

In the Court of Appeal of Alberta

Citation: Ranger v Precision Geomatics Inc, 2025 ABCA 357

Date: 20251031
Docket: 2503-0035AC
Registry: Edmonton

2025 ABCA 357 (CanLII)

Between:

Mitchell Ranger

Respondent

- and -

Precision Geomatics Inc.

Appellant

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice Jane Fagnan
The Honourable Justice Tamara Friesen

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M. Kraus
Dated the 24th day of January, 2025
Filed on the 4th day of March, 2025
(2025 ABKB 45, Docket: 1203 14027)

Memorandum of Judgment

The Court:

[1] Mitchell Ranger filed a claim against his former employer Precision Geomatics Inc (Precision) in 2012. In 2024, an applications judge dismissed Ranger's claim based on inordinate and unreasonable delay. Ranger successfully appealed that dismissal before a chambers judge. Precision now appeals the chambers decision reinstating the claim.

[2] For the following reasons, we dismiss the appeal.

Background

[3] Ranger's claim against Precision is for wrongful dismissal and shareholder oppression. The claim was served on Precision on February 20, 2013. Precision did not file its defence in time and was initially noted in default, which was later set aside. Precision filed its defence on July 2, 2013.

[4] Questioning for discovery took place in May of 2014. On April 25, 2017, Ranger provided Precision with his answers to undertakings. On Ranger's application, the parties filed a litigation plan by consent on August 21, 2017. The plan contemplated completing all questioning, undertakings, and interrogatories by December 14, 2017, and completing all other steps required to bring the action to trial by June 14, 2018. On August 31, 2017, Precision provided its answers to undertakings. Precision was not questioned on those undertakings until January 29, 2019. Ranger did not appear for questioning on that date. A second date also required rescheduling. He was eventually questioned on his undertakings on January 23, 2020. On September 29, 2020, Ranger provided his responses to undertakings arising from the January questioning.

[5] On January 21, 2021, the parties signed a Form 37 certificate of trial readiness which was filed with the court. Following an unsuccessful JDR on February 26, 2021, Ranger and Precision did not communicate until September 1, 2022. On September 19, 2022, Precision advised Ranger of its intention to apply to dismiss the claim for delay. On November 25, 2022, Precision filed an application under r 4.31 of the *Alberta Rules of Court*, Alta Reg 124/2010, to have the claim dismissed for delay or, alternatively, summarily dismissed under r 7.3.

[6] The dismissal application was scheduled for January 11, 2023. On December 12, 2022 Ranger applied to set trial dates. Precision opposed Ranger's application given its pending dismissal application. Ranger's application was heard first, and the matter ordered to trial. The trial was subsequently scheduled for March 4–8, 2024. Those dates were then vacated so the parties could proceed with Precision's summary dismissal application.

[7] Precision's dismissal application was eventually heard on March 26, 2024, and an applications judge granted Precision's application to dismiss for delay. He found that Ranger's

delay in pursuing his claim was inordinate and inexcusable such that it presumptively caused significant prejudice to Precision. Further, Ranger failed to rebut this presumption and there was no compelling reason not to dismiss the action under r 4.31.

[8] Ranger successfully appealed the application judge's decision before a chambers judge in the Court of King's Bench.

Chambers judge's decision

[9] With respect to whether the delay was inordinate, the chambers judge considered this case to be "borderline", but since Ranger did not seriously dispute this point, he accepted that it was inordinate: ***Ranger v Precision Geomatics Inc***, 2025 ABKB 45 at para 24. However, he found the delay to be excusable, considering some delay resulted from Ranger's personal circumstances, and some delay was attributable to Precision.

[10] Regarding Ranger's personal circumstances, the chambers judge accepted his explanation that he failed to attend his questioning as first scheduled because he was out of town due to a death in his immediate family. He noted that Ranger was then laid off from his employment, leaving him unable to afford legal expenses and preventing further progress in the action during this period. Ranger's questioning needed to be rescheduled again when he accepted a three-week employment contract out of town. Delays after his questioning were related to Ranger's limited ability to find work because of the Covid-19 pandemic and consequent lack of funds for legal expenses.

