Alberta Court Of Appeal Panel Of Five To Hear Summary Judgment Appeals

September 07, 2018

The Alberta Court of Appeal will be convening a five-member panel on September 7, 2018 to hear two summary judgment appeals. The panel will hear appeals from Brookfield Residential (Alberta) LP v Imperial Oil Limited ("Brookefield") and Weir-Jones Technical Services Incorporated v Purolator Courier Ltd ("Weir-Jones"), and it is expected that the Court of Appeal will clarify the test for summary judgment in Alberta. In anticipation of Friday's hearing, the Court of Appeal has invited counsel in both appeals to submit supplemental arguments on the appropriate test for summary judgment.

The underlying action in Brookfield involved a lawsuit brought by Brookfield Residential (Alberta) LP against Imperial Oil Limited for soil contamination resulting from Imperial's well drilling operations on or around the property in 1949. Brookfield ultimately succeeded to the property and began its residential development plans, at which point it was discovered that the soil contained hydrocarbons at a level requiring remediation. Imperial brought a motion for summary judgment, claiming a limitations defence under the Limitations Act. Brookfield cross-applied for an extension of the limitation period under s. 218 of Alberta's Environmental Protection and Enhancement Act. In describing the applicable test for summary judgment, Justice Graesser noted that a requirement of there being "no genuine issue for trial" or "no merit to the claim" sets a high standard. Brookfield's s. 218 application was rejected as Justice Graesser found that Imperial would suffer significant prejudice if the limitation period were to be extended. Accordingly, Justice Graesser granted Imperial's application for summary dismissal as Brookfield's claim was initiated outside the ultimate ten-year limitation period.

Weir-Jones addressed the issues of summary judgment and limitation defence in the context of a contract dispute. Weir-Jones Technical Services Incorporated brought action against Purolator Courier Ltd. and associated companies for breach of an agreement pursuant to which Weir-Jones was providing services to Purolator. Purolator applied for summary dismissal on the basis that Weir-Jones did not initiate its action within the two-year limitation period prescribed by the Limitations Act. Weir-Jones asserted, among other things, that the limitation period with respect to a services contract did not commence until the last service was performed under the contract.

Justice Shelley stated that summary judgment was "no longer determined on the basis of triable issues". The question is now whether there exists "any issue of merit that genuinely requires a trial" or "whether the defence is so compelling that the likelihood it will succeed is very high". On the facts, the Court was tasked with determining "whether there are undisputed facts that necessarily lead to the conclusion that it is plain and obvious the plaintiff's claim is statute barred". Justice Shelley concluded that the action was statute-barred, and it was summarily dismissed.

In the four years since the Supreme Court of Canada issued its decision in Hryniak v Mauldin, wherein the Supreme Court initiated a call for a culture shift toward promoting accessible and timely means of adjudicating claims, the Alberta Court of Appeal has issued a number of decisions on summary judgment, but at times stated the applicable test differently. In calling a rare five-member panel, it is clear that Alberta's highest court intends to provide significant guidance on the test for summary judgment in Alberta.

By

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