

CITATION: Vasilief v. Conforti, 2026 ONSC 1506
COURT FILE NO.: CV-24-717502-00CL
DATE: 20260312

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DIMITRIOS VASILIEF

Applicant

AND:

ALESSANDRO CONFORTI, AKA CONFORTI SANDRA, 12811871 CANADA INC, DBA IWINDOWS, PHILIPPE KYRITSIS, KONSTANTINO FOULIDIS AKA DANNY FOULIDIS, EPAL WINDOWS & DOORS INC., 15768993 CANADA INC. and DBA IWINDOWSDOORS

Respondents

BEFORE: JUSTICE W.D. BLACK

COUNSEL: *Patrick Bakos & Maneetpal Khera*, for the Plaintiff

Emily Evangelista & Soumyaa Sharma, for the Defendants Konstantino Foulidis & 15768993 Canada Inc

Heather Douglas & Jeremy Rizzetto, for the Defendants Alessandro Conforti, Sandra Conforti and Philippe Kyritsis

HEARD: March 6, 2026

ENDORSEMENT

Overview

[1] This was a troubling pair of motions, each seeking to set aside an order that I made on January 27, 2025 (the “January 2025 Order”). In this endorsement I will use terms as defined in the parties’ materials and in my prior endorsements herein.

[2] The troubling aspects of the motion relate to the involvement of a lawyer, John Ormston, who previously acted for all respondents in this application. As will be seen below, Mr. Ormston appears to have experienced problems in his personal and/or professional life – the details of which are unknown to the court at this time– leading him to let down and mislead at least these former clients, with disastrous consequences to the parties and to the court’s process. The residue of Mr. Ormston’s conduct and disappearance from these proceedings is a tangled mess, which is unfair to the parties, and to the court, and requires difficult choices about which imperfect scenario to choose to try to repair the damage in Mr. Ormston’s wake.

[3] Mr. Ormston has been notified, including at my direction, of these motions and of the fact that his conduct is being aired in this setting, and has been encouraged to engage counsel and to attend and participate in these proceedings to the extent appropriate and feasible, but he has not seen fit to attend or otherwise to make any response. This continued avoidance by Mr. Ormston of the consequences of his behaviour compounds the court's disappointment with that behaviour, and the difficulty of putting the pieces back together.

[4] Each set of respondents now has (separate) new counsel and have respectively instructed their new counsel to bring these motions to set aside relief that they allege was not reported to them at the relevant time and was continuously concealed from them for some months thereafter.

Conclusion

[5] While that case is stronger for one set of respondents than for the other, I have reluctantly concluded, for the reasons that follow, that my January 2025 Order must be set aside in part, and that the respondents should have an opportunity to contest the applicants' motion leading to that order with respect to those aspects of the motion in which the respondents had, or may have had, a potentially meritorious position to assert.

Relevant Background

[6] Part of the complexity of determining just how much of the proceeding and the order to unravel relates to the preceding history of the matter, during which time, up to a point, it is not suggested that the respondents were unaware of steps taken by the applicant.

[7] In that regard, in my endorsement accompanying the January 2025 Order, I noted specifically that the respondents had failed to comply with my previous order of May 27, 2024, and the order of Osborne J. (as he then was) dated June 11, 2024. The respondents had also failed to pay a modest costs order awarded by Kimmel J. on September 11, 2024. I also observed in my endorsement that the breaches of those orders were ongoing as of January 27, 2025 and would "continue to damage the iWindows business at the core of this dispute."

[8] It is also clear, however, that I had an inkling as of January 27, 2025 that there may have been problems arising from Mr. Ormston's role. I declined at that time to grant the finding of contempt that the applicant sought, saying: "There is or may be something amiss in the relationship between Mr. Ormston and his clients, and in any event, while very concerning, the evidence before me does not unequivocally make out the element of intent required in *Carey v. Laiken*, 2015 SCC 17."

[9] I went on to find that, nonetheless, there was "considerable evidence that the respondents have breached and/or ignored orders of this court, and those breaches are sufficient to give rise to the other aspects of the order sought." The January 2025 Order contained significant relief, including striking the respondents' pleadings, ordering access to respondents' bank records, and allowing for recovery of personal property.

[10] It was in the late spring and fall of 2025, when the applicant was taking steps to enforce and execute the provisions of the January 2025 Order, that concerns regarding the state of the respondents' information about that order came to light.

