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Docket: CI 18-01-13247
(Winnipeg Centre)
Indexed as: Governo et al v. Governo et al
Cited as: 2025 MBKB 82

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

MANUEL GOVERNO and 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) and MNP LTD. (also known as MNP LTEE. and previously known as MEYERS PENNY LIMITED),	)	Erin A. Lawlor Forsyth for the defendant Governo Aaron W. K. Challis for the defendant MNP
defendants.	)	
	)	JUDGMENT DELIVERED: June 23, 2025

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] Both defendants brought motions to dismiss the plaintiffs' action for delay. The motions were heard along with a motion by the defendant Maria Aida Alho Governo (Aida Governo) with respect to another action by the same plaintiffs against Aida Governo only in court file number CI 17-01-07218. The motion in that case is also a

motion to dismiss for delay. While the motions were heard together, they raise different issues. This decision relates only to the motions to dismiss for delay in this action.

[2] For the following reasons, I find that three or more years passed without a significant advance in the action, that the parties did not expressly agree to or accept the delay, and accordingly, that I must dismiss the action for long delay.

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 claim alleging losses and damages caused by the alleged unlawful actions of Aida Governo in connection with the receivership of the companies, as well as the alleged unlawful actions of MNP as receiver of the plaintiff companies.

PROCEDURAL BACKGROUND

[6] The plaintiffs filed their statement of claim on March 2, 2018.

[7] MNP filed a statement of defence and crossclaim on May 8, 2018.

[8] Aida Governo filed a statement of defence and a defence to crossclaim on May 22, 2018.

[9] In August 2019, the parties agreed to schedule examinations for discovery for November 27, 2019; however, those examinations did not occur.

[10] The plaintiffs provided an unsworn affidavit of documents on November 21, 2019.

[11] 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.

[12] MNP filed its motion to dismiss for delay on April 26, 2023, and Aida Governo filed hers on April 28, 2023.

ANALYSIS

[13] The defendants seek to dismiss the action for delay pursuant to Rule 24 of the Court of King's Bench Rules, M.R. 553/88 (the Rules). Aida Governo's motion was brought both for long delay and, in the alternative, inordinate and inexcusable delay pursuant to Rules 24.02 and 24.01, respectively. MNP's motion referenced both forms of delay, but their brief and submissions rely only on long delay.

LONG DELAY

[14] 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:	**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) all parties have expressly agreed to the delay;	a) toutes les parties ont expressément accepté le retard;
(b) the action has been stayed or adjourned pursuant to an order;	b) il a été sursis à l'action ou l'action a été ajournée en conformité avec une ordonnance;
(c) an order has been made extending the time for a significant advance in the action to occur;	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) the delay is provided for as the result of a case conference, case management conference or pre-trial conference; or	d) le retard découle d'une conférence de cause ou de gestion de cause ou d'une conférence préparatoire au procès;
(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.	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.

[15] The defendants say that aside from the plaintiffs' communications to ascertain the availability of opposing counsel for discovery, they took no other steps to advance their claim since providing the unsworn affidavit of documents on November 21, 2019. They say that the action must be dismissed for long delay because there have been three or more years without a significant advance in the action and none of the exceptions in Rule 24.02(1) apply.

[16] The plaintiffs say that there has not been 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. In the further alternative, they say that even if there has been long delay, that the court maintains a residual discretion pursuant to Rules 1.04, 2.03 and 2.04 to override Rule 24.02 when the circumstances are appropriate.

SIGNIFICANT ADVANCE

[17] The plaintiffs say that the conference call involving all counsel on November 3, 2021, was a significant advance in the action in light of the circumstances of the case, including the clear absence of co-operation on the part of the defendants to schedule the examinations for discovery.

[18] The plaintiffs rely on the Manitoba Court of Appeal decision of ***WRE Development Ltd. v. Lafarge Canada Inc.***, 2022 MBCA 11, and ***Buhr v. Buhr***, 2021 MBCA 63, in support of their position that the November 3, 2021, meeting was a significant advance in the action. In particular, they rely on the ***Buhr*** decision in support of their position that the defendants' conduct is a relevant factor in determining whether there has been a significant advance in the litigation. In ***Buhr***, the Court of Appeal found as follows at paragraph 82:

