Court of King's Bench of Alberta

Citation: Urban Square Holdings Ltd v Del Fisher Insurance Inc, 2025 ABKB 54

Date: 20250129
Docket: 1901 04164
Registry: Calgary

Between:

Urban Square Holdings Ltd.

Plaintiff

-and-

Dominion of Canada General Insurance Company of Canada Operating as Travelers Canada and Del Fisher Insurance

Defendants

Reasons for Decision of the Honourable Justice J.C. Price

I. Introduction

[1] This is an appeal by the Defendant, Del Fisher Insurance Inc. ("Fisher") of the Order of Application Judge Mason ("AJ Mason"), granted on May 25, 2023, deeming service of the Statement of Claim filed by the Plaintiff, Urban Square Holdings Ltd. ("Urban"), valid and effective as of March 26, 2019 (the "Service Order").

[2] Fisher disputes that service of the Statement of Claim filed by Urban on March 22, 2019 (the "Claim") was effected within the time allowed for service. Fisher asks that I allow their appeal and set aside the Service Order granted by AJ Mason and that I dismiss Urban's application for alternative relief to extend the time to serve the Claim that was not addressed by AJ Mason in her reasons.

[3] The other named Defendant, Dominion of Canada General Insurance Company of Canada Operating as Travelers Canada ("Travelers"), did not oppose the application made by Urban to validate or extend the time for service of the Claim and is not a party to this appeal.

[4] Briefly, the Claim arose as a result of a fire that took place at a shopping centre owned by Urban on March 25, 2017. Urban alleges that Travelers failed to pay the full amount owing under

a policy of insurance it had for the shopping centre, and that Fisher, which brokered the policy, failed to advise and obtain sufficient insurance coverage for the shopping centre, which resulted in Urban being underinsured and suffering losses and damages in excess of $2 million.

[5] By letter dated January 21, 2021, counsel for Fisher advised counsel for Urban that they planned to seek instructions to file a statement of defence but wanted confirmation of the date of service of the Claim. Urban was not able to provide the requested confirmation of service, and Fisher was not prepared to agree that service was effected. In the result, Urban applied to the Court for an order validating service of the Claim, or alternatively, for an extension of time to serve the Claim on Fisher.

[6] After reviewing the materials provided and hearing oral submissions made by counsel for the parties, AJ Mason gave oral reasons validating service of the Claim. AJ Mason found that Fisher had both knowledge of the Claim and notice that legal rights were engaged within the time permitted by law for service. Given her finding that service of the Claim had been made within the time prescribed by the *Alberta Rules of Court*, Alta Reg 124/2010 ("*Rules*"), AJ Mason did not deem it necessary to address in her oral reasons Urban's alternative relief sought to extend the time for service.

[7] The issues in this appeal are a) whether service of the Claim should be validated; or b) whether time for service of the Claim should be extended.

[8] For the reasons that follow, I find that AJ Mason's oral reasons for decision were correct in both fact and in law. I am satisfied, based on my own review of the evidence on the record before me, that the method of service by Urban brought the Claim to the attention of Fisher such that Fisher had knowledge of the Claim and knew that its rights were being engaged at the very latest by May 15, 2020, within the time permitted by law. Accordingly, Fisher's appeal is dismissed.

II. Standard of Review

[9] It is not disputed by the parties that an appeal of an applications judge's judgment or order is *de novo* and that the standard of review is correctness: ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at para 30.

[10] Rule 6.14 of the *Rules* governs appeals from an applications judge's decision. An appeal is on the record of proceedings before the applications judge and may include additional evidence if that evidence is relevant and material.

[11] In this case, the record and the submissions that were made before AJ Mason are substantially the same as they are before me. To be clear, no new evidence was filed by either Urban or Fisher.

[12] When an appeal involves the same record and submissions, the judge hearing the appeal may summarily describe their analysis and conclusions with reference to the applications judge's decision if that decision is otherwise correct in fact and law: ***HOOPP Realty Inc v Emery Jamieson LLP***, 2020 ABCA 159 at para 41; ***Western Energy Services Corp v Savanna Energy Services Corp***, 2023 ABCA 125 at para 74.

