Date: 20250623
Docket: CI 17-01-07218
(Winnipeg Centre)
Indexed as: Governo et al v. Governo
Cited as: 2025 MBKB 83

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

MANUEL GOVERNO, IDAM ENTERPRISES LTD. (formerly operating as Apollo Travel Agency) and GIJA ENTERPRISES LTD.,	)	Wayne M. Onchulenko for the plaintiffs
plaintiffs,	)	
-and-	)	
MARIA AIDA ALHO GOVERNO (also known as AIDA GOVERNO),	)	Erin A. Lawlor Forsyth for the defendant
defendant.	)	
	)	JUDGMENT DELIVERED: June 23, 2025

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] The defendant brought a motion to dismiss the plaintiffs' action for delay. The motion was heard along with two motions to dismiss for delay with respect to another action by the same plaintiffs against the defendant and MNP LTD. (MNP) in court file number CI 18-01-13247 (the 2018 action). The motions in the 2018 action are also motions to dismiss for delay. While the motions were heard together, they raise

different issues. This decision relates only to the motion to dismiss for delay in this action, although it does refer to and adopt some of the findings I made in the 2018 action in ***Governo et al v. Governo et al***, 2025 MBKB 82.

[2] For the following reasons, I find that there was an express agreement to the delay, and that the delay was excusable. Accordingly, the motion is dismissed.

FACTUAL BACKGROUND

[3] The plaintiff Manuel Governo and the defendant Aida Governo were married but separated. Together, they were the sole shareholders, directors and officers of the plaintiff companies IDAM Enterprises Ltd. (IDAM) and GIJA Enterprises Ltd. (GIJA) (collectively, the plaintiff companies).

[4] The operation of the plaintiff companies has formed the subject matter of several court applications involving the receivership, liquidation and bankruptcy of the plaintiff companies, as well as other relief under *The Corporations Act*, C.C.S.M. c. C225.

[5] On or about April 14, 2011, the defendant MNP Ltd. (MNP) was appointed receiver of the assets and undertakings of the plaintiff companies in court file number CI 11-01-71523. During the receivership period, MNP engaged Aida Governo to perform certain management services for the plaintiff companies. The plaintiffs commenced the within action alleging losses and damages caused by the alleged unlawful actions of Aida Governo in connection with the receivership of the companies.

[6] One year later, the plaintiffs commenced the 2018 action which is a similar action against the defendant Aido Governo and MNP LTD. (MNP).

PROCEDURAL BACKGROUND

[7] The plaintiffs filed their statement of claim on March 28, 2017.

[8] On April 11, 2017, counsel for the defendant wrote to counsel for the plaintiffs asking that he not note default as follows:

> Wayne: please confirm you will not note default against Aida without notice to me. I will need a brief extension in which to prepare a Statement of Defence.

[9] On April 11, 2017, the plaintiffs' lawyer wrote to the defendant's lawyer confirming he would not note default as follows:

> I will not note default. I do not yet have permission from MNP to proceed with the claim.

[10] Between August 2019 and November 2022, a few things occurred. However, and of significance to this motion, the parties to this action do not agree on whether these events relate to this action and the 2018 action or only relate to the 2018 action. These events were as follows:

a) In August 2019, the parties agreed to schedule examinations for discovery for November 27, 2019; however, those examinations did not occur.
b) The plaintiffs provided an unsworn affidavit of documents on November 21, 2019.
c) Between July 16, 2020, and November 14, 2022, a series of email exchanges between counsel and one conference call occurred regarding the scheduling of examination dates. However, no examination dates were ever scheduled, and examinations for discovery were never held.

[11] Aida Governo filed the motion to dismiss for delay on April 28, 2023.

ANALYSIS

[12] The defendant seeks to dismiss the action for delay pursuant to Rule 24 of the Court of King's Bench Rules, M.R. 553/88 (the Rules), both for long delay and, in the alternative, inordinate and inexcusable delay pursuant to Rules 24.02 and 24.01 respectfully.

LONG DELAY

[13] Rule 24.02 governs dismissals for long delay and provides in part as follows:

Dismissal for long delay
24.02(1) If three or more years have passed without a significant advance in an action, the court must, on motion, dismiss the action unless:

(a) all parties have expressly agreed to the delay;

(b) the action has been stayed or adjourned pursuant to an order;

(c) an order has been made extending the time for a significant advance in the action to occur;

(d) the delay is provided for as the result of a case conference, case management conference or pre-trial conference; or

(e) a motion or other proceeding has been taken since the delay and the moving party has participated in the motion or other proceeding for a purpose and to the extent that warrants the action continuing.

