CITATION: Normar Drywall v. 4241258 Canada Inc o/a Laurin General Contractor and Dennis Laurin, 2023 ONSC 3106
COURT FILE NO.: CV-20-00084465-0000
DATE: 2023/05/25

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Normar Drywall Inc., Plaintiff (Defendant to Counterclaim)

AND:

4241258 Canada o/a Laurin General Contractor and Dennis Laurin, Defendants (Plaintiffs by Counterclaim)

BEFORE: Justice K.A. Jensen

COUNSEL: Matthew Benson and Andrew Ferguson Counsel, for the Plaintiffs/Defendants by Counterclaim

Charlotte Watson, Counsel, for the Defendants/Plaintiffs by Counterclaim

HEARD: March 2, 2023

ENDORSEMENT

Introduction

[1] This is a motion for summary judgment. The moving party, the Defendants to the action, argue that the action is statute barred pursuant to ss. 4 and 5 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B ("the Act"). In response, the Plaintiff ("Normar") states that an agreement was reached in 2016 that extended the limitation period. However, because there is a dispute about this agreement which will involve questions of credibility, Normar states that the matter must proceed to a trial.

[2] The Defendants, 4241258 Canada operating as Laurin General Contractor and Dennis Laurin (collectively referred to as "Laurin"), have counterclaimed against the Plaintiff, but that action is not subject to the present motion.

[3] In the present litigation, Normar is seeking damages in the amount of $361,674.19 from Laurin for breach of contract (alleged non-payment of invoices) or damages in the same amount for breach of trust, unjust enrichment, and breach of s. 241 of the *Canada Business Corporations Act*, R.S.C. 1985. c. C-44, as amended.

[4] In September 2015, Normar contracted with Laurin to complete the drywall, steel stud framing, and acoustic ceilings at 1021 Thomas Spratt Place in Ottawa for the Medical Council of Canada (the "MCC Project"). The contract was valued at $850,000.00 plus H.S.T.

[5] In November 2016, the President of Normar, Fiore Calarco, met with the President of Laurin, Dennis Laurin, to discuss outstanding issues for payment. The parties disagree as to what was agreed upon during this meeting. Mr. Laurin states that he agreed to pay a total of $314,979.85 but did not promise any further payments on the contract. Mr. Calarco understood that further payments would be made in the future.

[6] Mr. Calarco and Mr. Laurin met again in December 2016. Again, the parties disagree as to what was discussed at this meeting. Mr. Calarco believed that the agreement to pay the remaining amounts in the contract was ongoing.

[7] The parties did not communicate again for quite some time. In April 2018, Normar invoiced Laurin for holdback amounts owing on the contract. Mr. Laurin states that the invoice was not received by Laurin.

[8] In October 2018, the parties exchanged correspondence in which it became apparent that both parties believed that they were owed outstanding amounts on the contract. Litigation then ensued.

[9] The issues to be determined in the present motion are quite straightforward: can the question of whether Normar missed the limitation periods be determined on a motion for summary judgment or is a trial needed? If a trial is not needed, did Normar file its claim outside of the limitation periods and therefore, should the claim be dismissed summarily?

[10] For the reasons that follow, I conclude that it is not necessary to proceed to trial to determine whether Normar's claims are barred by the *Limitations Act, 2002*. Although there are factual issues in dispute, the material facts required to decide the limitations issue are either not in dispute or I have accepted Normar's allegations as facts. On the basis of those facts, I conclude that Normar filed its claim well beyond the limitation period and therefore, the claim is dismissed.

No Genuine Issue for Trial

[11] Pursuant to Rule 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the Court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a defence.

[12] There will be no genuine issue requiring a trial when a summary judgment motion:

a. allows the Judge to make the necessary findings of fact;

b. allows the Judge to apply the law to the facts; and,

c. is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v.Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49.

[13] In determining a summary judgment motion, the Court assumes that both parties have put their best foot forward with respect to the existence or non-existence of material facts that must be

tried: *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11. In other words, the Court should conclude that it has before it all the evidence that would be available at trial: *Broadgrain Commodities Inc. v. Continental Casualty Company*, 2018 ONCA 438, 80 C.C.L.I. (5th) 23, at para. 7. The evidentiary burden is on the responding party to present affidavit material or other evidence to support the allegations or denials in their pleading: *Dawson v. Rexcraft Storage and Warehouse Inc.* (1998), 111 O.A.C. 201 (C.A.) at para. 17.