[11] As noted above, the way in which the order and the effort to execute on that order came to the attention of the respondents, and the respective respondents' response to those developments, differed as between the two groups of respondents.

How the Order Came to the Attention of the Foulidis Respondents, and the Steps They Took

[12] In the case of the Foulidis Respondents, when the January 2025 Order came to their attention in May of 2025 they (Mr. Foudilis) contacted Mr. Ormston, according to Mr. Foulidis' affidavit before me, to inquire as to why they had not previously been made aware of the January 2025 Order, nor of the motion pursuant to which that order arose.

Mr. Ormston's First Apparent Lie

[13] Mr. Foulidis' evidence is that Mr. Ormston told Mr. Foulidis that he (Mr. Ormston) had not been served with the motion.

[14] It appears clear from the materials that this was not true – Mr. Ormston was in fact served with materials for that motion – but the evidence from Mr. Foulidis about his interactions with Mr. Ormston are supported by contemporaneous correspondence between them.

[15] In that regard, and by way of additional context, Mr. Foulidis' effectively uncontradicted evidence is that he had first engaged Mr. Ormston in this matter in April of 2024, at which time Mr. Ormston had been recommended to him as an experienced commercial litigator. Mr. Ormston delivered a Notice of Appearance on behalf of all of the respondents on April 26, 2024.

[16] Of note, Mr. Foulidis subsequently retained Mr. Ormston to represent him and/or his corporate interests in various other proceedings (unrelated to the current matter).

[17] Mr. Foulidis says that Mr. Ormston kept him generally apprised of the relevant events in this proceeding at least until July of 2024. He says that Mr. Ormston told him about my order of May 27, 2024 and the order of Osborne J. on June 10, 2024, both of which orders Mr. Foudilis understood were made on consent. Mr. Foulidis also confirms that a forensic accountant was retained to assist in tracing funds into and out of 128iWindows and related corporations, with a view to complying with Osborne J.'s June 10, 2024 order.

[18] Mr. Foudilis acknowledges that he received copies of Mr. Ormston's emails to counsel dated July 5 and 6, 2024, which included copies of cheques to 157iWindowsDoors and the return of those funds to 128iWindows.

[19] These emails, Mr. Foudilis reasonably asserts, suggested to him that Mr. Ormston was taking steps to comply with the 2024 orders, and he says that Mr. Ormston never told him that the applicant had raised issues of non-compliance with the orders by Mr. Foudilis or his company 157iWindowsDoors. Mr. Foudilis also reports that he met with Mr. Ormston frequently after July

6, 2024 in the context of the other matters in which Mr. Ormston was representing Mr. Foudilis, and that Mr. Ormston advised him, when he asked about the status of this matter, that it had “gone quiet.”

[20] Consistent with this characterization, Mr. Foudilis says that from August 2024 onwards, Mr. Ormston did not communicate with him about this matter, such that Mr. Foudilis was unaware of the January 27, 2025 motion before me based on the respondents’ non-compliance with my order of May 2024 and Osborne J.’s order of June 2024.

[21] Mr. Foudilis says that he first learned of the January 2025 Order on May 16, 2025, when he heard from Mr. Kyritsis (another respondent herein) that day that the Sheriff had attended at his address at 935 Sandy Beach Road in Pickering, Ontario to attempt to enforce the January 2025 Order. Mr. Kyritsis texted pictures to Mr. Foudilis of the January 2025 Order that the Sheriff provided to him. Mr. Foudilis in turn sent the photographs to Mr. Ormston, with the subject line: “Bizarre court order.”

[22] According to Mr. Foudilis, Mr. Ormston responded saying he was “shocked” by the January 2025 Order and “had no idea what it was about.” Many of the communications between Mr. Foudilis and Mr. Ormston about which Mr. Foudilis deposes in his evidence are taken verbatim from exchanges of texts between the two of them during the relevant period. The texts were in the record before me, and no issue was raised about their authenticity. I accept that they were sent and received during the relevant timeframe.

[23] Concerning Mr. Ormston’s avowed lack of knowledge of the January 27, 2025 hearing, as mentioned above, this is simply untrue. I note that Mr. Ormston is recorded as having attended before Osborne J. at the December 12, 2024 hearing at which Osborne J. set the January 27, 2025 date. I also note that in my endorsement for the January 2025 Order, in refusing to adjourn the motion again, I pointed out that, the motion having already been adjourned once, the respondents had had considerable notice of the hearing date, and ample opportunity to file responding materials.

