

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *McKay v. Sidhu*,
2026 BCSC 958

Date: 20260527
Docket: S1711458
Registry: Vancouver

Between:

Lisa McKay

Plaintiff

And

**Geoffrey Rajay Sidhu, Abtar Shar Sidhu, and
Bracetek Industries Group Ltd.**

Defendants

Before: The Honourable Chief Justice Skolrood

Reasons for Judgment

Counsel for the Plaintiff:

A.A. MacDonald

Counsel for the Defendant, Geoffrey Sidhu:

J. Ensom
H. Chu

Place and Date of Hearing:

Vancouver, B.C.
March 16 and 17, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 27, 2026

[1] The defendant, Geoffrey Rajay Sidhu, applies pursuant to Rule 22-7(7) of the *Supreme Court Civil Rules* [SCCR] for an order dismissing this action for want of prosecution.

[2] In the action, the plaintiff, Lisa McKay, claims damages and related relief in respect of an investment she made in the defendant Bracetek Industries Group Ltd. (“Bracetek”) in December 2015. The other named defendant, Abtar Shar Sidhu, now deceased, was Geoffrey Sidhu’s father and the principal of Bracetek.

[3] The plaintiff alleges that she was induced to invest in Bracetek by reason of the negligence, negligent misrepresentation and/or breach of fiduciary duty of Geoffrey Sidhu and that Abtar Sidhu and Bracetek knowingly assisted Geoffrey Sidhu or, alternatively, acted jointly with him to deceive her.

[4] I do not propose to go through the background facts in any detail. I will however highlight a number of key events that are relevant to the determination of this application.

Chronology of Key Events

[5] In December 2015, the plaintiff invested \$1.75 million in Bracetek. That was followed in January 2016 with the plaintiff paying a further \$52,500 in order to become a “value added reseller” of Bracetek products.

[6] On February 11, 2016, the plaintiff submitted a complaint to the British Columbia Securities Commission (the “Commission”) and on February 18, 2016, she demanded the return of her investment from Bracetek.

[7] In or about January 2017, the Commission began investigating the plaintiff’s complaint, including by seeking to interview Abtar Sidhu and Geoffrey Sidhu, although the Commission encountered difficulties in arranging those interviews.

[8] On March 17, 2017, the Commission issued a formal investigation order pursuant to s. 142 of the *Securities Act*, R.S.B.C. 1996, c. 418 [Act]. Thereafter, the Commission pursued its investigation by, amongst other things, obtaining document

production, conducting a forensic examination of the plaintiff's electronic devices and interviewing witnesses.

[9] The plaintiff commenced this action on December 11, 2017.

[10] On February 14, 2018, Bracetek and Abtar Sidhu filed a response to civil claim and Bracetek filed a counterclaim. Geoffrey Sidhu also filed a response to civil claim on April 17, 2018.

[11] On March 21, 2021, Abtar Sidhu passed away.

[12] On May 26, 2021, the Commission issued a formal Notice of Hearing naming Geoffrey Sidhu and Bracetek as respondents.

[13] The Notice contains the following summary:

1. The respondents defrauded a BC investor when she invested \$1.75 million in Bracetek. They did not disclose Bracetek's true financial condition to the investor, including that Bracetek had less than \$100 in the bank, had no revenues, had never paid the licensing fees for its technologies and owed over \$300,000 in additional expenses. Bracetek also used over \$1 million of the investment for purposes that were not disclosed to the investor.
2. Bracetek distributed its securities to the investor without filing a prospectus when a prospectus exemption was not available. Sidhu acted in furtherance of the trade and as agent for Bracetek.
3. By engaging in the conduct set out in this notice of hearing, the respondents each contravened sections 57(b) and 61 of the *[Securities] Act*. Sidhu also authorized, permitted or acquiesced in Bracetek's contraventions of sections 57(b) and 61, and by operation of section 168.2 of the Act, he also contravened those sections.

[14] On September 6, 2022, Geoffrey Sidhu entered into a Settlement Agreement with the Commission (the "Settlement Agreement") agreeing to certain alleged facts, most notably that Bracetek improperly issued \$1.75 million in securities without filing a prospectus when a prospectus exemption was not available. Geoffrey Sidhu further agreed to pay the Commission \$900,000, which was a disgorgement of certain funds received from Bracetek, and a further \$50,000 fine. The terms of the Settlement Agreement were set out in a Commission order dated September 12,

2022. The Commission subsequently paid the \$900,000 plus interest to the plaintiff by way of an order dated November 8, 2023.