[11] The chambers judge agreed, as set out in ***Davenport Homes Ltd v Cassin***, 2015 ABQB 138, that impecuniosity alone is not a proper justification for failing to advance an action; however, he found that other factors should be considered. Here, Ranger made ongoing efforts to fund the litigation by seeking out work, borrowing from family, and selling assets. It was reasonable for Ranger to prioritize seeking out work contracts while litigation was ongoing due to the nature of his work and the uncertainty of finding work during the pandemic.

[12] The chambers judge found that Precision contributed, solely or jointly, to about 48 months of the delay. Precision failed to file its statement of defence on time, which then necessitated an application to set aside its noting in default, such that filing its defence took over five months. Precision also participated in joint delay of about 35 months when neither side responded to undertakings after questioning. It took four months for the parties to agree on the terms of the litigation plan, which Ranger made reasonable efforts to pursue. Likewise, while Ranger took diligent steps to schedule questioning for Precision's corporate representative, it was eight months before that questioning proceeded. Relying on ***Transamerica Life Canada v Oakwood Associates Advisory Group Ltd***, 2019 ABCA 276, the chambers judge noted that a defendant also has positive obligations to take steps in litigation, including filing a defence, responding to undertakings in a reasonable time, and complying with a litigation plan. He concluded, based on ***Transamerica*** at para 30, that where the parties acquiesce to a leisurely pace of litigation, the defendant cannot then

use that pace as proof of delay in an application to dismiss: it also has positive obligations to advance the litigation in a timely fashion.

[13] The chambers judge considered Precision's filing of a Form 37 certifying the matter was ready for trial on January 21, 2021 as a waiver of the right to complain about delay to that point, relying on *422252 Alberta Ltd v Messenger*, 2019 ABQB 251 at para 24 and *Trademark Calgary Holdings Inc v Hub Oil Company Ltd*, 2019 ABQB 42 at para 93. Likewise, Precision could not rely on delay following its application to dismiss the claim.

[14] The chambers judge was not satisfied that Precision demonstrated any significant prejudice from the delay. Bare assertions of failing memories without particulars did not suffice when questioning had been completed and the claim revolves around contractual interpretation for which records have been produced. Given the certificate of trial readiness, Precision did not suffer any significant prejudice up to its filing on January 21, 2021, and failed to demonstrate prejudice following this; absent the dismissal application, the claim would have gone to trial.

[15] The chambers judge viewed this as a borderline case under r 4.31 that should proceed to trial so the plaintiff can have his day in court.

Grounds of appeal

[16] Precision argues the chambers judge erred in finding that: the delays were excusable based on Ranger's personal circumstances and Precision did not suffer significant prejudice; Precision was responsible for 48 months of the delay; and Precision waived its right to seek relief for the delay when it agreed to the Form 37.

Standard of review

[17] For this Court to interfere with a discretionary decision assessing delay under r 4.31, a palpable and overriding error must be identified: *Westjet v ELS Marketing Inc*, 2025 ABCA 115 at para 15.

Analysis

[18] Under r 4.31(1)(a), a court may dismiss a claim if there has been significant prejudice to a party resulting from delay. Delay is presumed to have resulted in significant prejudice if it is inordinate and inexcusable: *Alberta Rules of Court*, r 4.31(2). This appeal challenges the chambers judge's exercise of discretion in evaluating whether the delay in this case – which he found to be inordinate – was nevertheless excusable.

Ranger's explanations for delay

[19] Precision says the chambers judge erred in how he dealt with Ranger's personal circumstances. Among other arguments, Precision says he overstated the impact of the pandemic on Ranger's ability to fund the litigation and erred in not appropriately considering that Ranger had been experiencing financial difficulties since 2011 which had impacted his ability to advance the claim since its inception.

[20] The chambers judge was entitled to use his discretion in considering Ranger's personal circumstances in determining the delay was excusable. The chambers judge was also entitled to exercise his discretion in how he weighed the evidence of the impact of the pandemic on Ranger's ability to fund the litigation and in focussing primarily on Ranger's financial situation from 2019 onwards. Similarly, it was within his discretion to conclude that it was reasonable for Ranger to prioritize pursuit of work contracts over pursuit of litigation: among other clear benefits, the work contracts allowed him to continue to fund the litigation.

[21] Ranger's difficulties with securing employment, financial struggles due to the pandemic, and resulting inability to pay for legal fees at certain times during the action were all relevant considerations. The chambers judge did not commit any palpable and overriding errors in his treatment of Ranger's personal circumstances. Furthermore, Ranger's personal circumstances were not the only basis upon which the chambers judge found the delay to be excusable.

