

CANADA / JUDGMENT

Suniara v. Suniara

2025 BCSC 2024

COURT

Supreme Court of British Columbia

DECIDED

18 September 2025

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

2025 BCSC 2024 Suniara v. Suniara

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Suniara v. Suniara,

2025 BCSC 2024

Date: 20250918

Docket: D26036

Registry: Vernon

Between:

Neelam Suniara

Claimant

And

Kulbir Ram Suniara

Respondent

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

M. Goyal

Counsel for the Respondent:

V. Yung

Place and Date of Hearing:

Vancouver, B.C.

September 18, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 18, 2025

- [1] THE COURT: When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered given that some matters were abbreviated in the interests of time. I have made such edits without affecting the substance or final disposition.
- [2] There are three applications before the court today, the primary one being to dismiss this family law action commenced September 6, 2000 (the "Vernon Proceedings") for want of prosecution and, assuming the court does not grant that order, cross applications to:
- a) amend pleadings filed in the New Westminster Registry under action no. E72281 (the "New Westminster Proceedings") that were filed to, as the parties describe it, to "replace" the Vernon Proceedings as the Vernon Proceedings have, given their age, been lost or destroyed by the registry, and to add a party to them, namely the respondent's brother (the "Brother"); and
 - b) declarations as to ownership rights of the Brother in and to real property located on Westwood Drive in Vernon BC (the "Vernon Property") title for which was in the name of the respondent and the Brother. In a petition filed in the Vancouver Registry under action no. S246617 (the "CPL Proceedings") the respondent and the Brother sought to have a CPL that was filed against the Vernon Property, under the Vernon Proceedings, released, or alternatively, that it be released with 50% of the sales proceeds being paid into court. An order was made, apparently on a consent basis, on September 23, 2024 to that effect, with the Vernon Property now being sold with the sales proceeds currently being held in court.

Background

- [3] One of the complicating factors for this application is that the Vernon registry has advised the parties that the court file for the Vernon Proceedings has been lost or destroyed, given its age. The parties do not seem to have retained copies of much of the materials from the file, and to the extent they have, many are so faded that they are illegible. For example, there is an affidavit that has been filed in support of this application which seemingly attaches documents that might have come from the court file but are so faded that they are unreadable and appear to be blank pages. As such, the procedural history has significant

gaps.

- [4] Based on what could be determined from the materials provided, and my review of the electronic court file, the parties were involved in what is generally described as a short-term relationship, being married on February 1, 1997, and separating under 3 years later, in early 2000. The parties have two children currently aged 19 and 26.
- [5] The Vernon Proceedings were commenced by filing a writ of summons and statement of claim on September 6, 2000, meaning almost exactly 25 years ago.
- [6] The parties were divorced by a final order pronounced on December 2, 2002, with the issue as to the property rights or property claims being adjourned generally, with the specific term of the order being that the balance of the plaintiff's and defendant's (as they then were) claims for relief are "adjourned generally".
- [7] In addition to the previously referenced proceedings, the parties also brought proceedings in the provincial court under action no 2530 (the "Provincial Court Action"). An order was pronounced on December 13, 2000, to consolidate the Provincial Court Action with the Vernon Proceedings. However, for reasons that are not entirely clear, the claimant subsequently continued to take steps in the Provincial Court Action, specifically with respect to issues relating to the children and support including special expenses, rather than in the Vernon Proceedings.
- [8] Approximately one year after the divorce was granted, on December 13, 2003 the parties reconciled and were together for just under five years with a second separation occurring August 2008. While they were reconciled, their former family home was foreclosed upon, and a sale approved in the foreclosure proceedings by court order pronounced October 20, 2009, and further varied to provide for payment out of court to the Director of Family Maintenance Enforcement in respect of unpaid support.
- [9] It does not appear that the parties commenced new proceedings after the reconciliation. Instead, they continued taking steps in the Provincial Court Action, regarding the children, support, and special expenses. The claimant states that orders continued to be made on those issues in the Provincial Court Action until 2018.
- [10] With respect to the property claims, including in respect of the Vernon Property, the claimant states that throughout 2009, they attempted to settle issues informally, or through informal means, including with the assistance of friends and members of the community. As a resolution had not been reached, on May 30, 2011 (that being 11 years since the claim was filed, and 4 years since the second separation), the claimant filed a notice of intention to proceed with the Vernon Proceedings, subsequently obtaining an order of alternative service in respect of that notice, on July 5, 2011.

