

CANADA / JUDGMENT

Bellefeuille v. Tamarack Developments Corporation (Tamarack Homes)

2026 ONCA 170

COURT

Court of Appeal for Ontario

DECIDED

10 March 2026

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Bellefeuille v. Tamarack Developments Corporation (Tamarack Homes) Collection Decisions of the Court of Appeal Date 2026-03-10 Neutral citation 2026 ONCA 170 Docket numbers COA-25-CV-0402 Judges Lauwers, Peter D.; Huscroft, Grant; Gomery, Sally A. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Bellefeuille v. Tamarack Developments Corporation (Tamarack Homes), 2026 ONCA 170 DATE: 20260310 DOCKET: COA-25-CV-0402 Lauwers, Huscroft and Gomery JJ.A. BETWEEN Marcel Bellefeuille and Julie Bellefeuille Plaintiffs (Appellants) and Tamarack Developments Corporation a.k.a. Tamarack Homes, City of Ottawa and Tarion Warranty Corporation Defendants (Respondents) David Milosevic, for the appellants Jennifer Therrien, for the respondent Tamarack Developments Corporation a.k.a. Tamarack Homes Angela Severson, for the respondent City of Ottawa Montgomery Shillington, for the respondent Tarion Warranty Corporation Heard: February 24, 2026 On appeal from the order of Justice Kevin B. Phillips of the Superior Court of Justice, dated February 28, 2025. REASONS FOR DECISION

- [1] Marcel and Julie Bellefeuille's action was administratively dismissed for delay under r. 48.14(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, because their action was not set down for trial within five years of its commencement. The Bellefeuilles brought a motion to set aside the dismissal, but the motion judge declined to do so. They now appeal the motion judge's decision.
- [2] For the following reasons, we dismiss the appeal.
- [3] The timeline follows. Bellefeuilles took possession of their new home in October 2016 and discovered alleged deficiencies. They made warranty claims to Tarion as early as November 2016. On October 19, 2018, they started this action against the builder and vendor, Tamarack, and against the City of Ottawa. In January 2020, the Bellefeuilles instructed their counsel to add Tarion as a defendant and adjourned the examinations for discovery scheduled for February. They brought a motion to add Tarion in January 2021. In August 2022, Tarion was added as a defendant. Examinations for discovery were eventually rescheduled for January 29, 2024, but the Bellefeuilles cancelled them, alleging deficiencies in Tamarack's affidavit of

documents among other reasons. A status motion was booked for October 22, 2024, but was later rescheduled to February 2025. On November 1, 2024, the action was administratively dismissed for delay.

- [4] Applying the Reid factors, the motion judge found that although the Bellefeuilles brought the motion to set aside the dismissal promptly, they did not adduce sufficient evidence to explain the delay and there was inferred prejudice: for the factors, see *Reid v. Dow Corning Corp.* (2001), 11 C.P.C. (5th) 80 (Ont. S.C.), rev'd on other grounds (2002), 48 C.P.C. (5th) 93 (Ont. Div. Ct.), adopted by this court in *Scaini v. Prochnicki*, 2007 ONCA 63, 85 O.R. (3d) 179, at para. 12.
- [5] Before us, the Bellefeuilles sought to re-argue the motion by analyzing the Reid factors in a granular fashion. However, they were unable to identify a palpable and overriding error in the motion judge's reasoning.
- [6] The factors from Reid are to be applied contextually, not rigidly: *Prescott v. Barbon*, 2018 ONCA 504, 141 O.R. (3d) 616, at para. 15. The primary responsibility for an action's progress lies with the plaintiff: *Prescott*, at para. 30. Once an action crosses the five-year mark and has not been set down for trial, the delay begins to move into the realm of "inordinate": *Barbiero v. Pollack*, 2024 ONCA 904, 504 D.L.R. (4th) 652, at para. 22.
- [7] The Bellefeuilles argue that the motion judge erred by not considering the respondents' conduct and, when assessing prejudice, by not taking into account whether a fair trial was still possible: see *Arumugasamy v. Subaschandiran*, 2026 ONCA 102, at paras. 15-16. The Bellefeuilles' reliance on *Arumugasamy* is misplaced. In that case, the defendant's inaction "demonstrated that he was content with the pace of the litigation". Critically, the action was ready for trial. By contrast, the motion judge here considered allegations that the respondents caused some delay, but, given the dearth of evidence, this did not "tilt the... factors in their favour." Examinations for discovery had not occurred, supporting a finding of prejudice.
- [8] In assessing prejudice, the motion judge referred to the Supreme Court's decision in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, as "a wake-up call directed to all justice system participants to treat the passage of time as a prejudicial factor", noting that the case had not yet proceeded to discoveries. In *Barbiero*, at paras. 11-12, Brown J.A. noted: *Hryniak* singled out for criticism an unhealthy characteristic of the contemporary Ontario civil justice system: its indifference to delay. In calling for a "culture shift" in the civil justice system, the court in *Hryniak* stated at para. 25: Prompt judicial resolution of legal disputes allows individuals to get on with their lives. But, when court costs and delays become too great, people look for alternatives or simply give up on justice. Effecting a culture shift requires... changing the entrenched culture of indifference to delay manifested by far too many litigants and their counsel...

- [9] The motion judge found that the Bellefeuilles provided no explanation for the delay in instructing counsel to add Tarion as a defendant, and no adequate explanation for the added delay in adding Tarion. The Bellefeuilles provided an affidavit sworn by their counsel which the motion judge found deficient. While an affidavit from counsel may be sufficient to explain the reasons for delay in some cases, here, the motion judge found that the affidavit contained bald assertions. On appeal, the Bellefeuilles point to documents that could explain some of the delay, such as an email from Tarion in January 2020 referring to Tarion's delay in addressing their warranty claim. While it might have been open to the motion judge to draw inferences of the Bellefeuilles' intent from these documents to explain the delay, he declined to do so. We defer to the exercise of his discretion. We see no palpable and overriding error in his findings.
- [10] The appeal is dismissed with costs payable in the amount of \$17,000 to Tamarack, \$8,000 to Tarion, and \$4,000 to the City of Ottawa, all inclusive. "P. Lauwers J.A." "Grant Huscroft J.A." "S. Gomery J.A."

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