

CANADA / JUDGMENT

Charbonneau v. Charbonneau Estate

2025 BCSC 2388

COURT

Supreme Court of British Columbia

DECIDED

19 September 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2388 Charbonneau v. Charbonneau Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Charbonneau v. Charbonneau Estate,

2025 BCSC 2388

Date: 20250919

Docket: S30208

Registry: Cranbrook

Between:

Alain Charbonneau and Benoit Joseph Gino Charbonneau Gravel

Plaintiffs

And:

Serge Charbonneau and Diane Charbonneau, in their Capacities

as Co-executors and Co-Trustees of the Last Will and Testament

of Joseph Armand Benoit Charbonneau, Serge Charbonneau,

Diane Charbonneau and Esperanza De Pu Aguilera

Defendants

Before: The Honourable Justice Marzari

Oral Reasons for Judgment

In Chambers

The Plaintiff Benoit Gravel, appearing in person:

B. Gravel

Counsel for the Defendants

Serge Charbonneau and Diane Charbonneau:

E. Hatch

Place and Date of Hearing:

Cranbrook, B.C.

September 19, 2025

Place and Date of Judgment:

Cranbrook, B.C.

September 19, 2025

- [1] THE COURT: This is an application by the defendants in this action, Serge Charbonneau and Diane Charbonneau (together, "the Executors"), in their capacities as co-executors of the last will and testament of the deceased, Joseph Armand Benoit Charbonneau (the "Will"), to dismiss this action for want of prosecution.
- [2] Mr. Benoit Joseph Gino Charbonneau Gravel is one of the plaintiffs, and he opposes the application before me.
- [3] This action has been the subject of prior proceedings, including an application to remove a CPL over the main estate property that was considered by Justice Lyster, referenced as Charbonneau v. Charbonneau Estate, 2023 BCSC 2463. In those reasons, just over two years ago in 2023, Lyster J. ordered the removal of the plaintiffs' CPL in this action. I am going to refer to those reasons as "Charbonneau #2".
- [4] Before Charbonneau #2, in Re Charbonneau Estate, 2021 BCSC 2571, Justice Blake proved the Will in solemn form, and thereby finally resolved aspects of this claim relating to the validity of the Will. I will refer to that decision as "Charbonneau #1" in these reasons.
- [5] There is a great deal of background to what is now before me contained in those two prior decisions, and I do not intend in these brief oral reasons to go through the full history of these proceedings. I will focus my attention on this application for want of prosecution which was made in November last year. Unfortunately, I understand this application was set down on a number of assize dates and adjourned for lack of a judge until today.

- [6] Mr. Benoit Gino Charbonneau Gravel has been referred to in Charbonneau #1 and Charbonneau #2 as "Gino" because his first two names are so similar to the deceased's. Mr. Charbonneau Gravel has given me permission to refer to him as "Gino" for the purposes of these reasons, and I am going to do that to avoid confusion. Similarly, I am going to refer to all of the Charbonneaus by their first name to avoid confusion, meaning no disrespect.
- [7] Gino filed a response to this application opposing the dismissal of his action for want of prosecution. Alain Charbonneau, who is a son of the deceased, did not file a response to this application. Alain has been self-represented in this action since he filed a notice to act in person in 2022, and his address for service provided in relation to this action in this court is a postal address only, in Quebec. Alain did not respond to the previous 2022 application to remove the CPL although he was duly served, as noted by Lyster J. in Charbonneau #2. Alain has not responded to this application either.
- [8] Counsel for the Executors fairly advised me before we proceeded, that their attempts to serve Alain with this application both at first instance, and then each time that it was adjourned, were returned as undeliverable. Nevertheless, I am satisfied of counsel's efforts made to serve Alain in this application in accordance with the Rules, and I am equally satisfied that Alain, having taken no steps in this action since filing his notice to represent himself in 2022, including no steps to serve the named defendant beneficiaries, and in not updating his address for service in this registry, and not filing a response to the application in 2022 to remove his CPL from the estate property or taking part in that hearing, has truly abandoned his claim set forth in this Amended Notice of Civil Claim ("ANOCC").
- [9] This is anecdotally confirmed by his cousin and co-plaintiff Gino, who says before me that Alain has given up and does not want anything more to do with his family or these proceedings because he is so hurt by his treatment under the Will and by them.
- [10] Therefore, I am satisfied that I can proceed to consider this application, which is opposed only by Gino, the deceased's nephew.
- [11] For the reasons that follow, I find that the plaintiff's delay in taking steps to pursue their action against the estate, and its executors and beneficiaries, has been inordinate and inexcusable, and that the interests of justice require the dismissal of the ANOCC.
- [12] In providing these reasons orally, I rely on the summaries of events described in both Charbonneau #1 and #2, as well as the comprehensive written submissions of the applicant executors, which succinctly summarizes much of the relevant factual and legal background, the key relevant evidence before me, and the law in this respect. I have also considered the affidavit prepared by Gino and his oral submissions before me, and I will indicate how that evidence and those submissions affect my decision.