- [11] The claimant filed a notice of judicial case conference ("JCC") on August 23, 2011, with the JCC occurring on December 20, 2011 before Master McDiarmid. No order has been entered in respect of that JCC. However, the clerk's notes indicate that the orders made were to compel the parties both to provide particulars as to, on the claimant's side, what specific claims she was advancing with respect to the Vernon property and, on the respondent's side, what his position was in response to those claims.
- [12] In addition, the claimant was to draft a new notice of family claim with the assistance of duty counsel to set out exactly what she was seeking and send it in an unfiled version to the respondent so that the positions could be canvassed. That was not done. The claimant says that it was not done because the respondent was "not cooperating".
- [13] Thereafter, the evidence of the claimant is that she was consumed with dealing with the parenting and financial issues, support and special expenses, in the Provincial Court Action which continued, as noted previously, until 2018.
- [14] The claimant deposes that in 2018 she filed a notice of intention to proceed, although I note there is nothing on Court Services Online to indicate that was done. Rather, the next formal step taken, at least as far as the court file indicates, is that on December 18, 2024 (over 24 years since this Vernon Proceeding was commenced, and over 16 years after the second separation) she filed a second notice of intention to proceed.
- [15] Shortly thereafter, on February 4, 2025, the claimant filed the notice of family claim in the New Westminster Proceedings, and amended those on February 6, 2025, seeking spousal support, an order relating to family property and debt, and an order for costs. The notice of family claim references the parties' marriage and divorce dates. It does not reference the period of reconciliation.
- [16] The claimant says that the decision to commence the New Westminster Proceedings arose from the fact that it would be more efficient given that the court file for the Vernon Proceedings is no longer available.
- [17] The claimant deposes that, notwithstanding that there were no formal filings in the Vernon Proceedings after 2011 when the JCC was conducted until this recent filing of the notice of intention to proceed, in addition to dealing with some of the support issues in the Provincial Court, there was discussions during the year 2020 as to settlement.
- [18] In particular, in February 2020 counsel for the respondent reached out to the claimant to discuss settlement specifically with respect to the division of the Vernon Property, in response to which on, I believe it was March 12, 2020, the claimant responded by email saying that she was, for the most part, not interested in settlement on the terms that had been generally proposed, stating that the matter was likely "going to have to be litigated".

- [19] While the parties attempted to take the court into those communications, I found them to be subject to solicitor-client privilege, other than for the fact that settlement discussions were proposed and answered in February 2020. However, it is of note that to the extent there was a discussion, it was prompted entirely by the respondent and by that time it was quite clear that the claimant's view was that any issue with respect to the Vernon Property, or any determination with respect to the division of the Vernon Property, would need to be litigated.
- [20] In addition, and although this largely wades into the merits, by that time it was clear that the Brother would be a necessary party. Although, notably, in September 2000 when the writ of summons and statement of claim in the Vernon Proceedings was filed, and the CPL was placed on title to the Vernon Property, the Brother was a registered owner on title. No reasonable explanation was given as to why no efforts were taken to add him as a party prior to now.
- [21] The respondent and the Brother have exhibited to their affidavit partial files in respect of their purchase of the Vernon Property in 1993, including the contractual documents. This too goes to the merits, which the court is not to determine on an application such as this. In any event, what is apparent is that the title transfer is somewhat convoluted as title was acquired, apparently through this 1993 contract, but with the prior owners retaining an interest, noted to be a vendor take back ("VTB") mortgage. The historical Land Title documents are largely incomplete, but it appears that the title transfer itself was not registered with the land title registry until early 2020, presumably because of a desire to not effect the transfer until the sale price was fully paid (despite that a VTB Mortgage could have been registered), although that is conjecture on my part with no evidence to explain the transactional mechanics. It is, on the documentary evidence, unclear how the property was dealt with from the 1993 purchase, until early 2000, at which time the current Land Title registration was released by which the respondent and the Brother are noted to be the owners. Given the 1993 sale documents that are before the court, the Vernon Property appears to have been acquired prior to this relationship commencing.
- [22] What is also evident is that, at the time the CPL was filed, the Brother was a registered owner.
- [23] Other than the email evidence of the 2020 inquiry as to settlement, there is no evidence of any steps being taken in the Vernon Proceedings after the 2011 JCC, until the notice of intention to proceed was filed on December 18, 2024, and the New Westminster Proceedings being commenced in February 2025.
- [24] What appears to have prompted those steps was the filing of the CPL Proceedings which was done on September 23, 2024.

- [25] In other words, it was the actions of the respondent and the Brother in wanting to deal with the Vernon Property, and their filing of a petition under the Land Title Act, R.S.B.C. 1996, c. 250 for the release of the CPL to enable them to do so that appears to have prompted the claimant to re-assert her remaining claims. Given the timing of the filing of the petition and consent order (both on the same day), it would appear that there was some discussion between the parties before that which lead to the filings, although that is also unclear.

