CITATION: JB Claims Management Inc. v. Wolf, 2016 ONSC 3868
COURT FILE NO.: CV-13-476097
MOTION HEARD: 20160127

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JB CLAIMS MANAGEMENT INC., Plaintiff

AND:

KEVIN WOLF, Defendant

BEFORE: Master Lou Ann M. Pope

COUNSEL: Counsel to lawyer for plaintiff: Jillian Van Allen, Brown & Partners LLP
Fax: 416-869-0271

Counsel for defendant: Mark David Johnston, Monteith, Baker, Johnston & Doodnauth Professional Corporation
Fax: 905-895-8269

REASONS FOR ENDORSEMENT

[1] The plaintiff brings this motion for an order to set aside the registrar's order dismissing this action for delay dated January 2, 2015 made pursuant to rule 48.14(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended ("Rules"). This motion is brought pursuant to rule 37.14 of the Rules.

[2] This action includes several actions commenced by the plaintiff against the defendant in small claims court that were consolidated and transferred to this court and continue under this action number. The actions involve a referral fee dispute between a paralegal company and its principal and a lawyer.

[3] This action has been dismissed for delay twice, the first time on July 2, 2013. That dismissal order was set aside on December 17, 2013 and a new timetable required that the action be set down for trial by December 17, 2014. However, because the action had not been set down by that deadline, it was dismissed again on January 2, 2015. This is the order that gives rise to this motion.

Procedural History

[4] This action and all related actions, as described below, involve alleged outstanding monies owned by the defendant to the plaintiff pursuant to a referral fee arrangement for legal work.

[5] The plaintiff carried on business providing paralegal services. Its principal is Jack Berger ("Berger"). The defendant, Kevin Wolf ("Wolf"), is a lawyer. Wolf and Berger worked together for a long time whereby Berger referred clients to Wolf and based on an agreement they would divide Wolf's fee equally.

[6] However, a dispute arose when Berger alleged that Wolf owed him half of Wolf's fee regarding the Kouznetzov account. The plaintiff commenced an action relating to that dispute in the Toronto Small Claims Court on June 14, 2010. ("Kouznetzov action") Wolf defended that action and issued a defendant's claim (counterclaim) against the plaintiff and Berger for slander and defamation, amongst other relief.

[7] Around that same time, another dispute arose regarding the Martinez account and the plaintiff commenced a second small claims court action on July 21, 2010 ("Martinez action") which was defended.

[8] On November 18, 2010, the defendant was successful in obtaining an order granted by Deputy Judge Ashby which directed that the first and second actions were to be tried together or one after the other subject to the discretion of the trial judge.

[9] The trials of the first and second actions were scheduled for March 3, 2011; however, it was adjourned at the plaintiff's request in order to bring a motion to transfer the actions to the Superior Court of Justice. On June 9, 2011, Justice Lederman granted the transfer order which included the first and second small claims court actions, as well as the defendant's claim in the Martinez action that had been defended by the plaintiff.

[10] The parties were self-represented until January 2011 when both retained counsel.

[11] During this time, it appears that the plaintiff continued to refer clients to the defendant because in July 2012, the plaintiff commenced two more actions against the defendant and former clients in the Small Claims Court in Richmond Hill, Ontario ("Richmond Hill actions"). These actions arose out of the same referral fee arrangement. These actions were defended in October 2012.

[12] Although the transfer order of the first two small claims court actions and the defendant's claim was made on June 9, 2011, the plaintiff did not file a requisition form to effect the transfer until January 3, 2013, some 17 months later. The requisition form failed to include the defendant's claim despite it being ordered by Justice Lederman.

[13] The evidence bears out that despite plaintiff counsel's efforts starting in early January 2013 to transfer the files from the Small Claims Court to the Superior Court of Justice, he had significant difficulty doing so. Without setting out a history of the steps taken, I accept that plaintiff's counsel took all reasonable steps to effect the transfer of the files despite, in my view, several errors made by the registrar's office combined with the oversight by plaintiff's counsel in failing to include the defendant's claim in the requisition form to transfer the actions to the Superior Court of Justice.

[14] On March 14, 2013, a status notice was issued by the court under rule 48.14(1). As the plaintiff did not comply with subrule 48.14(2), the action was administratively dismissed by the registrar on July 2, 2013. The plaintiff brought a motion to set aside the dismissal order, unopposed by the defendant. Master Glustein, as he then was, granted the order on December 17, 2013 and ordered that the action be set down for trial by December 17, 2014.