Parties and Property

- [13] Mr. Joseph Armand Benoit Charbonneau (the "Deceased") died almost six years ago on November 27, 2019.
- [14] The main asset of the Deceased's estate is a mobile home park in Canal Flats, BC (the "Property").
- [15] The named parties to this proceeding are:
- a) the plaintiff, Gino, who is the Deceased's adult nephew, and who has lived on the Property both before and after the death of the Deceased;
 - b) the defendant Executors, who are also named as defendants in their personal capacity as beneficiaries, and who are the adult children of the Deceased;
 - c) the plaintiff, Alain, who is also an adult child of the Deceased; and
 - d) the defendant, Esperanza De Pu Aguilera ("Ms. Aguilera"), who is the spouse of the Deceased and who also lived on the Property both before and after the death of the Deceased.
- [16] Serge, Diane, and Ms. Aguilera are beneficiaries of the Deceased under the Will. Alain and Gino are not beneficiaries. The Will provided no inheritance for Alain, but did provide Gino with an option to purchase the Property within six months of the Deceased's death. Gino did not exercise this option, and has expressed no intention of doing so before me. Gino's position before me was that he expected to be given the Property by the Deceased in the Will, or at least that there was an agreement between himself and the Deceased as to how he would acquire the Property on terms that were better than what the Deceased provided for in the Will.

PROCEDURAL BACKGROUND

- [17] Approximately five years ago - on or about October 16, 2020 - the plaintiffs, Alain and Gino, filed this action. They filed the ANOCC five days later on or about October 21, 2020. At the time this proceeding was commenced, the plaintiffs shared legal counsel, but both subsequently became self-represented.
- [18] The ANOCC seeks to set aside the Will on various grounds (a matter fully dealt with in the reasons of Justice Blake in Charbonneau #1 when she approved the Will in solemn form, and by Lyster J. in Charbonneau #2, who struck the relief in the ANOCC relating to the validity of the Will in 2023).
- [19] The claims that remain in the ANOCC are:
- a) First, that the Executors have not acted in the best interests of the Estate and ought to be removed under the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 ("WESA"). I note however, that neither Alain nor Gino are beneficiaries under the Will that has been approved in solemn form, so both lack standing to apply to remove the Executors under the Will. Furthermore, there is no claim to add Gino as a beneficiary in the ANOCC, and so Gino

could not obtain that standing even through success in this claim. Alain is no longer advancing this claim and has not responded. Overall, I consider that this aspect of the claim is now moot.

- b) Second, the Will does not make adequate provision for Alain's proper maintenance and support. This is a wills variation allegation, and Alain is not here to pursue that claim. This is not relief that Gino is in a position to pursue himself.
- c) Third, Gino advances a claim in unjust enrichment, or alternatively quantum meruit, for work he did on the Property.

[20] I note that although Alain and Gino shared legal counsel and combined their claims in one amended notice of civil claim - their claims are legally distinct. Alain has outstanding claims for wills variation, and Gino has an outstanding claim for unjust enrichment. These claims do not overlap.

