

CANADA / JUDGMENT

Laurier Charters Ltd. v. Eggleton

2020 BCSC 262

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 262 Laurier Charters Ltd. v. Eggleton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Laurier Charters Ltd. v. Eggleton,

2020 BCSC 262

Date: 20200304

Docket: S102304

Registry: Victoria

Between:

Laurier Charters Ltd. and Martin Chambers

Plaintiffs

And

Stuart Eggleton, 708804 Alberta Ltd., Dorothy Eggleton, 714574 Alberta Ltd.,

Barry Mann, Wayne Bazen, and Bighorn Ranch Ltd.

Defendants

Before: The Honourable Madam Justice Marzari

Reasons for Judgment

Counsel for the Plaintiffs:

D. Williams

Counsel for the Defendants,

Stuart Eggleton, 708804 Albert Ltd.,

Dorothy Eggleton and 714574 Albert Ltd. :

R.D. McConchie

Place and Date of Trial/Hearing:

Victoria, B.C.

December 11, 2019

Place and Date of Judgment:

Victoria, B.C.

March 4, 2020

INTRODUCTION

- [1] The defendants, Stuart Eggleton, 708804 Alberta Ltd., Dorothy Eggleton, and 714574 Alberta Ltd. (collectively the "Eggleton defendants") seek dismissal of this action against them for want of prosecution.

BACKGROUND TO THE CLAIMS

- [2] The action is brought by the plaintiff, Martin Chambers, and his closely held company Laurier Charters Ltd. ("Laurier"). The claim relates to a collection of properties and a water lot lease that Mr. Chambers, directly or through Laurier, acquired in Winter Harbour on the North-West Coast of Vancouver Island in the mid-90's. Between 1999 and 2000, the Eggleton defendants were persuaded by Mr. Chambers to pay off Laurier's mortgage on the properties in the amount of \$263,000, and in or about June 2000 the title to the upland properties (though not the water lot lease) was transferred to one of the Eggleton defendants.
- [3] In or about 2002 or 2003, Mr. Chambers was found guilty of money laundering in the United States, and was incarcerated in the United States between 2002 and 2015.
- [4] In November 2002, Laurier through its director Mr. Barry Mann, assigned the water lot lease to the Eggleton defendants. The Eggleton defendants say that they paid another \$100,000 towards the taxes and operating costs of the properties until October 2004 when they sold the Winter Harbour properties, water lease, and marina operation for \$350,000 to the defendants Wayne Bazen and Bighorn Ranch Ltd. ("Bighorn").
- [5] Mr. Chambers and Laurier allege that the Eggleton defendants' sale of the upland properties to Mr. Bazen and Bighorn in 2004 was a breach of contract and trust. The plaintiffs say that the Eggleton defendants were not the beneficial owners of the lands, and they were being held by the Eggleton defendants as part of a joint venture with the plaintiffs, for the equal benefit of the plaintiffs. The joint venture agreement is alleged to have been an oral agreement formed with the Eggleton defendants in or around 1999 when they invested in the

properties. The trust is alleged to have been formed orally in or about 2000 as part of the transfer of the properties to the Eggleton defendants.

- [6] Mr. Chambers and Laurier allege that the transfer of the water lease by Laurier to the Eggleton defendants in 2004 was accomplished by the Eggleton defendants through a conspiracy to defraud Laurier, bribery of Mr. Mann, and fraudulent assignment to Bighorn.
- [7] Mr. Chambers says that all of this occurred while he was incarcerated, and the Eggleton defendants took advantage of his absence to sell the properties and retain the value of the lands for themselves. He says that to the extent that the Eggleton defendants might have had a claim for return of their investment, this had already been accomplished through the settlement of another dispute with a business associate of Mr. Chambers in or about August 2002.
- [8] The Eggleton defendants deny the existence of either a joint venture or trust, and say that they were entitled to recoup their losses and cease contributing to operating costs in 2004 when they sold the properties. They firmly deny being involved in any fraud, bribery or conspiracy with Mr. Mann. They are now 79 years old.
- [9] Mr. Bazen and Bighorn did not take part in this application, though they have filed their own similar application.
- [10] Mr. Mann died in December 2013.

