CITATION: 744185 Ontario Incorporated v. Attorney General of Canada, 2024 ONSC 5825
BRACEBRIDGE COURT FILE NO.: CV-20-54 and CV-20-54-A1
DATE: 20241021

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
744185 Ontario Incorporated o/a Air Muskoka and Dave Gronfors	
Plaintiffs	Paul Daffern, for the Plaintiffs
– and –	
Attorney General of Canada	
Defendant (Moving Party)	Roger Flaim and Tengteng Gai, for the Defendant (Moving Party), Attorney General of Canada
– and –	
District Municipality of Muskoka	
Third Party (Moving Party)	Daniel Szirmak, for the Third Party Defendant, District Municipality of Muskoka, Third Party (Moving Party)
	HEARD: October 4, 2024

REASONS FOR DECISION

HEALEY, J.:

OVERVIEW

[1] The Plaintiffs commenced this action on April 6, 2020. The Plaintiff, Dave Gronfors, is the principal of the corporate Plaintiff, 744185 Ontario Incorporated o/a Air Muskoka ("744").

[2] Gronfors is the assignee of and lessee under a lease entered into with Transport Canada dated October 7, 1985, for lands comprising the Muskoka Airport in Gravenhurst, Ontario.

The term of the lease was for 40 years, spanning from November 1, 1983 to October 31, 2023. Gronfors entered into supplemental agreements thereafter, the last on November 6, 1995, and having an effective date of November 1, 1995 (collectively the "Lease").

[3] In November 1996, Transport Canada sold the airport to the District Municipality of Muskoka (the "District"). Gronfors' Lease was assigned to the District at the time of the sale. Accordingly, Gronfors has leased the subject lands from the District since November 1996.

[4] The underlying basis of the Claim, as amended, is the allegation that Transport Canada employees made representations to Gronfors that if he made substantial improvements to the airport lands, the Lease would be extended for a further 20 years after these improvements were constructed. The lease term would therefore end in 2043. Relying on such representations, the Plaintiffs were induced to accept the assignment of the Lease, and to make substantial improvements to the leased lands, investing sums of money and time. After doing so, the Lease was never extended. Further, the Lease contained a covenant to provide the Plaintiffs with quiet enjoyment of the leased premises, which the Plaintiffs allege has not been honoured by the District since assuming the Lease. The Amended Claim alleges various acts and omissions on the part of the District that the Plaintiffs say amount to a breach of the Lease, extending to other tortious conduct such as intentional interference with economic relations.

[5] The Amended Claim seeks declarations that the Attorney General of Canada ("Canada") has breached the Lease and is liable to pay damages, seeks damages for breach of the Lease and, in the alternative, seeks damages for misrepresentation.

[6] Because the pleading alleges that the District breached the Lease in various ways after becoming the owner of the Muskoka Airport, but did not name the District as a party, Canada filed a Third Party Claim against the District. The District has defended the Third Party Claim and the main action. Pleadings are now closed.

[7] There are two motions before the court, brought by Canada and the District. Canada moves under rule 21.01(1)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 to strike the Plaintiffs' claim for negligent misrepresentation set out in the Plaintiffs' Amended Statement of Claim at paragraphs 1(d) and 7-20, without leave to amend. The District moves under the same rule to stay or dismiss the action, or alternatively strike the claim under rule 21.01(1)(b), also without leave to amend.

[8] Both Canada and the District, bring their motions on the basis that the claims are statute-barred by the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (the "*Limitations Act, 2002*").

POSITION OF THE PLAINTIFFS

[9] The Plaintiffs assert that there can be no expiry of any limitation period before the end of the Lease, whether 2023 or 2043. Mr. Daffern argued in his submissions that the breach of the Lease is ongoing daily, not just by the District, but also by Canada, who Mr. Daffern

argued has the power to compel the District to honour the contractual obligations, as well as the representations that the Lease would be extended. This is not an "event triggered" claim, he argued, but one in which the cause of action continues to be triggered. As such, the provisions of the *Limitations Act, 2002* do not act to bar this action. As an adjunct to this argument, Mr. Daffern suggested that the representations with respect to the extension of the Lease supersede the terms of the Lease. The argument is that, as long Canada fails to see that the representations are enforced, the Lease continues to be breached on an ongoing basis.