Precision's contribution to delay

[22] Precision argues that the chambers judge improperly shifted the burden of advancing litigation to the defendant by attributing responsibility for the 35-month undertakings delay to Precision. We disagree. The chambers judge attributed the delay with respect to answering undertakings to both parties because they both had independent responsibilities under the *Rules* to provide undertakings within a reasonable timeframe following questioning.

[23] The plaintiff has primary responsibility for advancing litigation, but the defendant has concomitant obligations and must discharge its procedural obligations with respect to advancing the litigation in a timely way: *Transamerica* at para 27. Under the *Rules*, all parties have general obligations to advance the litigation, and the defendant has specific duties which support those general obligations: *Transamerica* at paras 29–30. Those obligations include filing a statement of defence within 20 days of service with the statement of claim, providing undertakings within a reasonable time following questioning, and complying with the provisions of a procedural order: *Transamerica* at para 30. The chambers judge did not err in finding that Precision was also obligated to advance the litigation, and that its failure to meet some of those obligations in a timely way contributed to the delay, either solely or jointly.

[24] Relatedly, Precision argues the chambers judge erred by focussing on delay attributable to the defence, while failing to account for approximately 24 months of delay caused by Ranger after

the trial readiness form was filed. But finding or even emphasizing that some of the delay was attributable to Precision does not mean the chambers judge was ignoring that most of the delay was attributable to Ranger. Defence delay is simply one factor to consider when deciding whether the total period of delay is excusable: *Transamerica* at para 28.

[25] Precision further argues that the chambers judge erred with respect to his treatment of the evidence relating to breach of the litigation plan. Again, we disagree. The litigation plan required all parties to complete questioning by December 14, 2017. The chambers judge’s finding that Ranger took diligent steps to schedule the questioning of Precision’s corporate representative is supported by the evidence. The questioning of both sides took place after December 14, 2017: this was, as found by the chambers judge, a breach of the litigation plan attributable to both parties.

The effect of the Form 37

[26] Precision argues the chambers judge failed to conduct a contextual analysis when he found that Precision had waived its right to complain of delay when it filed the Form 37; instead, the chambers judge regarded the filing as an automatic waiver. The chambers judge should have given more weight to the fact that: Precision said it only signed the Form 37 so the parties could proceed to a JDR; Precision opposed the application to set trial dates; and Ranger was responsible for the 18-month delay following the JDR.

[27] We agree that determining whether a party’s conduct constitutes acquiescence to delay is a contextual question, and as such, there are no pre-determined litigation activities that automatically result in an inferred waiver: *WestJet* at para 39. However, if a party takes a step that “intimates agreement that the action may proceed”, they will be unable to then rely on delay to dismiss that action: *Young v A Dei-Baning Professional Corporation*, 1996 ABCA 213 at para 10.

[28] We also agree that the chambers judge’s decision contains little explicit contextual analysis of the Form 37’s impact on the question of whether Precision waived the delay. However, the chambers judge’s reasons demonstrate he understood the relevant contextual factors and appropriately assessed how the question of Precision’s waiver weighed into the issue of whether the delay was excusable. The relevant context when applying r 4.31 is that of “the action as a whole”: *4075447 Canada Inc v WM Fares & Associates Inc*, 2020 ABCA 150 at para 14. The chambers judge’s reasons describe and evaluate the entire context of the action and contain a detailed timeline and examination of each party’s actions and contributions to the “inordinate” delay. The reasons illustrate that he specifically contemplated the significance of the completed Form 37 and found that it indicated the agreement of all parties that the parties were ready and willing to take the matter to trial. He did not rely on the filed Form 37 waiver to determine the entire application; rather, it was one of several relevant factors he considered in finding the delay was excusable.

Conclusion

[29] The appellants have not identified any palpable or overriding errors in the chambers judge’s reasons. As such, there is no basis on which we could justify interfering with the chambers judge’s exercise of discretion in allowing this matter to proceed to trial.

[30] The appeal is dismissed.

Appeal heard on September 2, 2025

Memorandum filed at Edmonton, Alberta
this 31st day of October, 2025

Authorized to sign for: Ho J.A.

Fagnan J.A.

Friesen J.A.

Appearances:

C. Greschner
for the Respondent

T. L. Hamelin (no appearance)

C.A. Mill
for the Appellant