PROCEDURAL HISTORY

- [11] The plaintiffs commenced this action against the Eggleton defendants in May 2010. On December 8, 2010, the plaintiffs filed (after application) their amended notice of civil claim adding the fraud, conspiracy and bribery allegations and naming the defendants Mr. Mann, Mr. Bazen and Bighorn.
- [12] The plaintiffs' claim was actively pursued and responded to in 2011. In June 2011, the plaintiffs filed an application seeking judgment against Mr. Mann, and Mr. Mann and the Eggleton defendants filed application responses opposing that relief. The Eggleton defendants also filed an application for security for costs. Neither of these applications was ever heard.
- [13] Unbeknownst to the other defendants, Mr. Mann entered into a consent order that judgment be taken against him in December 2011. Although this was a consent order, it appears to have been filed without notice or the signatures of the other parties. Indeed, it was not until the end of the hearing of this application that either counsel before me was aware of this consent judgment.

- [14] After January 2012, there were no further court filings or other steps taken in this proceeding until September 14, 2017 when the plaintiffs changed lawyers and filed a notice of intention to proceed. Mr. Chambers says the notice of intention to proceed followed his efforts in 2015 and 2016 to engage Mr. Eggleton in settlement discussions by visiting his house on a number of occasions. He says that Mr. Eggleton told him he should wait to receive an offer from him in 2016 that was never made.
- [15] However, after the filing of the notice of intention to proceed in 2017 there was again no steps taken by the plaintiffs to pursue in this action until April 16, 2019, when Mr. Bazen and Bighorn filed a notice of application to dismiss the action against them for want of prosecution. The Eggleton defendants followed suit with their own application in September 2019. I understand that there was some difficulty getting both applications heard, and ultimately the application of the Eggleton defendants came before me in December 2019.
- [16] Since June 2019, the evidence indicates that the plaintiffs have sought to proceed with their action by retaining new counsel and making demands for discovery. The defendants have resisted all discovery attempts until their applications for dismissal for want of prosecution have been heard. No notice of trial has been filed.
- [17] In addition to the history of these proceedings, the plaintiffs say that Mr. Chambers' pursuit of other proceedings after he was released from jail in 2015 are also relevant.
- [18] They point to an action filed in June 2015 by Mr. Chambers against his common-law wife in relation to his shares in companies (other than Laurier) entrusted with her during his incarceration. That claim alleges that she withdrew approximately \$3.2 million from these companies during his incarceration, and seeks rectification of the share registries and return of the shares in various companies. Mr. Chambers also alleges in that claim that he "made all major management, financial, tenancy and legal decisions" through to July 2009 with respect to at least two of these companies. That claim was filed (and amended in July 2015) with the assistance of counsel.
- [19] In addition, Mr. Chambers brought a small claims proceeding in March 2016 for repayment of a \$17,000 loan.
- [20] Mr. Chambers says that neither of these proceedings required significant funds or attention from him as they were settled without the need for a trial.

WANT OF PROSECUTION

- [21] Rule 22-7(7) of the Supreme Court Civil Rules provides that the court may dismiss a proceeding for want of prosecution. The factors that a chambers judge charged with hearing an application to dismiss an action for want of prosecution were stated by the Court of Appeal in 0690860 Manitoba Ltd. v. Country West Construction Ltd., 2009 BCCA 535 as follows at para. 27:

[27] These cases suggest to me that a chambers judge charged with the hearing of an application for dismissal of an action for want of prosecution is bound to consider the following:

- (1) the length of the delay and whether it was inordinate;
- (2) any reasons for the delay either offered in evidence or inferred from the evidence, including whether the delay was intentional and tactical or whether it was the product of dilatoriness, negligence, impecuniosity, illness or some other relevant cause, the ultimate consideration being whether the delay is excusable in the circumstances;
- (3) whether the delay has caused serious prejudice to the defendant in presenting a defence and, if there is such prejudice, whether it creates a substantial risk that a fair trial is not possible at the earliest date by which the action could be readied for trial after its reactivation by the plaintiff; and
- (4) whether, on balance, justice requires dismissal of the action.

[28] I consider the fourth question to encompass the other three and to be the most important and decisive question.

