ONSC clarifies misnomer rules in Abramov v. Doe hit-and-run case

April 12, 2023

In *Abramov v. Doe*, 2023 ONSC 1232 (Abramov), the Ontario Superior Court (the Court) released its decision on a misnomer motion brought by the plaintiff, who tried to substitute the “Jane/John” Doe defendant for two individuals related to a hit-and-run case. Abramov provides insightful comments on applying the doctrines of misnomer and discoverability, when dealing with parties who are unidentified at the outset of an action. Although the plaintiff’s misnomer motion in Abramov was denied, the Court was not opposed to adding these defendants after the presumptive two-year limitation period, as discoverability remained a live issue.

Overview

The plaintiff in Abramov was involved in a motor vehicle collision. The colliding vehicle immediately left the scene, though a witness followed the fleeing vehicle and called 9-1-1, providing some information about the vehicle. The plaintiff contacted the police the next day, requesting the license plate number, which could not be disclosed due to privacy reasons. The plaintiff later retained counsel who made several attempts to obtain this information. After issuing his claim, appointing new counsel and obtaining the redacted 9-1-1 call logs, plaintiff’s counsel was able to confirm the fleeing vehicle’s model, as well as part of the license plate number. This, however, was not enough to identify the appropriate Jane/John Doe defendant(s) to properly name them as defendants. The plaintiff then brought a motion for the unredacted police file, allowing him to confirm the complete license plate number for the fleeing vehicle. After conducting a search for that plate number, the fleeing vehicle’s owner and lessor from the material time were both identified.

The “Litigating Finger” vs. Discoverability

To be a misnomer, the plaintiff must clearly have intended to sue the proposed defendant(s). The pleading must be drafted with sufficient particularity that a generous reading would demonstrate the "litigating finger" is pointing at the proposed defendant. It must be clear that a properly informed defendant, reading the allegation, would be able to recognize that they are in fact target of the allegation. The Court in Abramov was not satisfied that a properly informed defendant would know the "litigating finger" was

pointed at the owner of the fleeing vehicle, as the Statement of Claim lacked the necessary particularity. The Claim failed to provide any description of the vehicle and failed to identify where the accident occurred, although this information was available from the Collision Report completed on the day of the accident.

The alternative relief sought was to add the owner and lessor after the limitation period passed, based on discoverability. The Court recognised that the plaintiff did not actually discover the owner's identity and therefore the plaintiff's claim against the owner did not materialize until plaintiff's counsel conducted the license plate search, identifying the owner and lessor. However, on the record before the Court, the motion judge could not conclude that the plaintiff did not act with reasonable diligence or that he could have identified the owner any sooner. Accordingly, the appropriate remedy on the within motion was to grant leave adding the owner and lessor as a defendants. Since discoverability remained a live issue, the owner was granted leave to plead limitation defences.

Key Takeaways

Abramov serves as an important reminder that a Statement of Claim must be drafted to include the factual particularities that are known at the outset of the action. If these details are excluded from the claim, unidentified defendants may be able to argue that the "litigating finger" was not pointed at them. Even if the doctrine of misnomer cannot be relied upon, plaintiffs may still have the ability to obtain the relief they are looking for by applying the doctrine of discoverability.

For more information on the law of misnomer or the implications of Abramov, please connect with any of the key contacts below.

By

Jonathan Thoburn

Expertise

Disputes, Insurance Claim Defence

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 800 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.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.