[24] Critically, I also recorded that applicant’s counsel told me that Mr. Ormston had called him that morning, had advised applicant’s counsel that he (Mr. Ormston) had suffered a medical issue that had required him to go to hospital the night before, and that the medical issue was preventing Mr. Ormston from attending at court that morning.

[25] In refusing the adjournment, I observed that Mr. Ormston’s recent ailment did not explain the respondents’ failure to deliver responding materials, and that they “could have and should have” delivered those materials well before the day of the motion.

[26] I note these items not to rekindle the debate about whether the adjournment should have been granted, but simply to underline that Mr. Ormston was clearly aware of the January 27, 2025 motion, contrary to what he is alleged to have told Mr. Foudilis.

[27] I also note an important proposition with respect to my order of May 2024 and Osborne J.’s order of June 2024 and the difference between the relief ordered thereunder, on one hand, versus the January 2025 Order. That is, the respondents were clearly aware of the 2024 orders; in

Mr. Foudilis' own evidence he confirms his understanding that those orders were made on consent, and that Mr. Foudilis was in fact endeavoring to provide the necessary information (via Mr. Ormston) to comply with those orders.

[28] Accordingly, whatever flows from the respondents' purported unawareness of the January 2025 Order, it in no way derogates from the respondents' awareness of and obligation to comply with the 2024 orders, and the fact that, as of January 27, 2025, they had failed to do so (whether or not they were aware of the motion that day).

After His Initial Apparent Lie, Mr. Ormston Compounds the Problem

[29] Returning to the events of 2025, after (falsely) telling Mr. Foudilis that he had been unaware of the January 27, 2025 motion, Mr. Ormston told Mr. Foudilis, according to Mr. Foudilis' account, that he (Mr. Ormston) would bring a motion to set the January 2025 Order aside. This was the first in a series of further lies and bizarre fabrications by Mr. Ormston.

[30] Mr. Ormston is alleged to have told Mr. Foudilis that the January 2025 Order would inevitably be set aside because Mr. Ormston had had no notice of it (again, this was not true). Mr. Foudilis said he was anxious about the impact of the January 2025 Order on his ability to do business and operate his personal accounts. Mr. Ormston is said to have reassured Mr. Foudilis that the January 2025 Order was stayed pending a decision on the motion that Mr. Ormston would be bringing to set it aside.

[31] Mr. Foudilis' personal bank account was then garnisheed in early June of 2025. Mr. Ormston's response to Mr. Foudilis' "frantic pleas for help" in those circumstances caused his lies to start down the road from disturbing to irretrievably damning. That is, Mr. Ormston told Mr. Foudilis on June 18, 2025 that he had spoken with the court that day, and had been told that "they think that they can get us a judge early next week."

[32] On June 25, 2025, Mr. Ormston doubled down, telling Mr. Foudilis: "We will be in court next Tues. I spoke to the sheriff office. They are holding funds until further order of the court."

[33] On July 2, 2025, the purported date of the hearing, in response to Mr. Foudilis' inquiries, Mr. Ormston responded that he was "just on morning break" and that he would "message as soon as done." When Mr. Foudilis asked how the hearing was going, Mr. Ormston replied: "Good."

[34] At some point, Mr. Ormston told Mr. Foudilis that the July 2, 2025 motion was before Cavanagh J. This was simply untrue. There was no such motion.

[35] In July of 2025, Mr. Foudilis heard from a customer of the business that the January 2025 Order had been served on that customer (as part of executing on the order). Mr. Foudilis immediately contacted Mr. Ormston, seeking confirmation of Mr. Ormston's previous advice that the order should have been stayed pending the judge's decision and asking Mr. Ormston to contact the Applicants' lawyer to advise him of the Applicants' inappropriate conduct. Mr. Ormston replied: "Danny I will."

[36] Mr. Foudilis and Mr. Ormston met for breakfast in September of 2025. At that point, Mr. Foudilis asked about when to expect the decision, asking “And will you be contacting Judge Cavanaugh’s (sic) office re the delay, does he care if my personal world is frozen that garnishment.” Mr. Ormston replied “Got it, thanks, and thanks again for breakfast.”