Discoverability and Limitation Periods

[14] According to the *Limitations Act, 2002*, the two-year limitation period starts on the day the claim is discovered.

[15] Section 5(1) of the Act defines the date on which the claim is discovered:

> 5.(1) A claim is discovered on the earlier of,
>
> (a) the day on which the person with the claim first knew
>
> (i) that the injury, loss or damage had occurred,
>
> (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
>
> (iii) that the act or omission was that of the person against whom the claim is made,
>
> (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
>
> (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[16] Section 5(2) of the *Limitations Act, 2002* provides that a person with a claim shall be presumed to have known of the claim on the day the act or omission on which the claim is based took place, unless the contrary is proved.

[17] In *Clarke v. Sun Life Assurance Company of Canada*, 2020 ONCA 11, 149 O.R. (3d) 433, at paras. 19-20, the Ontario Court of Appeal provided the following instructions regarding the discoverability of a claim:

> The discoverability analysis required by s. 5(1) and (2) of the Act contains cumulative and comparative elements.

> Section 5(1)(a) identifies the four elements a court must examine cumulatively to determine when a claim was "discovered". When considering the four s. 5(1)(a) elements, a court must make two findings of fact:
>
> > (i) the court must determine the "day on which the person with the claim first knew" all four of the elements. In making this first finding of fact, the court must have regard to the presumed date of knowledge established by s. 5(2): "A person with a claim shall be presumed to have known of the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved"; and
> >
> > (ii) the court must also determine "the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known" of the four elements identified in s. 5(1)(a).
>
> Armed with those two findings of fact, s. 5(1) then requires the court to compare the two dates and states that a claim is discovered on the earlier of the two dates: see *Nasr Hospitality Services Inc. v. Intact Insurance* (2018), 142 O.R. (3d) 561, [2018] O.J. No. 4514, 2018 ONCA 725, at paras. 34-35.

[18] In *Shukster v. Young et al.,* 2012 ONSC 4807 at para. 19, the Ontario Superior Court stated that although a party moving for summary judgment retains the overall burden of showing that there is no genuine issue requiring trial, where a defendant moves for summary judgment in relation to a statutory limitation period, the evidentiary burden as to the discoverability issue effectively shifts to the responding party. A plaintiff seeking to defeat operation of the limitation period on such a motion has the onus to rebut the presumption in s. 5(2) of the *Limitations Act, 2002,* or at least demonstrate that there is a genuine issue requiring trial as to whether that presumption is rebutted.

[19] Laurin states that Normar has not raised a triable issue with respect to the presumption under s. 5(2) of the *Limitations Act, 2002*. Laurin states that the facts and sequence of events are not in dispute. Instead, the parties disagree as to how the law applies to those facts, specifically, whether anything delayed the running of the limitation period beyond when payment of Normar's invoices became overdue.

[20] In their factum, Normar concedes that on a purely objective basis, it would have discovered its claim by 30 days after the dates on which the invoices were due, which would have been by November 2016. However, Normar asserts that the meetings in November and December 2016 changed the objective evaluation of when the claim arose because the meetings confirmed Normar's view that Laurin owed outstanding amounts on the contract, which would be paid in the future. Normar asserts that the following issues are in dispute, and resolution of these disputes will determine whether the presumption in s. 5(2) of the Act is rebutted.

The Factual Disputes

[21] The key factual dispute is with respect to the meetings between Mr. Calarco and Mr. Laurin in November and December 2016.

[22] Mr. Calarco states at paragraphs 6 and 7 of his Affidavit that the meeting on November 24, 2016, was to discuss "outstanding issues for payment". He states that Laurin agreed to pay Normar $188,345.75 for the August 2016 invoice and $76,634.10 for the September 2016 invoice. He states that Laurin also agreed to provide United Building Products with a $50,000.00 payment from Normar's October 2016 invoice. At the meeting held on November 24, 2016, , Mr. Laurin made it clear that he did not want Normar or any subcontractors to register construction liens on the MCC Project.

[23] In contrast, Mr. Laurin states in his Affidavit that at the meeting held on November 24, 2016,, Normar agreed to accept the above-noted payments as final payments for the contract. Mr. Laurin states in his Affidavit that neither party mentioned any further amounts owing on the contract during the November 24, 2016 meeting.

[24] It is noteworthy that Mr. Calarco does not state that there were any promises of further payments or that a timetable was established for these future payments. Rather, Mr. Calarco vaguely asserts that Laurin wished to avoid any future litigation. Normar has not provided any evidence, as it is required to do under Rule 20, to establish that Laurin committed to pay the amounts in question at some point in the future.