[15] Thereafter, the Commission continued its investigation into Bracetek and, on October 24, 2022, the Commission held a combined liability and sanctions hearing in respect of Bracetek. Bracetek did not participate in that hearing because by that time Abtar Sidhu had passed away and Bracetek had no other directors. Geoffrey Sidhu also did not participate. On March 8, 2023, the Commission issued a decision finding that Bracetek had issued \$1.75 million in securities in violation of s. 61 of the *Act*, specifically without issuing a prospectus where a prospectus exemption was not available.

[16] The findings in the Commission's order concerning Geoffrey Sidhu and its decision concerning Bracetek reflect the fact that the plaintiff invested the \$1.75 million in Bracetek, and received corresponding securities, on the basis that she was an "accredited investor" within the meaning of s. 1.1 of the *National Instrument 45-106 – Prospectus and Registration Exemptions*, thus no prospectus was required. In fact, the plaintiff was not so qualified, hence the violation of s. 61 of the *Act*. Amongst the various orders made by the Commission was an order requiring Bracetek to pay the Commission \$850,000 as well as an administrative penalty of \$50,000.

[17] The Commission subsequently recovered a portion of that amount (\$178,749.82) from a Ms. Slonski, Abtar Sidhu's former girlfriend. By way of an order dated September 16, 2024, the Commission ordered those funds payable to the plaintiff.

[18] In terms of the action, from the time that the Notice of Civil Claim (NOCC) was filed on December 11, 2017 up until the Commission's March 8, 2023 decision, minimal steps were taken by the plaintiff to advance the proceeding apart from the production of a number of lists of documents and delivery of a notice to admit.

[19] Following the March 8, 2023 Commission decision, on July 7, 2023, the plaintiff delivered a notice of intention to proceed. Then, on October 17, 2023, the plaintiff applied for and obtained an interim *ex parte* Mareva injunction against Geoffrey Sidhu.

[20] That injunction was subsequently set aside by Justice Kent in reasons for judgment released on January 23, 2024 (indexed at 2024 BCSC 102). The plaintiff filed a notice of appeal from Justice Kent's order but did not proceed with the appeal.

[21] On February 16, 2024, on an application brought by the plaintiff, Associate Judge Vos ordered the Commission to produce documents relating to its proceeding involving Bracetek and Abtar and Geoffrey Sidhu.

[22] On December 4, 2024, counsel for Geoffrey Sidhu advised the plaintiff that Geoffrey would be applying to dismiss the action for want of prosecution. The application was originally scheduled to proceed on April 22, 2025, but on April 3, 2025, the parties agreed to adjourn the application because no application materials had been filed.

[23] In conjunction with the adjournment, the parties entered into a standstill agreement whereby neither party would rely on delay after April 3, 2025, and the trial would not be scheduled for at least one year after the want of prosecution application was decided.

[24] The application was then scheduled for three days beginning September 2025. The application did not proceed, largely because the materials filed by both parties did not comply with the requirements of the *SCCR* and because at that point the parties decided they needed five days to have the matter heard.

[25] I then seized myself of the application and directed that the parties file amended materials in accordance with the *SCCR* and schedule two days for the hearing of the application.

[26] For various reasons, the current application was not heard until March 16–17, 2026. A notice of trial has been filed by the plaintiff setting the matter for trial for 15 days beginning July 12, 2027, although it was unclear at the hearing of the application whether this date had been agreed to by Mr. Sidhu.

Legal Framework

[27] Rule 22-7(7) provides:

If, on application by a party, it appears to the court that there is want of prosecution in a proceeding, the court may order that the proceeding be dismissed.

[28] In *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [*Giacomini*], the Court of Appeal revised the long-standing test for dismissal of an action for want of prosecution. Essentially, the court held that prejudice is no longer a stand-alone requirement for dismissal but is a relevant consideration as part of the interests of justice analysis: *Giacomini* at para. 72.

[29] The test for dismissal as established by the Court of Appeal now asks three questions (at paras. 69–70):

1. Is the delay inordinate?
2. Is the delay inexcusable?
3. If the first two questions are answered in the affirmative, is it in the interests of justice for the action to continue?

[30] The first two questions are to be analyzed in accordance with the law that has developed in British Columbia under the former test: *Giacomini* at para. 70.