[37] When 157iWindowsDoors’ corporate bank account was thereafter garnisheed, Mr. Foudilis asked Mr. Ormston if they had lost the July 2, 2025 motion to set aside the January 2025 Order, and sent him a screenshot of the company’s online banking portal. Mr. Ormston told Mr. Foudilis that he would follow up with the bank, and that if the January 2025 Order would be set aside, the garnishment would be set aside as well.

[38] Somewhere during this timeframe, Mr. Ormston also told Mr. Foudilis that, because of the delay in receiving a decision from Cavanagh J., Mr. Ormston had contacted Kimmel J. (presumably in her capacity as team lead for the Commercial List) to inquire about that delay.

[39] On November 4, 2025, in response to Mr. Foudilis’ request for an update because he was desperate to access his accounts, Mr. Ormston texted: “no message from Kimmel. I have followed up again.” On November 7, 2025, again in response to Mr. Foudilis’ request for an update, Mr. Ormston reported: “I heard from her this morning. Decision will be rendered on or before Nov. 21.”

[40] On November 24, 2025, having heard nothing more, Mr. Foudilis contacted Mr. Ormston. Mr. Ormston said he was in northern Ontario, that he did not have access to email and that his cell service was “spotty.”

[41] In the circumstances, Mr. Foudilis decided to attend at the courthouse himself on November 25, 2025 to see if he could obtain a copy of Cavanagh J.’s decision (which Kimmel J. had allegedly told Mr. Ormston would be released by November 21).

[42] Mr. Foudilis was told that there was no record of any motion before Cavanagh J. or any other judge seeking to set aside the January 2025 Order. Mr. Foudilis, shocked, again contacted Mr. Ormston, who replied that he was now “tracking down the contact person for (Chief) Justice Morawetz.”

[43] On November 28, 2025, Mr. Ormston forwarded to Mr. Foudilis a copy of an email he had purportedly sent to Morawetz CJC’s Judicial Assistant, Ms. Livingston.

[44] In this remarkable email, Mr. Ormston wrote:

“Justice Morawetz, I act for the respondent in this application, Danny Foudilis.

An order was obtained on January 27, 2025 that made a cost award against my client. I was not served. I brought a motion before Justice Cavanagh of the Commercial List on July 2, 2025 to set aside the order. We have not received a decision and the garnishment continues to have a very detrimental impact on my client.

Can you inquire and let me know when we can expect a decision.”

[45] On December 1, 2025, Mr. Foudilis asked if there had been a reply. Mr. Ormston said: “Not yet. I will follow up.”

[46] When Mr. Foudilis received nothing further, he attempted to email Ms. Livingston himself, only to learn that the email could not be delivered to the email address that Mr. Ormston had used.

[47] Now deeply suspicious, Mr. Foudilis confronted Mr. Ormston in person at Mr. Ormston’s home office on December 4, 2025. At that time Mr. Foudilis says that Mr. Ormston admitted that he had not brought the motion he had purported to have argued on July 2, 2025 to set aside the January 2025 Order. Mr. Ormston advised Mr. Foudilis that he would contact LawPro and send his file so that Mr. Foudilis could get another lawyer.

[48] In a poignant text after that meeting, Mr. Ormston told Mr. Foudilis that he (Mr. Ormston) was “sick to his stomach” for “betraying” Mr. Foudilis, and that he would do whatever was necessary to make it right.

[49] I note that, despite that assurance, and despite my admonition to Mr. Ormston (by endorsement) that he should engage counsel and may wish to attend court in these proceedings, there has been no sign of Mr. Ormston since, apparently, his attendance before Osborne J. in June of 2024.

Conclusions re Mr. Ormston’s Conduct

[50] I also observe that Mr. Ormston’s use of the word “betrayal” is apt. It appears clear that:

- a. Mr. Ormston lied to his clients (at that point all respondents) about not knowing of the motion before me on January 27, 2025;
- b. Lied about bringing a motion to set aside the January 2025 Order;
- c. Lied about the alleged hearing of that motion by Cavanagh J. on July 2, 2025;
- d. Lied about contacting Kimmel J. (as team lead) to inquire about the delay in and timing for the release of Cavanagh J.’s purportedly outstanding decision;
- e. Lied about various alleged contacts with court staff relative to these matters; and,
- f. Fabricated the false email to Morawetz CJC (via his judicial assistant) ostensibly requesting that His Honour intervene and/or provide information about the expected timing for Cavanagh J.’s decision.