[13] The record in this appeal includes the following:

(a) Application filed May 12, 2021, by Urban;

(b) Affidavit of Howard Lowenstein, sworn and filed May 12, 2021, submitted by Urban;

(c) Supplementary Affidavit of Mr. Lowenstein sworn April 28, 2023, and filed May 6, 2023, submitted by Urban;

(d) Affidavit of Jenna Woodland, sworn April 28, 2023, and filed May 6, 2023, submitted by Urban;

(e) Transcript of the Oral Questioning of Mr. Lowenstein held June 17, 2021, on Affidavit sworn and filed May 12, 2021 (Transcript filed June 30, 2021);

(f) Answers to Undertakings from Questioning of Mr. Lowenstein on June 17, 2021;

(g) Transcript of AJ Mason decision pronounced orally on May 25, 2023;

(h) Full transcript of the proceedings held before AJ Mason on May 25, 2023;

(i) Order of AJ Mason pronounced May 25, 2023, and filed on July 7, 2023; and

(j) Notice of Appeal of AJ Mason's Judgment or Order filed July 1, 2023, by Fisher.

III. Background

[14] Urban owned a shopping centre that was damaged by fire on March 25, 2017. The shopping centre was insured by the Defendant, Travelers. Fisher brokered the policy of insurance for Urban.

[15] In August 2017, Urban retained legal counsel, Mr. Lowenstein, of Fric, Lowenstein & Co. LLP ("FLC"), to represent its interests in the matter.

[16] FLC contacted Fisher regarding the fire on August 22, 2017. Thereafter, Fisher retained legal counsel, Mr. Heinsen, of Borden Ladner Gervais LLP ("BLG"). FLC first made contact with BLG with respect to the matter in November 2017.

[17] Urban attempted to resolve the insurance coverage dispute with both Travelers and Fisher regarding the damages and loss it suffered from the fire at the shopping centre. Several communications were exchanged, mostly from FLC trying to engage settlement discussions. One such letter from FLC to BLG dated May 22, 2018, states:

> *Further to our letters of May 3, 2018 and May 14, 2018, may we please have your immediate attention and reply. We prefer not to issue a Statement of Claim if there is still a possibility of resolving this matter without having to do so.*

[18] A further letter from FLC to BLG dated June 4, 2018, states:

> *Further to our letters of May 3, 2018, May 14, 2018 and May 2, 2018 [sic], we note that we have still not heard from you and we cannot allow this to go on indefinitely without a response if there is any possibility of resolving this matter.*
>
> *If we do not hear from you by June 15, 2018, we will assume that there is no possibility of resolving this matter and we will then immediately thereafter issue a Statement of Claim to protect our client's interests.*

[19] On June 5, 2018, Mr. Heinsen of BLG replies by email and states:

> *Howard, I'm in receipt of your correspondence of yesterday. We've now reviewed the further materials you provided and are seeking instructions. I am going to be out of the office for two weeks as of Monday. I would ask that you postpone filing until the beginning of July.*

[20] On the same date, June 5, 2018, Mr. Lowenstein of FLC responded to Mr. Heinsen's email and stated: "*I will extend to beginning of July but don't want to delay further unless the [sic] is a real possibility of a resolution*."

[21] Despite efforts made by the parties, they were evidently not able to resolve the dispute. The limitation period to file a statement of claim was approaching. It is clear, based on the communications exchanged between the parties to this date, that Urban filed its Claim to preserve its right to pursue the Defendants within the limitation period for filing a statement of claim, as set out in the *Limitations Act*, RSA 2000, c L-12.

[22] Urban filed its Claim within time on March 22, 2019, and on March 26, 2019, FLC sent a copy of the Claim to counsel for each of the Defendants.

[23] As mentioned above, Travelers did not oppose Urban's application to validate service and is thus not a party to this appeal, so very few facts pertaining to the communications that Urban had with Travelers are referred to herein. The majority of these background facts are focussed on the relevant communications between counsel for Urban (FLC) and counsel for Fisher (BLG).

[24] The covering letter from FLC dated March 26, 2019, enclosing the Claim, sent on a without prejudice basis to BLG, states:

> *Further to this matter enclosed please find for your reference a copy of the Statement of Claim filed in this matter. We are not formally serving it at this time, and do not require a Statement of Defence at this time as we are waiting for word from Travelers Canada with regard to proceeding with the dispute resolution process under the Insurance Act.*

[25] After sending a copy of Urban's claim to BLG, FLC sent many further communications to BLG, the dates and relevant content of these communications are as follows:

(a) On June 26, 2019, FLC wrote to BLG regarding the matter. The contents of this letter are almost entirely redacted. The inference is that this letter contains content protected by settlement privilege. FLC sent follow up letters to BLG on July 10, 2019, July 30, 2019, and August 15, 2019.