[15] In the meantime, in May 2013, the defendant brought a motion to consolidate the Richmond Hill actions with the Superior Court action and, on consent of the plaintiff, Justice Moore granted the order on May 9, 2013 ("consolidation order"). However, the defendant failed to have the order entered with the court.

[16] By May 2013, due to oversights and errors by all parties and the registrar's office as set out above, none of the small claims court files had been transferred to the Superior Court. The evidence contains numerous communications between counsel regarding rectifying the problems.

[17] In December 2013 counsel discussed dates for examinations for discovery. The defendant was not willing to conduct discoveries or discuss a discovery plan until the consolidation order was entered. It is difficult to understand the defendant's position because it was the defendant who obtained the consolidation order six months earlier in May 2013; thus, it was his responsibility to have the order entered with the court and ensure the files were transferred.

[18] In any event, a few months later in February and March 2014, plaintiff's counsel took additional steps to have the actions transferred and finally on March 18, 2014, the first two actions were transferred to the Superior Court of Justice. The next day, plaintiff's counsel wrote to defence counsel and advised of the transfer of the first two actions. He also enquired about the status of the two Richmond Hill small claims court actions and the need to complete all steps to be able to set the action down for trial by December 31, 2014.

[19] Also in March 2014, plaintiff's counsel left the firm and Mr. Pomer ("Pomer") took carriage of the file. Around that same time, the defendant changed counsel. In June 2014 there was a death in Pomer's family that interfered with his practice. Also that same month, plaintiff's counsel wrote to defence counsel and invited settlement discussions to which the defendant refused.

[20] There was little activity on the file from March 2014 until October 2014 when the plaintiff sought new counsel. He obtained his entire file from Pomer; however, it is Pomer's evidence that he overlooked providing the plaintiff with Master Glustein's order which contained the term that the action was to be set down for trial by December 31, 2014, nor did Pomer advise the plaintiff of that timeline and the consequences if the action were not set down by that date. Pomer states that he did not provide the plaintiff with a "transfer memorandum."

[21] The plaintiff did not set the action down for trial by December 31, 2014 and the action was dismissed for delay a second time by the registrar on January 2, 2015. Pomer sent the plaintiff a copy of the dismissal order a few days later. On January 19, 2015, Mr. Linden, the plaintiff's new lawyer, delivered a notice of change of lawyer and a notice of motion to set aside the dismissal order returnable June 1, 2015.

[22] On February 2, 2015, the defendant delivered a notice of change of lawyer.

[23] In October 2015, at the settlement conference in the two Richmond Hill actions, there was discussion regarding the fact that these actions had not been transferred despite the consolidation order of Moore J. made on May 9, 2013. The Deputy Judge directed that the plaintiff apply to Justice Moore for directions.

[24] This motion was ultimately heard on January 27, 2016.

Law

[25] This action was dismissed for delay on January 2, 2015 pursuant to Rule 48.14(1) of the Rules. As an aside, it is important to note that the applicable Rules regarding administrative dismissals were amended effective January 1, 2015 whereby former Rules 48.14 and 48.15 were revoked and replaced with the current Rule 48.14. However, this action was dismissed under former rule 48.14 as it was the Rule in effect on December 31, 2014, the last day this action was to be set down for trial before it would be dismissed. The effect of current rule 48.14 will be addressed in more detail later.

[26] Former subrule 48.14(16) provided that an order under the rule dismissing an action may be set aside under rule 37.14.

[27] Rule 37.14(1) provides that a party who is affected by an order of a registrar may move to set aside the order, by a notice of motion that is served forthwith after the order comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion. The court has discretion to set aside the order on such terms as are just. (subrule (2))

[28] The plaintiff has the onus to satisfy the court that this action should be permitted to proceed.

[29] In considering whether the dismissal order should be set aside, the court will consider the following four factors while taking a contextual approach in order to achieve a result that is just in all the circumstances. It is not necessary for the plaintiffs to satisfy each of the four factors in order to have the order set aside. (*Reid v. Dow Corning Corp.* (2001), 11 C.P.C. (5th) 80 (Ont. Master), *Finlay v. Van Paassen*, 2010 ONCA 204, 2010 CarswellOnt 1543 (C.A.), at paras 27-29; *Wellwood v. Ontario Provincial Police*, 2010 ONCA 386; *Habib v. Mucaj*, [2012] O.J. No. 5946 (C.A.))

a. Explanation for the litigation delay;

b. Inadvertence in missing the deadline;
c. Promptness in bringing the motion to set aside;
d. Prejudice to the defendants.