[51] I also do not know what would cause someone like Mr. Ormston, whom I know to be a senior counsel, not only to fail to advise his client(s) about adverse events and outcomes, but then to significantly compound the problems by lying about having attended in court, and fabricating correspondence and related communications purporting to confirm the (non-existent) court hearing.

[52] It does a terrible disservice not only to Mr. Ormston’s client(s) but to the profession and to the administration of justice when a member of the profession disgraces himself and the process in this way. I hope that Mr. Ormston will seek the help it appears he needs.

[53] Mr. Ormston’s conduct also means, at least in the case of Mr. Foudilis, that the evidence before me satisfies a substantial component of the test by which a court will consider setting aside its order.

Test Under Rule 37.14 to Set Aside an Order and Discussion of Relevant Caselaw

[54] That test is set out in Rule 37.14, and has been considered on a number of occasions by this court, including recently in the decision of Charney J. in *Aluminum Window Design Installations Inc. v. Grandview Living Inc.*, 2020 ONSC 1294. In that case, the facts of which bear a striking similarity to the evidence before me in many respects, His Honour discussed and applied the five-part test for the operation of Rule 37.14 established by Strathy J. (as he then was) in *Ontario (Attorney General) v. 15 Johnswood Crescent*, 2009 CanLII 50751 (ON SC).

[55] In *Aluminum Window*, Charney J. first recited the elements of Rule 37.14:

“[45] Rule 37.14 provides:

37.14(1) A party or other person who,

- (a) is affected by an order obtained on motion without notice;
- (b) fails to appear on a motion through accident, mistake or insufficient notice; or
- (c) is affected by an order of a registrar,

may move to set aside or vary the order, by notice of motion that is served forthwith after the order comes to the person’s attention and names the first available hearing date that is at least three days after service of the notice of motion.

(2) On a motion under subrule (1), the court may set aside or vary the order on such terms as are just”.

[56] Justice Charney then cited Strathy J.’s decision in *15 Johnswood*, initially outlining the purpose of Rule 37.14:

“...to prevent unfairness or, worse, a miscarriage of justice, where a party’s inadvertence or the absence of sufficient notice has resulted in an order being obtained without that party being afforded an opportunity to present his or her case. A party who does not appear in these circumstances will usually be given a chance to present evidence and to argue the motion on its merits, assuming he or she moves promptly and provided there are no countervailing considerations.”

[57] In *15 Johnswood*, Strathy J. then set out the following five factors, which have been regularly cited since, including by Charney J. in *Aluminum Window*, to be considered in the court's exercise of its discretion in the application of Rule 37.14:

(1) Proof of accident or mistake: The moving party must establish a failure to appear on the original motion through accident, mistake or insufficient notice. This is a precondition to relief under the rule. A party who has simply chosen not to appear on a motion cannot complain later if he or she does not like the outcome.

(2) the party must move forthwith after the order comes to his or her attention. This is also a precondition to relief under the rule, but there is room for flexibility in the interpretation of "forthwith" depending on the circumstances.

(3) the length of the delay and the reasons for it: In considering whether to set aside an order, the court will consider whether there has been delay in bringing the motion and the reason for it. All other things being equal, the longer an order has been in effect, particularly where parties have acquired rights or changed their position as a result of the order, the less likely it will be that the court will set it aside.

(4) the presence or absence of prejudice: The court should consider whether a party will be prejudiced by setting aside the order or by failing to set aside the order. There will always be prejudice if an order is made against a party without sufficient notice and there will always be some kind of prejudice to the other party if the order is set aside. Nevertheless, the exercise of the court's discretion may require an examination of the relative prejudice to the parties.

(5) the underlying merits of the moving party's case: It may be necessary to consider the underlying merits of the moving party's case in weighing the various factors, balancing the interests of the parties, and determining what is just in the circumstances. Lengthy delays in bringing the motion may be more readily forgiven if the moving party has a very strong case on the merits. It will be less readily forgiven if the party's case appears frivolous."

[58] In *Aluminum Window*, Charney J. was dealing with circumstances in which a lawyer, who was suffering from diagnosed and pervasive mental health issues, had, like Mr. Ormston in the case at hand, failed to report to his clients about various steps in the proceedings, including orders in this court and the Court of Appeal for Ontario that were adverse to the clients' interests, and which had been obtained in the absence of opposition from the lawyer (and without the clients' knowledge).