(b) On September 10, 2019, BLG contacted FLC by email. The email contained one sentence: "*Hello-we are reviewing the matter with our client and will be back to you shortly*."

(c) FLC wrote to BLG on November 12 and 28, 2019, following up on its earlier correspondence and again received no substantive response. The next letter from FLC to BLG was sent on January 13, 2020. This letter was sent on a without prejudice basis. None of the content of this letter is redacted. This letter states in its entirety:

> *Further to this matter and our letter of November 28, 2019, as we have still not heard from you with respect to this matter, we believe that we have no alternative but to proceed with Questioning in this matter and filing of Affidavits of Records. Please advise as to available dates over the next few months in order that a mutually convenient date can be arranged.*

I find that despite this letter indicating that it is sent on a without prejudice basis, there is nothing contained in the letter that is protected by settlement privilege, and I accept Urban's position that it was inadvertently marked as without prejudice.

(d) Following receipt of that letter, on January 23, 2020, BLG sent a letter that purports to outline Fisher's position. The letter states "*We refer you to your letters dated May 3, 2018, and June 26, 2019, as the starting point of this discussion*."

This letter is also marked on a without prejudice basis. It is clear by the significant redactions that much of the letter contains communications protected by settlement privilege. Furthermore, the letter indicates that it is responding to correspondence from FLC dated May 3, 2018, and June 26, 2019. It is clear from my review of this letter from BLG that there is no content that responds to FLC's letter of January 13, 2020. As noted above, the January 13, 2020, letter notifies counsel for Fisher that Urban was proceeding with the litigation: "*...we believe we have no alternative but to proceed with Questioning in this matter and filing of Affidavits of Records.*"

Notably, on the last page of the January 23, 2020, letter from BLG, it states: "...As we are all interested in resolving this matter as promptly as possible...If you would please advise which of these times would work for you... BLG would be pleased to host the meeting. We look forward to meeting with you."

(e) On January 28, 2020, FLC sends a letter marked without prejudice attaching Urban's Affidavit of Records sworn on January 23, 2020, by Jas Sahota, Urban's corporate representative. The letter simply states, "Further to this matter, please find enclosed our client's sworn Affidavit of Records."

From review of the Affidavit of Records, it appears to contain a description under Schedule I of all the relevant and material records under Urban's control for which it has no objection to produce. I find that despite the covering letter enclosing the Affidavit of Records being marked without prejudice, it was inadvertently marked

as such. There are no privileged communications in the letter or in the contents of the enclosure itself.

(f) On March 9, 2020, FLC wrote to counsel for each of Fisher and Travelers and stated as follows:

> *Further to this matter, we were trying to convene a meeting between the writer, Mr. Hagg and Mr. Heinsen to see if there was any possibility of resolving this matter before we arrange for formal Questioning and we therefore look forward to advice from each of your offices as to your availability during the rest of March and the first half of April in order that we can convene such a meeting.*
>
> *If we are unable to come to an arrangement for a date for such a meeting to be held by the middle of April, we will proceed to arrange Questioning in accordance with the provisions of the Rules of Court. We therefore look forward to hearing from you.*

Again, this letter was marked without prejudice, but it is clear that the letter does not contain any privileged without prejudice content.

(g) On March 16, 2020, after hearing from counsel for Travelers, FLC sent an email to BLG seeking their availability to meet. However, due to the Covid-19 Pandemic (the "Pandemic"), the parties agreed to postpone the meeting. Counsel for Urban commenced working from home.

(h) On May 15, 2020, BLG contacted FLC requesting copies of the documents listed in Urban's Affidavit of Records. FLC sent the records requested on the same date.