Executors' Application to Cancel CPLs filed by Plaintiffs

[21] On or about May 11, 2022, the Executors filed an application to cancel two certificates of pending litigation filed by the plaintiffs against the Property. In Charbonneau #2, Lyster J. granted that application and ordered that the CPLs be cancelled pursuant to s. 252 of the Land Title Act, R.S.B.C. 1996, c. 250, on the basis that no step has been taken in the proceeding for over one year. In her analysis, the Honourable Lyster J. held that:

[45] ... Neither Alain nor Gino had taken any steps that moved this litigation forward in the one-year period immediately preceding service of the notice of application. Indeed, neither of them have taken any steps to move this litigation forward since filing the ANCC on October 21, 2020, a period now of almost two and one-half years.

.

[49] Alain has provided no explanation for his delay in moving this litigation forward. Gino submitted that he attempted to settle the litigation, and he averted to the difficulties he has experienced in pursuing this litigation as a self-represented person. I appreciate that it is difficult for any self-represented person to move litigation of this type forward, but no acceptable explanation for the significant delay in this case has been offered.

.

[60] ... I conclude in the case of both Alain and Gino, that the statutory pre-conditions for their CPLs to be cancelled pursuant to s. 252 have been established. That is, they took no steps to move this litigation forward in the one-year period preceding being served with this application. In both cases, I conclude that it is appropriate for me to exercise my discretion to cancel the CPLs. There has simply been too much unexplained delay in moving this litigation forward to justify the park continuing to be tied up by this dormant litigation. Alain's claim to an interest in land is, in my view, bound to fail. While Gino's claim to an

interest in land is not bound to fail, it is not strong, and the equities favour both CPLs being cancelled ...

[Emphasis added.]

[22] As was the case before Lyster J. in 2023, Gino has not taken the application before me as motivation to take any steps to move this litigation forward in the nine months since the application was served on him. Indeed, as was also the case before Lyster J. in 2023, the plaintiffs have continued to take no steps to advance their claims in the ANOCC since 2020.

Service and Scheduling of this Application

[23] The present application to dismiss for want of prosecution was filed on November 27, 2024. Despite being scheduled on four previous assize lists, due to judge availability it has not proceeded to hearing until now.

[24] On or about November 28, 2024, the application was emailed to Gino who filed an application response and affidavit on his own behalf.

[25] I find that the evidence before me establishes that since the filing of the ANOCC approximately five years ago, Alain and Gino have taken almost no steps to advance their claims. This includes an ongoing failure to personally serve the ANOCC on the beneficiaries of the estate, including Ms. Aguilera (who has not been served at all), and Serge and Diane (who have not been served in their personal capacities as beneficiaries).

[26] Not surprisingly, Ms. Aguilera, Serge, and Diane have not filed responses to the ANOCC, and the ANOCC is therefore no longer in force against them pursuant to Rule 3-2(1) of the Supreme Court Civil Rules.

[27] Rule 3-2 of the Supreme Court Civil Rules states:

Rule 3-2 -- Serving and Renewing the Notice of Civil Claim

Renewal of original notice of civil claim

(1) An original notice of civil claim does not remain in force for more than 12 months, but if a defendant named in a notice of civil claim has not been served, the court, on the application of the plaintiff made before or after the expiration of the 12 months, may order that the original notice of civil claim be renewed for a period of not more than 12 months.

Further renewal of notice of civil claim

(2) If a renewed notice of civil claim has not been served on a defendant named in the notice of civil claim, the court, on the application of the plaintiff made during the currency of the renewed notice of civil claim, may order the renewal of the notice of civil claim for a further period of not more than 12 months.

When renewal period begins

- (3) Unless the court otherwise orders, a renewal period ordered under subrule (1) or (2) begins on the date of the order.

After renewal of notice of civil claim

- (4) Unless the court otherwise orders, a copy of each order granting renewal of a notice of civil claim must be served with the renewed notice of civil claim, and the renewed notice of civil claim remains in force and is available to prevent the operation of any statutory limitation and for all other purposes.

