

In the Court of Appeal of Alberta

Citation: 2114223 Alberta Ltd v Lougheed, 2026 ABCA 291

Date: 20260909
Docket: 2603-0035AC
Registry: Edmonton

Between:

**2114223 Alberta Ltd. and
McDonald & Bychowski Ltd. operating as CMB Insurance Brokers**

Respondents/Cross-Appellants

- and -

Kevin Lougheed

Appellant/Cross-Respondent

The Court:

**The Honourable Justice Bernette Ho
The Honourable Justice Jane Fagnan
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment Delivered from the Bench

Appeal from the Order by
The Honourable Justice D.R. Mah
Dated the 4th day of February, 2026
Filed on the 3rd day of March, 2026
(2026 ABKB 78, Docket: 1203 00841)

**Memorandum of Judgment
Delivered from the Bench**

The Court:

[1] This appeal concerns a chambers judge's decision on appeal from an applications judge, to set aside a default judgment and to dismiss a long delay application. The background is set out in greater detail in the chambers judge's reasons, published as *2114223 Alberta Ltd v Lougheed*, 2026 ABKB 78.

[2] We will deal first with the appeal filed by Kevin Lougheed regarding the chambers judge's decision to dismiss his application for long delay under rule 4.33 of the *Alberta Rules of Court*, Alta Reg 124/2010, which provides that if three or more years have passed without a significant advance in an action, the court must dismiss the action on application unless certain exceptions apply. This case engages the exception allowing a court to exercise its discretion and decline to dismiss the action if steps have been taken since the delay and the applicant has participated in a manner that warrants the action continuing.

[3] Here, the chambers judge held that no three-year period of delay had been established, and further, Mr Lougheed had participated in the proceeding in a manner that warranted the action continuing.

[4] In *CWC Well Services Corp v Option Industries Inc*, 2019 ABCA 331, this Court held that the exception in rule 4.33(2)(b) should be interpreted holistically and because a finding an applicant has participated in a manner that warrants the action continuing involves an element of discretion, appellate intervention is only appropriate if there is an error in principle or an unreasonable exercise of discretion: *CWC* at paras 8, 11. We are not persuaded there was a reviewable error in the chambers judge's decision that Mr Lougheed's participation in the action after default judgment was granted warranted the action continuing given the circumstances of this case. This is dispositive and Mr Lougheed's appeal is dismissed.

[5] We now turn to the cross-appeal filed by 2114223 Alberta Ltd and McDonald & Bychowski Ltd operating as CMB Insurance Brokers, which are collectively referred to as 211.

[6] 211 cross-appeals the chambers judge's decision to set aside default judgment, submitting the chambers judge cited the correct test for setting aside a default judgment from paragraph 23 of *Liberty Mortgage Services Ltd v River Valley Development Corp*, 2025 ABCA 346, but erred in articulating and applying the test. In our view, the chambers judge considered the correct legal test, and we are not persuaded the chamber's judge committed a reviewable error in applying the test

and legal principles in the circumstances before him, particularly in relation to the chambers judge's exercise of residual discretion afforded by rule 9.15(3) of the *Rules of Court*. Accordingly, 211's cross-appeal is dismissed.

[7] Given both appeals have been dismissed, we direct that each party bears their own costs of their respective appeals. That concludes this matter.

Appeal heard on August 31, 2026

Memorandum filed at Edmonton, Alberta
this 9th day of September, 2026

Ho J.A.

Fagnan J.A.

Shaner J.A.

Appearances:

J.E. Halloran
for the Respondents/Cross-Appellants

R.C. Stephens
for the Appellant/Cross-Respondent