

Commercial Litigation Insights: Understanding Limitation Period Dismissals in Summary Judgment Motions

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Defendants sometimes bring summary judgment motions seeking to dismiss an action because it is statute barred. If the motion is successful, the action is dismissed, and the order is final.

When the motion for summary judgment is dismissed, what does that mean in so far as the limitation period is concerned. Does it mean there is a genuine issue for trial? Does it mean the limitation period defence has been finally determined, preventing the defendant from raising it again at trial? What happens if the order is silent on this point?

The Ontario Court of Appeal recently considered these questions in the case of *1819472 Ontario Corp v John Barrett General Contractors Limited*, 2024 ONCA 333 ("9472 Case"). The answer to these questions depend on the grounds for the motion and the reasons of the motion judge, particularly when the motion judge does not make an explicit finding that there is a genuine issue for trial or that the issue is being determined under Rule 20.04(4).

The 9472 Case arose because the motion judge dismissed the defendants' motion for summary judgment based on a limitation defence without expressing whether he found there was a genuine issue for trial or whether he was finally determining a question of fact or law. The defendants appealed the decision to the Court of Appeal on the basis that the decision was a final decision, just as it would have been if the motion had been successful. While both parties agreed that the order under appeal was final, the Court had to consider the issue because the parties cannot confer jurisdiction if the Court does not have it. The Court of Appeal only has jurisdiction if the order is final.

Because the motion judge did not make the legal basis for dismissing the motion clear, contrary to previous directions by the Court of Appeal, the Court had to make some effort to determine whether the motion judge finally determined the issue. The Court noted that "it will often be the case that a dismissal of a motion for summary judgment that has been brought solely on the basis that the claim has been brought out of time will be a final order." However, that is not invariably the case. (paragraphs 22 and 23).

The Court must determine whether the dismissal of the motion was intended to (i) decide a substantive issue or (ii) decide that there is a genuine issue for trial, "without intending that any findings made be binding on any subsequent proceeding." Where there is ambiguity in the motion judge's decision, "there is a presumption that, unless the motion judge specifically references the powers under r. 20.05(1) or r. 20.04(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, to make binding determinations of fact or law, and specifies what material facts or questions of law are now not in dispute, the motion judge did not intend to make binding determinations of fact or law, and those determinations will remain to be made by the trial judge."

In the 9472 Case the Court of Appeal found that the reasons for decision made it clear that the motion judge intended to finally decide the legal issue of whether the action was statute-barred, notwithstanding the presumption that it was not final. The Court of Appeal considered the following factors in reaching its conclusion:

- (i) The parties understood that the motion judge intended to determine the legal issue;
- (ii) The only issue argued on the motion was the limitation period issue;
- (iii) None of the material facts were in dispute;
- (iv) Nothing in the reasons expressed concerns about credibility; and
- (v) Nothing in the reasons expressed any need for *viva voce* evidence.

To avoid the ambiguity in the 9472 Case and the uncertainty of where an appeal lies, motion judges should expressly state the basis for their decisions to dismiss a summary judgment motion based on a limitation period. Is there a genuine issue for trial or is it a final determination of an issue? Even if no appeal is contemplated, the trial judge will need to determine whether the motion judge made a final determination of the limitation issue.

When considering the factors the Court of Appeal looked at to determine if the order dismissing the motion for summary judgment was final, it is clear that if there are no material facts in dispute and, therefore, no need to assess credibility or *viva voce* evidence, it is likely that a dismissal of the summary judgment motion will finally determine the issue, even if the presumption applies because the motion judge does not expressly state his or her reasons.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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