

COURT OF APPEAL FOR ONTARIO

CITATION: Yurkovich v. Citibank Canada, 2024 ONCA 98

DATE: 20240209

DOCKET: M54759 (COA-23-CV-1128)

Gillese and Copeland JJ.A. and Wilton-Siegel J. (*ad hoc*)

BETWEEN

Robert Yurkovich and Laurene Yurkovich

Plaintiffs/Moving Parties
(Respondents/Moving Parties)

and

Citibank Canada and Citibank, N.A.

Defendants/Responding Parties
(Appellants/Responding Parties)

James Doris and Shimon Sherrington, for the respondents/moving parties

Brett Harrison and Preet Saini, for the appellants/responding parties

Heard: February 6, 2024

REASONS FOR DECISION

[1] The appellants appeal from the motion judge's order granting the respondents leave to amend their statement of claim. The respondents move to quash the appeal on the basis that the order is interlocutory and this court lacks jurisdiction.

[2] The motion judge's order granting the respondents leave to amend their statement of claim is an interlocutory order: *Natario v. Rodriguez*, 2015 ONCA 227,

at para. 7; *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited*, 2016 ONCA 404, 131 O.R. (3d) 455, at para. 28.

[3] In assessing whether there would be non-compensable prejudice to the appellants if leave to amend were granted, the motion judge considered whether the proposed amendments constituted a new cause of action or were elaborations of the original claims already pleaded: *Boyer v. Callidus Capital Corporation*, 2023 ONCA 233, at paras. 66-68. The fact that the motion judge considered whether the amendments constituted a new cause of action in her analysis does not transform her order granting leave to amend the statement of claim into a final ruling on the appellants' limitation period defences: *Natario*, at paras. 3-6; *Fram Elgin Mills*, at paras. 18, 20, 25 and 36-39. The reasons and order of the motion judge are clear that the parties retain the right to assert arguments at trial in relation to the *Limitations Act, 2002*, S.O. 2002, c. 24.

[4] As the order is interlocutory, the appeal lies to the Divisional Court, with leave, pursuant to s. 19(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[5] The motion is granted and the appeal quashed for want of jurisdiction. The respondents are entitled to costs of the motion and the appeal in the agreed amount of \$7,500, inclusive of disbursements and HST.

“E.E. Gillese J.A.”
“J. Copeland J.A.”
“Wilton-Siegel J. (*ad hoc*)”