(i) On August 26, 2020, FLC wrote to counsel seeking to reconvene the meeting that had been postponed due to the Pandemic or to proceed with questioning. The letter states:

> *...if you are not prepared to be involved in such a meeting to attempt to resolve this matter we will need to proceed to arrange for formal questioning.*

(j) On September 28, 2020, BLG wrote to FLC. The letter includes the following statements:

> *In response to Mr. Lowenstein's letter dated August 26, 2020, we are interested in meeting to discuss the insurance coverage available. ...*
>
> *We would also like to discuss your client's interest in the three parties mutually retaining a quantity surveyor to assist with the determination of coverage. ...*
>
> *...We are hopeful that a discussion as proposed by Mr. Lowenstein will lead to a resolution of this matter.*

(k) On September 30, 2020, FLC wrote to BLG advising:

> *We are in agreement with your position and wish to have this matter move forward as quickly as possible, either by a meeting between the three of us as we proposed many months ago, or through the Court process if necessary as this matter has dragged on far too long.*

(l) Despite the efforts made towards resolution, FLC received an email from BLG on January 21, 2021, requesting a copy of the affidavit of service of the Claim on Fisher. On January 22, 2021, FLC wrote to BLG to advise that it could not locate the affidavit of service, but that the matter should proceed because of Rule 11.27. On March 3, 2021, a letter was received by FLC from BLG dated January 25, 2021, advising that the Claim was a nullity because it was not served on Fisher.

[26] Mr. Lowenstein deposed in his Affidavit filed on May 12, 2021, at paras 31 to 33, as follows:

> *As a result of the numerous dealings that we had with the lawyers for the Defendants, I firmly believe that the Defendants had knowledge of the Statement of Claim and that the Plaintiff intended to proceed with the claim. In particular, we served an affidavit of records and requested to proceed with questioning. Furthermore, the lawyers for both Defendants requested copies of the documents listed in Schedule 1 of the Affidavit of Records and Mr. Hagg served a Request for Particulars.*
>
> *The lack of personal service was due to the fact that one year time limit came right during the beginning of the pandemic and the confusion that created due to having to transition to working from home. This was also compounded by the fact that the legal assistant that was handling this file on behalf of FLC left FLC's employ at the same time. When I returned to the office near the end of June 2020 and noted that affidavit of records had been sent, that both Defendants requested documents listed in Schedule 1 of the Affidavit and because we received a Request for Particulars, I believed that the Statement of Claim was already served.*
>
> *Additionally, both Defendants continued to deal with the claim without raising any issue regarding service of the Statement of Claim until January 21, 2021. I firmly believe that the Defendants and their legal counsel also believed that service of the Statement of Claim was not an issue and proceeded on that basis. This service issue has only been raised to try to obtain a litigation advantage.*

[27] This affidavit evidence of Mr. Lowenstein was tested on cross-examination held on June 17, 2021. I reviewed the transcript of his cross-examination; Mr. Lowenstein did not waver in his testimony.

[28] Urban's application for an order validating service pursuant to Rule 11.27, or in the alternative, for an order for an extension of time for service pursuant to Rule 3.27 was filed on May 12, 2021.

[29] The application was set down for a Special Chambers Application and heard by AJ Mason on May 25, 2023. AJ Mason rendered her decision orally on the same date. AJ Mason granted Urban's application validating service of the Claim effective March 26, 2019. Given her findings and ruling, AJ Mason did not address the alternative relief sought by Urban.

[30] Fisher filed an appeal of AJ Mason's Order on July 21, 2023. That appeal was heard by me on January 15, 2025.

IV. Law and Analysis

A. Should service of the Claim be validated under Rule 11.27?

[31] Rule 3.26 requires that a statement of claim be served within one year from the date it was filed unless an application is made that could extend service for up to 3 months beyond that date.

[32] Fisher says that it knew of the Claim but did not have the requisite notice that its rights were being engaged within the one-year period as required by Rule 3.26. It takes the position that Urban had until June 8, 2020, to serve the Claim. This date takes into consideration the 75-day extension for limitation periods that was ordered pursuant to *Ministerial Order* 27/2020 (Alta) ("*MO 27/2020*"). *MO 27/2020* suspended limitation periods from March 17, 2020, to June 1, 2020, after "*a state of public health emergency in Alberta due to pandemic COVID-19"* was declared. There is no dispute that June 8, 2020, was the deadline for Urban to serve the Claim.

[33] Fisher's position arises because, when Urban served the Claim on counsel on March 26, 2019, the Claim was sent under cover of a letter that specifically indicated that the Claim was being sent for reference only, was not being formally served, and that the Statement of Defence was not required at the time. Courts have held that when a claim is being provided to a defendant under the understanding that it is not being served then no method of service has been undertaken.

[34] For there to be service, "the document must be conveyed in a context that makes it clear rights are being engaged": ***1226911 Alberta Ltd v Redecopp***, 2012 ABQB 776 at para 30, citing ***Sandhu v MEG Place LP Investment Corporation***, 2012 ABCA 266 at para 23.