Rejet pour cause de long retard
24.02(1) Lorsqu'au moins trois ans s'écoulent sans que des progrès importants n'aient lieu dans le cadre d'une action, le tribunal la rejette sur motion, sauf dans l'un des cas suivants:

a) toutes les parties ont expressément accepté le retard;

b) il a été sursis à l'action ou l'action a été ajournée en conformité avec une ordonnance;

c) une ordonnance prolongeant le délai pouvant s'écouler avant que des progrès importants n'aient lieu dans le cadre de l'action a été rendue;

d) le retard découle d'une conférence de cause ou de gestion de cause ou d'une conférence préparatoire au procès;

e) une motion a été présentée ou une autre instance a été entreprise depuis le retard et la partie ayant présenté la motion ou entrepris l'instance y a participé à des fins ou dans une mesure justifiant la poursuite de l'action.

[14] The defendant says that the plaintiffs took no steps to advance their claim since serving their statement of claim. She says the action must be dismissed for long delay because there have been three or more years without a significant advance in the action and that none of the exceptions in Rule 24.02(1) apply.

[15] The plaintiffs say there has not been a period of three or more years without a significant advance in the action, or in the alternative, that the parties have expressly agreed to or accepted any delay in the action.

SIGNIFICANT ADVANCE

[16] The plaintiffs say that a teleconference meeting that took place on November 3, 2021, was a significant advance in the action in light of the circumstances of the case, including the clear absence of cooperation on the part of the defendant to schedule examinations for discovery. The defendant, on the other hand, says that all of the communications between counsel for the parties between July 16, 2020, and November 14, 2022, relate only to the 2018 action. Likewise, the defendant says that the plaintiffs' unsworn affidavit provided on November 21, 2019, was for the 2018 action only.

[17] To accept that there was a significant advance in the action, I need first to be satisfied that a step was taken in this action. Then, if I am so satisfied, I need to determine whether there was a significant advance as a result of the step taken.

[18] On March 28, 2017, the plaintiffs commenced this action against Aida Governo. On March 2, 2018, the plaintiffs commenced the 2018 action against both Aida Governo and MNP. The 2018 action alleges nearly identical losses and damages caused by the

same alleged unlawful conduct on Aida Governo's part as alleged in the 2017 action, as well as the alleged unlawful conduct of MNP as receiver of the plaintiffs' companies.

[19] The defendant says that she is not aware of any steps the plaintiffs have taken to advance the within action since filing the claim in March 2017. In light of this, and given the commonality in the 2017 and 2018 actions, the defendant says in her affidavit sworn May 9, 2023, that she "assumed that the 2018 Action is the one the Plaintiffs chose to pursue."

[20] The defendant says in her affidavit that her counsel advises that he did not receive any correspondence from the plaintiffs or their counsel in the last several years in relation to the 2017 action, including from the end of November 2019 to the filing of the motion for delay. Further, the defendant says the only correspondence her counsel received from the plaintiffs' counsel since the end of November 2019 includes correspondence also addressed to counsel for MNP and, accordingly, was assumed to pertain to the 2018 action.

[21] The plaintiffs' affidavit evidence in defence of the motion to dismiss is an affidavit of a legal assistant employed by the plaintiffs' counsel's law firm. In it, she outlines all of the various communications that took place between counsel, including those that relate to scheduling examinations for discovery in November of 2019, the provision of the unsworn affidavit of documents on November 21, 2019, and, over the next several years, the many attempts made by the plaintiffs to schedule the examinations for discovery. In her affidavit, she refers to the communications as relating to "this matter." The affidavit does not respond directly to the assertion of the

defendant's own affidavit wherein she sets out her assumption that the communications only related to the 2018 action.

