

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

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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 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.

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