[59] As in the case before me, the delinquent lawyer before Charney J. had repeatedly reassured his clients, in response to their increasingly alarmed and anxious inquiries, that he was "looking after things." That lawyer, like Mr. Ormston, had also ignored and failed to report a number of problematic events and developments, doing nothing while a series of orders deepened the hole into which the clients, unbeknownst to them were sinking.

[60] That lawyer did not go so far as Mr. Ormston has in the case before me, in that there is no suggestion that the lawyer before Charney J. actively fabricated purported proceedings and communications to cover his tracks.

[61] Nonetheless, like the respondents before me, the abandoned clients in *Aluminum Window* eventually had to engage new counsel, and had to bring a motion under Rule 37.14.

[62] In the context of that motion, and in considering the first *Johnswood* factor, “accident or mistake,” Charney J. started with the proposition enshrined in the Court of Appeal for Ontario’s decision in *Graham v. Vandersloot*, 2012 ONCA 60, in which the court commended “the often applied principle that the sins of the lawyer should not be visited upon the client.”

[63] Justice Charney then adopted the words of Laskin J.A. in *Finlay v. Van Paasen*, 2010 ONCA 204 that:

“In my view, on a motion to set aside a dismissal order, the court should be concerned primarily with the rights of the litigants, not with the conduct of their counsel. As Sharpe J.A. noted in *Marche*, at para 28, “The law will not ordinarily allow an innocent client to suffer the irrevocable loss of the right to proceed by reason of the inadvertence of his or her solicitor.”

[64] Finally, in concluding that the circumstances before him qualified as “accident or mistake” for purposes of Rule 37.14, Charney J. relied on Nordheimer J.(as he then was)’s decision in *Gerling Global General Insurance C. v. Siskind, Cromarty, Ivey & Dowler*, 2002:

“Dealing first with the issue of whether the summary judgment should be set aside, the medical evidence regarding the illness of the plaintiff’s former solicitor makes it clear that the solicitor was incapable of properly dealing with the affairs of his client. It is equally clear that the plaintiff’s former solicitor failed to respond to the summary judgment motion as a consequence of the illness under which he was labouring and not through any informed or conscious decision not to attend. In fairness, the defendants do not dispute this fact. In my view, those circumstances would constitute a failure to appear through “accident or mistake” as those terms are used in rule 37.14...and provide sufficient grounds to set aside the summary judgment that was granted.”

[65] I acknowledge that in the case before me there is no medical evidence to the effect that Mr. Ormston suffers or has suffered from an illness impacting his conduct. As such, while I have concerns about the implications and origins of Mr. Ormston’s conduct, I cannot definitively say that the conduct is a result of a medical condition. However, in my view, this lack of explanatory evidence should not redound against the moving parties. Mr. Ormston has apparently decided to stay out of the fray caused by his conduct, and declined to attend at or in any way participate in these proceedings for many months. The respondents cannot be held accountable for Mr. Ormston’s poor choices.

[66] The next *Johnswood* factor, which highlights a difference between the positions of the different sets of respondents, and thereby raises interesting questions, relates to the imperative, under Rule 37.14, to move “forthwith” to set aside or vary the order at issue.

[67] I note that in *Johnswood* itself, in discussing this criterion, Strathy J. described the “room for flexibility in the interpretation of “forthwith” depending on the circumstances.”

[68] In *Aluminum Window*, Charney J acknowledged that in the case before him there had been a delay of 18 months in bringing the Rule 37.14 motion, and that “Under normal circumstances, a delay of 18 months would be fatal for a Rule 37.14 motion.”

[69] However, Charney J. found, nonetheless, that “the defendants have demonstrated an intention to defend the action and challenge the strike order throughout the proceedings, and their failure to bring a Rule 37.14 motion “forthwith” was solely the result of bad legal advice.”

[70] Further, and akin to the situation before me, Charney J. observed that:

“The evidence indicates that the defendants at all times intended to challenge the strike order, instructed their lawyer to do so immediately, and indeed were under the misapprehension that their lawyer was actively doing so. The defendants did not simply sit on their hands, but repeatedly and regularly communicated with their lawyer to move the proceeding along, only to be misled by their lawyer, who assured them that he was “taking care of it.”

[71] In my view, these observations hold equally true concerning the intentions and actions of Mr. Foulidis and his company in the matter at hand.