[28] Gino argues that he did not understand that there was a difference between serving the lawyer for the executors, which was done by his counsel, and serving the personal defendants who are beneficiaries of the estate. While I appreciate that the distinction may not be easy to understand, the fact is that this failure was noted more than two years ago in Charbonneau #2 at para. 36, and further notice of this failure was provided in this notice of application. During this entire period, Gino has still not attempted to serve the defendants personally, including Ms. Aguilera, who has not been served in any capacity.

[29] The pleadings stage of this action has yet to be completed because the service of necessary defendants has not been completed. The beneficiaries are necessary defendants to the relief sought in the ANOCC. Furthermore, there is no option for the plaintiffs here to simply discontinue against unserved defendants and still proceed with the action as filed. The action has therefore lapsed and has been lapsed for several years.

[30] As a result, the plaintiffs are not in a position to pursue this proceeding. Not only have they failed to serve the personal defendants, they have not taken any steps to renew the ANOCC against the personal defendants, which would require a further order of this Court.

Dismissal of the Proceeding for Want of Prosecution

[31] The power to dismiss an action for want of prosecution must be interpreted in the context of the general objective of the Supreme Court Civil Rules, as stated in Rule 1-3(1), "to secure the just, speedy and inexpensive determination of every proceeding on its merits".

[32] In 2023, the Court of Appeal in *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [Giacomini], revised the test that governs applications to dismiss actions for want of prosecution as follows:

- (a) Has the defendant established that the plaintiff's delay in prosecuting the action is inordinate?
- (b) Is the delay inexcusable?

[33] If (a) and (b) are answered in the affirmative, the court should proceed to the last question below:

(c) Is it in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay?

[34] In *Giacomini*, the BC Court of Appeal adopts the reasoning of the Saskatchewan Court of Appeal in *International Capital Corporation v. Robinson Twigg & Ketilson*, 2010 SKCA 48, which lists a series of non-exhaustive factors for the Court's consideration, including:

- i. the prejudice the defendant will suffer defending the case at trial;
- ii. the length of the delay;
- iii. the stage of the litigation;
- iv. the impact of the delay on the defendant's professional, business or personal interests;
- v. the context in which the delay occurred, in particular whether the plaintiff delayed in the face of pressure by the defendant to proceed;
- vi. the reasons offered for the delay;
- vii. the role of counsel in causing the delay;
- viii. the public interest in having cases that are of genuine public importance heard on their merits; and
- ix. the merits of the action - if the action is bound to fail then the interests of justice will favour its dismissal.

Inordinate and Inexcusable Delay

[35] In the present case, I am satisfied that the questions under (a) and (b) are satisfied. I find that the plaintiffs' delay in prosecuting the case of almost five years has been inordinate. In *Etcheverry v. Bhatti*, 2024 BCSC 1222, a delay of three and-a-half years was found to be inordinate (paras. 10-11), and in *Krist v. British Columbia*, 2024 BCSC 1925, the Court noted that a delay of over four years, in which nothing has occurred, is inordinate, and should not be normalized by the court (para. 23). I need not worry about whether to measure the delay since commencement of the last steps taken, because the claim has not gone beyond the commencement stage.

[36] I agree with the Executors that the delay is compounded in this case when read in the context of *Lyster J.*'s reasons for judgment made over two years ago on April 12, 2023 granting the order to cancel the CPLs wherein she concluded that "no acceptable explanation for the significant delay in this case has been offered" and "There has simply been too much unexplained delay in moving this litigation forward to justify the park continuing to be tied up by this dormant litigation". I agree that the reasons for judgment ought to have served as a warning to the plaintiffs to advance this litigation, yet, over two years have since passed since the reasons for judgment and the plaintiffs still have failed to take any steps.