[10] None of these arguments are presented in the Plaintiffs' Factum.

[11] The Plaintiffs also oppose the motions on the basis that their claims are subject to the *Real Property Limitations Act*, R.S.O. 1990, c. L.15 ("*RPLA*"), and not the *Limitations Act, 2002*. They assert that the claim against Canada was commenced within the 10-year limitation period under the *RPLA*. The Plaintiffs allege that their "claim is for recovery of the leased land by way of a lease extension, which is a proprietary claim by way of a constructive trust or for damages because of the unjust enrichment of Canada and Muskoka if the lease is not extended."

[12] This position, set out in the Plaintiffs' Responding Factum, has never been advanced before this motion. The Plaintiffs also alleged that their claim against Canada was commenced when a Statement of Claim was issued in the Federal Court of Canada on June 11, 2015, and that the Plaintiffs' action against the District for damages was commenced in the Superior Court of Justice when a Statement of Claim was issued in Bracebridge on January 31, 2001.

ISSUE TO BE DECIDED

[13] The sole issue to be decided is whether the Plaintiffs' claim against Canada for negligent misrepresentation, and all of their claims against the District, are barred by the expiry of the applicable limitation periods under the *Limitations Act, 2002*.

[14] In considering this issue, the court will have to determine whether, on the face of the pleading and the other material that may be considered on a motion under this rule, the claims are subject to the *RPLA* instead of the *Limitations Act, 2002*.

MOTIONS TO STRIKE UNDER RULE 21.01

[15] Rule 21.01(1) provides that a party may move before a judge,

> (a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

> (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,
>
> and the judge may make an order or grant judgment accordingly.
>
> (2) No evidence is admissible on a motion,
>
> (a) under clause (1) (a), except with leave of a judge or on consent of the parties;
>
> (b) under clause (1) (b).

[16] Although rule 21.01(1)(a) refers to the determination of a question of law, the Ontario Court of Appeal has made it clear that where the pleadings are closed, the facts are undisputed, and there is no factual controversy related to the discoverability of the claim so that the determination of the issue is "plain and obvious", then whether the action is statute-barred is considered a question of law that can be determined under this rule: *Kaynes v. BP p.l.c.*, 2021 ONCA 36, 456 D.L.R. (4th) 247, at paras. 74-80.

[17] The issue of law must be one raised by the pleading and must not depend on findings of fact such as the availability of a limitation period defence, in order for a moving party to rely on this rule: *Dugalin v. Canada (Attorney General)*, 2019 ONSC 6656, at paras. 12-13.

[18] Where it is plain and obvious that the claim is statute-barred, it is appropriate that the claim be struck under this rule: *Kaynes*, at para. 84; *Beardsley v. Ontario* (2001), 57 O.R. (3d) 1 (C.A.), at para. 21.

[19] On a motion under rule 21.01(1)(a) the court is to consider the facts as alleged in the statement of claim, accepting them to be true, any documents incorporated by reference, as well as a plaintiff's answers to a defendant's demand for particulars: *Shanthakumar v. Ming Pao Newspapers*, 2017 ONSC 5553, at para. 25; *Best v. Ranking*, 2015 ONSC 6269, at paras. 125-126. The court may also rely on admissions made in response to requests to admit: rule 51.06(2); *JBN Medical Diagnostic Services Inc. v. 1527877 Ontario Inc*., 2009 CanLII 9755 (Ont. S.C.), at paras. 7-8.

[20] As prescribed by rule 21.01(2)(a), the court may also rely on evidence upon leave being granted or on consent. The District asks that the court not consider the Affidavit of Dave Gronfors, filed in the Plaintiffs' responding record, which attaches documents from the parties' productions. Canada takes no position on the issue.