[35] In ***Zahmol Properties Ltd v Calgary (City)***, 2012 ABCA 89 at para 16, the Court stated:

> Sometimes legal processes are commenced in order to crystallize rights, without a final decision having been made as to whether the action will be triggered by service and prosecuted. Sometimes knowledge of an action or proceeding is conveyed without intending to affect legal rights, as when a "courtesy copy" of legal process is provided. Where the knowledge of the legal process is conveyed without an intention to affect legal rights, there is generally no "service". [citations omitted]

[36] The purpose of service is for the defendant to have knowledge of the claim so that it can choose to defend itself: ***Goodwin v Goodwin***, 2022 ABQB 520 at para 27 [***Goodwin***]. Service is a question of fact that does not require "a magical or formalistic ritual," but service does require that the defendant be aware that their rights have been engaged: ***Goodwin*** at para 27, citing ***Al-Ghamdi v Alberta***, 2017 ABQB 684 at para 317, aff'd 2020 ABCA 81, leave to appeal refused [2020] SCCA No 363.

[37] In this case, Fisher says, service was not effected when counsel received the Claim in March 2019. I agree. As at that date, service of the Claim was not effected on Fisher. The issue is whether the subsequent communications Fisher received put Fisher on notice that Urban intended to prosecute the Claim and that rights were being engaged.

[38] It is not disputed that Urban did not serve Fisher by any of the usual methods, i.e., by sending the Claim by recorded mail, addressed to Fisher at its principal place of business, or by obtaining confirmation from BLG that it accepted service of the Claim on Fisher's behalf. If either of those methods of service could be proved, there would not have been the need for Urban to have applied for relief pursuant to Rule 11.27(1).

[39] Rule 11.27(1) provides that the Court may, on application, make an order validating the service of a document in a manner not specified by the *Rules*, if the Court is satisfied that the method of service used brought or was likely to have brought the document to the attention of the person to be served.

[40] As set out by W.A. Stevenson & J.E. Côté, in the *Alberta Civil Procedure Handbook* 2022, (Edmonton: Juriliber, 2022) at p 11-51:

> Service is a practical question, not a theoretical or ritualistic one, and unconventional forms of service which actually produce notice will suffice ... It does not matter whether service is direct or indirect.

[41] In order to validate service under Rule 11.27, the Court must be satisfied that there was a method of service that brought or was likely to bring the claim to the attention of the party to be served.

[42] In this case, when FLC provided BLG with a copy of the Claim, it is clear that the copy it provided was on a courtesy basis, and so service was not effected as of March 26, 2019. The fact that service was not effected as of March 26, 2019, is not disputed by Urban. If that was the only communication that Urban was relying on to prove service was effected, it would be in trouble, as the Court has found that delivery of a statement of claim by such a method does not constitute service. For example, in ***Hansraj v Ao***, 2004 ABCA 223 [***Hansraj***], a case cited by AJ Mason in her oral reasons, a letter to the adjuster accompanying a copy of the statement of claim indicated that it was a courtesy copy, that no statement of defence was required, and that notice would be given before any further steps taken. The Court of Appeal in ***Hansraj*** stated, at paras 106-107:

> In my view, the phrase "courtesy copy" means a copy for information, not for action; it negates service... and the phrase "has now gone out for service" means that it is not yet served and will be served by other means in the future. That too negates service. The following sentence in the letter about not requiring a defence is not quite so clear, but it certainly does not do anything to negate the first sentence.
>
> In my view, viewed as a whole, this letter and enclosure plainly did not constitute service upon anyone.

[43] Fisher argues that Urban cannot rely on any of the subsequent communications to support its position that it had notice that its rights were being engaged. It is asking this Court to operate solely on the basis of the March 26, 2019, letter that communicates that the Claim is effectively

just a courtesy while the parties continue to explore resolution. Fisher further argues that all the subsequent communications that occurred between counsel were solely for settlement purposes and that, because it was never formally asked to provide a statement of defence or an affidavit of records, Fisher did not have notice. It further argues that because Urban's Affidavit of Records was served "out of step" (i.e., it was served before Urban received Fisher's Statement of Defence), this step was unusual and means nothing. Fisher's counsel would like me to believe that the records it requested and received from Urban were only for the purposes of settlement. These arguments were not persuasive.