[25] Mr. Laurin maintains that nothing was owed beyond what was paid in October 2016, and nothing further was promised. His argument seems to be confirmed by an invoice provided by Normar to Laurin dated November 25, 2016, one day after the meeting, showing that Normar owed Laurin $10,889.02.

[26] However, at paragraph 9 of Normar's factum on this motion, Normar states that it did not receive the payments on the outstanding invoices, nor did Laurin pay Normar the holdback amount.

[27] Mr. Laurin and Mr. Calarco met again in early December 2016. Mr. Calarco states that they met onsite to discuss the agreement and how it might be affected by back charges. Mr. Calarco stated that at this meeting, Mr. Laurin assured him that Mr. Laurin would be fair through the resolution process as he was thankful the MCC Project was able to move closer to substantial completion now that Normar and other suppliers were not going to register liens on the Project.

[28] In contrast, Mr. Laurin states in his supplementary affidavit that on December 13, 2016, there was no discussion of how back charges would affect the agreement reached on November 24, 2016. Mr. Laurin states that the purpose of the December 13, 2016 walkthrough at the Project site was to discuss Normar's work on the Project. Mr. Laurin states that as far as he was concerned, the issue of payment to Normar for the MCC Project was resolved on November 24, 2016.

[29] However, Normar states that activity continued on the file up until at least June 2017; according to Normar, Laurin made change orders well into June 2017, which reduced the contract price from $850,000.00 to $641,156.10. According to Normar, such continued activity on the file suggests that the issue of payment for the MCC Project may not have been fully resolved on November 24, 2016.

[30] Mr. Calarco states that Laurin did not provide Normar with notice of the change orders made in June 2017, and that the changes were not in line with what was agreed to at the November 24, 2016 meeting.

[31] Mr. Calarco states that when Normar had not heard anything from Laurin in early 2018, Normar decided to send an invoice for holdback amounts that were owed to it. That invoice was apparently sent on April 30, 2018.

[32] Mr. Laurin states that he did not receive the April 30, 2018, invoice prior to Mr. Calarco's Affidavit being served on February 1, 2023.

[33] Mr. Calarco states that on October 16, 2018, he learned for the first time in an email that Mr. Laurin was taking the position that Normar owed Laurin for the MCC Project and not the other way around. Mr. Calarco states that before seeing this email, he believed that Laurin was still going to provide Normar with the outstanding amounts in satisfaction of the agreement reached on November 24, 2016. However, when he discovered that Laurin was not going to make any further payments for the MCC Project, and was in fact claiming amounts owed, he commenced litigation.

[34] Normar issued its Statement of Claim in this action on September 15, 2020. The Statement of Claim was served on the Defendants on February 8, 2021. Laurin responded with a counterclaim for amounts owing.

The Limitations Issue in This Case Can be Determined on the Summary Judgment Motion

[35] Normar cites *Alexis v. Darnley*, 2009 ONCA 847, 100 O.R. (3d) 232, at para. 10, for the proposition that "because discoverability is a factual analysis, it will often be inappropriate to dispose of the issue on a motion for summary judgment" and that "such motions should not be granted unless the material facts are not in dispute". Normar states that because some of the facts are in issue in the present proceeding, a decision should not be made on the basis of affidavit evidence.

[36] However, I find that the material facts that are relevant to Normar's discovery of the claim are either not in issue in the present case, or I have accepted Normar's allegations as fact. These facts are as follows:

(i) Normar issued invoices in August and September 2016, which it says were not paid.

(ii) The parties met on November 24, 2016, and December 13, 2016, and during those meetings Laurin agreed to be fair with Normar in resolving outstanding payment issues.

(iii) On November 25, 2016, Normar issued an invoice indicating that Normar owed Laurin $10,889.02.

(iv) Normar did not issue another invoice, nor check in with Laurin about any outstanding payments until April 30, 2018, at the earliest.

(v) On April 30, 2018, Normar issued an invoice to Laurin for $107,612.72.

(vi) Laurin and Normar did not communicate further until October 2018, when an exchange of emails revealed that Laurin did not believe it owed any money to Normar.

(vii) The Certificate of Substantial Performance for the Project was published on December 1, 2016, in the Daily Commerce news.

(viii) Normar completed all work to repair deficiencies on the Project on December 2, 2016.

(ix) The Certificate of Substantial Performance triggered the payout of the holdback payment from the Project owner to Laurin on February 28, 2017.