[72] Mr. Foudilis regularly contacted Mr. Ormston and was repeatedly told that Mr. Ormston was taking care of the problem, even to the point of pretending he was bringing and had argued a motion to set aside my January 2025 Order.

[73] I find that, notwithstanding the delay of just over a year between my January 2025 Order and Mr. Foudilis bringing this motion, he meets the test for bringing his motion “forthwith”.

Test Under Rule 37.14 to Set Aside an Order and Discussion of Caselaw

[74] I do not reach the same conclusion regarding the remaining respondents (the “Conforti respondents”).

[75] The evidence (in an affidavit of Philippe Kyritsis sworn January 29, 2026) from those respondents is that, in the midst of the attempts by the applicant at execution (of the January 2025 Order) in the late spring of 2025, and given their inability to reach or hear from Mr. Ormston, these respondents – Philippe Kyritsis and Sandra Conforti – engaged new counsel during that timeframe, serving a notice of change of solicitors on May 28, 2025.

[76] However, although there is evidence of a somewhat desultory attempt by new counsel into the fall of 2025 to contact Mr. Ormston and to obtain his file, there is no evidence that new counsel

acted with dispatch to schedule a motion under Rule 37.14, despite being aware of the January 2025 Order and despite these respondents' information that the order had been obtained without notice to them and was being enforced.

[77] In fact, these respondents first sought to schedule a motion under Rule 37.14 at a case conference before me on December 3, 2025 (at which neither Mr. Foudilis nor of course Mr. Ormston attended). As my endorsement from that case conference reflects, it was only when faced with the applicant's renewed attempt to schedule a contempt motion that Mr. Kyritsis and Ms. Conforti asked to schedule a Rule 37.14 motion.

[78] It is evident, in my endorsement, that I had concerns about these respondents' ability to satisfy the "forthwith" requirement of the rule. I wrote (in paragraph 9 of the endorsement for that day):

"I have some misgivings about the Conforti respondents' position, given the lack of evidence before me at this point. Given the test for a motion under Rule 37.14, they will also have to explain the hiatus between May of 2025, when it appears the Confortis retained their current counsel and learned of my January 27, 2025 order, and their request raised for the first time in the context of today's case conference, over six months later."

[79] In the circumstances, while I was prepared to take steps to schedule this motion, I specifically admonished the Conforti respondents to schedule the motion "promptly" and observed that "any delay in that regard is unlikely to help the Confortis' position."

[80] There is very little attempt in these respondents' material before me today to explain the delay between May 28, 2025 when they engaged new counsel until the request in early December of 2025 to schedule this motion. Had these respondents been the only parties before me bringing a Rule 37.14 motion, I would not have granted it. I find that the motion was not brought "forthwith" and that even the "flexibility" described and endorsed by Strathy J. in *Johnswood* would not assist these respondents in the absence of evidence to explain the delay.

Granting Rule 37.14 Relief to Only One Set of Respondents is Not Feasible

[81] However, I also find that it will cause tremendous uncertainty and an unmanageable disparity and disequilibrium between the two sets of respondents if I order that one of them, and not the other, be bound by the January 2025 Order.

[82] In particular, in the first two paragraphs of the January 2025 Order, I ordered that the respondents' responding materials were struck and that the matter was to proceed to an unopposed hearing of the application. The positions of the respective sets of respondents, and the evidence on which they will or may rely, is inextricably interwoven: the risk of inconsistent findings if I, in effect, consign one set of respondents to judgment against them, and allow the other set of respondents to defend the case on the basis of evidence on which the first set of respondents would also have relied had I not struck their pleadings, is clear.

[83] It is also unwieldy to grant to the applicant, as I did in paragraph 15 of the January 2025 Order, “sole full authority and decision-making power with respect to iWindows, including without limitation to remove the respondent, Alessandra Conforti aka Sandra Conforti, as an officer and director.” If I am leaving Mr. Foudilis the ability to respond to the motion, which I have determined to do, then it is at least premature to grant sole authority to the applicant and to allow him to remove Ms. Conforti from office.

[84] These are but a couple of obvious examples of the procedural uncertainty and perhaps chaos that will ensue if I allow the January 2025 Order to stand against one set of respondents and not the other.