[21] No leave was sought from the Plaintiffs to rely on the Affidavit. However, Canada has referenced at least one of the exhibits to that Affidavit in its Factum, being a letter dated June 29, 1995 by which Transport Canada advised Gronfors of its intention to transfer the Muskoka Airport to the District, which states "in effect, at the time of the transfer, the District… will "step into the shoes" of Transport Canada and will be required to honour all

existing leases, licenses and contracts." The District has not referred to this Affidavit in its Factum in any way and, surprisingly, neither has the Plaintiffs.

[22] The Affidavit was not created for this proceeding, as it bears Court file number CV-23-170-00. It contains evidence that has nothing to do with this action.

[23] This Affidavit and its exhibits will not be considered by this court. The fact that the letter of June 29, 1995 referenced above was delivered to the Plaintiffs is not in dispute, nor its content.

ENFORCEMENT OF LIMITATION PERIODS

[24] In *Levesque v. Crampton Estate*, 2017 ONCA 455, 136 O.R. (3d) 161, at para. 53, the Court explained that limitation periods:

> …promote finality and certainty in legal affairs by ensuring that potential defendants are not exposed to indefinite liability for past acts. They reflect a policy that, after a reasonable time, people should be entitled to put their pasts behind them and should not be troubled by the possibility of "stale" claims emerging from the woodwork. They ensure the reliability of evidence. And they promote diligence, because they encourage litigants to pursue claims with reasonable dispatch.

THE STATEMENT OF CLAIM, AS AMENDED

[25] The prayer for relief in the Statement of Claim issued on April 6, 2020 is as follows:

> 1. The Plaintiffs, 744185 Ontario Incorporated o/a Air Muskoka and Dave Gronfors claim from the Defendant, her Majesty The Queen, In Right Of Canada (Transport Canada),
>
> a) A declaration that Transport Canada has breached and continues to be in breach of the lease, T-1059 between it and the Plaintiff Dave Gronfors for the lease of land at the Muskoka Airport, District Municipality of Muskoka;
>
> b) A declaration that Transport Canada is liable to pay damages to Dave Gronfors under lease T-1059 that Transport Canada assigned to the District Municipality of Muskoka;
>
> c) Damages for breach of the lease agreement T-1059 in the amount of $5,000,000.00;
>
> d) In the alternative, damages of $5,000,000.00 for misrepresentation by Transport Canada that induced Dave

> Gronfors to enter into the lease T-1059 and to invest monies, time and effort into consulting airport facilities and in operating an aviation company at the Muskoka Airport;
>
> e) Prejudgment and postjudgment interest on the Plaintiffs' claims;
>
> f) Costs of this action on a substantial indemnity scale and/or solicitor and own client basis.

[26] The *RPLA* was not pleaded. There is no request for recovery of land. No trust claim is advanced anywhere in the Claim. The only reference to unjust enrichment is at paragraph 43, where the Plaintiffs claim that the District will be unjustly enriched at the expense of the Plaintiffs if the Plaintiffs are not compensated by the Defendant for the value of the Plaintiffs' business, and because the Plaintiffs have been deprived of the opportunity to sell their business for a reasonable price.

[27] The Plaintiffs amended their Claim on August 5, 2021. The amendment simply substitutes Canada for Her Majesty the Queen in the title of proceeding and in paragraph 1.

[28] In its Statement of Defence, Canada pleaded that the Plaintiffs' claims were barred by the expiry of the limitation periods under the *Limitations Act, 2002*. The Plaintiffs served a Reply, in which the *RPLA* is not pleaded. Instead, the Plaintiffs deny that their claims are statute-barred because they are based on "repeated breaches of the Lease".

[29] The Amended Claim alleges various acts and omissions on the part of Canada and the District to support its breach of contract and tort claims. I agree with the characterization in the District's Factum at paragraphs 16-28 that these acts and omissions can be distilled into five categories spanning the period from 1985 to 2013. These categories are grouped into facts supporting the Plaintiffs' misrepresentation claim, facts supporting their claim of interference with economic relations, facts by which they dispute charges imposed by the District, facts alleging interference with the right to quiet enjoyment and facts alleging improper refusal of the District to assign adjoining lands to them.