[30] In *Ross v. Hertz Canada*, 2013 ONSC 1797 (CanLII), Master Dash provided the following summary of the guiding principles:

- A plaintiff need not satisfy all four of the *Reid* factors but rather a contextual approach is required;

- The key point is that the court is to consider and weigh all relevant factors to determine the order that is just in the circumstances of each particular case;

- All factors are important but prejudice is the key consideration;

- Prejudice to a defendant may be presumed, particularly if a lengthy period of time has passed since the order was made or a limitation period has expired, in which case the plaintiff must lead evidence to rebut the presumption;

- Once a plaintiff has rebutted the presumption of prejudice, the onus shifts to the defendant to establish actual prejudice;

- Prejudice to a defendant is not prejudice inherent in facing an action in the first place but prejudice in reviving the action after it has been dismissed as a result of the plaintiff's delay or as a result of steps taken following the dismissal of the action;

- The party who commences the litigation bears the primary responsibility under the Rules for the progress of the action; and,

- In weighing the relevant factors, the court should not ordinarily engage in speculation concerning the rights of action a plaintiff may have against his or her lawyer but it may be a factor in certain circumstances, particularly where a lawyer's conduct has been deliberate. The primary focus should be on the rights of the litigants and not with the conduct of their counsel.

Analysis

[31] I will now address the four *Reid* factors.

Explanation for the Litigation Delay

[32] In summary, this action was commenced on June 14, 2010 in the Small Claims Court and subsequently transferred to the Superior Court of Justice and consolidated with other Small Claims Court actions. The first dismissal order was made on July 2, 2013 and it was set aside on December 17, 2013, unopposed by the defendant. The order setting aside the first dismissal order required that the action be set down for trial by December

31, 2014. When it was not set down for trial by December 31, 2014, the registrar issued a dismissal order on January 2, 2015. Therefore, by January 2, 2015, this action had been ongoing for some four and a half years and it had not proceeded beyond the close of pleadings.

[33] The plaintiff submits that this action has been delayed for numerous reasons, including (1) numerous actions commenced by the plaintiff against the defendant between 2010 and 2012 that were ultimately consolidated into this action, (2) both parties being self-represented early in the actions, (3) several motions that resulted in orders requiring actions be tried together, consolidated and transferred, (4) difficulties encountered with the court in transferring the actions, (3) the errors made by his former counsel and the court when attempting to transfer the actions, (4) change in counsel by both parties.

[34] The defendant submits that the plaintiff has not explained the delay in transferring the first two Small Claims Court actions as the transfer order was made in June 2011 and the actions were finally transferred in March 2014. The plaintiff submits that this delay was caused by the difficulties encountered with the court, his counsel's attendances at the court office and letters to the court to try to resolve the problem, then when the court office found Lederman J.'s order in the back of the court file, the actions were finally transferred.

[35] The defendant further submits the plaintiff has not explained the fact that after the order was made setting aside the first dismissal order on December 17, 2013, the plaintiff took no steps to deliver an affidavit of documents, produce documents, schedule examinations for discovery, or amend the statement of claim to increase the quantum of damages sought given that the actions were now in the Superior Court and Lederman J.'s order which provided that the parties were at liberty to amend their claims. The plaintiff's evidence is that its counsel attempted to schedule discoveries in December 2013 but defence counsel refused to do so until the actions had been transferred and discussion took place regarding a discovery plan. The plaintiff also points to his lawyer's letter to defence counsel on March 19, 2014 wherein he advised that the first two Small Claims Court actions had been transferred and enquired about the status of the consolidation order made on May 9, 2013. Plaintiff's counsel also expressed his concern that they only had until December 31 of that year to complete the steps in the action in order to set it down for trial. There was no response from defence counsel to that letter. It was around that time that the defendant changed counsel. In addition, it is important to point out that the consolidation order was obtained on motion brought by the defendant and the usual procedure is that the party who obtained the order is responsible to have it entered and, as in this case, take the necessary steps with the court office to have the actions consolidated.