[44] In my view, it would mean a triumph of the technical to not validate service of the Claim upon Fisher in the circumstances of this case. In consideration of all the evidence on the record before me and in all the circumstances of the facts herein, service of the Claim is validated upon Fisher as of May 15, 2020, pursuant to Rule 11.27. I find that by this date, Fisher knew that its rights were being engaged.

[45] In this case the following occurred, that I find when taken into consideration as a whole, including the exchange of communications that occurred before and after the Claim was filed, leads me to the conclusion on a balance of probabilities that the Claim was brought to Fisher's attention such that Fisher knew that its rights were engaged at the very latest by May 15, 2020.

[46] The January 13, 2020, letter from FLC to BLG put Fisher on notice that it was proceeding with the litigation through questioning and the "filing" of Urban's Affidavit of Records. The January 13, 2020, letter expressly asked for mutually convenient dates, and when reading the words in the letter all together, could only mean mutually convenient dates for questioning.

[47] Fifteen days later, on January 28, 2020, FLC sent BLG further notification that it was moving forward with the litigation by serving BLG with Urban's sworn Affidavit of Records. This in my view is a step that advances the litigation and can only mean in the context of all the communications exchanged up to that point, that Urban was proceeding with advancing the litigation to hopefully also effect a resolution. As was stated by AJ Mason in her oral reasons, by this time, Urban was "proceeding down two tracks, attempting to resolve the matter outside of the action and proceeding with litigation steps in the action".

[48] Despite that the letters FLC sent to BLG on January 13, 2020, and January 28, 2020, were marked "without prejudice", I accept that these letters were inadvertently marked as such, as nothing contained in the letters, or any enclosure contains any communication that is protected by settlement privilege.

[49] Following Urban's notice through its counsel that it was proceeding with the litigation, Urban continued to try to resolve the dispute through settlement negotiations. Urban's actions, in my view, in its attempts to resolve the dispute before the issuance of its Claim, and after the issuance of its Claim, were in accordance with the purpose and intention of the *Rules*, in looking to resolve the dispute in a timely and cost-effective way with or without the assistance of the Court: see Rule 1.2.

[50] Similar to AJ Mason, I find, based on the record before me, that Fisher had notice that its rights were being engaged. It is uncontroverted that through its counsel, Fisher received FLC's letter putting it on notice that it was proceeding with questioning and the filing of an affidavit of

records on January 13, 2020. Subsequently, Fisher was served on January 28, 2020, with Urban's Affidavit of Records sworn on January 23, 2020.

[51] Fisher argued that service of the Affidavit of Records was "out of step" of regular litigation practice and that it was unusual for an affidavit of records to be served prior to a statement of defence first being filed and served. Although service of an affidavit of records before the filing of a statement of defence may not be the usual practice, it is not unusual. In my view, it can be an aid to the process, by expediting the litigation and sometimes settlement.

[52] Based on the communications of FLC of January 13, 2020, followed up by service of Urban's Affidavit of Records on January 28, 2020, on a balance of probabilities, I find that Fisher had notice that its rights were being engaged.

[53] Furthermore, by May 15, 2020, the date upon which Fisher requested documents listed in Urban's Affidavit of Records, it is evident by the actions taken by this date that Fisher was engaging in the litigation process.

[54] As was argued by Urban, the Court views service as a means to an end, and a strict interpretation of service does not apply in every circumstance, hence the existence of Rule 11.27. This is because the core reason for the *Rules* surrounding service is to ensure proper notice and to avoid any prejudice to a defendant. It is clear, from the caselaw, that if the defendant had actual notice of the statement of claim, the method by which they received the notice is less important. Furthermore, if the defendant became aware that its legal rights were being engaged during the currency of the statement of claim, the fact that it became aware after the Claim was provided is inconsequential.

[55] In summary, there is ample evidence that Fisher knew that its rights were being engaged at the very latest by May 15, 2020, prior to the expiry of the Claim.

[56] I find that AJ Mason did not err in fact or in law in exercising her discretion to validate the Claim and find that service of the Claim had been effected within time. I adopt her reasons and analysis in its entirety.

[57] The intent behind Rule 3.26 is to "eliminate procrastination and delay" by plaintiffs in advancing their claim: ***Galandy v Edward's Moldings and Painting Ltd***, 2018 ABQB 251 at para 43.

