

# In the Court of Appeal of Alberta

**Citation: Anway Solutions Inc v Bellotto, 2024 ABCA 59**

**Date:** 20240223  
**Docket:** 2201-0293AC  
**Registry:** Calgary

**Between:**

**Anway Solutions Inc.**

Respondent

- and -

**Marco Bellotto, 2205895 Alberta Ltd. and Maria Grazia Bellotto**

Appellants

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**The Court:**

**The Honourable Justice Patricia Rowbotham  
The Honourable Justice Michelle Crighton  
The Honourable Justice April Grosse**

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**Memorandum of Judgment  
Delivered from the Bench**

Appeal from the Order of  
The Honourable Justice J. R. Ashcroft  
Dated the 15th day of November, 2022  
Filed on the 24th day of November, 2022  
(Docket: 2201-04663)

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**Memorandum of Judgment  
Delivered from the Bench**

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**Grosse J.A. (for the Court):**

[1] The unusual procedural record in this case required that at a minimum, more information be provided to the judge who granted the default judgment. At the time of the default judgment, the self-represented defendants had been in contact with the plaintiff's counsel; they had provided draft defences; they had attempted to file the defences at the court but they were not accepted; they had attempted to retain counsel; they had indicated their intention to apply to set aside the noting in default. All of these facts were known to the plaintiff, but they were not put before the judge hearing the application for judgment.

[2] By a procedural irregularity, although the defendants filed their application to set aside the noting in default before the plaintiff's application for default judgment was filed, the latter was heard before the former.

[3] The chambers judge, having focused almost exclusively on the appellants' delay following service of the default judgment, did not duly account for the totality of the circumstances we have outlined. Her approach is understandable given the limited authority provided to her. She was only provided with the three-part analysis set out in *Palin v Duxbury*, 2010 ABQB 833 and applied it. However, this court has made clear that where there is a procedural irregularity leading to default judgment, the considerations are distinct: *Anstar Enterprises Ltd v Transamerica Life Canada*, 2009 ABCA 196 and *Kraushar v Kraushar*, 2019 ABCA 186. While delay in moving to set aside is relevant in both, assessment of delay is contextual and the authority presented to the chambers judge led her to consider it in the incorrect legal context. This resulted in an error that warrants intervention.

[4] In these circumstances, the appeal is allowed and the default judgment granted July 22, 2022 is set aside on the following terms:

1. Statements of Defence shall be submitted for filing no later than February 27, 2024 with proof of submission for filing to be served on the respondent's counsel forthwith. Filed copies to be served upon receipt.
2. Further enforcement on the July 22, 2022 judgment is stayed and to the extent that enforcement steps taken to date yield funds, those funds shall be held in court or in trust, subject to written agreement of the parties or further order of the Court of King's Bench.

3. Respondent is entitled to thrown away costs on a solicitor and client basis for all judgment enforcement steps in respect of the July 22, 2022 judgment. To be clear the Respondent is not entitled to costs with respect to the July 22, 2022 application itself, the August 4, 2022 appearance in Applications Judge Chambers or the November 15, 2022 application to set aside the default judgment. These thrown away costs shall be paid within 30 days of a determination of the costs by agreement or assessment, failing which the Statements of Defence are struck without further order of the court.
4. Each party will bear their own costs of this appeal.
5. Paragraphs 6-8 of the judgment granted July 22, 2022 relating to revival of 2205895 Alberta Ltd. remain in full force and effect.

Appeal heard on February 13, 2024

Memorandum filed at Calgary, Alberta  
this 23rd day of February, 2024

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Grosse J.A.

**Appearances:**

D. Pontin (no appearance)

K. Millar

M. Mostowfi

for the Respondents

C.O. Llewellyn

for the Appellant