(x) Normar issued its Statement of Claim in this action of September 15, 2020, almost 4 years after the last day of its work on the Project.

[37] As will be seen in the analysis below, the facts set out above provide me with an adequate factual basis to render a fair decision on the limitation period issue. Therefore, a trial on this issue is not needed.

Normar Did Not Miss the Limitation Period

[38] Normar's Statement of Claim claims $361,674.19 in damages. Unfortunately, the claim is not well particularized so that I am left to assume that $264,979.85 of the claim is for the August and September 2016 invoices that Normar says were unpaid. The remaining $96,694.34 would seem to be related to holdback amounts that were not paid. I draw this conclusion based on Normar's inclusion in its motion materials of an invoice for $107,612.72 dated April 30, 2018, that it says it sent to Laurin, which was not paid.

[39] Assuming that Normar did in fact send the invoice for $107,612.72 to Laurin on April 30, 2018, and the other invoices in August 2016 and September 2016, the question I am faced with in determining when the limitation periods began to run is this: when did Normar actually discover it had claims against Laurin and when would a reasonable person in Normar's circumstances have discovered the claims? The earlier of those two dates is the date that the limitation period begins to run: *Clarke*, at para. 20.

[40] It is undisputed that the work on the MCC Project was completed on December 2, 2016. Normar then waited 16 months before pursuing payment for the holdback amounts. Further,

Normar waited nearly two years from the date the August 2016 and September 2016 invoices were overdue before raising the payment issue with Laurin in the email exchanges in October 2018. Normar says it delayed its claims for payment on the strength of Mr. Laurin's commitment to treat Normar fairly in the process of making additional payments. Although Normar says that Mr. Laurin promised to pay the amounts owing, it has not indicated when the payments were to be made.

[41] In assessing when a plaintiff might have discovered a claim, courts will look at whether the plaintiff acted with reasonable diligence to ascertain the facts upon which a claim could be based. It is not acceptable to simply wait and see what might happen: Alexis, paras. 9-12. Normar did not act with reasonable diligence to determine when Laurin would make the payments it was expecting. It cannot rely on assurances that payments will be made in due course and that the process will be handled fairly to delay the commencement of the limitation period. The case law clearly establishes that the tolling of a limitation period is not suspended while a party waits to see what may happen.

[42] Furthermore, the Courts have held that the cause of action in construction claims does not necessarily arise when the invoice is issued and not paid; it arises from the expiration of a reasonable period of time for the plaintiff to deliver an invoice to the defendants and the expiration of a reasonable time for the defendants to pay that invoice.: see *G.J. White Construction Ltd. v. Palermo* (1999), 2 C.P.C. (5th) 110 (Ont. S.C.), para. 22; *Hugh Munro Construction Ltd. v. Moschuk*, 2011 ONSC 3271, at para. 29, aff'd 2012 ONCA 109. Otherwise, plaintiffs could delay issuing invoices for tactical or strategic advantages: *407 ETR Concession Company Limited v. Day*, 2016 ONCA 709, 133 O.R. (3d) 762, at para. 47, leave to appeal refused, [2016] S.C.C.A. No. 509; *Delmar Construction Inc. v. Toronto (City)*, 2008 CanLII 19223 (Ont. S.C.), at paras. 12-13.

[43] A reasonable time for an invoice to be delivered is one or two months after the work is completed. A reasonable time for payment is thirty days after receipt of an invoice: see *Bougadis Chang LLP v. 1231238 Ontario Inc*., 2012 CarswellOnt 10430 (S.C.), at paras. 18-19, leave to appeal refused, 2012 ONSC 6409, 300 O.A.C. 363.

[44] Once a reasonable time to issue an invoice and the reasonable time for payment of that invoice have passed, it would be appropriate for the contractor to commence a proceeding if the invoice remains unpaid: see *1838120 Ontario Inc. v Township of East Zorra-Tavistock*, 2021 ONSC 3341, at paras. 52-53.

[45] Normar's invoices specifically required payment within 30 days. Laurin argues that payment of an invoice became "overdue", and an action became legally appropriate, 30 days after each invoice of Normar's was submitted.

[46] On November 24, 2016, any invoice issued by Normar in August and September 2016 that was unpaid was overdue. On that same date the parties discussed payment of Normar's August and September 2016 invoice and a $50,000 payment to Normar's supplier, UPB. Thus, I find that on

November 24, 2016, the limitation period for the August and September 2016 invoices began to run.

