

Case Brief

Case Name & Citation

Duchesne v St. Denis, 2012 ONCA 699.

Procedural History

This is an appeal by the plaintiff to the Ontario Court of Appeal. The plaintiff's motion was originally dismissed by the Master, indicating that the plaintiff had not actually discovered his claim against G and B under s. 5(1)(a) of the Limitations Act, 2002 and that as a minor, the plaintiff could not be deemed to have discovered his claim pursuant to s. 5(1)(b). The motion was dismissed. The Divisional Court upheld this decision.

Facts

The plaintiff, 15 years old at the time, was injured while playing a game with two friends (G and B). The incident occurred on property owned by the defendants. The plaintiff's mother sought legal advice and informed her son that he had a lawsuit against a "bunch of people". The plaintiff decided not to pursue an action at that time. In August 2006, the plaintiff issued a Statement of Claim against the defendant's, 8 days before the expiry of a two-year limitation period after he had reached the age of majority. The defendant's made a third party claim against G and B. In June of 2009, the plaintiff brought a motion to amend the Statement of Claim to add G and B as party defendants. If the plaintiff's claim against G and B was discoverable prior to January 1, 2004, the former Limitations Act, R.S.O. 1990, c. L.15 applied and the plaintiff would have had six years from attaining the age of majority to add the two additional parties. If the plaintiff's claim was only discoverable when he attained the age of majority after January 1, 2004, a two year limitation period applied and the plaintiff would be out of time.

Issue(s)

Was the minor plaintiff's claim discoverable by a reasonable person, with his abilities and in his circumstances, prior to January 1, 2004?

Decision

Appeal allowed. The order from the Divisional Court was set aside.

Reasons

The limitation issue and the question whether the claim was discovered or discoverable were to be determined by the trial judge. Both the Master and the Divisional Court erred in their interpretation of previous decisions of the Court of Appeal relative to whether knowledge of legal consequences that flow from known facts is required in order for actual knowledge to exist. Such knowledge may assist in the acquisition of actual knowledge of a claim, but it is not a requirement. The plaintiff could have had actual knowledge without having had the benefit of the legal analysis that might have identified for him the potential liability of various potential defendants. During examination for discovery, the plaintiff admitted that, even during 2004, he did not know that he had a case specifically against either G or B that would result in a damage award in his favour. The plaintiff testified that he knew he had a case but not specifically against whom. This admission was key to the Master's and Divisional Court's erroneous determination that the plaintiff had not 'discovered' his claim against these particular persons as required by s. 5(1)(a)(iii) and (iv) of the 2002 Limitations Act prior to the implementation of the Act itself (on January 1, 2004). As the finding of the Master, affirmed by the Divisional Court, that the plaintiff did not have actual knowledge of the claim before January 1, 2004, was based upon an incorrect view of the law, that finding must be set aside. The Divisional Court made no determination as to whether the plaintiff's claim was 'discoverable' pursuant to s. 5(1)(b) of the 2002 Act (which requires assessing whether the claim was discoverable by a reasonable person with the plaintiff's abilities and in his circumstances).

Ratio

It is an error in law not to have addressed whether the claim was discoverable by a reasonable person with the plaintiff's abilities and in his circumstances.