CITATION: Hennebury v. Makita Canada Inc., 2025 ONSC 3850
COURT FILE NO.: CV-20-83163
DATE: 2025/06/27

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Mark Hennebury Plaintiff (Responding Party on the Motion)	Michael Adamek, for the Plaintiff (Responding Party on the Motion)
– and –	
Makita Canada Inc. Defendant (Moving Party on the Motion)	Robert Love and Bethany Keeshan, for the Defendant (Moving Party on the Motion)
	HEARD: March 6, 2025

RULING ON MOTION FOR SUMMARY JUDGMENT

ANNE LONDON-WEINSTEIN J.

[1] The Defendant, Makita Canada Inc., brings a motion for summary judgment to dismiss the Plaintiff's action in its entirety.

[2] The action arises from a personal injury incident involving a power router tool that occurred on June 4, 2019. The Plaintiff claims that he was injured through the negligence of the Defendant. The Plaintiff claims negligence and breach of terms, conditions and warranties against the Defendant including:

- Permitting a defective router to be distributed to the public;

- Distributing a defective and hazardous router;
- Failing to provide adequate warning of the risks with the router;
- Failing to comply with adequate safety standards and testing of the router;
- Failing to recall the router upon becoming aware of problems with the router;
- Failing to ensure that the router was fit for its intended purpose and safe for use;
- Failing to distribute the router in a reasonably safe and prudent fashion;
- Distributing a router with defects not revealed upon visual inspection; and
- Distributing a router of quality below industry standards.

[3] The Defendant argues that the action is statute-barred by the ultimate 15-year limitation period in the *Limitations Act, 2002,* S.O. 2002, c. 24 ("*Limitations Act*"). The Plaintiff argues that a trial is required to determine whether any of the breaches alleged in the Statement of Claim constitute ongoing or recurring obligations, wherein the *Limitations Act* period would not apply. The Defendant's written materials raised arguments in the alternative, including that the Plaintiff had not met its evidentiary burden to establish a genuine issue requiring a trial. However, it was agreed between the parties that the only issues to be decided on this motion was whether it is appropriate to deal with this matter by way of summary judgment, and whether the action is barred by virtue of the *Limitations Act*.

Facts:

[4] The Plaintiff is a person living in Inkerman, Ontario. The Defendant is a corporation in the business of distributing power tools in Canada.

[5] The Plaintiff alleges that he sustained facial injuries while using a Makita RF1101 router ("Incident Router") in his workshop on the evening of June 4, 2019. He alleges that the Incident Router sped up without warning, causing a stone grinding bit to break apart, a portion of which struck the Plaintiff.

[6] The Plaintiff is unable to pinpoint how or when he acquired the Incident Router. He indicated he is unsure whether he purchased it new, or whether he purchased it from a friend.

[7] The Plaintiff issued a Statement of Claim in this action on March 13, 2020, and the Defendant delivered its Statement of Defence on August 24, 2020. Discoveries were finished on March 25, 2021, subject to refusals, undertakings and questions arising from undertakings.

[8] During the discovery process, the Defendant obtained documentation indicating that the Incident Router was manufactured in March 2001 by the Makita Corporation of America located in Georgia, USA. This information, which provided that the Incident Router was manufactured by the Makita Corporation of America, was provided to the Plaintiff's counsel in June 2023.

[9] The Defendant amended its Statement of Defence to plead the limitation period on August 8, 2023, and the Plaintiff delivered a Reply on October 6, 2023.

[10] The Defendant did not design the Incident Router. The Incident Router was designed by the Makita Corporation, the Makita parent company in Japan which designs and manufactures power tools.

[11] The Defendant also does not have a record of distributing the Incident Router in Canada. It does not sell directly to consumers. The Incident Router would have been sold through a retailer authorized to sell Makita products.

[12] The Plaintiff has submitted online forum posts regarding routers as evidence of issues with speed variation related to these routers. These online posts are anonymous.

Issues:

[13] The issues to be determined are:

1. Is summary judgment appropriate in the circumstances?
2. Is the action barred by the operation of the ultimate limitation period?

Legal Analysis:

[14] Pursuant to r. 20.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Rules*"), the court shall grant summary judgment where the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or a defence. Subrule 20.04(2.1) furnishes the court with considerable powers on a summary judgment motion, including the power to weigh evidence, evaluate credibility and draw reasonable inferences from the evidence.

[15] Summary judgment is appropriate where, based on the evidence a judge can make necessary findings of fact, apply the law to the facts, and the process results in an expeditious and

balanced manner through a less expensive means of obtaining a just result: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49. A documentary record is often enough to permit resolution of the material issues, in the absence of significant credibility issues regarding key issues: *Hryniak*, at para. 57; *Cook v. Joyce*, 2017 ONCA 49, at para. 92.

[16] I do not agree with the Plaintiff that the credibility assessments required in this case mandate a trial. Pursuant to the powers under r. 20.04(2.1), the court is entitled to evaluate the credibility of a deponent, weigh evidence, and draw reasonable inferences from the evidence and from the absence of evidence.

[17] The Plaintiff suggests that the timing of the discovery of the date of manufacture document, which was discovered during the discovery process and not disclosed to the Plaintiff's counsel until two years after the examination for discoveries, should give rise to questions of credibility.

[18] The Plaintiff could have sought to reopen discoveries upon receiving the documents relating to manufacture, but chose not to do so.

[19] The Plaintiff argues that a trial is necessary to resolve credibility issues related to the timing of the disclosure. I do not find that a full trial is necessary to resolve the credibility issues in this case which I find to be quite limited in scope.