[22] On November 21, 2019, counsel for the plaintiffs sent the plaintiffs' unsigned affidavit of documents by email to counsel for both Aida Governo and MNP. In that email, the subject is "Governo v. Governo & MNP CI 18-01-13247." That is the only communication that expressly references the 2018 action. Otherwise, the subject or reference lines of the other communication are one of the following variations:

- Aida Governo v. Manuel Governo, IDAM Enterprises Ltd. and GIJA Enterprises Ltd. Queen's Bench Winnipeg File No. CI 11-01-71523
- Aida Governo v. Manuel Governo et al CI 11-01-71523
- Aida Governo v. Manuel Governo et al

[23] There is no evidence to support the plaintiffs' position that the communications related to both actions. On a balance of probabilities, I am not satisfied that the communications did relate to this action. On that basis, it is clear that there was no advance in the action, let alone a significant one, since the statement of claim was filed in March of 2017.

[24] Nevertheless, if I am wrong on this point, then for all of the reasons that are set out in greater detail in my decision in the 2018 action, I would still find that there was no significant advance in this action. Specifically, I find that none of the communications, including the teleconference meeting that took place in November of 2021, was a significant action in all of the circumstances of the case. Unfortunately, that teleconference meeting did nothing to advance the action.

EXCEPTION TO THE RULE

[25] The plaintiffs say that the parties expressly agreed to the delay. First, the plaintiffs say there was an express agreement to or an express acceptance of the delay by the defendant by her failure to attend the originally scheduled examinations, her repeated scheduling requests, and her refusal to provide her availability for examinations for discovery.

[26] Based on my findings set out above that these communications were not made in this action, they likewise could not form the basis of any agreement to delay in this action.

[27] Nevertheless, if I am wrong in that finding, then for the reasons set out in my decision in the 2018 action, I would still find that there was no express agreement or acceptance of the delay based on those communications.

[28] The plaintiffs' second argument is that there has been an express agreement to the delay pursuant to Rule 24.02(1)(a), as the defendant requested an unspecified extension of time to file a defence which the plaintiffs granted. The plaintiffs rely on the decisions ***Knight v. Daradin Investments et al***, 2021 MBQB 279 and ***Krasulja v. Manaigre***, 2021 MBQB 131.

[29] The defendant says there was no express agreement to the delay in this action. Her position is that the ***Knight*** decision is distinguishable because it was a personal injury case where it is not uncommon for a defence not to be filed. Her counsel suggested that the situation is very different from the case at hand, where he requested an extension of time to file a defence. He argued that there must be finality

to proceedings and that it would be a bizarre outcome if a plaintiff could avoid the long delay rule by taking no action. He said the defendant was not aware that the plaintiff was pursuing this action.

[30] I find that the ***Knight*** decision is not distinguishable. This type of communication, particularly in this time frame of when Rule 24.02 came into force, has been found to be an express agreement to the delay.

[31] Rule 24.02 came into effect on January 1, 2018, but with a transitional provision that stipulated that it only applies to motions to dismiss brought after January 1, 2019. As noted in ***Krasulja*** at para 13, this transitional period was designed to avoid the harsh effects of the new rule:

> 13 ... Delaying the implementation of the rule allowed time for lawyers to take steps on files that had been dormant to avoid the harsh effects of the new rule. As Martin J. explained in ***D.L. et al. v. C.P. et al.***, 2019 MBQB 42 (CanLII), at para. 32:
>
> > The revised Rules change the focus to spotlight delay, which is often more defined and demonstrable than prejudice. A sharper, perhaps harsher, dawn is at hand. Particularly with Rule 24.02 now in force, with its very limited exceptions, counsel and parties will have to be most vigilant to advance actions. Stagnant actions will be weeded out, and active claims finished swifter. Balancing for "a kind of essential justice" will not save the day.

[32] In both ***Knight*** and ***Krasulja***, the court considers agreements like the one made by counsel on April 11, 2017. In ***Knight***, counsel for the plaintiff was contacted by an adjuster for the defendants asking whether he would grant an extension of time within which the defendants would file a statement of defence. Counsel for the plaintiff agreed to provide the defendants an extension of time to file a statement of defence. Bock J. notes as follows at paras 23 to 25 of ***Knight***:

> 23 Greenberg J.'s comments on the approach to be taken in the interpretation of the parties' agreement are apposite, at para. 35:
>
> > Practice under Rule 24.02 is in an embryonic stage and undoubtedly will develop over time. It would be prudent in future for counsel to turn their minds to the rule and specifically address it in any agreement to delay proceedings. But agreements that pre-date the rule should be interpreted with some regard to past practice. I am satisfied that the email of July 9, 2018 [quoted above], was an express agreement to delay proceedings and that it is an answer to the motion to dismiss.
>
> 24 I agree with Greenberg J. Prudence dictates that parties who enter into an agreement to delay proceedings for the purpose of Rule 24.02(1) carefully indicate so in their agreement by, for instance, referring explicitly to the Rule. However, agreements like the one made by the parties in this case must be interpreted in light of the obvious fact that they pre-date the long delay rule.
>
> 25 I am satisfied that the parties in this case agreed by their communications in August 2015 to delay proceedings until such time as the agreement had been terminated by one side or the other.

