

Limitation Period Began to Run When Plaintiff Threatened Class Action

September 26, 2019

In [Asfar v. Sun Life](#), Justice Nakatsuru of the Ontario Superior Court of Justice granted summary judgment in favour of the defendant and dismissed the plaintiffs' claim on the basis that the plaintiffs discovered that they had a claim against the defendant nearly 10 years prior to commencing their action. In particular, the court considered the fact that the plaintiffs threatened the defendant with a class action and therefore understood that they had potentially suffered loss or damage at the hands of the defendant.

Facts

The plaintiffs, Mr. Jean-Pierre Asfar and Equity Cheque Card Corporation Ltd. (ECCC), commenced an action in April of 2018 against Sun Life for a host of issues relating to five mortgages by Sun Life, the last of which discharged in 2006. In the Statement of Claim, the plaintiffs attacked the various aspects of the mortgage process, the conditions of the mortgage, the fees and interest charged, and the profits made by Sun Life. The plaintiffs claimed them to be fraudulent, forged, deceitful, and illegal. In response, Sun Life moved to have the plaintiffs' action dismissed, on the basis that the action was frivolous, vexatious and an abuse of process. Sun Life also moved for summary judgment on the ground that the plaintiffs' claims were statute-barred.

Outcome

Justice Nakatsuru was not satisfied that the plaintiffs' claim ought to be dismissed on the grounds that the action was frivolous, vexatious and an abuse of process. Although the Court noted that the plaintiffs threatened to start a class action against Sun Life and even went so far as to publish an alleged libelous Class Action Notice in the Globe and Mail newspaper, the Court found it more appropriate to dispose of the plaintiffs' action by granting summary judgment in favour of the defendants.

In that regard, the Court considered whether or not there was a genuine issue requiring a trial with respect to all or part of the claim. Sun Life argued that the plaintiffs' claim was statute-barred and was commenced outside the applicable limitation period. The plaintiffs, on the other hand, argued that they only discovered they had a claim against Sun Life in 2016.

Upon review of the plaintiffs' own affidavit evidence, the Court was satisfied that by May of 2006, the plaintiffs knew that they suffered loss or damages and could bring a legal claim against the defendant. Indeed, in 2006, the plaintiffs created legal documents to try to enforce their claims against Sun Life. Specifically, the individual plaintiff wrote to Sun Life and threatened to commence a class action if his demands were not met.

The plaintiffs, however, argued that their claims were not statute barred, because they included claims of fraud, forgery, and various criminal acts, which, in the plaintiffs' view, suspended the limitation period. The Court did not agree, and remained satisfied that the plaintiffs discovered the "fraud" in May of 2006 and that the limitation period began to run on that date.

Takeaway

Justice Nakatsuru's decision serves as insight into the Court's analysis regarding discoverability. The Court considered, among other things, the fact that the plaintiffs threatened the defendant with a class action nearly 10 years earlier. Although a claim was not formally commenced at that time, the Court was satisfied that the plaintiffs were aware several years prior they had suffered injury, loss, or damages and a legal proceeding was the appropriate way to remedy it.

An interesting question, not addressed in the decision, is what would have happened if a different individual (not the one who had threatened the class action) had commenced a class proceeding more than two years (the applicable limitation period) after the threat. Arguably, the fact that a class action notice had been published in a major newspaper could mean that the claim of any class member who had seen the notice at the time would be statute-barred. At a minimum, the defendants could argue that the question of whether or not particular class members' claims would be statute-barred would be an individual issue that would make the case unsuitable for certification.

By

[Samantha Bonanno](#)

Expertise

[Class Actions](#), [Disputes](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.