[36] The defendant submits that this court should follow the decision in *1196158 Ontario Inc. v. 6274013 Canada Ltd.*, (2012) 112 O.R. (3d) 67 (C.A.) ("119") because the facts in that case are identical to the facts herein. I respectfully disagree. Although the timelines in 119 may be similar to the timelines in this action, 119 did not involve numerous actions involving the same parties and the same issues being consolidated and transferred from

one jurisdiction to another. This court is required to take a contextual approach on a motion to set aside a registrar's dismissal order while considering four major factors.

[37] I am satisfied that the plaintiff has adequately explained the litigation delay. Although there were periods of time where no steps were taken to advance this action, I accept that this action involved unusual circumstances that involved numerous actions commenced over several years having to be transferred from one court to another and complicated by a change of venue of two actions. There were errors that occurred on the part of counsel for both parties that contributed to the delay. There was an attempt by plaintiff's counsel to move the action ahead by scheduling discoveries which was refused by defence counsel until the procedural steps had been completed. In my view, that was not a valid reason given by defence counsel to delay scheduling discoveries. As there are only two parties to this action, it is my view that had defence counsel agreed to schedule discoveries when requested to do so in December 2013, they would have been completed in sufficient time to set the action down for trial by December 31, 2014.

Inadvertence in Missing the Deadline

[38] On December 17, 2013 Master Glustein ordered that the action be set down for trial by December 31, 2014. In other words, the parties had one year to complete discoveries, motions arising out of discoveries, and mediation.

[39] Pomer's evidence is that through inadvertence his office failed to diarize the new set down date and failed to advise the plaintiff of the deadline. He explained that his former associate, Mr. Holness, who had carriage of the file, had obtained the order from Master Glustein on December 17, 2013. When Mr. Holness left the firm some three months later in March 2014, Pomer took over carriage of the file. It took Pomer some time to familiarize himself with the file and the procedural issues. It is also Pomer's evidence that a death in his family interfered with his practice.

[40] It is also Pomer's evidence that when the plaintiff requested his file in October 2014 in order to seek new counsel, inadvertently Pomer did not give the plaintiff a copy of Master Glustein's order.

[41] Therefore, based on Pomer's evidence, the plaintiff was unaware of the deadline of December 31, 2014 when the plaintiff picked up his file from Pomer's office in October 2014. The plaintiff retained its current counsel on or about October 30, 2014. It is Mr. Linden's ("Linden") evidence that between November and December 2014 he was preparing for and attending a trial and therefore he was unable to review the plaintiff's file to determine whether he would go on the record. Linden states that he believed that Pomer, who remained lawyer of record, would take appropriate steps to address procedural issues including setting the action down for trial if required.

[42] The defendant submits that missing two deadlines amounts to solicitor's negligence as opposed to simple inadvertence. He further contends that the plaintiff's evidence is lacking with, firstly, particulars regarding its counsel's diary system and what went

wrong and, secondly, evidence from Holness who had carriage of the plaintiff's file prior to leaving the firm and Pomer taking over the file.

[43] This factor involves a consideration as to whether missing the deadline was due to inadvertence or intentional conduct on the part of the plaintiff or its counsel not to advance the action. It is not an issue of whether plaintiff's counsel was negligent in missing the deadline. Simply put, it is not an issue on this motion, or any motion to set aside a dismissal order, to determine whether plaintiff's counsel was negligent. The jurisprudence is clear that in considering whether to permit an action to proceed to trial on its merits, the court should be concerned primarily with the rights of the litigant, not with the conduct of their counsel. (*Finlay v. Van Paassen*, 2010 ONCA 204, at para. 32)

[44] I find that the cause for missing the deadline was due to inadvertence on the part of plaintiff's counsel. There is no evidence that plaintiff's counsel intentionally stopped work on this file. In fact, there is ample evidence that he continued to take steps to consolidate and transfer the actions, albeit without success until the court office discovered Lederman J.'s order in the back of the court file. He further attempted to schedule discoveries but was met by defence counsel's refusal. For those reasons, I find the plaintiff has adequately explained this factor.

Motion Delay

[45] This factor is not in dispute.

