

DATE: 20040514
DOCKET: C39666

COURT OF APPEAL FOR ONTARIO

**RE: LUIGI ALBERTO TIRABORELLI (Plaintiff/Appellant) –and–
PATRICIA TIRABORELLI and WENDY WOOD (Defendants/
Respondents)**

BEFORE: CATZMAN, MOLDAVER and GOUDGE JJ.A.

**COUNSEL: Daniel Lawson
for the appellant**

**Thomas Kelsey
for the respondent Patricia Tiraborelli**

**HEARD AND
ENDORSED: May 14, 2004**

On appeal from the judgment of Justice R.N. Thompson dated January 20, 2003.

APPEAL BOOK ENDORSEMENT

[1] In the exceptional circumstances of this case, we think an adjournment should have been granted. Subject to the conditions that follow, we would therefore allow the appeal and set aside the order dismissing the action. It is clear, even from the limited record before us, that the appellant has delayed the prosecution of this action for a significant period of time. We therefore order that, as conditions of setting aside the order, the appellant shall set this action down for trial within 30 days of this date and that the trial will proceed when called on a basis peremptory to the appellant. The appellant shall also deposit the sum of \$5,000 as security for costs within 60 days of this date. If the appellant fails to comply with any of these conditions, the appeal to this court will be dismissed upon the filing of affidavit material from the respondent deposing to such default.

[2] Costs of this appeal will be costs in the cause.