[31] In respect of the first question, “inordinate delay” refers to delay that is “uncontrolled, immoderate, excessive and out of proportion to the matters in question”: *Giacomini* at para. 38; *Wiegert v. Rogers*, 2019 BCCA 334 at para. 32. Assessing delay is not merely a “question of temporal arithmetic” but requires consideration of the specific circumstances of the case: *Sun Wave Forest Products Ltd. v. Xu*, 2018 BCCA 63 at para. 25 [*Sun Wave*].

[32] For example, where there are allegations impacting a defendant's personal reputation, such as claims of fraud, a court may be less forgiving in assessing litigation delay: *Sun Wave* at para. 25.

[33] As to whether the delay is inexcusable, this too is largely dependent upon the circumstances. "As a rule, unless a credible excuse is offered, the natural inference is that inordinate delay is inexcusable": *Giacomini* at para. 40; *Irving v. Irving*, 38 B.C.L.R. 318 at 323, 1982 CanLII 475 (C.A.). The evidence led to explain delay may indicate whether it was intentional and tactical, or the result of "dilatatoriness, negligence, impecuniosity, illness or some other relevant cause": *Giacomini* at para. 40; *0690860 Manitoba Ltd. v. Country West Construction Ltd.*, 2009 BCCA 535 at para. 27. Where a delay is found to be tactical, in the sense of intending to prejudice the defendant, this will weigh more heavily against the plaintiff: *Giacomini* at para. 40; *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120 at para. 47.

[34] With respect to the interests of justice analysis, the following non-exhaustive list of factors guide the assessment:

- (a) the prejudice the defendant will suffer defending the case at trial;
- (b) the length of the delay;
- (c) the stage of the litigation;
- (d) the impact of the delay on the defendant's professional, business, or personal interests;
- (e) the context in which the delay occurred, particularly whether the plaintiff's delay continued despite pressure from the defendant to proceed;
- (f) the reasons offered for the delay;
- (g) the role of counsel in causing the delay;
- (h) the public interest in having cases that are of genuine public importance heard on their merits; and
- (i) the merits of the action, particularly whether it is bound to fail.

See *Giacomini* at paras. 66, 71; *International Capital Corporation v. Robinson Twigg & Ketilson*, 2010 SKCA 48 at para. 45.

[35] With respect to factor (e) above, there is no obligation on the part of a defendant to take steps to move the plaintiff's claim forward. However, a defendant's inaction in the face of lengthy delays by a plaintiff may weigh against a finding that dismissing the action is in the interests of justice: *Giacomini* at para. 76.

[36] Before turning to the application of these principles, it is worth emphasizing that a central impetus behind the Court of Appeal's revision of the historical want of prosecution test was the acknowledgement of the damage that undue delay in civil proceedings has, not just on the parties but to the justice system generally. The court made this point in *Giacomini*, citing its earlier decision in *Drennan v. Smith*, 2022 BCCA 86:

[30] In recent years, there has been increasing attention to the effect of delay on public confidence in the justice system. The Supreme Court of Canada has described the increasing delay and expense of civil proceedings as an access to justice issue: *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 23–25. In *Drennan*, Justice DeWitt-Van Oosten described the systemic impact of delay in civil law by analogy to the decision of the Supreme Court of Canada in *R. v. Jordan*, 2016 SCC 27, which addressed delays in the criminal justice system:

[62] In *R. v. Jordan*, 2016 SCC 27, a majority of the Supreme Court ruled that the absence of prejudice can no longer be used to justify delay in criminal proceedings. The majority emphasized that “[t]imely justice is one of the hallmarks of a free and democratic society” (at para. 1). Extended court delays “undermine public confidence in the [justice] system” (at para. 26), and Canadians “rightly expect a system that can deliver quality justice in a reasonably efficient and timely manner” (at para. 27). While those comments were made in the criminal law context, where timely justice takes on “special significance” (at para. 1), some of the underlying policy concerns, contextually informed, also resonate in the civil law realm. See, for example, the discussion in *The Workers Compensation Board v. Ali*, 2020 MBCA 122 at paras. 84–87.

[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.

[37] That said, the court also noted that a plaintiff's interest in having their claim decided on the merits remains an important consideration and that an application to

dismiss for want of prosecution will only succeed if the court is persuaded that the interests of justice justify depriving the plaintiff of their presumptive right to such a determination: *Giacomini* at para. 75.

Analysis

Inordinate Delay

[38] In my view, there has been inordinate delay in prosecuting this action. The NOCC was filed on December 11, 2017, and up until the parties' standstill agreement effective April 3, 2025, over seven years had passed with minimal steps taken.