THE ALLEGATIONS

[30] Canada's Factum, at paragraph 7, contains an exhaustive list of the allegations contained in the Plaintiff's material, taken from the Amended Statement of Claim, the Plaintiffs' answers to Canada's demand for particulars, the Plaintiffs' Reply, and the Plaintiffs' answers to Canada's request to admit. These allegations have each been accurately footnoted in the Factum to show the source document, and are reproduced below:

> (a) Her Majesty the Queen, as represented by the Minister of Transport (the "Minister"), was the lessor under lease no. T-1059 (the "Lease") of certain lands at the Muskoka Airport in Gravenhurst, Ontario. The Lease was assigned to Gronfors as tenant on or about October 7, 1985, with the

consent of the Minister. The Lease was effective November 1, 1983, and was for a 40-year term expiring on October 31, 2023.

(b) Gronfors was induced to accept the assignment of the Lease by representations made by certain Transport Canada employees in 1985. These employees represented that if Gronfors made improvements to the airport lands, the Lease would be extended by 20 years.

(c) These representations were reflected in a Transport Canada booklet entitled "*Land Development Leasing at Airports in Ontario Region*", which stated, "For projects where the tenant is proposing a major capital investment ($300,000 and up) the lease term may be negotiated but will not exceed 40 years." [emphasis added by Canada]

(d) Based on these representations, the Plaintiffs began making substantial improvements to the leased lands in 1986.

(e) On June 29, 1995, Transport Canada advised Gronfors by letter of its intention to transfer the Muskoka Airport to the District.

(f) On November 5, 1995, Transport Canada and Gronfors entered into a supplemental agreement that gave Gronfors the right to use additional lands at the Muskoka Airport.

(g) Prior to entering the supplemental agreement, Transport Canada employees repeated the representation that if Gronfors made leasehold improvements, Canada would extend the Lease by an additional 20 years from 2023 to 2043.

(h) These representations are reflected in certain media reports from 1993 which state that "tenants…may obtain extensions of their lease for up to 20 years" and that "tenants can request extensions based on capital improvements".

(i) Gronfors relied on these representations when he agreed to the supplemental agreement.

(j) Based on these representations, the Plaintiffs proceeded to make various leasehold improvements valued at no less than $1.7 million.

(k) The Plaintiffs completed all their leasehold improvements by 1996.

(l) Effective November 1, 1996, Canada transferred its ownership interest in the Muskoka Airport to the District.

(m) It is not in dispute that prior to the transfer, Canada did not extend the Lease consistent with the representations allegedly made to Gronfors.

(n) On February 16, 2006, Gronfors wrote a letter to Transport Canada – the authenticity of which he admits - in which he acknowledged the Lease had been assigned to the District in 1996, asserted the Lease was valid until 2023, and advised that his company had invested "over $500,000 in buildings and improvements." Gronfors then wrote:

> "At the time of our largest investment in 1995 of over $300,000, I was not aware of a Transport Canada document called "Airport Land Development – January 1992 (version 1.1)". In this document Appendix D (ii) mentions that an extension up to 40 years may be granted if in excess of $300,000 is invested for the lessee to amortize and have reasonable time to for returns [sic]. Since I was not made aware of this clause I wish to now apply for an extension to our lease and make it valid for 40 years from 1995. Please advise the procedure to do this." [emphasis added by Canada]

(o) None of the pleadings, particulars, or admissions alleges any request to Canada prior to this request in 2006 to extend the Lease.

(p) On April 7, 2006, counsel at the Department of Justice responded by letter to Gronfors' then-counsel. The letter – the authenticity of which Gronfors admits - states:

> "If your client's lease was granted by the Crown prior to the transfer to the District Municipality and then assigned to the District Municipality, evidently Transport Canada cannot now extend the term of the lease as requested by Mr. Gronfors."

(q) Gronfors admits that this response came to the Plaintiffs' attention on or about April 7, 2006, the date indicated on the face of the letter.

(r) In or around February 2006 and again in 2015, the District advised Gronfors that it would not extend the Lease.

(s) The Plaintiffs claim damages from Canada for misrepresenting that the Lease would be extended and for the District's failure to honour that obligation.

(t) On June 11, 2015, the Plaintiffs commenced an action against Canada in relation to acts and omissions relating to the Lease, including the misrepresentation regarding the extension of the Lease, in the Federal Court of Canada (the "Federal Court Action").

