

CANADA / JUDGMENT

Adjala-Tosorontio (Township) v. Saunders

2025 ONCA 906

COURT

Court of Appeal for Ontario

DECIDED

30 December 2025

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Adjala-Tosorontio (Township) v. Saunders

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COA-25-CV-0209, M56430

Judges

Roberts, Lois B.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Adjala-Tosorontio (Township) v. Saunders, 2025 ONCA 906

DATE: 20251230

DOCKET: M56430 (COA-25-CV-0209)

Roberts J.A. (Motion Judge)

BETWEEN

The Corporation of the Township of Adjala-Tosorontio

Applicant (Respondent/Responding Party)

and

Timothy Saunders and Alvin Lindhorst

Respondents (Appellants/Moving Parties)

Alvin Lindhorst, acting in person, and for Timothy Saunders

James J. Feehely, Tanja Webster and Debbie Anderson, for the Corporation of the Township of Adjala-Tosorontio

Mohsen Seddigh, appearing as amicus curiae, Pro Bono Ontario

Heard: December 3, 2025

REASONS FOR DECISION

Overview

- [1] These proceedings arise out of the Township's over seven-year efforts to enforce its Property Standards By-Law (the "By-Law") and compel the moving parties to clean up their property. Mr. Lindhorst is the tenant; Mr. Saunders is the property owner. The Township's efforts and the moving parties' steadfast resistance to the orders to comply culminated in the application judge's December 9, 2024 order, granting the Township a permanent injunction to clear the property of abandoned vehicles, tires, trailers and debris littered throughout the property, in compliance with the By-Law passed pursuant to the Building Code Act, 1991, S.O. 1992, C. 23.
- [2] On May 13, 2025, the Registrar dismissed for delay the moving parties' appeal of the application judge's December 9, 2024 order. The moving parties now seek to set aside the Registrar's order. If the Registrar's order is set aside, they ask for an extension of time to perfect their appeal.
- [3] The Township opposes the motions, arguing that the appellants' history of delay disentitles them to equitable relief and that the proposed appeal is frivolous, vexatious and without merit.
- [4] I reserved my decision after the hearing of the motion on December 3, 2025, to permit the parties to submit the affidavits that were before the application judge, Casullo J. The affidavits did not form part of the motion records before me and are relevant to a proposed ground of appeal: that the application judge allegedly ignored pertinent evidence that the appellants have cleared their property.

- [5] Notwithstanding my clear direction that only the affidavits before the application judge were to be filed without any other documents, Mr. Lindhorst tried to file a lengthy affidavit in which he attempted to address substantive issues. His new affidavit was rejected by the court office, and I have not considered its contents in determining these motions. However, I have taken into account Mr. Lindhorst's act of attempting to file the unauthorized affidavit as continuing his pattern of vexatious behaviour in these proceedings, to which I return below.
- [6] If the moving parties are unsuccessful in setting aside the Registrar's dismissal order, it is unnecessary to consider the extension motion. That is the case here. For the reasons that follow, I dismiss the motions.

General Principles: the test for setting aside the Registrar's dismissal order

- [7] The test for setting aside the Registrar's dismissal order for delay under r. 61.16(5) of the Rules of Civil Procedure is well-established. There are both procedural and substantive requirements.
- [8] The person challenging the Registrar's dismissal order must serve a notice of motion forthwith after the order or decision comes to that person's attention and the notice of motion must name the first available hearing date that is at least three days after service of the notice of motion: r. 61.16(5). A motion to set aside a Registrar's order dismissing an appeal must be supported with proper evidence. Although some allowance may be made for self-represented litigants, the failure to provide evidence in the proper form may be a sufficient basis on which to dismiss the motion: *Guillaume v. Ontario (Animal Review Board)*, 2024 ONCA 851, at para. 15.
- [9] The judge's decision to set aside or vary a decision of the Registrar is discretionary. The overarching consideration is "the justice of the case, which includes consideration of the merits of the appeal and factors analogous to those typically considered on a motion to extend the time to appeal": *Graff v. Network North Reporting and Mediation*, 2020 ONCA 319, at para. 8, leave to appeal refused, [2020] S.C.C.A. No. 431. Generally, more justification should be shown by a party moving for relief under r. 61.16(5) than would have been required if the party had moved earlier for an extension of time, prior to the dismissal: *Langer v. Yorkton Securities Inc.* (1986), 57 O.R. (2d) 555, at p. 558; *Sickinger v. Sickinger*, 2017 ONCA 760, at paras. 13-14.
- [10] Factors informing the analysis include: (1) the length of and explanation for the delay (both with respect to perfecting the appeal and moving to set aside the administrative dismissal); (2) the prejudice to the respondent caused by the delay; (3) and the merits of the appeal: *Guillaume*, at paras. 9-10; *Caledon (Town) v. Darzi Holdings Ltd.*, 2022 ONCA 455, at para. 28; and *Kudrocova v. Kronberger*, 2021 ONCA 563, at para. 6.
- [11] In applying this test, the court has observed that if a claim is devoid of merit and has no chance of success, the justice of the case requires dismissal of the motion: *Philbert v. Graham*, 2022 ONCA 488, at para. 12. Prejudice, which focuses on whether the respondent's

