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CASE SUMMARY: SMALL CLAIMS ACTION DISMISSED AFTER CLAIMANT'S FAILURE TO APPEAR AT SETTLEMENT CONFERENCE DUE TO NOT SEEING THE NOTICE OF SETTLEMENT CONFERENCE IN THE MAIL DURING ITS COVID-RELATED CLOSURE. APPLICATION TO SET THAT DISMISSAL ORDER ASIDE WAS BROUGHT SEVERAL MONTHS LATER AND DISMISSED DUE TO CLAIMANT'S LACK OF DILIGENCE

Small claims action dismissed after claimant's failure to appear at settlement conference due to not seeing the notice of settlement conference in the mail during its COVID-related business closure. Application to set dismissal order aside brought several months later dismissed due to lack of diligence.

Administrative law – Judicial review – Appeals – Delay – Standard of review – Reasonableness simpliciter – Fresh evidence – Admissibility

Revive Spa Ltd. v. Melka Construction Ltd., [2022] B.C.J. No. 1831, 2022 BCCA 336, British Columbia Court of Appeal, September 23, 2022, E.A. Bennett, G. Dickson and K. Horsman JJ.A.

The appellant's small claims action was dismissed by an order of the BCPC pursuant to Rule 7(17) of the Small Claims Rules after it failed to appear at the settlement conference. The appellant said it did not receive the notice of settlement conference in the mail due to a COVID-related business closure. After it did see the notice and learned the action had been dismissed, it waited several months before applying to set aside that order. The exact timing of when the appellant received the notice of settlement conference was not determined as the appellant was uncertain, but the judge was satisfied on the evidence that at least four months had passed after the appellant's receipt of the notice of settlement conference and the filing of the application to set aside the dismissal order. The chambers judge was not satisfied that the appellant took diligent efforts to have the dismissal order set aside, and dismissed its application.

In its petition for judicial review to the BCSC, one of the appellant's arguments was that the judge acted unreasonably in dismissing the application without making a definitive finding on when the appellant had received the notice of settlement conference. The BCSC judge dismissed the petition, finding that the BCPC judge's conclusion that the appellant had not acted diligently to set aside the dismissal order was reasonable. On appeal to the BCCA, the Court found the BCSC judge was correct to conclude that a further affidavit from the appellant was not admissible at the hearing, and was correct to conclude that the decision of the BCPC judge was reasonable. The appeal was dismissed.

This case was digested by [Kara Hill](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kara Hill at khill@harpergrey.com.