

CANADA / JUDGMENT

Aville Enterprises Ltd. v. Lloyd's Underwriters

2025 BCSC 2631

COURT

Supreme Court of British Columbia

DECIDED

19 December 2025

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2025 BCSC 2631 Aville Enterprises Ltd. v. Lloyd's Underwriters

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Aville Enterprises Ltd. v. Lloyd's Underwriters,

2025 BCSC 2631

Date: 20251219

Docket: S171013

Registry: Vancouver

Between:

Aville Enterprises Ltd.

Plaintiff

And

Lloyd's Underwriters, The Sovereign General Insurance Company

a.k.a. La Souveraine, Compagnie d'assurance générale and

Temple Insurance Company a.k.a. La Compagnie d'assurance Temple

Defendants

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J. Corbett,

appearing as Agent for

V.G. Critchley, K.C.

Counsel for the Defendants:

N.L. Trevethan

A. Taggar

Place and Date of Hearing:

Vancouver, B.C.

December 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 19, 2025

- [1] THE COURT: Lloyd's applies to dismiss Aville's claim for lack of prosecution under Rule 22-7(7) of the Supreme Court Civil Rules.
- [2] In 2014, just as Aville completed construction of its three-storey rental building at 49th and Granville in Vancouver, the building was destroyed by fire. Reconstruction took until March 2017.
- [3] Under Aville's builder's risk policy, Lloyd's paid Aville approximately \$10.6 million for reconstruction and other costs. By this notice of civil claim filed in early 2017, Aville claims an additional approximately \$1.3 million.
- [4] In the 8.5 years since filing, Aville has taken virtually no steps to advance its claim. It submits that its delay is excusable, however, because it was the responsibility of its former lawyer and so it is not in the interests of justice that it be dismissed.
- [5] Despite the able submissions of Mr. Corbett, in my view Aville's claim should be dismissed. The delay is too excessive to be excused, and there is real risk of prejudice to Lloyd's from fading memories and lack of documentation regarding the claim for at least \$700,000 of the \$1.3 million.
- [6] Although dismissal deprives Aville of its presumptive entitlement to a decision on the merits, allowing the case to continue would be unfair to Lloyd's and undermine public confidence in the justice system.

Background Facts

- [7] The destruction of the building by fire occurred on October 3, 2014.
- [8] On January 27, 2017, Lloyd's provided Aville with a complete review of its (round numbers) \$10.6 million payments to date and its external accounting reports supporting those payments. Regarding Aville's claim for approximately \$700,000 of interest payments to a related company, the letter said that Aville had provided no loan agreement in support.
- [9] The notice of civil claim was filed on February 2, 2017, and served on August 29, 2017.
- [10] On September 29, 2017, counsel for Lloyd's wrote to counsel for Aville enclosing a payment of \$406,112, which Lloyd's said concluded its obligations owing under the policy and requesting particulars of any remaining claims.
- [11] In October 2017, the principal of Aville, Mr. Ching Kit Ma, responded to Lloyd's regarding the interest claim. He said this:

Kit is a director of Aville and of the parent companies Indirect Investments Ltd. and CMA Holdings Ltd. The bank statements we have provided to Cox Insurance on a monthly basis showed how the Aville account was funded.

The only document missing is a loan agreement, and Kit can prepare one if that is what the insurance company wishes to see.

- [12] On March 13, 2018, Lloyd's counsel requested documents relating to the interest claim. By letter of August 10, 2018, Lloyd's' counsel summarized, at length, Aville's claims and Lloyd's' responses, explained its position for why all obligations were met, and requested additional information for any claims remaining, including the interest claims.
- [13] In September 2018, Aville changed counsel. New counsel asked Lloyd's' counsel not to take steps while he familiarized himself with the file.
- [14] During the balance of 2018 and through the summer of 2019, Aville's counsel followed up regarding document requests and the status of the case. By 2019, his letter said it appeared Aville had lost interest in the case and Lloyd's would like to close its file.
- [15] This led to correspondence between Mr. Kit Ma and Aville's counsel, from the fall of 2019 through January 2020, in which Mr. Kit Ma asked his lawyer to move the case forward, and then ultimately instructed him to schedule a mediation and trial date neither of which was done.
- [16] The final correspondence between the lawyers prior to Lloyd's bringing this application was in August 2020, when Lloyd's' counsel followed up once again to say:

Another year has gone by since your last email on this file. See below. It truly seems like your client has lost interest in this matter or they would have been pushing you.