[47] Given that the work was completed on December 2, 2016, Normar could have issued an invoice for the holdback amounts by February 2, 2016. Payment of that invoice would have been overdue on March 10, 2017. I find that had Normar been acting with reasonable diligence, it would have discovered its claim for the holdback amounts on March 10, 2017.

[48] The evidence establishes that the discussions on November 24, 2016 and December 13, 2016, were aimed at avoiding litigation. Such discussions do not however, delay the tolling of a limitation period: *407 ETR*, at para. 47; *Markel Insurance Co. of Canada v. ING Insurance Co. of Canada*, 2012 ONCA 218, 109 O.R. (3d) 652, at para. 34.

[49] This Court has held that communication between the parties, including a request for documentary back-up for the invoice, settlement discussions, and acknowledgement that part of the amount claimed was owing, cannot be taken to extend the limitation period. If these communications did extend the limitation period, no one would be able to safely discuss their dealings: see *Delmar*, at paras. 5-6.

[50] I accept Laurin's argument that a reasonable person with Normar's abilities and in Normar's circumstances would have known that a proceeding was an appropriate means to seek to remedy the loss when Normar's invoices were not paid within 30 days. Normar knew, or ought to have known, that a proceeding was appropriate at the November 24, 2016 meeting at which time it had been over 30 days since Normar had issued its August and September invoices for payment. Indeed, as Normar concedes, the point of the November 24, 2016 meeting was to discuss how to avoid litigation regarding the Project. Therefore, I find that Normar was aware that there were potential claims at that time. Normar had two years from November 24, 2016, to commence litigation for the August 2016 and September 2016 invoices. It had two years from March 10, 2017, to commence litigation for the holdback amounts. It failed to do so within that time.

[51] I agree with Laurin that O. Reg. 73/20, which suspended limitation periods during the pandemic, would only have impacted the limitation period applicable to Normar's claim if Normar could demonstrate that it discovered its claim on or after March 16, 2018. As noted above, with reasonable diligence, Normar could have discovered its claim by March 10, 2017, at the latest. O. Reg. 73/20 therefore, has no application to the limitation period applicable to this claim.

[52] With respect to Normar's subjective awareness that it had a claim against Laurin, Mr. Calarco states in his Affidavit that he knew that the limitation period was coming due in the Fall 2018 for work that was being done for Laurin on another project that was completed around the same time as the MCC Project. That work project was at 2014 Ogilvie Road in Ottawa, known as the Shoppers City East or SCE Project.

[53] In an email dated October 12, 2018, Normar contacted Laurin threatening litigation. On October 16, 2018, Laurin responded to Mr. Calarco, stating that Normar owed Laurin $42,582.42 on the MCC Project. Normar responded on October 24, 2018, stating:

> We made an agreement to take the necessary steps to avoid litigation, yet [it] seems that there has been no cooperation on your part ... I am meeting with my legal [counsel] today with the intent to initiate legal proceedings against Laurin for default of contract and the respective money owed to Normar.

[54] The agreement Mr. Calarco referred to "to avoid legal proceedings" was entered into on November 24, 2016, as set out in the Minutes agreed to by the parties. Mr. Calarco's October 24, 2018 email acknowledged that Normar had contemplated litigation by November 24, 2016 and was trying to avoid litigation by negotiating with Mr. Laurin.

[55] On October 25, 2018, Mr. Calarco emailed Laurin stating, "If I don't take action now, I will lose my rights to proceed with this matter in court, something I am not prepared to do ... my rights expire tomorrow." Mr. Calarco's email confirms that he believed litigation would have been appropriate on October 26, 2016, which is the day after Normar issued its final invoice for payment to Laurin on October 25, 2016.

[56] Normar takes the position that the limitation period referred to in Mr. Calarco's October 25, 2018 email was for the SCE project and not the MCC Project. The SCE and MCC Projects took place at roughly the same time. Normar's final invoice for payment on the SCE project was dated September 26, 2016. Normar's final invoice for payment on the MCC Project was dated October 25, 2016. Payment for both projects was discussed at the parties' November 24, 2016 meeting.

[57] In light of the circumstances noted above, I agree with Laurin that Normar has not provided a reasonable explanation as to why it believed the limitation period for the SCE Project would expire on October 26, 2018, but the limitation period for the MCC Project would expire sometime after March 16, 2020, when O. Reg. 73/20 suspended limitation periods in Ontario.