Analysis

- [26] The parties do not dispute the applicable law with respect to applications for dismissal for want of prosecution.
- [27] The analysis to be applied has been recently clarified by our Court of Appeal in *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 ("Giacomini"). In *Giacomini*, the five-panel bench revisited the applicable considerations for such applications having regard to, among other things, the impact of the changes in the Rules of Court arising from the 2009 amendments.
- [28] At paras. 27 to 31, the court addressed the issues that supported a revisiting of the analysis, specifically as to whether it is a requirement that prejudice be established before the court would dismiss an action for want of prosecution. Specifically, the court referred to the apparent conflict that arises where the object of the Rules is stated to secure the just, speedy, and inexpensive determination of every proceeding on its merits, with the time that matters take to be resolved, noting the Supreme Court of Canada's criticism of the delays and expenses in civil proceedings as discussed in decisions such as *Hryniak v. Mauldin*, 2014 SCC 7, at paras 23 to 25 from a civil perspective, and in *R. v. Jordan*, 2016 SCC 27 from a criminal perspective. These comments are, of course, equally applicable to family matters.
- [29] The court concluded its analysis as follows:
- [31] There is no doubt, and the respondent does not dispute, that unreasonable delays in civil proceedings cause systemic harm in undermining public confidence in the justice system and the public interest in a justice system that delivers timely and affordable justice. The real question is whether the existing test for dismissal for want of prosecution adequately accounts for the full measure of harm caused by delay. In addressing this question, I will begin with a review of the existing test, as it has evolved over time.
- [30] After reviewing the test as it has evolved, the court summarized the revised framework for such applications, as follows:
- [69] For clarity, I will summarize the revised framework of analysis that, in my view, should govern applications to dismiss actions for want of prosecution in British Columbia. The first two questions are:

(1) Has the defendant established that the plaintiff's delay in prosecuting the action is inordinate?

(2) Is the delay inexcusable?

[70] These two questions are to be answered in accordance with the law that has developed in British Columbia under the existing test. If both questions are answered in the affirmative, the court should move to the third and final question:

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

[71] The non-exhaustive list of factors set out at paragraph 45 of *International Capital Corporation* provides a useful starting point for assessing the interests of justice. To that non-exhaustive list, I would add one further factor: the merits of the action. While a judge should not engage in any searching examination of the merits on an application to dismiss for want of prosecution, if the action is bound to fail then the interests of justice favour its dismissal: *Ed Bulley* at para. 62.

[72] Under this framework of analysis, the prejudice to the defendant's ability to defend the action remains a relevant, and indeed important consideration. However, prejudice to the defendant is not a pre-requisite to an order dismissing a claim for want of prosecution. At the interests of justice stage, the court should look to all relevant circumstances rather than prioritizing the impact of delay on trial fairness.

[31] Thus, while prejudice was considered a necessary element under the prior test, it is now not determinative. Rather, prejudice is something that is to be considered under the well known, but non-exhaustive list of, factors in that inform the court in exercising its discretion whether it is ultimately in the interests of justice to dismiss the action.

[32] I will address this application under that framework.

Was there inordinate delay?

[33] The question as to whether or not there has been inordinate delay is one that is factually specific. An inordinate delay, as noted in *Wiegert v. Rogers*, 2019 BCCA 334 at para. 32, is one that is uncontrolled, immoderate, excessive and out of proportion to the matters in question. Further, although there is no universal rule as to when time starts to run, the date of commencement of the action is typically identified as the point from which delay is measured, with the delay to be analysed holistically, not in a piece-meal fashion.

[34] As noted in *Sun Wave Forest Products Ltd. v. Xu*, 2018 BCCA 63, at para. 25 it is not just a question of temporal arithmetic but, rather, requires consideration of the circumstances of the case with an acknowledgeable that:

- some cases by their nature are susceptible of faster carriage or by the nature of the allegations call for more expeditious prosecution than others.