[85] Having reached the conclusions that I have to this point, I think there is little utility in reviewing the balance of the *Johnswood* factors in detail. The third factor, as to the length of the delay and the explanation for that delay is subsumed in the discussion above concerning the interpretation of “forthwith” in the circumstances of this case.

[86] As to the fourth *Johnswood* factor, I find that, owing in particular to the conduct of Mr. Ormston, there is prejudice all around. Clearly there is and has been prejudice to the respondents as a result of the January 2025 Order having been made against them, and of course having to go to the time and expense of bringing the motions herein. For the applicants, they have proceeded to a considerable extent on the basis of the January 2025 Order being in effect, have undoubtedly incurred time and expense in those steps, and have incurred the expense of responding to this motion.

[87] There is some difficulty, as discussed below, in determining the balance of competing prejudice, and, turning now to the fifth *Johnswood* factor, in assessing the merits of the parties’ underlying positions.

Where Does the Matter Go From Here?

[88] Part of the difficulty in determining those issues, and deciding where this matter goes from here, is that it is evident that, with respect to the balance of the January 2025 Order, (i.e. beyond paragraphs 1, 2, and 15 discussed above) the applicants have taken some enforcement steps, including, I believe, accessing iWindows’ bank accounts and statements, obtaining information about the customer lists of iWindows and iWindowsDoors, and recovering personal property under Rule 44.

[89] As I mentioned above, it is also the case that setting aside the January 2025 Order does not relieve the respondents from compliance with my order of May 27, 2024 and Osborne J.’s order of June 10, 2024, which themselves required production of substantial information, including customer and supplier lists, bank statements, detailed information about jobs completed and payments made and received by the respondents, and recovery by the applicants of various personal property in the possession of the respondents.

[90] It is not clear to me exactly what compliance has taken place to this point pursuant to my May 27, 2024 order, Osborne J.’s June 10, 2024 order, and/or the January 2025 Order. Even though I am prepared to set aside the January 2025 Order, it may not be possible, to the extent

disclosures have been made thereunder, and to the extent that information and property have been produced to the applicants, to “put the toothpaste back in the tube.” Moreover, to the extent that some of the productions and disclosures were originally mandated by the May and June, 2024 Orders, which were made on consent and remain in effect, it would not be appropriate to reverse those orders in any event.

[91] Based on the current circumstances, and my findings above, I order (or where applicable direct) as follows:

- a. The respondents’ motions under Rule 37.14 are granted, to the extent that no further steps are required by the respondents at this time to comply with the January 2025 Order;
- b. The parties are to schedule a 90-minute case conference before me, at a mutually convenient time, at which they are to attend with:
 - i. Detailed lists of what steps have been taken, and what information and/or property has been produced by the respondents pursuant to, respectively, my order of May 27, 2024, Osborne J.’s order of June 10, 2024, and the January 2025 Order;
 - ii. I expect the parties to confer and to agree, to the extent possible, with respect to item i. above.
- c. At the case conference, I will determine which such steps and productions should remain in place (which will depend in part on the interplay between and among the three orders discussed in i. above), and which steps and productions, if any, should be reversed;
- d. If required to resolve any disputes on those items, I will schedule a further motion;
- e. In terms of the costs of these motions, I find as follows:
 - i. In my view the applicant is entitled to his costs of this motion. The applicant has incurred the time associated with responding to these motions necessitated by the conduct of the respondents’ former counsel and, to an extent, the delay of at least one set of respondents in moving. I find that that partial indemnity is the correct scale, and that the costs claimed in the applicants’ costs outline should be reduced in respect of costs claimed for case conferences and for certain steps in enforcing the January 2025 Order, inasmuch as I have yet to determine whether the results of such steps are to be reversed. I fix the applicants’ partial indemnity costs of this motion at \$60,000 (all-inclusive).
 - ii. While the Foudilis respondents are liable for 50% of those costs, they are entitled to recover all such costs from Mr. Ormston personally. While Mr. Ormston was not present on the motion, I have previously advised him to obtain counsel and to participate as required, and his former clients specifically claimed, as part of their motion, costs against Mr. Ormston personally. In any event given his conduct as described above, I have no difficulty in finding him liable for these costs;

- iii. The Conforti respondents are liable for the balance of those costs, and are not entitled to recover those costs from Mr. Ormston (as noted, but for the success of the Foudilis parties' motion, I would not have granted an order in favour of the Conforti respondents).

Justice W.D. Black

Date: March 12, 2026