- [37] I also find that the delay is inexcusable. The plaintiff bears the burden of bringing evidence to excuse the delay: *Ramirez Carabantes v. Ivanhoe Cambridge Inc./Ivanhoe Cambridge I Inc.*, 2024 BCSC 520 at para. 39. Generally, when inordinate delay is established, unless a credible excuse is provided, the natural inference is that inordinate delay is inexcusable: *Domirti v. Crescenzo*, 2024 BCSC 422 at para. 38.
- [38] In this case, Gino has filed an affidavit regarding his reasons for delay. It is brief and unspecific.
- [39] In oral submissions before me, Gino also stated a number of things that are not in the affidavit evidence before me. He says that he cannot afford a lawyer, he is raising his daughter as a single father, working full time an hour away from his residence and dealing with threats of eviction from the Property to both himself and his family. He is also concerned about costs of taking any steps in the litigation, and that costs might be awarded against him if he is unsuccessful.
- [40] These statements are not sworn evidence, but I have considered them regardless with respect to whether some extension of time should be provided to allow that information to be placed into proper form. Unfortunately, given the length of the delay, I find that these explanations are insufficient, and give me no assurance that Gino will take the necessary steps to move forward with alacrity.
- [41] Gino's explanations add little to what was before Lyster J. more than two years ago, and little in the way of specifics. They are not the types of reasons that are generally accepted, and they are the types of reasons that, for example, in *Etcheverry*, were found to be insufficient.
- [42] Gino also provides evidence that he "attempted to contact counsel for the Applicants on multiple occasions" but has not received a response. He points to emails he sent in 2020, 2021, 2022, and 2023 asking the Executors or their lawyer to negotiate with him. These included a November 2022 email, "are you guys in the mood to negotiate a settlement", or most recently, "Good morning Erin, give me a call if you want to chat".
- [43] None of these are "steps in the litigation" because attempts to negotiate a settlement are not steps in litigation. Attempts to negotiate a settlement are not steps in the litigation, and I have no substantive evidence of that in any event.
- [44] I note for the record that Gino attached to his affidavit a letter dated 2025 on his former counsel's letterhead suggesting that he made some attempt to move the litigation forward through making an offer to settle in 2025. That letter is not signed by Gino's former counsel, and I am satisfied that it was never sent to, nor received by, the Executors' counsel. Furthermore, Gino admitted before me that this letter is not, in fact, a letter prepared by his former counsel or a letter sent in 2025, as it purports to be. Instead, it is a letter he prepared on his former lawyers' letterhead, perhaps from an old draft letter, which was not sent, but which he nevertheless attached to his affidavit. Despite this concerning behaviour, even if this letter was what it purports to be, it would be both privileged and irrelevant to my

considerations.

The Interests of Justice

- [45] Although I have found that the plaintiffs' delay is inordinate and inexcusable, the court may still allow an action to proceed if it is in the interests of justice. I shall therefore review each of the non-exhaustive factors listed above. In my view, they do not support allowing this claim to proceed.
- [46] The first factor is the prejudice to the defendant if the case goes to trial, and that really relates primarily to the fact that witnesses are getting older. They are forgetting things five years since the ANOCC was filed, and you can expect the quality of evidence to decay over time. I will note that pursuant to *Giacomini*, this aspect of the test has changed. It is not a discrete element, and the defendants no longer have to prove that there is serious prejudice to the defendant. Instead it is just one of the factors to be considered. It is not a factor that weighs heavily in my considerations here.
- [47] The length of the delay is a significant factor weighing in favour of dismissing the claim. This is not a case that is complex that would need five years to prepare, as was found in *Pioneer Inn Holdings Ltd. v. Pier Side Landing Hotel Ltd.*, 2025 BCSC 1228. Complexity issues are not a reason for the delay in this case.
- [48] The stage of litigation is also a significant factor in this case. This claim has not advanced beyond the pleading stage. It has not even completed the pleading stage because the beneficiaries of the estate have not been served personally, and they are named and necessary personal defendants. I find that this factor strongly supports dismissal at this point.
- [49] Before me, Gino argued that he believed his lawyer had served Ms. Aguilera, and that is why he had taken no steps to serve her, but that was a factor, as I said, that was also missing in 2023 and noted by Lyster J. It is not encouraging that in the last two and-a-half years since then, Gino has still not fully understood what is required and taken steps to address this deficiency in his service of the ANOCC.
- [50] The most significant factor, however, in this case is the impact of the delay on the defendants' professional business or personal interest, and in this case, this lawsuit is preventing the processing of the Will under WESA. It is well established that probate of a will is supposed to be done expeditiously so that the beneficiaries may receive the benefits of the Will. The Executors have been required to operate and maintain the mobile home park on the Property throughout this period. I have a detailed affidavit with respect to the financial situation of this business, and I am satisfied that while the Property may be generating revenue, these revenues are offset by its expenses.