(u) On November 15, 2016, Canada initiated a Third Party Claim against the District in the Federal Court Action. Canada then moved to stay the Federal Court Action on the basis the Federal Court did not have jurisdiction over the Third Party Claim.

(v) On October 12, 2018, the Federal Court stayed the Federal Court Action.

(w) On January 7, 2020, the Federal Court of Appeal upheld the decision to stay the Federal Court Action.

(x) On April 6, 2020, the Plaintiffs commenced this action.

(y) On September 29, 2021 (following the Plaintiffs' Amended Statement of Claim of August 5, 2021), Canada filed a defence in which limitations was pleaded.

(z) On October 18, 2021, the Plaintiffs filed a reply in which they addressed limitations by asserting there was "no reasonable basis for the Defendant to claim it has a limitation period defence" because the torts alleged were "ongoing".

[31] Additional facts may be gleaned from the Plaintiffs' Amended Claim and responses, as follows:

(a) In their answers to the demand for particulars, the Plaintiffs plead that the representations that Canada would extend the lease by a further 20 years if substantial capital improvements were made were given orally and in writing

between 1985 and 1995, at the time of the negotiation of the initial Lease as well as the third supplemental agreement in 1995 (the "Misrepresentation Claim").

(b) The Lease provides, at paragraph 43, that Canada (or later the District) was under no obligation to renew the Lease or grant an extension.

(c) The Plaintiffs allege in the Amended Claim that the District intentionally interfered with the economic relations between the Plaintiffs and its former aircraft fuel supplier, Imperial Oil Ltd., such that that supplier terminated its agreement with the Plaintiffs on May 6, 1999. In their answers to the demand for particulars, the Plaintiffs plead that the conduct by the District that led to this termination occurred between 1996 and May 1999 (the "Intentional Interference Claim").

(d) The Plaintiffs plead that the District breached the Lease Agreement by imposing unjustified municipal property taxes and other levies such as disputed maintenance fees and rent. The answers to the demand for particulars states that these actions by the District began in 1996, after the District assumed the Lease Agreement. The Amended Claim further alleges that the additional charges were collected illegally by unlawful entry into the leased premises and by excluding Gronfors from the Plaintiffs' buildings until the charges were paid. In its answers to the demand for particulars, the Plaintiffs stated that they paid the disputed charges on February 13, 2013 (the "Disputed Charges Claim").

(e) The Plaintiffs allege in the Amended Claim that the District's alleged unlawful entry onto the property on February 13, 2013 constituted a breach of the Lease Agreement in that it interfered with Gronfors' rights to quiet enjoyment of the property. No other facts are pleaded in support of the allegation of a breach of the covenant relating to quiet enjoyment (the "Quiet Enjoyment Claim").

(f) The Plaintiffs plead that the District breached the Lease Agreement by declining to assign adjoining lands to them in violation of an agreement stipulating that the Plaintiffs would have a right of first refusal over these adjoining lands. In its answers to the demand for particulars, the Plaintiffs plead that this refusal was communicated to Gronfors by letter dated October 24, 2011 (the "Assignment Refusal Claim").

(g) Court file number CV-01-26 commenced by 744 (not Gronfors) against the District in 2001 in Bracebridge was active in the system as of June 12, 2023. That action seeks a declaration that a contract held by the District for the sale of Imperial Oil Limited aviation fuels and products at the Gravenhurst Airport is held by the District in trust for the Plaintiff as a result of breaches of fiduciary duty committed by the Defendant and as a result of its misuse of confidential information. The claim seeks an order that the Defendant assign the contract to the Plaintiff or, in the alternative, payment of damages for breaches of fiduciary duty and damages for misuse of confidential information in the amount of $500,000.

WHETHER THE *RPLA* APPLIES

[32] Section 2(1)(a) of the *Limitations Act, 2002* expressly exempts proceedings to which the *RPLA* applies.