[22] In *Edmond v. British Columbia*, 2013 BCSC 1102 at para. 47, Mr. Justice Abrioux (as he then was) set out the four questions above and went on to summarize additional principles applicable to applications to dismiss a claim for want of prosecution, including the following:

- (a) the defendant bears the initial burden of demonstrating inordinate or inexcusable delay (*Irving* at 162);
- (b) there is a particular onus on a plaintiff to pursue a case which involves serious allegations against the character of the defendant: *Vic Van Isle Construction Ltd. v. Lomenda*, 1999 CanLII 3661 at para. 19 (B.C.S.C.);
- (c) once a defendant shows a delay is inordinate or inexcusable, a rebuttable presumption of prejudice exists. The plaintiff must establish on a balance of probabilities that the defendant has not suffered prejudice: *Busse v. Chertkow*, 1999 BCCA 313 at para. 18;
- (f) the court will more easily dismiss a questionable claim than a strong one: *Nice* at para. 64;
- (g) when inordinate or inexcusable delay and serious prejudice are demonstrated, the court must still consider whether justice demands that the action be dismissed under all the circumstances. The overriding principle is that essential justice must be done: *Irving* at 162;

.

I will consider each factor.

Was the length of delay inordinate given the seriousness of the allegations?

[23] The plaintiffs concede the delay of 9 years has been inordinate. I agree.

- [24] In *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52 at para. 38, the Court of Appeal emphasized that the determination of whether a delay has been inordinate "should not be considered piecemeal. The proper approach is to consider it holistically; that is, whether the overall delay in prosecuting an action is inordinate."
- [25] The Eggleton defendants point to the commencement of the claim in 2010 as indicating a near nine-year delay in the prosecution of this claim. No steps to move the litigation forward were taken in the proceeding for over seven years between the end of 2011 and Summer of 2019, and only after the defendant purchasers filed their application to strike the claim.
- [26] To compound this, the Eggleton defendants point to the fact that the claim, even when filed, was already dated. The pleadings rely on alleged oral agreements in 1999 and 2000, that are alleged to have been breached in 2002 and 2004, and that were discovered by Mr. Chambers no later than December 2004. At the time the claim was filed in 2010, the Limitation Act, R.S.B.C. 1996, c. 266 provided for a 6 year limitation on most of the claims pled. As it was, in late 2010 the plaintiffs filed an affidavit stating that the amended allegations of breach were not discovered by Mr. Chambers until December 7, 2004 to obtain an the order allowing the amended claim to be filed at all.
- [27] The filing of a notice of intention in 2017 without more was not a "step in the proceeding" for the purposes of this application; it did not move the claim forward. Nor are informal attempts at settlement.
- [28] Furthermore, the allegations of fraud are very serious and require diligence on the part of the plaintiffs in their pursuit of them: See *Thore v. Sliva*, 2001 BCSC 899 at paras. 11-15; *Vic Van Isle Construction Ltd. v. Lomenda*, [1999] B.C.J. No. 3032 (S.C.) at para. 19; *SeaQuest (1993) Adventurecraft Inc. v. Gray Line of Victoria Ltd.*, 2008 BCSC 873.
- [29] The very earliest a trial could proceed is mid-2021, if the parties could agree to the trial dates and times. However, at this point, no discoveries have occurred, and in my estimation the setting of a trial date is likely further off.

Was the Delay Excusable?

- [30] The plaintiffs argue that the delay, although inordinate in this case, is excusable for three reasons:
- a) Up until early 2015, Mr. Chambers was incarcerated in the United States without regular access to email and phones for some of those years;
 - b) When he returned to Canada in early 2015, he had not been able to earn money for many years, and did not have the financial or psychological means to pursue this claim; and
 - c) In 2016, he pursued Mr. Eggleton at his home a number of times, and at one point, Mr. Eggleton said that he would make him an offer.