ability to defend the appeal would be prejudiced by steps taken following its dismissal or that would result from its restoration, "figures largely" in the analysis: *Jewish Foundation of Greater Toronto (Re)*, 2022 ONCA 581, 1 C.B.R. (7th) 1, at para. 26. Context matters: if, for instance, the moving party claims that they failed to perfect an appeal through inadvertence, the claim must be considered in the context of the motion materials as a whole and the path of the litigation: *Hoffelner v. Whiteley*, 2024 ONCA 753, at para. 13.

Principles Applied

- [12] Having considered the context of the motion materials as a whole and the path of the litigation, I am not persuaded that the justice of this case warrants setting aside the Registrar's dismissal order. None of the well-known factors favour the moving parties.
- [13] The delay in perfecting the appeal remains inadequately explained. The deficiencies outlined by the court office were not trivial and the moving parties do not explain their lackluster efforts to comply with them in a timely manner. Even when faced with the April 30, 2025 dismissal deadline of the Registrar's April 7, 2025 notice of intention to dismiss appeal for delay, the moving parties did not take any real steps to comply with the urgency the circumstances demanded. Rather, their attitude was one of entitlement to further indulgences. Contrary to the requirements under r. 61.06(5), they continued their delay by failing to take any steps to bring their motion to set aside the Registrar's dismissal order for over three months.
- [14] The moving parties' delay in perfecting their appeal and moving to set aside the Registrar's dismissal order repeats their pattern of delay and unreasonable behaviour in the underlying proceedings. The dispute between the Township and the moving parties dates back to the first complaint in relation to the moving parties' property which was made in June 7, 2018. Thereafter the Township tried to secure their compliance with the By-law via requests to the moving parties, which were not successful. The Township was then required to issue a number of orders to comply, which the moving parties strenuously resisted. They unsuccessfully appealed the Township's October 16, 2018 order to comply to the Property Standards Committee, which confirmed the order. The moving parties did not appeal.
- [15] The moving parties' vigorous resistance extended to barring the Township from attending at the property to compile a photographic record of the progress of the ordered clean-up, even pursuant to the January 9, 2025 order of the application judge, which the moving parties unsuccessfully attempted to set aside but did not appeal. The application judge's January 10, 2025 \$7,500 costs order against the moving parties remains unpaid.
- [16] The moving parties' proposed appeal is frivolous, vexatious and without any apparent merit. It is designed to further delay their compliance to clean up the property. It essentially reiterates the arguments rejected by the application judge. It also challenges her findings of fact about the state of the property at the time of the application, arguing that she failed to consider relevant evidence. The newly filed affidavits do not reveal any error in the

application judge's findings, which were open to her on the record before her. Nor are the application judge's reasons or order ambiguous.

- [17] With respect to the arguments repeated in the proposed appeal, the application judge set out in detail the history of the proceedings, including the moving parties' long delay and continuing failure to clean up the property as required. She accepted that the evidence before her demonstrated that the moving parties had finally taken some steps to remove the debris, but that despite the recent show of progress, the clean-up was not complete. She correctly rejected the moving parties' limitations period defence as inapplicable because the Township's application was brought under s. 15.1 of the Building Code Act, and not s. 36, as the moving parties argued. She did not accept the moving parties' argument of legal non-conforming use: there was no evidence that the property was being used as a junk yard at the time the By-law was passed, and Mr. Lindhorst admitted that no business was carried on at the property.
- [18] In my estimation, the appeal is without merit and is merely being brought to delay the inevitable. As the application judge concluded: "The [moving parties] have reached the end of the line. It is high time the property is cleaned up." Her reasons and order could not be clearer.
- [19] I end my analysis with the question of prejudice to the Township. There is continued prejudice to the Township and to the public interest by the moving parties' ongoing resistance to their obligations under the By-law and the orders to comply: *Continental Imperial Exploration Ltd. v. Ontario (Environment, Conservation and Parks)*, 2024 ONCA 328, at para. 3.

Disposition

- [20] The motions are therefore dismissed. The Township is entitled to its costs from the moving parties. If the parties cannot agree on the scale or quantum of the Township's costs, they may deliver brief written costs submissions (no affidavits) of no more than two pages, plus bills of costs, within 7 days of the release of these reasons.
- [21] I express my gratitude to amicus for his very helpful submissions.

"L.B. Roberts J.A."

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