[33] The Plaintiffs rely on *McConnell v. Huxtable*, 2014 ONCA 86, 118 O.R. (3d) 561, which stands for the proposition that a claim for unjust enrichment in which the plaintiff seeks a remedial constructive trust in property is "an action to recover any land" within the meaning of s. 4 of the *RPLA*. Further, s. 4 of the *RPLA* applies where the plaintiff is seeking a monetary award in the alternative to a remedial constructive or resulting trust over real property.

[34] Recently, the Court of Appeal confirmed that an action for the recovery of land within the meaning of s. 4 of the *RPLA* is one in which the judgment of the court grants a property right in land or in money that was paid for land: *Bank of Montréal v. Iskenderov*, 2023 ONCA 528, 168 O.R. (3d) 1, at para. 51.

[35] In *Bill Co. Incorporated v. Yellowstone Property Consultants Corp*., 2012 ONSC 5116, the court was faced with a similar argument to the one presented by the Plaintiffs - that its claims against a defendant landlord for breach of a lease of land were subject to s. 4 of the *RPLA*. At para. 18, the court stated:

> [Sections 4 and 5 of the *RPLA*] do not refer to claims arising from leases of land in general… In my view, the RPLA does not apply to any and all potential claims simply because the basis of the parties' relationship is a lease agreement involving real property. One of the purposes of the enactment of the Limitations Act, 2002 was to create certainty and finality [citation omitted]. An expansive interpretation of the provisions of the RPLA would not be consistent with such a purpose.

See also *Coffee Culture Systems Inc. v. Krukowski*, 2013 ONSC 1588, at para. 44, aff'd 2014 ONCA 61; *Lacey v. Kakabeka Falls Flying Inc.*, 2022 ONSC 1780, at para. 36, aff'd 2023 ONCA 83.

[36] It is clear on the face of the pleading that the Plaintiffs' Amended Claim seeks declarations that damages are owed, and monetary damages. As indicated earlier, there is no claim for an order for possession or any other property right in land or money that was paid for the land. The Plaintiffs have not advanced a trust claim over the real property. They have not pled the constituent elements of an unjust enrichment claim, nor could they successfully, as paragraph 33 of the Lease states that any improvements to the land revert to the landlord "without any right to compensation". It has been held in *530888 Ontario Ltd. v. Sobeys Inc*, 2001 CanLII 28359 (Ont. S.C.), at para. 27, that a contractual right contained in a lease agreement that permitted the landlord to receive the leasehold improvements at the end of the lease constitutes a "juristic reason" for any enrichment.

[37] The *RPLA* does not apply to the Plaintiffs' claims.

LIMITATIONS ACT, 2002

[38] Under the *Limitations Act, 2002*, a "claim" is defined as a "claim to remedy an injury, loss or damage that occurred as a result of an act or omission".

[39] The applicable limitation period depends on whether the alleged acts or omissions took place and were discovered before or after January 1, 2004, when the *Limitations Act, 2002* came into force.

[40] For claims based on acts or omissions that occurred after January 1, 2004, the claim must be commenced within the earlier of (a) the two-year anniversary of its discovery, being the basic limitation period, and (b) the 15-year anniversary of the date of the acts or omissions underlying the claim, pursuant to s. 15.

[41] With respect to the two-year basic limitation period, section 5(1) provides that 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, and
>
> (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).

[42] Section 5(2) provides that a claimant is presumed to discover a claim on the day the complained of act or omission occurs.

[43] The degree of knowledge on the part of the claimant needed to satisfy the requirements of s. 5(1)(a) has been clarified by the Supreme Court of Canada in *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, [2021] 2 S.C.R. 704. It must be more than mere suspicion or speculation but does not require the person to be certain of liability, or to have "perfect knowledge": para. 46.

[44] For claims based on acts or omissions that occurred before January 1, 2004 (the "Effective Date"), the transitional provisions in s. 24 may operate to make the "old" limitation period

apply, as prescribed by the former *Limitations Act*, R.S.O. 1990, c. L.15 (the "*Old Limitations Act*").

[45] Subsections 24(2) to (6) set out four requirements that must be satisfied before the former limitation period can apply:

> (a) The acts or omissions forming the basis of the claim occurred before the Effective Date;
>
> (b) Those acts or omissions were discovered before the Effective Date;
>
> (c) A limitation period under the Old Limitations Act would have applied had the claim been commenced prior to the Effective Date; and
>
> (d) No proceeding on the basis of those acts or omissions was commenced before the Effective Date.