- [31] With respect to impecuniosity, the plaintiffs rely on the courts comments in *Busse v. Robinson, Morelli, Chertkow*, [1998] B.C.J. No. 660 (B.C.S.C.) at para 24:
- [24] The authorities appear to be mixed as to whether impecuniosity can be an excuse for delay which the courts will accept but I believe that I should be guided by the comments of Hollinrake J.A. in *Star-Ten Contracting Ltd. v. Laurentian Pacific and Zurich Insurance Company*.⁷ In that case, Hollinrake J.A. rested his decision on the balance that must be struck between the interests of justice between the parties. However, he stated that if it were necessary to do so, he would have held that the chambers judge had erred in finding that delay caused by impecuniosity was inexcusable. He stated that the type of delay in the Irving case (i.e., waiting as a tactical manoeuvre in the hope that the law would change) was not to be compared to a delay forced on a plaintiff by negligent solicitors, impecuniosity or illness.
- [25] Although impecuniosity can be an excuse for delay, I do not believe that it should always be accepted as an excuse. Other factors must also be considered. For instance, the length of the delay should be taken into account. Impecuniosity should not be accepted as an excuse irrespective of the length of the delay because, otherwise, an action could be delayed indefinitely. Other factors would include the matters I mentioned when discussing whether the Plaintiffs' delay was inordinate (i.e., the length of time which elapsed after the cause of action arose and before the action is commenced, and the fact that the Plaintiffs are alleging fraud).
- [32] The plaintiffs rely on two cases from Alberta for the position that informal settlement discussions can excuse delay: *Guccione v. Bell*, 2004 ABQB 729 at para. 11 referring to *Kuziw v Kucheran Estate*, 2000 ABCA 226. Although the Alberta Rules in relation to want of prosecution differ from those in British Columbia, legitimate settlement discussions may also constitute an excuse for delay in British Columbia, depending on the circumstances.
- [33] The Eggleton defendants accept that Mr. Chambers' incarceration provides some explanation for the delay through to 2015, although it is clear that Mr. Chambers was able to still instruct counsel during this period, and Laurier remained a going concern. They say that there is no excuse for the plaintiffs' delay since early 2015 when Mr. Chambers was released and had returned to Canada.
- [34] The Eggleton defendants say that while impecuniosity may be an excuse for delay in some circumstances, the evidence filed by Mr. Chambers (which amounts to a bare assertion that he did not have the financial resources to pursue the litigation) is not sufficient. The evidence establishes that Mr. Chambers was engaged in real estate development prior to his incarceration in 2002, and in 2015 he had the resources to sue his wife and related companies for substantial amounts of money, and to file a small claims proceeding as well. Mr. Chamber's pleading in the 2015 litigation allege that he continued to own shares in companies in which he was the sole shareholder, and that were valued in the millions of dollars during his incarceration. Mr. Chambers neither disclosed these shares, nor his legal actions with respect to them, in his sworn assertions of impecuniosity. Nor did he provide

any evidence of his actual assets or liabilities held directly, or through companies.

- [35] To the extent that Mr. Chambers says that filing those other legal actions did not require substantial resources because they resulted in settlement, the Eggleton defendants say then that he would have had the resources after settlement to pursue this litigation.
- [36] Finally, the Eggleton defendants say that, while they have not filed any materials to contest Mr. Chambers' evidence of informal settlement discussions, Mr. Chambers' own evidence does not amount to anything that would constitute an excuse on his part not to proceed.
- [37] In my view, the delay is inexcusable.
- [38] By 2010 and throughout that year and through 2011, Mr. Chambers was able to direct the course of this litigation from his place of incarceration and did so, filing a notice of civil claim and two amended claims, multiple applications, affidavits, defending the security for costs application of the Eggleton defendants, and securing a consent judgment from Mr. Mann.
- [39] By 2015, Mr. Chambers was no longer physically restrained, and was able to retain counsel and instruct them in the filing of a claim and an amended claim against his common law wife. Had this action been a priority for him, he could have also filed at least a notice of intention to proceed or sought document disclosure at that point.
- [40] Legitimate settlement discussions may constitute an excuse for delay in British Columbia, depending on the circumstances. This is in keeping with the general policy of the courts to promote settlement. However, given the object of the Rules, courts must also guard against inordinate and inexcusable delay that prejudices defendants to civil actions. As Master Elwood stated in *Parkerdean Plumbing and Mechanical Inc. v. Best Builders Ltd.*, 2019 BCSC 1969, at para. 20:

While efforts at reaching a negotiated resolution are to be encouraged, they are not a substitute for prosecuting a claim in the absence of productive engagement between the parties.

- [41] In this case, Mr. Chambers' attempts in 2016 to locate and converse with Mr. Eggleton at Mr. Eggleton's home does not amount to "legitimate settlement discussions" and, in any event, does not explain the extent of the delay. There is no evidence of any meaningful settlement exchanges in that year, or afterwards. Even in cases where there are formal and documented attempts to settle, courts are reluctant to accept settlement offers and negotiations as an excuse unless there is a reasonable belief that the matter will resolve out of court, and this belief is diligently pursued.
- [42] I also agree that Mr. Chambers' bare assertion of lack of financial means as a result of his incarceration does not establish impecuniosity, particularly in light of his legal pleadings filed in 2015 alleging that he continued to have the benefit of shares in various closely held companies valued in the millions, and that these companies also had the benefit of professional management services while he was incarcerated.

[43] In addition, I have no evidence at all as to the resources of the corporate plaintiff, Laurier, which Mr. Chambers asserts continued to be an active company throughout this period.