- [35] Family matters are, I would say, a hybrid. Generally, courts agree that issues with respect to certain aspects of family litigation are ones that ought to be proceeded with in an expeditious matter with some priority given to them, such as parenting, protection and necessary support obligations. However, the court may not be as quick to assign the same urgency to issues with respect to property division or issues that are merely financial in nature.
- [36] Nonetheless, there is an expectation that matters move forward quickly. That expectation is somewhat higher when, as is the case here, there is a CPL being used to gain a pre-judgment remedy akin to security for judgment, the effect of which is to tie up a parties' ability to make use of property or its proceeds. That is even more so when a non-party, in this case the Brother, is facing the same prohibition from being able to deal with property to which he is a registered owner. In the case at hand, while the CPL was released by court order, proceeds of sale remain out of the hands of the registered owners, one whom is, as noted, not a party to the action itself.
- [37] It is incumbent the claiming party proceed in such circumstances to proceed in an expeditious manner to resolve those claims.
- [38] I find there has been an inordinate delay. That delay has been repeatedly exhibited throughout the course of the carriage of the Vernon Proceedings themselves, even if I were to accept that steps being taken in the Provincial Court Action were steps here, given the consolidation order, or that the prompted settlement inquiry in 2020 was a "step". Looking at the matter holistically there has been an inordinate delay.

Is the delay Excusable?

- [39] The second question, then, is whether the delay is inexcusable.
- [40] As noted in *Irving v. Irving* (1982), 38 B.C.L.R. 318 (C.A.) at para. 8, as a rule, unless a credible excuse is offered the natural inference is that inordinate delay is inexcusable. The extent to which a delay may be excusable is highly fact-dependent: *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52 at para. 38 ("Ed Bulley").
- [41] While the courts have made it clear in decisions such as *0690860 Manitoba Ltd. v. Country West Construction Ltd.*, 2009 BCCA 535 at para. 27, a party who intentionally delays the prosecution is said to assume the risk of dismissal. Where it is tactical in the sense of intended prejudice, it will weigh more heavily against the plaintiff in the analysis. That sentiment was also raised in *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120, at para. 47.
- [42] I am satisfied that the delay here was not intentional or tactical, as has been discussed in some cases, but it is certainly the result of dilatoriness on the part of the claimant.

- [43] Some of the explanations given by the claimant as to why this matter has languished for what is now 25 years since the action was filed, 17 years since the second separation, 7 years since the last step was taken in the Provincial Court Action, or even 5 years since the brief settlement discussion was raised, are hard to reconcile on the evidence.
- [44] While I do accept that it is reasonable for a party in a family litigation matter to prioritise the parenting and support issues over those of division of property and do not fault the claimant for doing so, there does remain an obligation to pursue all issues in litigation in a reasonably timely manner.
- [45] Even dismissing the period prior to the settlement discussions, by that time (i.e. in 2020) the claimant was making it clear to the respondent that the issue would only be resolved through litigation, and yet took no steps to prosecute her remaining claims until after the Petition Proceedings were filed.
- [46] Counsel for the claimant seems to suggest that it was just as open to the respondent and the Brother who, again, was not and still is not a party to the Vernon Proceedings, to somehow prompt or compel the action to be moved forward.
- [47] It is a trite principle that a defendant/respondent does not have the obligation to advance the litigation against him. That is not an answer and it does not provide a reasonable excuse, although, as noted at para. 76 in *Giacomini*, their failure to do so may weigh against a dismissal at the interest of justice stage of the analysis. In this case, the 2020 settlement overture was a sufficient prompt that it is not a factor that should weigh against them here.
- [48] Similarly, I will comment on one further argument of the claimant, that being that because she felt she had a strong argument to support her claim to an interest in the Vernon Property, she did not feel she had to move the matter forward any quicker than she did. Specifically, she argues that the Brother was put on title only to assist the Brother with an immigration application involving his wife. The fact the claimant felt they had a strong claim to the property is not an excuse to not advance that claim. In fact, I would say the opposite is true, particularly when tying up property of a non-party.

Is it in the interests of justice to dismiss this action?

- [49] Having found there to be an inordinate and inexcusable delay, I must consider whether it is, ultimately, in the interests of justice for the action to proceed despite such inordinate and inexcusable delay.
- [50] Under this analysis, the court should not engage in a full examination of the merits, however, can consider if the action is bound to fail, as noted in *Ed Bulley* at para. 62, and para. 71 of the *Giacomini*.
- [51] Both parties waded into the merits of their client's respective cases during their submissions, particularly when answering questions as to the obvious gaps in the evidence due to the lack of information and evidence by virtue of:

