remaining parties were held.
- On December 8, 2023, counsel for the defendant, Kelly Brickworks & Masonry Inc., advised that it was no longer in business, was insolvent, and would not be participating further in the action.
- By December 18, 2023, a mediation was scheduled for July 15, 2024. The mediation had to be rescheduled because the plaintiffs had not completed their outstanding undertakings by May 2024.
- On March 18, 2025, the plaintiffs provided their answers to undertakings. The plaintiffs contemplate delivering expert reports in compliance with r. 53.03.
- The plaintiffs canvassed mediation dates for the summer of 2025. Given the number of parties and counsel, the earliest the parties could schedule a mediation was in February 2026.
- Mr. DeMarco passed away on August 20, 2025.
- The deadline to set this matter down for trial was September 14, 2025.

[11] The main delay here was the plaintiffs answering their undertakings. In my view, the plaintiffs have provided an acceptable explanation for the delay in providing their answers to undertakings. Ms. Helmer's health made it difficult to respond to undertakings. She deposed that she has been struggling with fatigue, chronic pain, and migraines. She has been diagnosed with genetic and chronic health conditions and has been on long-term disability since the birth of their third child. Her health needs, combined with childcare responsibilities, have placed an additional burden on Mr. Helmer.

[12] The difficulty in rescheduling the mediation is adequately explained through the competing schedules of the parties and counsel.

[13] Further, when I consider the overall progress of the litigation, the delay was not unreasonable. The action was moving forward, even if the pace was at times slow. As the court observed in *Lépine*, at para. 36: “Slow progress, even slower than ideal, does not necessarily amount to an inadequate explanation; the standard is reasonableness, not perfection.”

[14] DeMarco Construction relies on *Green v. Green*, 2012 ONSC 1099 and *DK Manufacturing Group Ltd. v. MDF Mechanical Limited*, 2019 ONSC 6853.

[15] In *Green*, the plaintiff relied on depression and anxiety to explain more than four years of inactivity. The court held that the plaintiff’s evidence lacked particulars, failed to identify any efforts taken during the delay, and that the plaintiff had to address what steps had been taken other than “simply waiting”: at para. 24.

[16] The present case is distinguishable. The plaintiffs here moved the action forward. While there was a period of over two years in which the plaintiffs had not completed their outstanding undertakings, I am satisfied that Ms. Helmer’s health and family circumstances provide an adequate explanation. The litigation was also not at a standstill—the plaintiffs were actively pursuing mediation, even though their failure to complete their undertakings caused delay.

[17] While I acknowledge that Robinson A.J. held in *DK Manufacturing*, at para. 32, that “statements made by deponents of affidavits should, wherever possible, be supported by documentary evidence”, I do not accept DeMarco Construction’s submission that because there is no exhibit evidence produced by Ms. Helmer to substantiate her health conditions, that there are significant credibility concerns. DeMarco Construction did not cross-examine her on her affidavit. In the absence of contrary evidence, I am satisfied with her evidence explaining the cause of the delay.

***The prejudice of Mr. DeMarco’s passing is not attributable to the plaintiffs and, in any event, is attenuated***

[18] I now turn to the second, conjunctive element of the test—the prejudice component.

[19] Although I accept that the loss of Mr. DeMarco’s evidence prejudices DeMarco Construction to a certain extent, I find that the resulting prejudice is not attributable to the plaintiffs’ delay.

[20] Mr. DeMarco passed away about three weeks before the deadline to set this matter down for trial. The plaintiffs had sought dates to hold a mediation over the summer of 2025, but due to conflicting schedules of multiple counsel, they could not find a suitable date until February 2026. Even if the plaintiffs had met the deadline to set the action down for trial, Mr. DeMarco would still have passed away before the deadline and well before a trial could be held.

[21] Further, the prejudice to DeMarco Construction is attenuated in this case: *Belay v. Ages*, 2015 ONSC 2377. First, Mr. DeMarco’s evidence from discovery is available to parties. Under r.

31.11(6)(a), any party may, with leave of the trial judge, read into evidence all or part of the discovery evidence of a person who has died. Second, there is extensive documentary productions available to the parties from the construction project.

### ***Conclusion***

[22] Ultimately, the plaintiffs seek a seven-month extension of the deadline to set the action down for trial, excluding the time required to hear this motion. Weighing all the relevant factors, I am satisfied that granting the plaintiffs an extension of time to set the action down for trial is a just result.

[23] DeMarco Construction argued in the alternative that I should order that the plaintiffs be prohibited from serving any expert reports or calling expert evidence at trial because Mr. DeMarco is unavailable to assist and instruct them in responding.

[24] I do not accept this submission. As the plaintiffs explained at the hearing, they expect to adduce two categories of expert opinion evidence at trial. The first relates to design deficiencies, and this is not relevant to the claim against DeMarco Construction. The second category relates to construction delays, which is relevant to the claim against DeMarco Construction. I accept the plaintiffs' submission that this latter opinion evidence will be based on the records produced in the litigation—including the project schedule, minutes of meetings, and the records of what was done and not done—rather than Mr. DeMarco's personal recollection. DeMarco Construction has access to the same documentary production in instructing a responding expert. There is no suggestion from DeMarco Construction that the project in dispute was not well documented.

### **Disposition**

[25] Accordingly, I grant the plaintiffs' motion.

[26] Mandatory mediation shall be completed by August 31, 2026, which can be varied by mutual consent of the parties. The deadline to set the action down for trial is extended to September 15, 2026.

[27] The plaintiffs seek costs and disbursements of \$6,948.05, all inclusive, on a partial indemnity basis. Had DeMarco Construction been successful, it would have sought \$7,859.51.

[28] The plaintiffs have been successful and are entitled to costs. Having reviewed the parties' costs outlines, I fix costs in the amount of \$6,500, all inclusive.

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Justice Owen Rees

**Date: February 20, 2026**