[44] Overall, I find that the plaintiffs' delay was both inordinate and inexcusable.

Prejudice to the Defendants

[45] Prejudice to the defendants is presumed given the inordinate and inexcusable delay and the nature and seriousness of allegations against them.

[46] However, our Court of Appeal has cautioned that, although the plaintiff bears the onus of establishing a lack of prejudice, this must not always be achieved by specific evidence, but can be established by the circumstances as a whole. For example, in *Tundra Helicopters Ltd. v. Allison Gas Turbine*, 2002 BCCA 14, Esson J.A. stated the following:

[35] I also regard it as error in principle to dispose of the issue of prejudice by asking whether the plaintiffs had rebutted 'the presumption of prejudice that arises in the circumstances' and by going on to answer that question in the negative. The "presumption of prejudice" is not a presumption of law. It can be termed a presumption of fact but only in the sense, as it is put in *Sopinka and Lederman "The Law of Evidence in Civil Cases"*, 1974 at p. 378:

The term "presumption of fact" is used in many instances in which it is desired merely to shift the secondary burden to a particular party. When used in this sense, it means that the facts are such that a certain inference should, but need not, be logically drawn.

[36] It is in that sense that the word "presumption" is employed in *Busse v. Robinson Morelli Chertkow*, *supra*. In considering whether the presumption of prejudice has any application in a particular case, the question properly to be asked, as stated by Goldie J.A. in para. 27 of *Busse*, is:

... has the plaintiff established on a balance of probabilities that the defendant has not suffered prejudice or that other circumstances would make it unjust to terminate the action?

In considering that question it may be misleading to approach it by asking whether the plaintiff offered evidence on the point. In most cases, it will only be the defendant who is in a position to offer evidence as to the existence of specific prejudice - as two of the defendants attempted to do in this case. The plaintiff often will be able only to point to the overall circumstances, including the absence of any evidence from the defendant of specific prejudice, as establishing on the balance of probabilities that serious prejudice has not been suffered.

[47] The Eggleton defendants rely on the presumption of prejudice, and in particular on the fact that it has now been 15-20 years since the incidents alleged to have given rise to the various oral agreements, trusts and breaches alleged by the plaintiffs. They rely on the cases that state that it is presumed to be prejudicial to allow allegations of fraud and dishonesty to go undetermined. They rely on their advanced years. Finally they rely on the death of Mr. Mann in 2013, a key player and witness in the plaintiff's allegations of conspiracy and fraud against

them.

- [48] The plaintiffs say that the delay is not prejudicial because the Eggleton defendants have always been meticulous record keepers. Mr. Chambers believes they would still have records of the transactions and discussions that formed the alleged partnership or joint venture in 1998-1999, and the transfer of the properties on alleged trust terms in 2000, as well as documentation relating to the alleged fraud in arranging for the transfer by the corporate plaintiff to themselves of the water lot lease in 2002.
- [49] While I accept that it is difficult for Mr. Chambers to rebut a presumption of prejudice when the presumed prejudice is not his, in this case I find that the circumstances as a whole establish that the delay of the plaintiffs to proceed has caused substantial and specific prejudice to the Eggleton defendants.
- [50] The nature of the allegations, including allegations of fraud and breach of trust are serious ones. Moreover, the allegations of breach relate to oral transactions and not written ones where memory and the retention of relevant materials cannot be dependably relied upon.
- [51] It has now been more than 15 years since the initial alleged breaches of trust occurred and Mr. Chambers alleges he discovered them. That is more than twice the original limitation period for the alleged breaches (and many times the limitation period of these claims under the current Limitation Act, S.B.C. 2012, c. 13 and beyond the ultimate limitation date of that Act).
- [52] More importantly, I find that the death of Mr. Mann in 2013, when the incidents giving rise to the claim were over 10 years old, and the claim itself was 2-3 years old, creates a risk of substantial unfairness to the Eggleton defendants. The plaintiffs have filed affidavits describing admissions and conversations with Mr. Mann before his death as the foundation of their claims in fraud, conspiracy and breach of duty. None of this hearsay is testable in court. Without Mr. Mann's participation and discovery, at this point I do not consider that the Eggleton defendants can have a fair trial of these allegations.
- [53] I note that the consent order signed by Mr. Mann was not signed by the other defendants, which would ordinarily be required for the entry of a consent order. I accept Mr. McConchie's statement as an officer of the court that he was wholly unaware of this order. The plaintiffs' current counsel was also unaware of it until I raised it with counsel.
- [54] Furthermore, the evidence before me establishes that Mr. Mann was the sole director of the corporate plaintiff in 2002 when the corporate plaintiff assigned the water lot lease to the Eggleton companies. Although Mr. Chambers' states in his affidavit that Mr. Mann had resigned this role, the Eggleton defendants attach corporate searches performed both before and after the transfer by the corporate plaintiff showing Mr. Mann as the sole director before the controversial transaction, and not being replaced until months afterward. Prior to his death and settlement, Mr. Mann also filed a response to the claim pleading that he was responsible, at least in part, for the operations of the properties at issue, and that he was