Prejudice

[46] The plaintiff submits that there will be no prejudice to the defendant if the action is allowed to proceed as the plaintiff has preserved all relevant documents, the defendant has produced his accounting documents for the clients' accounts in dispute and the parties are still available for examinations for discovery and trial. The action relates to an oral fee arrangement between the parties; therefore, the only witnesses expected to give evidence at trial will be Berger on behalf of the plaintiff and the defendant. It is further submitted that the defendant did not oppose the setting aside of the first dismissal order made on December 17, 2013 and no prejudice has arisen since then. Lastly, the plaintiff points out that the parties attended a settlement conference in the Richmond Hill actions on October 30, 2015 in Small Claims Court. The endorsement of the pre-trial judge states:

> On May 15, 2013, Justice Moore ordered that this action be consolidated with the other actions, and that the parties could amend the pleadings to monetary limits under Simplified Rules. It appears to me that this action should have been transferred to the Superior Court. The Order lacks that aspect. The s. conf. is adjourned, pending an application by the Plaintiff seeking directions from Justice Moore as to the procedure to be adopted.

[47] The plaintiff states that it intends to take those steps if the dismissal order is set aside.

[48] The defendant submits that there is a presumption of prejudice given the passage of the limitation period and the fact that the settlements of the actions that gave rise to the fee disputes were more than nine years ago. For clarification, there is no dispute that the settlements were some time ago; however, Berger states in his affidavit sworn October 19, 2015 at paragraphs 3 and 6 that the two settlements took place in November 2009, which was less than seven years ago, not more than nine years ago as submitted by defence counsel.

[49] The defendant relies on the general accepted principle that memories fade with time and; therefore, as the settlements took place some seven years ago there is prejudice to the defendant. His evidence is that his recollection of numerous discussions with Berger regarding the issues has diminished and worsened. He further states, by inference, that his former clients will be called as witnesses at trial to give evidence regarding their dealings with Berger and, given the delay, their memories will have faded. Further, he states that his office has moved twice in the last nine years and he cannot say with certainty that he has preserved all relevant documents, particularly e-mails.

[50] There is no automatic presumption of prejudice with the passage of the limitation period. Prejudice to a defendant may be presumed, particularly if a lengthy period of time has passed since the order was made or the limitation period has expired. This is to be determined by the court taking a contextual approach to all of the facts. Prejudice to a defendant is not prejudice inherent in facing an action in the first place but prejudice in reviving the action after it has been dismissed as a result of the plaintiff's delay or as a result of steps taken following the dismissal of the action. (*Ross v. Hertz Canada*)

[51] I find there is no presumption of prejudice to the defendant given the passage of the limitation period. Although the parties have not delivered affidavits of documents, the plaintiff has preserved all relevant documents and the defendant has produced his accounting documents. While the defendant stated that his office moved twice over the last nine years, the first two Small Claims Court actions were commenced six years ago in June 2010 and the actions were defended the same month. Despite his office moves, the defendant was aware that he had an obligation to preserve all relevant documents since that time.

[52] Notably, the defendant is a lawyer and although there is no greater onus on him, I do not accept that he did not retain all relevant documents, including e-mails, particularly because he has continued to defend these actions, including the Richmond Hill actions, which went to settlement conference recently on October 30, 2015.

[53] Further, I fail to see how the testimony of the defendant's former clients at trial will be relevant to the issue of whether there was an oral agreement between the parties regarding a fee arrangement. If it is relevant, an explanation has not been put before the court.

[54] Lastly, the defendant did not raise the issue of prejudice in not opposing the setting aside of the first dismissal order in December 2013; therefore, any alleged prejudice must have arisen since that time. This motion was brought on January 19, 2015; therefore, any prejudice to the defendant due to delay must have arisen within that 13 month period. I find no such prejudice.

[55] For the above reasons, I find that there will be no prejudice to the defendant if this action is allowed to proceed.

Additional Factors

[56] The defendant submits that the court ought to take into consideration the fact that the plaintiff is an experienced paralegal and a sophisticated litigant and thus the plaintiff is held to a higher standard of responsibility than a lay litigant in these circumstances. For that proposition, he relies on the case of *Sands v. Walpole Island Police*, (2011) ONSC 1682, at paras.15-16 ("*Sands*"). For the following reasons, I respectfully reject that submission.