Can we not just close it up? If we cannot we will set discovery and trial dates to get the matter on track. We will also need your clients list of documents asap.

[17] As between Mr. Kit Ma and Aville's counsel, according to the record, there was no further communication between them for almost three years, from January 2020 to October 2022, when Mr. Kit Ma requested an update. He requested another update in May 2023.

[18] On November 12, 2024, Lloyd's served this application.

[19] In April 2025, Aville produced some documents in response to Lloyd's letter of March 2018. This included little, if any, documentation establishing the alleged loan.

Aville's Evidence

[20] Mr. Miachika's evidence includes the following:

12. The delays that occurred between 2020 and 2024 were not tactical nor intentional delays on behalf of my client.
13. The COVID-19 pandemic caused delays to my legal practice from mid-2020 and into 2021. From 2022 to date, I have been involved in several large and time-consuming construction and insurance disputes that caused me to not prioritize pushing this matter along towards mediation, which was the next intended step in the Action. It was my delay alone that has led to the plaintiff not pushing to set mediation or to advance the action beyond its present state.
14. Based on my years of experience in litigating construction insurance claims for policy holders, almost all of my claims never reach conclusion through trial as they are typically resolved at initial or subsequent mediations.
17. From the outset of my retainer, I have taken instructions on behalf of Aville from Ma Ching Kit ("Kit"). Without disclosing solicitor client privilege, I can confirm that at all times Kit has expressed his intention to pursue recovery of what he considers to be approximately \$1.3 million owing under the Policy. Kit had instructed me to pursue mediation with the Insurers and failing a resolution, moving the action forward to trial if required.
18. During the period of 2019-2024 Kit made periodic enquiries to me by email about the progress of the action. When I responded I noted that not much was progressing as the Insurers had not changed their position on adjusting the fire loss for the remaining amount claimed. I realize I should have been prompting him to provide further timely document disclosure to the Insurers (as discussed further below) and that if there were lengthy delays this could cause difficulties down the road. I also should have been in contact with the Insurers' counsel to advise him about the status of matters or set down a mediation.
20. Kit is located in China and is over 70 years old. For the past few years, he has been attempting to locate the documents requested by the Insurers as noted in their counsel's letter dated 13 March 2018 (the "Requested Documents").

22. My understanding was that the Insurers were not prepared to engage in any further adjusting of the claim or negotiation of the dispute until Aville produced the Requested Documents. As such, the Action stalled while we located the Requested Documents, and during this time, neither party pushed the claim along. As noted above, however, I should have prompted Kit or advised Kit that lengthy delays in locating the Requested Documents could cause difficulties. I also should have informed opposing counsel about the status of matters and scheduled a mediation.
 23. I take responsibility for any delay in moving the Action along including proceeding to mediation as instructed by my client. As Kit is an unsophisticated litigant, it was my obligation to ensure that steps were being taken to advance the claim even though the Insurers had taken the position that no further amounts were owing under the insurance policy. I did not take these steps in spite of my client's ongoing intention to pursue the claim.
- [21] Mr. Kit Ma's evidence includes this:
16. A significant amount of the outstanding disputed costs is for the balance of the soft cost limits under the Builder's Risk Policy, which is primarily interest paid on money Aville had borrowed for the construction as a result of the Incident. Reconstruction caused by the Incident took well over a year to complete, and as a result Aville incurred over \$700,000 in interest payments.
 19. As Ms. MacDonald was retiring, Ms. MacDonald suggested that I work with Mr. Miachika of Borden Ladner Gervais. Ms. MacDonald also advised me to not just deliver documents without knowing why the documents are related to Aville's claim.
 20. I changed counsel in September 2018. In the fall of 2018, I retained Mr. Miachika of Borden Ladner Gervais as my counsel for this dispute.
 21. I did not understand that my action would be stalled and could not progress to a mediation until I produced the requested documents. Mr. Miachika never advised me of this fact; nor did he follow up with me substantially after 2019 to request the documents.
 30. I assumed that Mr. Miachika would advise me in terms of how best to manage this claim throughout. I assumed he was taking steps to maintain the action and to do what was necessary to ensure that my action could be pursued a conclusion, whether through mediation or trial. I was not aware that an application could be made to dismiss my claim for want of prosecution until January 2025 when I learned of the Defendant's application, which I understand was initially served in November 2024.