unable to get any resources from Laurier or Mr. Chapman to pay the taxes and other expenses of the property. In addition, I have no sworn evidence as to the terms and amount that Mr. Mann settled the plaintiffs' claim against him prior to his death.

- [55] In light of all of this, the claims by the both Laurier and Mr. Chambers are utterly compromised by Mr. Mann's death.
- [56] Ultimately, I am satisfied that the Eggleton defendants would be unfairly prejudiced if this trial were to proceed. I consider that the prejudice is such that there is a substantial risk that a fair trial is not possible any longer on any aspect of the amended notice of civil claim.

Interests of Justice

- [57] The plaintiffs argue that none of the above three factors matter if I find it is in the interests of justice for this matter to proceed. They point out that the Eggleton defendants have not responded to the merits of the action, or the evidence that Mr. Chambers has adduced in support of his underlying claims in this application. For example, the Eggleton defendants have not filed any responsive evidence in relation to Mr. Chambers' allegations that they received some compensation for their investment through their settlement with his business associate in 2002. They have sworn that there was no joint venture or trust, but they have not provided any alternative explanation as to why they originally invested more than ¼ million dollars in the Winter Harbour properties in 1999.
- [58] The merits of the plaintiffs' action are not before me. Without deciding anything on its merits, I observe that Mr. Chambers' affidavit evidence discloses a foundation for his allegations that he had entered into a form of joint venture with the Eggleton defendants in 1999, and that the transfer of legal title to the Eggleton defendants in 2000 was not intended to be compensation for their investment, but a transfer of legal title only. Whether the plaintiffs would be able to substantiate these claims with documentary evidence after discovery sufficient to meet their burden of proof is not possible to determine at this stage. At this point, all that can be said is that the claim is arguable.
- [59] Generally, this Court is and should be reluctant to strike an arguable claim. In 0690860 Manitoba Ltd. v. Country West Construction Ltd., 2009 BCCA 535, our Court of Appeal noted:
- [19] Rule 2(7) [now Rule 22-7(7)] raises the possibility of dismissal of an action other than on its merits. Therefore, it should be applied with considerable caution. Lengthy delay by a plaintiff in bringing a claim to trial must be carefully considered in the context of evidence presented by both sides as to actual prejudice to the defendant in presenting its case at trial. Any prejudice will only be material to the extent that it was caused by the plaintiff's inordinate delay, not by other events.
- [60] On the other hand, Rule 22-7 is a distinct rule from the rule for striking a claim on the basis that it discloses no reasonable cause of action, and that is not the test here.

- [61] While the plaintiffs' claims disclose an arguable cause of action, I find that that is not enough in this case.
- [62] I note that the Eggleton defendants were not the only persons to whom Mr. Chambers has alleged he entrusted substantial amounts of undocumented assets prior to his incarceration. He had the means and ability to pursue at least some of those persons after his period of incarceration in 2015. He also had the means and ability to pursue the Eggleton defendants through instructions to his counsel and his agents and corporate directors during his incarceration, including successfully filing these claims, pursuing an application, and obtaining an order for judgment from Mr. Mann before his death.
- [63] The plaintiffs did not pursue these claims against the Eggleton defendants for approximately 4 years after Mr. Chambers' release. Furthermore, these claims relate to alleged oral agreements that are now almost 20 years old.
- [64] Ultimately, I find that the questions of whether Mr. Chambers entrusted his interest and investment in the Winter Harbour properties to the Eggleton defendants, on what terms, whether those terms were breached, and if so, why, are questions that the plaintiffs' inordinate delay in proceeding and the death of a key witness no longer allow a court to fairly determine.
- [65] I therefore dismiss the plaintiffs' claim pursuant to Rule 22-7 for want of prosecution. The Eggleton defendants are entitled to their costs of the action as ordinary tariff costs.

"Marzari J."

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