[57] Firstly, while it is a reasonable to conclude that the plaintiff is an experienced paralegal given the lengthy relationship between the plaintiff and the defendant, there is no evidence whatsoever that the plaintiff is a "sophisticated litigant". I do not accept the suggestion that because the plaintiff commenced several actions against the defendant herein, one can conclude that he a sophisticated litigant.

[58] Secondly, the proposition that this plaintiff is held to a higher standard than a lay litigant has no bearing on this action because both parties are represented by counsel.

[59] Thirdly, defence counsel has inaccurately described the decision in *Sands* as supporting the proposition that the plaintiff herein is held to a higher standard than a lay litigant. In *Sands*, Nolan J. merely noted that, contrary to the plaintiff's assertion, he was not an unsophisticated self-represented litigant as he had proceeded to trial without counsel in a prior action against the same defendant which indicated that he aware of court procedures. Nolan J.'s comments do not stand for the proposition as put forth by the defendant herein.

[60] Recent amendments to rule 48.14 may be a relevant factor on a motion to dismiss for delay. Neither party made any submissions on this point; however, it is worthy of comment. The amendments became effective January 1, 2015. Actions commenced on or after January 1, 2015 will now be dismissed for delay by the registrar five years from the date of commencement. The first two claims in this action were issued in June and July 2010 and the two claims issued in the Richmond Hill court were issued in July 2012. These actions have been ordered to be consolidated. Therefore, had the amendments applied to this action when it was commenced in June 2010, it would have been dismissed for delay in June 2015. As the second dismissal order in this action was made on January 2, 2015, prior to that five-year timeline, in my view, the amendments to rule

48.14 are a relevant factor on this motion in that the action was dismissed on both occasions within the new five-year timeline. This, in my view, favours the plaintiff.

Conclusion

[61] For the reasons above, I find that the plaintiff has adequately explained the four factors. Having taken a contextual approach to the issues on this motion, I exercise my discretion under rule 37.14(2) to set aside the registrar's dismissal order made on January 2, 2015 and to order the following timetable for the balance of the steps in this action, including the remaining steps to consolidate the Richmond Hill actions with this action:

1. Plaintiff shall seek directions from Moore J., or the court, regarding transfer of the Richmond Hill actions to the Superior Court of Justice in Toronto forthwith;

2. Once a transfer order is obtained, the plaintiff shall immediately (1) file a requisition with the court office in Richmond Hill to effect the physical transfer of the files from Richmond Hill to Toronto, and (2) when the physical files arrive at the court in Toronto to file a requisition to effect the consolidation;

3. While steps in orders 1 and 2 above are taking place, the plaintiff shall deliver to the defendant a proposed amended statement of claim in the consolidated action and seek the defendant's consent to the amendments within 30 days of the release date of this Endorsement. (So as not to delay this action any further, I see no reason why the plaintiff should wait until steps 1 and 2 above are completed before delivering a proposed amended statement of claim). It is expected that the defendant will consent to the proposed amendment on quantum only and that a motion will not be necessary.

4. affidavits of documents in the consolidated action shall be delivered within 30 days of the date the defendant was served with the Order amending the statement of claim;

5. examinations for discovery shall be held within 90 days of the date the defendant was served with the Order amending the statement of claim;

6. satisfy undertakings within 60 days of the date the examinations for discovery were held;

7. schedule any motion arising out of examinations for discovery within a further 30 days after undertakings were to be satisfied;

8. complete mediation within 120 days of the date examinations for discovery were held, or as further ordered by this court in the event a motion arising out of discoveries is held;

9. this action shall be set down for trial no later than August 31, 2017.

Costs

[62] The plaintiff does not seek costs of the motion despite its success.

[63] Although the defendant was not successful in defeating this motion, it is open to the court under rule 57.01(2) to award costs against a successful party in a proper case.

[64] In my view, this is a proper case to award costs to the defendant as the dismissal order was the second time the action had been dismissed. However, in fixing costs I have considered that the plaintiff explained the four factors adequately. I have also considered that the defendant's responding material was not extensive and the majority of the cases filed were the typical ones filed on a motion to set aside a dismissal order. In fact, many of the cases were not referred to in submissions. Moreover, the time estimated for attendance at the hearing was admittedly over-estimated by defence counsel. Cross-examinations were not held. Therefore, I fix costs to the defendant in the amount of $2,500 payable within 30 days.

June 13, 2016

(original signed)
Master Lou Ann M. Pope