- a) The loss of the physical Vernon court file;
- b) The loss of the respondent and Brother's mortgage. I was advised that the mother granted a mortgage over the Vernon Property but has now passed away. Thus, it is believed that the mother would have evidence with respect to the Brother's involvement with the Vernon Property.
- c) The solicitor who did the conveyance, and documented the 1993 sale and vendor take back mortgage has closed his practice and cannot be found. Counsel has attempted to find his file, which could have possibly had notes expressing the interests and intentions of the parties when buying it, given that both of their names were on those initial sale documents, but counsel has exhausted all avenues that could have produced the files, including through the Law Society.
- d) Bank records that would show funds paid into the property or holding costs in terms of being able to assess the interests that the Brother holds, or the impact to any constructive trust claim, that being evidence as to who did what, and who put what money into the property are no longer available given the general rule that bank records are not available more after seven years. While the claimant has put into evidence copies of some cheques showing payments for the Vernon Property being made by the respondent, it is not an answer to a loss of potential evidence for one party to say that they have the records that show their version of events, and that is sufficient. The problem here is that the Brother has not been a party to any of these proceedings until the CPL Proceedings were filed in 2024. He has had no notice that he would be made a party in these proceedings or formal notice that his registered interest is being challenged. As such, he has lost the opportunity to collect and retain records and evidence to establish his version of the case.
- e) No discoveries have been conducted.
- f) It appears quite clear, based on the evidence that is before the court today, that memories have faded. There is, for example, a great deal of supposition in the affidavit evidence as to what the claimant did, and why and when it was done that, frankly, does not always correspond with the little amount of documentary evidence that continues to exist.

[52] Determining the merits may be complicated by those gaps.

[53] The claimant points to the prejudice that will befall her if she is denied her ability to proceed with what she feels is a meritorious action; namely, that the Vernon Property is a family asset to which that she has a claim under the Family Relations Act, R.S.B.C. 1996, c. 128 as applies to these claims.

[54] That prejudice is always the consequence of an application for a dismissal of want of prosecution.

- [55] It is the balancing of that inevitable outcome against all of the other considerations, including the over-taxed litigation system, the need to have a timely resolution of matters, and that the delay of one party should not prejudice the ability of the other party (or in this case, a non-party) to properly advance their defences.
- [56] Ultimately the goal of the court is to ensure that there can be a fair trial on the merits. That cannot be done where there is a loss of witnesses, a loss of memories, and in this case a loss of documents.
- [57] The court in *Giacomini* noted as follows:
- [74] First, in my view, it is not helpful to characterize the remedy of dismissal for want of prosecution as "Draconian", to the extent this label implies the remedy is excessively harsh or punitive. It must be remembered that a plaintiff faces the risk of dismissal of an action only once they are guilty of inordinate and inexcusable delay. Undue litigation delay undermines public confidence in the justice system, and should not be countenanced. Generally speaking, a plaintiff who has filed a civil claim should be expected to get on with it. If, having regard to the circumstances, it is not in the interests of justice to allow an action characterized by such delay to continue, then the remedy of dismissal is not excessively harsh or punitive. Rather, it is justified.
- [75] Second, the preceding comment, and the revision of the test that I propose, should not be taken to signal an invitation to defendants to bring applications for dismissal for want of prosecution as a matter of routine. A plaintiff's interests in a trial on the merits remains an important consideration. The revised test is simply intended to provide a more nuanced balancing of the competing considerations of the interests of defendants, and the justice system as a whole. An application will succeed only if the court is persuaded that the interests of justice justify depriving the plaintiff of their presumptive entitlement to an adjudication on the merits.
- [76] Third, it should not be forgotten that there are avenues available to defendants concerned about the pace of litigation, including setting timelines for pre-trial steps through the terms of a case plan order. Put simply, the plaintiff's delay does not tie the hands of a defendant who is motivated to bring the case to its conclusion. There is, of course, no obligation on the defendant, who has involuntarily been brought into a lawsuit, to take any steps to move the plaintiff's case forward. However, the defendant's inaction in the face of lengthy delay by the plaintiff may weigh against dismissal of the action at the interests of justice stage of the analysis.
- [58] Having regard to all of the circumstances of this case and the chronology and history of this matter as set out herein, this is a case where the interests of justice support a dismissal given the failure to proceed in a timely manner, resulting in the inability for there to be a fair trial on the merits.

- [59] Accordingly, I grant the order as sought by the respondent. The Vernon Proceedings are dismissed.
- [60] Given the result, I need not address the other applications. The amendments to the New Westminster Proceedings are now moot. With respect to the CPL Proceedings, given that the September 23, 2024 order resolved all the relief sought in that petition it is unclear if the court could have made an order as sought, namely a declaration as to ownership entitlement, as the court is now functus other than in respect of issues arising from that order. Regardless, a new application will likely have to be brought to seek the release of the sales proceeds.

[SUBMISSIONS ON COSTS]

- [61] Costs of this application shall be in cause.

"Associate Judge Robertson"

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/25/20/2025BCSC2024.htm>

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

Prepared on 25 October 2026 · Esheria