[39] As noted above, and as numerous authorities have held, where there are claims of fraud or other claims going to the character or reputation of the defendant, the onus is on the plaintiff to act with dispatch in advancing the litigation: *Sun Wave* at para. 25; *Goldenkey Oil Inc. v. Song*, 2025 BCSC 371 at para. 41.

[40] The delay in advancing the action was noted by Justice Kent in his reasons setting aside the *ex parte* Mareva injunction obtained by the plaintiff. Justice Kent referred to the plaintiff's "deliberate and strategic decision to delay prosecution of this lawsuit while the Commission investigation and related proceedings were underway" (at para. 57). While Justice Kent's observation was made in the context of assessing the interests of justice on Mr. Sidhu's application to set aside the injunction, it nonetheless accurately captures the status of the action as of January 2024 when the application was heard by Justice Kent.

[41] Justice Kent's reference to the Commission proceeding as the plaintiff's justification for not moving forward with the action mirrors the plaintiff's position on this application i.e. that she was justified in allowing the Commission process to run its course before proceeding with the action. In my view, this is a factor more properly considered under the second prong of the want of dismissal test which examines whether the delay is excusable.

Is the Delay Excusable?

[42] The plaintiff relies on the Commission process as her principal excuse for delaying the prosecution of this action.

[43] In her written submission, the plaintiff makes a number of statements to this effect. For example, she says:

- she “paused the litigation to await the outcome of the Commission proceedings”; and
- she “determined that the best course of action was to wait for the results from the Commission arising from her February 11, 2016 complaint”.

[44] Mr. Sidhu submits that there is no evidentiary basis for these statements. Specifically, there is no evidence at all from the plaintiff, let alone evidence explaining her delay in moving the action forward.

[45] The evidence filed by the plaintiff on this application comprises two affidavits sworn by a paralegal employed by the plaintiff’s counsel. One affidavit describes the process engaged in by the plaintiff’s counsel to obtain production of Commission files, as well as the contents of those files. The second affidavit simply attaches correspondence between counsel and various of the parties between July 2018 and November 2025.

[46] There are no hard and fast rules about what evidence must be led in order to establish that a delay is excusable, including a rule requiring direct evidence from the plaintiff. However, the evidence must be sufficient to permit the Court to determine if there is a “credible excuse” or whether the delay was intentional and tactical or due to some other cause such as a lack of diligence on the part of counsel: *Giacomini* at para. 40. While certain types of excuses, such as impecuniosity or other personal circumstances, often require thorough direct evidence (see e.g. *Parvanta v. Gajoum*, 2026 BCSC 300 at paras. 77–78; *Louie v. Security National Insurance Company*, 2025 BCSC 1315 at para. 56), I find that in

these circumstances, where there is a parallel regulatory process, it is appropriate to consider reasons for the delay which can be “inferred from the evidence” (0690860 *Manitoba Ltd.* at para. 27).

[47] In this particular case, Mr. Sidhu’s objection to the lack of evidence about why the plaintiff delayed rings somewhat hollow given that one of the grounds advanced in support of his application is that the plaintiff made the strategic decision to delay moving ahead with the action pending the results of the Commission proceeding. In fact, Mr. Sidhu has produced in evidence copies of handwritten notes prepared by the plaintiff which he submits supports that conclusion.

[48] Thus, the question at this stage of the analysis is not so much why the plaintiff delayed in prosecuting the civil action, but whether it was reasonable for her to do so while the Commission process was ongoing i.e. has she offered a credible excuse?

[49] The plaintiff submits that even absent direct evidence from her, the Court can conclude that it was reasonable for her to allow the Commission process to run its course. She argues that it would have been an abuse of process to proceed with the civil action while the issues relating to her investment in Bracetek were before the Commission.

[50] In support of this position, the plaintiff cites *Lamarche v. British Columbia (Securities Commission)*, 2024 BCSC 1137, rev’d in part on another ground, 2025 BCCA 146. In *Lamarche*, the plaintiff was issued a notice of hearing by the Securities Commission in connection with alleged breaches of the *Act*. In conjunction with the ongoing investigation, an investigator, pursuant to s. 144 of the *Act*, sought production of records pertaining to the plaintiff that were in the possession of a third party. The plaintiff then filed a notice of civil claim seeking a declaration that s. 144 was unconstitutional on the basis that the section created an impermissible risk of disclosure of records subject to solicitor-client privilege. He also claimed damages.