[33] In the present case, the agreement was made in 2017 before the long delay rule came into effect and before the guidance of the courts in ***Krasulja*** and ***Knight***, which say that it would be prudent for an express agreement to delay to include reference to Rule 24.02. Like in ***Knight***, I am satisfied that the essential elements of an agreement were present. In that regard, Bock J. found as follows at para 19:

> 19 The essential elements of an agreement were present: an offer, an acceptance, consideration and a common intention to create a binding, legal arrangement. Ms. Thorburne's voicemail constituted the offer and the voicemail of plaintiff's counsel constituted its acceptance. The consideration included the plaintiff's forbearance from noting default during the agreed-upon delay in proceedings in exchange for the defendants' forbearance from taking advantage of any time limits which might expire during that period of delay. The parties' intention to create a binding legal arrangement is evidenced by, amongst other things, Ms. Thorburne's email memorializing it.

[34] Here, the email from counsel for the defendant on April 11, 2017, asking that he not note default was the offer, and the response agreeing not to note default was the acceptance. The consideration is the same as pointed out by Bock J., namely, the

plaintiffs' forbearance from noting default in exchange for the defendant's forbearance from taking advantage of any time limits which might expire during that period of delay.

[35] Accordingly, I find that the parties in this action agreed by their communications in April 2017 to delay the action until such time as the agreement had been terminated by one side or the other.

INORDINATE AND INEXCUSABLE DELAY

[36] Rule 24.01 governs inordinate and inexcusable delay and provides as follows:

Dismissal for delay 24.01(1) The court may, on motion, dismiss all or part of an action if it finds that there has been delay in the action and that delay has resulted in significant prejudice to a party.	**Rejet pour cause de retard** 24.01(1) Le tribunal peut, sur motion, rejeter une action, en tout ou en partie, s'il estime qu'elle a fait l'objet d'un retard ayant causé un préjudice important à une partie.
Presumption of significant prejudice 24.01(2) If the court finds that delay in an action is inordinate and inexcusable, that delay is presumed, in the absence of evidence to the contrary, to have resulted in significant prejudice to the moving party.	**Présomption de préjudice important** 24.01(2) Lorsque le tribunal estime que le retard dont une action fait l'objet est inhabituel et inacceptable, ce retard est présumé, en l'absence de preuve contraire, avoir causé un préjudice important à la partie ayant présenté la motion.
What constitutes inordinate and inexcusable delay 24.01(3) For the purposes of this rule, a delay is inordinate and inexcusable if it is in excess of what is reasonable having regard to the nature of the issues in the action and the particular circumstances of the case.	**Retard inhabituel et inacceptable** 24.01(3) Pour l'application de la présente règle, tout retard est inhabituel et inacceptable lorsqu'il excède ce qui est raisonnable compte tenu des circonstances et de la nature des questions du litige.

[37] I agree with the defendant that there has been inordinate delay within the meaning of Rule 24.01. The plaintiffs' claim was filed six years before the motion to dismiss for delay, and there has been no progress in the action. However, as in the ***Knight*** decision (see para 34), while I find the delay to be inordinate, I also find it

excusable. The excuse for the delay is that the parties agreed to delay the proceedings in April 2017. As a result, the presumption of significant prejudice in Rule 24.01(2) is not triggered. The defendant did not argue for, or present evidence to support, a finding of actual as opposed to presumed prejudice. Accordingly, there is no basis upon which to dismiss the action for delay.

CONCLUSION

[38] The parties made an express agreement to delay the proceedings in April 2017 within the meaning of Rule 24.02(1). That agreement prevents the application of the long delay rule. While the delay in the action has been inordinate within the meaning of Rule 24.01(2), the delay is excusable by the parties' agreement in April 2017 to delay the proceedings.

[39] The defendant's motion is therefore dismissed. If the parties cannot agree on the issue of costs, they may arrange to speak to the matter.

J. L. Goldenberg
Associate Judge