

Pasandideh v. Vahidi

Court File No.: 18-CV-599822

Motion Heard: December 13/19

In attendance: D. Windrim, for the plaintiff 647-360-7148, f.
 K. Sanchez, for the defendant 416-447-7529, f.

Endorsement

[1] The plaintiff seeks leave to add Ms. Laleh Khani, his mother, as a party plaintiff and to amend the statement of claim so as to reflect Ms. Khani's claims.

[2] The plaintiff alleges that a January 2017 advance of funds made by him to a family friend, Mr. Rahim Vahidi, was a loan that ought to have been, but was not, repaid by Mr. Vahidi in a timely fashion. In his affidavit, filed on this motion, the plaintiff deposes that *his mother*, Ms. Khani, "repaid [him] these amounts from her own account"—this *before* his claim was brought against Mr. Vahidi.

[3] By statement of claim issued in June of 2018, the plaintiff pleads that the funds advanced to Mr. Vahidi (the defendant) had been requested from the plaintiff "and his family" and that he "and his family" agreed to assist the defendant, on terms. He says that he "and his family" loaned money to the plaintiff. The references to "his family" notwithstanding, the plaintiff states that the monies loaned (plus interest and interest penalties) are due to *him*. He alleges that "[d]espite numerous verbal and written requests, [the defendant] has not repaid any of the funds loaned to him by [the plaintiff]" which, in accordance with the plaintiff's own evidence, were to have been repaid by July 7/17--at the very latest (i.e. one month after the last advance was made to the defendant). Three money transfer slips were filed on this motion by the plaintiff (with *his* name and address listed), totaling the principal sum he says was loaned by him to Mr. Vahidi.

[4] In April/2019, examinations for discovery took place herein. The plaintiff then confirmed, under oath, having been reimbursed by Ms. Khani.

[5] That the plaintiff was made whole before the claim was commenced was known by him even before the claim was commenced. In his September 25/19 affidavit, he deposes that, when his lawyers were retained [i.e. March 5/18], his mother was already "bearing the financial burden of the transactions until [he] could repay her". That he discovered in April/19 that "Ms. Khani was more involved than had previously been considered" is a statement made by the plaintiff, without foundation. In April/19, the plaintiff admitted to having been reimbursed by Ms. Khani. The plaintiff knew from where the monies advanced to the defendant derived and what monies were paid to him by Ms. Khani in respect of the advances to the defendant, throughout. And his own statement of claim references the involvement of "his family".

[6] In reimbursing her son for payments by him, Ms. Khani would have known to what extent she was out-of-pocket. There is nothing before me to suggest otherwise, with there being no evidence from Ms. Khani. There is also nothing before me to suggest that the limitation

period for commencement of a claim against the defendant elapsed later than July 7/19, with the last possible due date for repayment of any part of the funds advanced to the defendant being, according to the plaintiff, July 7/17.

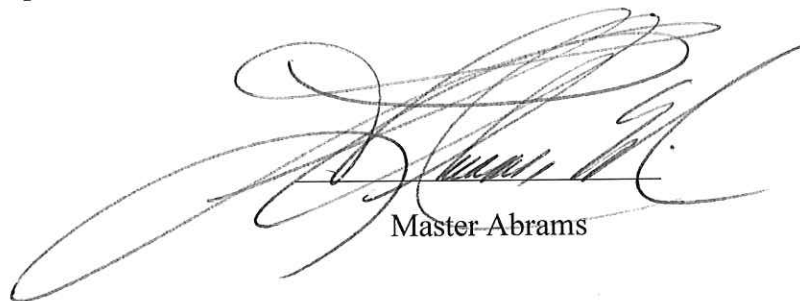
[8] If I were to grant leave to amend the statement of claim to add Ms. Khani as a party at this time (with the plaintiff's motion record having been delivered in late October/19), I would be denying the defendant the benefit of a limitation defence and, thus, causing him to suffer non-compensable prejudice. What is here being sought is the addition of a new party to the action, someone who, herself, could have brought claim against the defendant, if she was so inclined, by July 7/19. And, on the plaintiff's own theory of the case and evidence, he knew what he needed to know about the benefit of adding his mother as a party some three months before the limitation period elapsed (i.e. at the time he was discovered).

[9] Section 21 of the *Limitations Act* says that "[i]f a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding", save in circumstances of misnomer or misdescription. This is not a case of misnomer or misdescription. Instead, the plaintiff and/or his lawyers are rethinking the manner in which the action has been pled, with the benefit of the *same* information available to the plaintiff and his mother--throughout the currency of their dealings with the defendant, at the time the claim was commenced *and before the presumptive limitation period elapsed*.

[10] In all, and with the doctrine of special circumstances no longer applying to extend a limitation period (*Joseph v. Paramount Canada's Wonderland*, 2008 ONCA 469), the plaintiff's motion is denied.

[10] The parties have agreed that the successful party ought to be awarded \$5,600.00 in costs. That amount is now ordered paid to the defendant, by February 13/20.

January 8/20



Master Abrams