[46] In this case, the claims of breach of contract and negligent misrepresentation would be subject to a six-year limitation period under s. 45(1)(g) of the *Old Limitations Act*: *Swale Investments Ltd. v. National Bank of Greece (Canada)*, 1997 CanLII 12439 (Ont. S.C.), at para. 16; *Jack v. Canada (Attorney General)*, 2004 CanLII 6217 (Ont. S.C.), at paras. 45 and 47.

[47] The six-year limitation period under s. 45(1)(g) of the *Old Limitations Act* begins running when "the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence": *Amelin Engineering v. Steam-Eng Inc.*, 2021 ONSC 5799, at para. 102, citing *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, at para. 77.

[48] *Limitation Periods*, O. Reg. 73/20 enacted in response to the Covid-19 pandemic had the effect of suspending limitation periods from March 16, 2020 to September 13, 2020, for a total of 183 days. If the limitation period for any claim did not expire before March 16, 2020, this additional 183 days must be factored into the running of time.

ANALYSIS

[49] I will first deal with the novel argument advanced on behalf of the Plaintiffs that no limitation period applies to bar the claims because there are ongoing breaches of the Lease.

[50] First, the Lease contains an "entire agreement" clause at paragraph 42, specifically noting that the Lease shall supersede all previous negotiations, representation and documents made by any party to the Lease.

[51] Second, the interpretation urged upon the court has no legal precedent, to my knowledge, and Mr. Daffern did not present any.

[52] Third, the likely absence of cases to support this proposition is unsurprising. Such an interpretation would have absurd results and defeat the policy reasons behind limitation periods. Claimants could continuously allege new grievances to serve as a basis for extending a pending limitation *ad infinitum*. It could also lead to unwieldy limitation periods that would leave litigants in a position of trying to establish and defend claims in which documents and witnesses have disappeared. Consider for example, the case of 99-year leases granted to some cottage owners in national parks. Imagine one such lessee (or more likely their assignee) in the later years of the lease deciding to challenge the imposition of realty taxes, rent or other levies and being permitted to proceed with such a claim at any time until the lease expired. Documents and witnesses potentially covering a 99-year lease period would be required. The litigation would be mired in wasteful inefficiencies that are contrary to the goals of our justice system.

[53] Last, a generalized, over-arching, non-"event triggered" basis for the causes of action pled by the Plaintiffs runs contrary to the purpose and wording of the *Limitations Act, 2002*. As previously stated, the definition of "claim" means redress for an act or omission. "Events", whether an act or omission, which informs a person that another party has caused them to suffer loss, injury or damage, are what triggers the limitation period to start running.

[54] Mr. Daffern also made submissions about how the leasehold improvements and the operation of the Gronfors' business under the Lease represents his life's work and savings. As much as this is a sympathetic argument, it does not assist the Plaintiffs on this motion as it cannot alter the law. As the Court of Appeal stated in *Levesque*, one of the reasons that limitation periods exist is to encourage litigants to pursue claims with reasonable dispatch. An individual cannot sit on their rights and then expect courts to fix their own lack of diligence where limitation periods are concerned.

The Misrepresentation Claim

[55] The District confirmed its refusal to extend the Lease in November 2006, at which time the Plaintiffs knew or should have known that Canada's alleged representations arising between 1985 and 1995 were not going to result in an extension of the Lease.

[56] It is plain and obvious that, at the latest, the Misrepresentation Claim was discovered on April 7, 2006, when Gronfors received the letter from the Department of Justice confirming that the Lease would not be extended. He admits that he received this letter. This followed on the heels of the District's express confirmation in February 2006 that it would not be extending the Lease Agreement. Accordingly, the Misrepresentation Claim is statute-barred under the basic two-year limitation period prescribed by s. 4 of the *Limitations Act, 2002*. The limitation period would have expired in April 2008, over 11 years before the commencement of this action.