- [51] The Honourable Justice Lyster already concluded that it was contrary to the interests of the estate to be tied up by CPLs for almost two and-a-half years in 2023, and I find that it is similarly unfair for the estate to be tied up indefinitely by this outstanding proceeding. Ms. Aguilera is a beneficiary with little means. She is a housekeeper, and her work fluctuates with work demands. The evidence establishes that she is suffering financially and cannot afford a lawyer to pursue her rights to obtain her inheritance under the Will. Her rights as beneficiary under the Will, and as personal defendant in this action, are a significant factor.
- [52] With respect to the context in which the delay occurred, the context includes the two Charbonneau decisions. The defendants have not been lax in trying to move this forward. The reasons offered for the delay are insufficient overall.
- [53] Counsel has not caused the delay here. Counsel for the plaintiffs has not been involved for approximately four years.
- [54] With respect to whether there is a public interest in having this matter proceed, I am satisfied that Giacomini essentially adopts the factors set out in International Capital Corporation, and that the discussion of public importance in that case at para. 45(h) relates to broad public importance. I am satisfied that the issues before me, and in particular Gino's unjust enrichment and quantum meruit claims, are not the type of public-interest claims that the Court is referring to in that factor.
- [55] Finally, I turn to the merits of the action. This factor is where Gino directed most of his submissions and dedicated most of his affidavit evidence. He believes that there is strong merit to his claim. He says he did work on the Property prior to the Deceased's death and that he can prove that he worked on the Property since 2009. He has photographs of himself working on the Property, digging trenches for the mobile home park. He also has documents that he has not attached to his affidavit, he says, which could prove more details of what work he did to help the mobile home park get up and running. He says that I can infer from how old the Deceased was when he died, and the fact that the mobile home park developed over the course of 15 years while Gino was living there and had worked on the land, that Gino must have contributed significantly to the improvement of the Property.
- [56] Gino also relies on an excerpt of the Deceased's notes in the preparation of his Will. That note indicates that the Deceased made a verbal agreement to sell the manufactured home park to his nephew, which I accept is Gino. The Will provides for that option, but Gino has not taken it, perhaps because the price set out in the Will is not the price that Gino expected. Gino also says that he has witnesses that could testify that he was supposed to be able to purchase the Property for less than what is stated in the Will.
- [57] The content and validity of the Will is not a live issue before me given that the Will was proven in solemn form in Charbonneau #1. Gino's evidence might relate to his claim in quantum meruit or to unjust enrichment, but any such argument is undeveloped at this point, five years later, both in the pleadings and in Gino's affidavit materials before me.

- [58] Overall, I am not going to say that Gino's case has no merit. It really has not been tested. Justice Lyster, when she removed the CPLs, found that the claim was not bound to fail, but she also did not think it was strong. I do not have any ability to test what the evidence will be at trial, but overall I think this is a neutral factor. I am going to assume that the claim is not without merit, and yet it has been five years and it has not advanced. The failure to advance the claim is really the fundamental concern that I have, including the way that it has been holding up the administration of the Deceased's estate.
- [59] Overall, I am satisfied that there has been an inordinate and inexcusable delay and that it is in the interests of justice that the ANOCC be dismissed for want of prosecution. The plaintiffs' action is therefore dismissed for want of prosecution with costs to the applicants.

[SUBMISSIONS]

- [60] I am not going to remove the requirement that Mr. Charbonneau sign the order. He has assured me that he will, and he understands the requirement under the Rules to promptly return it, and that it may be entered without his signature if he does not sign it within the prescribed time under the Rules.

"Marzari J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/23/2025BCSC2388.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/charbonneau-v-charbonneau-estate-2025>

Prepared on 28 October 2026 · Esheria