[51] The Commission brought an application seeking to stay the proceeding in respect of the constitutional claims and to strike the claim for damages. In this court, Justice MacDonald granted the stay and struck certain of the damage claims. She granted the stay on the basis that the plaintiff's claim was an abuse of process in that it was attempting to bypass the Commission proceeding. In coming to this conclusion, Justice MacDonald applied the well-established principle that absent exceptional circumstances administrative remedies should be exhausted before a party has resort to a superior court (at para. 19); see e.g., *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61 at paras. 30–31.

[52] The Court of Appeal dismissed the appeal from the order granting the stay but allowed the appeal in part by setting aside the judge's order striking the claim for damages.

[53] The plaintiff here submits that it would similarly have been an abuse of process to actively pursue the civil action while the Commission investigation was proceeding.

[54] *Lamarche* has no application to the circumstances of this case. In *Lamarche*, the Commission was named as a defendant in the civil action and, as found by Justice MacDonald, the action was an attempt to bypass, if not directly challenge, the Commission process. That is not the case here. The Commission is not a party to this action and the relief sought does not in any way seek to undermine the Commission's investigative process.

[55] Simply put, this is not a case of a party seeking resort to the court before exhausting all available administrative remedies.

[56] The plaintiff also relies on *Tundra Helicopters Ltd. v. Allison Gas Turbine et al.*, 2002 BCCA 145 [*Tundra Helicopters*], in support of her contention that it was reasonable for her to await the outcome of the Commission process given the overlap of issues in the two proceedings. There, a chambers judge had dismissed

the action for want of prosecution, but the Court of Appeal allowed the appeal. The plaintiff here cites the Court of Appeal's finding:

[22] In my respectful view, it was error in principle for the learned judge to find ... that the delay was unreasonable because the decision to do so was "tactical in nature". In circumstances such as arose here, it cannot be held against the plaintiffs that they wished to save litigation costs or obtain the benefit of a review of the available evidence or that they hoped to improve their settlement prospects. Those are legitimate objects, a view which the defendants appear to have shared.

[57] This last observation reflects the fact that the defendants were found to have acquiesced in the delay: at para. 24.

[58] In response to *Tundra Helicopters*, Mr. Sidhu points to the fact, again, that the plaintiff has not adduced any evidence explaining her delay, for example by addressing the circumstances referred to by the court in *Tundra Helicopters*. Further, Mr. Sidhu submits that *Tundra Helicopters* is distinguishable on grounds similar to those applied in *SeaQuest (1993) Adventurecraft Inc. v. Gray Line of Victoria Ltd.*, 2008 BCSC 873 [*SeaQuest*]. Mr. Sidhu cites the following passage from *SeaQuest*:

[30] The plaintiff says there were legitimate reasons for the delay including awaiting the outcome of the arbitration proceedings.

[31] In *Tundra Helicopters Ltd. v. Allison Gas Turbine, a Division of General Motors Corp.*, 2002 BCCA 145, there was a five year period between the issuance of a writ until the filing of the motions to dismiss. During that time, the plaintiffs took no active steps to pursue the action in British Columbia. Rather, the plaintiffs were awaiting the outcome of proceedings in the Yukon and in Texas. The defendants in the British Columbia action were also defendants in the Texas action. All three actions were based in negligence and arose from the same accident. Esson J.A. stated at para. 21:

... having regard to the whole of the circumstances including the fact that the four defendants in this action were defendants in the Texas action, it was not unreasonable for the plaintiffs to assume that all defendants were content with the approach proposed by Standard Aero. On the face of it, it was as much, and perhaps more, to the benefit of the defendants as to that of the plaintiffs to await the outcome of the Texas action. The liability issue in the two actions was precisely the same. Had the plaintiffs in this action insisted on proceeding, the defendants might have seen that as a pointless waste of resources by involving them in incurring the cost of two actions when one might do.

[32] *Tundra Helicopters Inc.* is distinguishable as, here, the parties are not the same. The only parties to the arbitration are the plaintiff and the Gray Line

defendants; none of the other defendants are involved with the arbitration. Furthermore, the serious allegations of fraud were not present in *Tundra Helicopters Ltd.* as they are here.

[59] Mr. Sidhu submits that *Tundra Helicopters* can similarly be distinguished because the parties to the civil action are not the same as to the Commission proceeding (specifically the plaintiff is not a party before the Commission), the issues to be decided in the two proceedings are different and this case involves serious allegations of fraud, such that delays in prosecution are not lightly excused. Further, in *Tundra Helicopters*, there was evidence of acquiescence on the part of the defendants, which Mr. Sidhu says is absent here.