[58] Based on my review of the communications exchanged between the parties, I find that Urban was neither procrastinating nor delaying pursuit of recovery of its loss and damages set out in the Claim. In my view, the communications in evidence show that Urban was operating in a manner consistent with the purpose and intent of the *Rules* in looking to resolve the Claim as quickly as possible and at the least expense. It did so by initiating communications soon after the fire occurred. Only when it appeared that resolution would not be forthcoming did it then proceed with filing its Claim. After filing its Claim, many further communications took place in an attempt to resolve the dispute without trial. Again, only when Fisher stopped negotiating did Urban proceed with its Affidavit of Records. After that, Urban still tried to resolve the dispute as all parties should, in a manner consistent with the purpose and intent of the Rules: see Rule 1.2.

[59] In conclusion, I find that if service had not been validated, it would be a technical triumph that would be entirely unwarranted and that would serve only Fisher in this case, who, based on the evidence on the record before me, was fully aware that its rights were being engaged.

B. Should the time for service be extended under Rule 3.27?

[60] As I have found that service on Fisher by Urban was valid and effected within the time for service permitted by the *Rules*, I need not address the alternative relief sought by Urban.

[61] However, if I were asked to make a finding as to whether time should be extended in the circumstances, my answer would be, yes, time should be extended in the circumstances.

[62] Pursuant to Rule 3.27 the Court may at any time, and in certain circumstances, grant an extension of time for service of a statement of claim. The circumstances include when a lawyer purports to negotiate on behalf of a defendant and causes the plaintiff's lawyer to reasonably believe and to rely on the belief that the defendant has been served; or when special or extraordinary circumstances exist resulting solely from the defendant's conduct or conduct from a person not a party to the action.

[63] In this case, the evidence supports Urban's position that its counsel believed the Claim had been served because Fisher's counsel had requested documents that had been listed in Urban's Affidavit of Records. Making the request for the documents is an acknowledgment that the litigation is progressing. Furthermore, the communications from Fisher's counsel to Urban's counsel regarding settlement that occurred after the 1-year expiry are also evidence that supports Urban's belief that the Claim had been served or that time limits would not be strictly followed.

[64] In addition, in this case, there is the Pandemic factor. The Pandemic played a role in the timeline and chronology of all of what occurred. It certainly impacted timing for the questioning and for meeting.

[65] Once the requirements for Rule 3.27 are met, the Court must still decide whether to exercise its discretion in favour of extending the time for service. That discretion involves determining whether there is any prejudice to the defendant. I find, in this case, that there is no prejudice to Fisher in extending the time for service. It is clear, based on my findings set out earlier herein, that Fisher was fully aware of its rights and was engaging in the litigation proceedings and continued to try and negotiate settlement even after the period of time to serve the Claim had expired.

[66] If I had not validated service, I would have permitted Urban a 1-month extension of time from the date of this decision to serve the Claim on Fisher.

V. Conclusion

[67] In examining the entire circumstances of this case, I find that Urban was dealing with its Claim from very early on. In fact, counsel for all the parties were actively dealing with the matter. On many occasions Urban's counsel requested that the parties proceed with questioning and even served Urban's Affidavit of Records on the parties. Fisher's lawyer requested a copy of the documents listed in the Affidavit of Records. Fisher was engaging in the legal action. Even after the Claim allegedly expired, Fisher continued to deal with the matter. There is no prejudice to

Fisher if the Action continues. It would certainly be a "triumph of the technical" to not validate the Claim and to not permit an extension of time for service of the Claim.

[68] In conclusion, AJ Mason did not err in fact or in law. I find on a balance of probabilities that Fisher had knowledge of the Claim on or about March 26, 2019, and had notice that its rights were being engaged at the very latest by May 15, 2020. Fisher's appeal is dismissed.

[69] However, I would revise the Service Order to indicate that service of the Claim is validated and deemed effected as of May 15, 2020, within the time for service permitted by the *Rules* and as extended by *MO 27/20.*

[70] Costs are awarded to Urban. If the parties cannot agree on the amount, they may request an appearance before me through the scheduling clerk to speak to the amount of costs.

Heard on the 15th day of January 2025.
Dated at the City of Calgary, Alberta this 29th day of January 2025.

J.C. Price
J.C.K.B.A.

Appearances:

Anthony J. Di Lello
for the Respondent/Plaintiff, Urban Square Holdings Ltd.

Michelle Pilz and Briggs A. Larguinho
for the Appellant/Defendant, Del Fisher Insurance Inc.