[57] The fact that the District confirmed in 2015 that it would not extend the Lease is irrelevant. This did not add anything to the Plaintiffs' knowledge that they were going to suffer losses and damages, something they had known about since 2006. That second confirmation does not extend the limitation period and, even if it did, the limitation period expired in 2017.

The Intentional Interference Claim

[58] It is plain and obvious on the pleadings that the Plaintiffs were aware that Imperial Oil Ltd. was terminating a fuel supply agreement on May 16, 1999 because of the District's conduct between 1996 and May 1999, and accordingly the six-year limitation period prescribed by the *Old Limitation Act* applies. This limitation period expired no later than May 16, 2005, over 14 years before the commencement of this action.

The Disputed Charges Claim

[59] The Plaintiffs have pled that all of the disputed charges were assessed between 1996 and 2002. Even though Gronfors considered them to be illegal and improper, he was forced to pay them in February 2013 after the District entered onto the property, changed the locks and seized the Plaintiffs' assets. It is patently obvious that the Plaintiffs knew of their losses in February 2013. The basic two-year limitation period under the *Limitations Act, 2002* applies, and the Plaintiffs' window to commence this claim expired in February 2015, over five years prior to the commencement of this action.

[60] The claim commenced by 744 against the District in 2001 as Bracebridge court file number CV-01-26 is irrelevant to this motion. It has nothing to do with whether this claim involving the District is statute-barred.

The Quiet Enjoyment Claims

[61] This claim is based on the same factual allegations involving the District entering onto the property and taking steps to enforce the disputed charges. Accordingly, the limitation period for this claim also expired in February 2015.

The Assignment Refusal Claim

[62] On the face of the pleading, the Plaintiffs discovered the District's refusal to consent to the assignment of adjacent lands to Gronfors on or about October 24, 2011. It is alleged that this caused losses to the Plaintiffs because they were unable to build another aircraft hangar. At the time of the refusal, the Plaintiffs knew or should have known the material facts underlying this claim, including the resulting pecuniary harm. Accordingly, the two-year limitation period under the *Limitations Act, 2002* applies. The Assignment Refusal Claim expired by October 24, 2013, over six years prior to the commencement of this action.

ORDER

[63] This is the type of case for which the dismissal powers available under r. 21.01 should be exercised.

[64] It is plain and obvious that all the claims advanced in the Amended Claim have no prospect of success and raise no viable cause of action because they are statute-barred. This is a determination that this court has been able to make on the face of the pleading and

documents listed in paragraph 19 herein, without having to weigh any matters of credibility or the merits of the action. The issue of when the facts underlying the various claims were discovered is readily apparent from the allegations and information provided by the Plaintiffs. No amendment can cure the claims in these circumstances.

[65] This court orders that this action be dismissed, without leave to amend.

[66] I am indebted to counsel for the moving parties for their thorough factums, from which I have drawn heavily in preparing these Reasons.

COSTS

[67] Canada and the District both sought costs of this action if successful on the motions. Neither sought this relief in their Notice of Motion. They did indicate in their Factums, both served in August, 2024. Counsel for each brought a Bill of Costs to the motion.

[68] In the circumstances of not requesting this relief in their motions, I will provide some further opportunity for the Plaintiffs to consider the costs requests, as the amounts are substantial. There is no question, however, that the moving parties are entitled to their costs given the outcome of the motion.

[69] If the parties are unable to agree upon the issue of costs within 10 working days from the date of these Reasons, they may make submissions in writing. The moving parties' are due on November 8, 2024, the Plaintiffs' on November 18, 2024 and any reply, if necessary on November 22, 2024. Written submissions are limited to 6 double spaced pages, plus a Bill of Costs. Counsel may extend these dates by mutual agreement, with notice to me through BarrieSCJJudAssistants@ontario.ca.

[70] All authorities relied on are to be hyperlinked in the document or uploaded to Case Center with a tabbed (i.e., hyperlinked) index. The submissions are to be filed with the court, with a copy emailed to my judicial assistant at BarrieSCJJudAssistants@ontario.ca, in addition to being uploaded to Case Center.

Madam Justice S.E. Healey

Released: October 21, 2024