[60] As noted above, the central issue under this rung of the test is whether delaying prosecution of the civil action while the Commission process was ongoing amounts to a credible excuse. On this point, Mr. Sidhu's point about the absence of evidence carries more weight. For example, without any evidence from the plaintiff, it is difficult for the Court to assess the rationale underlying what was clearly an intentional decision to delay, including whether it was "tactical" in the sense of intended to prejudice Mr. Sidhu: *Giacomini* at para. 40.

[61] Leaving aside the absence of direct evidence from the plaintiff, I am of the view that, notwithstanding Mr. Sidhu's submissions to the contrary, the analysis of the Court of Appeal in *Tundra Helicopters* is applicable to the circumstances of this case.

[62] In terms of the parties, while Mr. Sidhu is correct that the plaintiff was not technically a party to the Commission process, it was her complaint that triggered that process and it was the circumstances of her investment in Bracetek that were being investigated, including her dealings with both Abtar Sidhu and Geoffrey Sidhu.

[63] This is reflected in the Notice of Hearing that was issued by the Commission on May 26, 2021, which names Geoffrey Sidhu and Bracetek as respondents and which focuses specifically on the circumstances of the plaintiff's investment in Bracetek (see para. 13 above).

[64] Furthermore, the Commission process involved a thorough investigation into those circumstances, which included compiling an extensive evidentiary record and conducting interviews with all of the key players, including the plaintiff and both Abtar and Geoffrey Sidhu. Much, if not all, of that evidentiary record has now been produced in this action.

[65] Mr. Sidhu submits that the action is distinguishable from the Commission proceeding because it involves allegations of fraud that were absent in the Commission complaint. In fact, the notice of hearing issued by the Commission (see para. 13 above) specifically alleges that “the respondents defrauded a BC investor when she invested \$1.75 million in Bracetek”. The fact that Geoffrey Sidhu subsequently settled with the Commission on narrower grounds limited to an admitted breach of the *Act*, does not alter the fact that allegations of fraud were made as part of the Commission complaint and that, again, the Commission investigation dealt with exactly the same facts and circumstances at issue in the action.

[66] Finally, as was the case in *Tundra Helicopters*, it can fairly be said that Mr. Sidhu acquiesced in the delay, not expressly but by his conduct.

[67] Mr. Sidhu was aware since July of 2018 that the plaintiff intended to wait for the Commission process to run its course. It was at that time that the plaintiff produced the notes on which Mr. Sidhu relies in support of his allegation that the plaintiff made a strategic decision not to advance the action. Yet faced with that knowledge, Mr. Sidhu took no steps to push the litigation forward. While a defendant has no duty or obligation to take steps to move a plaintiff’s case forward, “the defendant’s inaction in the face of lengthy delay by the plaintiff may weigh against dismissal of the action”: *Giacomini* at para. 76.

[68] I appreciate that the court in *Giacomini* suggested that the defendant’s conduct may factor into the interests of justice analysis under the third rung of the want of prosecution test, but in the circumstances of this case, it is also relevant to

whether the plaintiff has a credible excuse because of Mr. Sidhu's acquiescence in the face of his knowledge of the very facts giving rise to the plaintiff's excuse.

[69] Finally, it is apparent that the plaintiff benefitted considerably from the Commission process in that it resulted in her recovering the \$900,000 disgorged by Geoffrey Sidhu as well as the additional \$178,749.82 received from Ms. Slonski. Geoffrey Sidhu also benefitted in that any damages for which he might be found liable in the action will be reduced by the amount already recovered by the plaintiff.

[70] In summary, while the delay in prosecuting this action has been inordinate, I am satisfied that the delay is excusable.

[71] Based on that finding, it is unnecessary for me to consider the interests of justice element of the want of prosecution test.

Conclusion

[72] Geoffrey Sidhu's application to dismiss the action for want of prosecution is dismissed.

[73] The parties are directed to schedule a case planning conference through Supreme Court Scheduling within 30 days of the date of these Reasons to set a schedule for all remaining pre-trial steps to ensure that there is no further delay in bringing this matter to a resolution. I am not seized of the action, and the case planning conference may take place before any judge or associate judge.

[74] Costs of this application will be in the cause.

"The Honourable Chief Justice Skolrood"