Governing Law

- [22] Under the leading case of *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473, paras. 69-70, if the defendant establishes inordinate delay in the prosecution, meaning delay that is excessive in the circumstances, and that the delay is inexcusable, then the case should be dismissed unless contrary to the interests of justice.
- [23] Factors to be considered in assessing the interests of justice include:
- (a) the prejudice the defendant will suffer in mounting its case if the matter goes to trial;
 - (b) the length of the inexcusable delay the stage of the litigation;
 - (c) the impact of the inexcusable delay on the defendant;
 - (d) the context in which the delay occurred;
 - (e) the reasons offered for the delay;
 - (f) the role of counsel in causing the delay;
 - (g) the public interest; and
 - (h) the merits of the action.
- [24] The power to dismiss an action for want of prosecution is not to be lightly exercised because it deprives a plaintiff adjudication on the merits. This must be weighed, however, against the interests of defendants, and society more generally, in the efficient resolution of civil disputes: *Giacomini*, para. 29.

Analysis

- [25] Aville quite properly concedes that its delay has been excessive. Since the claim was filed almost nine years ago, in February 2017, it has taken virtually no steps despite frequent follow-up by Lloyd's.
- [26] In my view, the delay is not excusable, at least in the sense that there is no reason why Aville should not have proceeded with it quickly in 2018. The issues were well defined and straightforward. The question, however, is whether the lack of diligence from its former lawyer amounts to a reasonable excuse in the circumstances of the case: *Giacomini*, para. 40.
- [27] The record is clear that, as between Aville and its lawyer, responsibility for the delay falls on the latter, as he failed to move the case forward despite prompting from Mr. Kit Ma and Lloyd's counsel. Mr. Miachika's affidavit is forthright in that regard.
- [28] Having said that, I agree with Lloyd's' submission that Mr. Kit Ma bears some responsibility for not insisting the claim be advanced from 2020 through 2024. Although Mr. Kit Ma prompted his lawyer to advance the case in 2019/2020, and was given the impression some progress was occurring, the evidence is that he too allowed it to languish from January 2020

forward. The inattention of counsel is certainly the dominant reason for this delay, and as between Aville and its counsel, the fault lies with the latter. But as between Aville and Lloyd's, Aville cannot be excused as it bears some responsibility for allowing its claim to languish as it did.

- [29] In the circumstances of this fairly straightforward case, where the issues are well defined by Lloyd's in 2017/2018, the length of delay is beyond excessive and is not excused.
- [30] I also agree with counsel for Lloyd's that the claim should not be allowed to continue in the interests of justice, though this deprives Aville of its presumptive entitlement to a decision on the merits. Over the past almost eight years, no procedural steps were taken other than the pleadings despite Lloyd's' follow-up. If the case were to proceed to trial, this would occur almost 10 years after it was filed. Undue delay to this extent undermines public confidence in the justice system: *Giacomini*, para. 74.
- [31] While a defendant is not obliged to move the plaintiff's case forward, its inaction in the face of lengthy delay can weigh against dismissal: *Giacomini*, para. 76. I agree with counsel for Lloyd's that it was reasonable for him, in the circumstances, not to unilaterally schedule discoveries or a trial. I say that for two reasons. First, in the early stages of this delay, the logical first step was to await Aville's documents in support of its interest claims and then assess whether the next steps should be mediation or something else. Second, as the years passed, and despite Aville's counsel's occasional statements to the contrary, all indications were that Aville had lost interest in the case and did not intend to proceed.
- [32] In my view, there is also a real risk of prejudice to Lloyd's from the delay. Given the excessive delay, memories regarding events surrounding the alleged loan will no doubt have faded, if the witnesses can even be found, and some documents and communications will likely be lost. Aville has not submitted any evidence to rebut this obvious concern. While I take Aville's point that such difficulties may be more prejudicial to the proof of its claim than to Lloyd's' defence, that is speculative at this stage and there may well be evidence, now lost, that would have benefitted Lloyd's' defence.
- [33] Finally, the prejudice to Aville from dismissal is somewhat diminished by its claim against its former counsel regarding these matters.

Conclusion

- [34] This action is dismissed for delay in prosecution.
- [35] Subject to hearing from counsel for Aville, I award costs to Lloyd's of the action at scale B.
- "Coval J."

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