[58] Therefore, I find that on or about November 24, 2016, and March 10, 2017, Normar knew, or ought to have known, that the loss had occurred, that the loss was caused by Laurin's failure to pay the September and August invoices and the holdback amounts, and that, having regard to the nature of the loss, a proceeding would be an appropriate means to seek to remedy it. Normar's claim for breach of contract is therefore, beyond the limitation periods set out in the *Limitations Act, 2002* and must be struck.

Normar's Other Causes of Action are Dismissed

[59] Normar's Statement of Claim alleges that the Defendants, Laurin and Dennis Laurin, are liable for a breach of trust, unjust enrichment, and a violation of s. 241 of the *Canada Business Corporations Act*, R.S.C., 1985. c. C-44, as amended, ("CBCA") in the amount of $361,674.19. However, in their factum, Normar does not argue the limitations issue with respect to these other causes of action. I will, however, address them now to explain why Normar's other causes of action must also be dismissed because they were commenced after the limitation period expired.

Breach of Trust

[60] The courts have consistently held that plaintiffs must exercise reasonable diligence to determine if they have a trust claim when they have not been paid. Consequently, the courts have held that the limitation period runs concurrently with that of the breach of contract: *Carmen Drywall v. BCC Interiors Inc.*, 2013 ONSC 4644, at paras. 27-28; *Cast-Con Group Inc. v. Alterra (Spencer Creek Ltd.)* (2008), 71 C.L.R. (3d) 54 (Ont. S.C.), aff'd (February 20, 2009), File #DC-08-00013-00 (Ont. Div. Ct.); *Aldine Construction v. Brucegate Holdings Inc.*, 2010 ONSC 3032, 95 C.L.R. (3d) 194, at para. 18.

[61] Reasonable diligence with respect to a potential trust claim would include making the appropriate inquiries under s. 39 of the *Construction Act*, R.S.O. 1990, c. C.30, to obtain information relevant to the potential claim.

[62] I agree with Laurin that if Normar believed funds were owed to it after it completed work on the Project, it had an obligation to make timely section 39 requests to confirm if a breach of trust had occurred with respect to Project funds. Normar did not make any inquiries about the state of accounts for the Project. Normar cannot rely on its own failure to act with due diligence to be fully appraised of information relating to Project funds in 2016 and 2017 to delay the running of the limitation period to sometime after March 16, 2018.

[63] Consequently, the breach of trust claim is dismissed.

Unjust Enrichment

[64] Normar alleges in paragraph 16 of the Statement of Claim that it enhanced the value of the premises and Laurin has been unjustly enriched by those enhancements in the amount of $361,674.19. The last day a Normar employee was on site was December 2, 2016, to repair deficiencies. Normar did not enhance the value of the premises after December 2, 2016.

[65] The concept of reasonable diligence applies also to the discovery of unjust enrichment claims: *Cast-Con Group Inc. v. Alterra (Spencer Creek) Ltd.*, 2008 CanLII 8595 (ON SC), at para 16. Therefore, for the reasons set out above, I find that with reasonable diligence, Normar could have discovered its unjust enrichment claim by March 16, 2018 (two years prior to the effective date of the Emergency Suspension Period that suspended limitation periods to September 14, 2020).

Claim Under Section 241 of the Canada Business Corporations Act ("CBCA")

[66] Paragraph 1(g) of the Statement of Claim seeks a declaration that Laurin's actions were contrary to section 241 of the CBCA. Section 241 of the CBCA provides a remedy to security holders, creditors, directors or officers whose interests have been unfairly disregarded or prejudiced.

[67] For the reasons set out above, the claim under the CBCA is also time-barred pursuant to section 4 of the *Limitations Act, 2002*.

Conclusion

[68] There is no need for a trial on the issues raised in the present motion. Taking the facts as alleged by Normar, I conclude that Normar failed to act with due diligence to discover that it had a claim against Laurin. It took a "wait and see" approach to this litigation, which was to its ultimate detriment. Normar's claim against Laurin is dismissed because it failed to bring the action within the two-year limitation period set out in the *Limitations Act, 2002.*

Costs

[69] Laurin has prevailed on this motion. It is therefore, presumptively entitled to its costs.

[70] If costs cannot be agreed upon between counsel, then an appointment should be scheduled with the trial coordinator within 30 days of the release of this decision to address the issue of costs. In such event, the parties will deliver concise briefs at least two days before their attendance. If no arrangements are made within 30 days for an appointment to speak to costs, no order for costs will be made in this motion.

Date: May 25, 2023

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Madam Justice Karen A. Jensen

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ENDORSEMENT

Jensen J.

Released: May 25, 2023