> 82 I agree that, in the application of the functional test, the conduct of a defendant, before or after a plaintiff has taken a step, can be relevant to a determination as to whether that step is a significant advance (see Jondreau v Maclean, 2006 ABQB 265 at para 14; and Flock at para 17, point 7). For example, the comments made by counsel for the defendants at the adjournment of the examination for discovery about the need for answers to the undertakings and matters taken under advisement were relevant. Furthermore, had counsel for the defendants indicated, upon receipt, that the answers were satisfactory, that too would be relevant. This does not mean, however, that r 24.02(1)

> requires a defendant to complain about the quality of answers to undertakings provided in order to establish that the provision of same does not constitute a significant advance. Nor does the rule require a defendant to follow up and attempt to advance an action (see Charik Custom Homes Ltd v Sara Development Inc, 2014 ABQB 63 at para 33). While a defendant cannot intentionally obstruct, stall or delay an action, it need not move a plaintiff's action along (see Flock at para 17, point 4).

[19] While I agree that the defendants' conduct, in particular Aida Governo's, in not providing their availability for examinations for discovery in a timely manner was problematic, I cannot find that the teleconference meeting in November of 2021 was a significant advance in the action. I find that a functional analysis in this case, considering the whole picture of what transpired in the over three-year period and whether that step moved the lawsuit forward in a meaningful way in the context of the action, that the teleconference meeting, unfortunately, did nothing to move the lawsuit forward in a meaningful way.

[20] The long delay rule was meant to prevent litigation from stalling for years at a time, including in a situation like this where parties or their counsel are unable to schedule the examinations for discovery. While I agree with Mr. Onchulenko that courtesies between counsel should not be deterred, the long delay rule means there must be limits to granting courtesies. There were many options available to the plaintiffs in this case. For example, they could have provided a sworn affidavit of documents, served a notice of examination, or brought a motion to compel the defendants to provide their affidavit of documents and attend discovery, or to strike their pleadings. Alternatively, it was open to the parties to expressly agree to the delay, which issue I will address next.

EXCEPTION TO THE RULE

[21] The plaintiffs say there are distinctions between the English and French version of Rule 24.02(1), which support their position that the parties have agreed to or accepted the delay, such that there is an exception to the long delay rule in this case.

[22] In particular, the plaintiffs point out the language found in subsection (a), which reads in French, "toutes les parties ont expressément accepté le retard." They say the word "accepté" is used in the French version, rather than the English version "agreed". The plaintiffs submit that the language of "accepted" allows acquiescence to take place with respect to any delay, rather than needing a formal agreement.

[23] The plaintiffs say that by failing to attend the originally scheduled examinations, by making repeated rescheduling requests, and by refusing to provide availability, the defendants have expressly agreed to or accepted the delay which was taking place.

[24] I do not accept the plaintiffs' position that the exception in Rule 24.02(1)(a) applies in this case, regardless of whether the French version can be read differently than the English version.

[25] The plaintiffs say the French version uses "accepted" not "agreed." I do not accept or agree that there is plainly a difference in the two versions, and the plaintiffs submitted no translation resources in support of their assertion. Regardless, even if this section can mean "expressly accepted the delay," I am not satisfied that this is materially different from "expressly agreed to the delay." Either way, the agreement or acceptance must be express. I disagree with the plaintiffs' assertion that the language

of "accepted" allows for acquiescence with respect to any delay. That ignores the word "expressly" which exists in both English and French.

[26] I do not accept the plaintiffs' position that by not attending the originally scheduled examinations, by making repeated rescheduling requests and by refusing to provide availability, the defendants have expressly agreed to or expressly accepted the delay that was taking place. At best, this could be an implicit agreement to the delay. An implicit agreement does not trigger the Rule 24.02(1)(a) exception.

[27] I find that more than three years passed without a significant advance in the action and that the parties did not expressly agree to or accept the delay. I disagree with the position put forward by the plaintiffs that the court has residual discretion to not apply Rule 24.02 in certain circumstances. The language of Rule 24.02 is mandatory. The action is therefore dismissed. Further, I order that the dismissal shall be a defence to any subsequent action.

INORDINATE AND INEXCUSABLE DELAY

[28] Having dismissed the action for long delay, it is not necessary for me to determine the alternate ground put forward by the defendant Aida Governo that there has been inordinate and inexcusable delay.

THE CROSSCLAIM

[29] By virtue of Rule 24.05, the crossclaim is deemed to be dismissed with costs.

CONCLUSION

[30] More than three years have passed without a significant advance in the action and the parties did not expressly agree to or accept the delay. The action is therefore dismissed and the dismissal shall be a defence to any subsequent action. If the parties cannot agree on the issue of costs, they may arrange to speak to the matter.

J. L. Goldenberg
Associate Judge