[20] I find that this matter is suitable to be resolved by way of summary judgment.

Is the action barred by operation of the Limitations Act?

[21] Subsection 15(2) of the *Limitations Act* creates an ultimate limitation period, providing that no proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission giving rise to the claim took place. In the case of a continuous act or omission, the limitation period commences when the act or omission ceases: *Limitations Act*, s. 15(6)(a).

[22] Subsection 15(4) provides that the ultimate limitation period does not run where the plaintiff is incapable or a minor and is not represented by a litigation guardian in relation to their

claim, or where the defendant willfully conceals information or willfully misleads the plaintiff. The plaintiff bears the onus of establishing that such an exception exists: *Limitations Act*, s. 15(5).

[23] The rigid ultimate limitation period seeks to balance a plaintiff's right to bring an action against the need for finality in litigation. If a limitation period was endless, parties would be expected to indefinitely incur the burden of unreasonable costs related to record-keeping and insurance: *Wong v. Lui*, 2023 ONCA 272, 167 O.R. (3d) 92, at paras. 24-25, citing *York Condominium Corporation No. 382 v. Jay-M Holdings Limited*, 2007 ONCA 49, 84 O.R. (3d) 414, at para. 32.

[24] Therefore, the principle of discoverability does not apply to the ultimate limitation period: *Zeppa v. Woodbridge Heating & Air Conditioning Ltd.*, 2019 ONCA 47, 144 O.R. (3d) 385, at para. 107.

[25] In this case, the action was commenced on March 13, 2020, which is 19 years after the alleged acts or omissions upon which the claims are based. Accordingly, any claims arising from the design, manufacture and distribution of the Incident Router are statute-barred by virtue of the 15-year ultimate limitation period set out in s. 15(2) of the *Limitations Act*. It is true that the Plaintiff's claim of injury did not materialize until June 4, 2019 when the incident is alleged to have occurred. The claim was made within the basic two-year limitation period. Section 5(1) of the *Limitation Act* reads: A claim is discovered on the earlier of:

(a) the day on which the person with the claim first knew;

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission;

(iii) that the act or omission was that of the person against whom the claim was made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[26] However, the Plaintiff's claim while worded broadly, rests entirely on an alleged defect in manufacture of which the Defendant was alleged to be aware. Given the fact that the claim for liability rests on a defect in manufacturing, the ultimate limitation period applies. The Plaintiff argues that the claim should not be statute barred by the ultimate limitation period as that the actionable conduct on the part of the Defendant was ongoing. I respectfully disagree.

The elements of a "continuing cause of action".

[27] The application of the concept of a "continuing cause of action" was recently clarified by the Court of Appeal for Ontario in *Huether v. Sharpe*, 2025 ONCA 140.

[28] As the court pointed out, s. 117 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 entitles the court to assess damages with respect to a continuing cause of action that arises between the commencement of the action and trial. The predecessors of s. 117 have been in force in Ontario since at least 1919 and the concept of a continuing cause of action dates to the 19th century: *Huether*, at para. 38, citing *Hamilton v. Quaker Oats Co.* (1919), 46 O.L.R. 309 (H.C.), at para. 10 and *Hole v. Chard Union*, [1894] 1 Ch. 293, at pp. 295-96.

[29] The term is used to describe causes of action that accrue from repeating actionable conduct. The rationale is that each repetition of the actionable conduct is identical and occurs continuously, founding a new and discrete cause of action: *Huether*, at para. 39.

[30] Actionable conduct is not continuing merely because it can be rectified or because the harm it causes is either continuing or delayed. A continuous act or omission requires a succession or repetition of separate acts of the same character. The allegation that the defendant was under an ongoing duty of care to the plaintiff does not constitute the type of repetitive and continuing conduct which is the foundation of the continuing cause of action: *Huether*, at paras. 43-44, citing *Sunset Inns Inc. v. Sioux Lookout (Municipality)*, 2012 ONSC 437, aff'd 2012 ONCA 416.

[31] As referred to in *Heuther*, in *Bowes v. Edmonton (City of)*, 2007 ABCA 347, 86 Alta. L.R. (4th) 47, a riverbank collapse destroyed the plaintiffs' homes 12 years after their construction. The

plaintiffs sued the defendant municipality for negligence, alleging that a breach of its duty to warn against construction on the riverbank and arguing that the breach was ongoing and continuous. The Alberta Court of Appeal did not accept this argument, reasoning that any alleged negligence had occurred at the time the buildings were constructed and "absolutely nothing happened" thereafter: at para. 169.

[32] The court in *Bowes* noted that "[t]o regard every ancient failure to warn as occurring every day would be a fiction destroying all limitation periods…[since] most cause of delayed harm from a tort could be dressed up as failures to warn, with no limitation period": at paras. 173-74.

[33] In the case before me, I find an absence of the successive or repetitive actionable conduct which would permit a finding that this was a continuing act or omission and that the claim was not barred by s. 15(2) of the *Limitations Act*. The Defendant has done nothing which would constitute a continuing act or omission since the manufacture of the Incident Router.

[34] As pointed out in *Huether*, this interpretation of a "continuous act or omission" is consistent with the purposes underlying the ultimate limitation period, including the exception in s. 15(6)(a) of the *Limitations Act*. The mere allegation that the defendant has a generalized ongoing duty to the plaintiff is, in and of itself, insufficient to toll the running of the ultimate limitation period, absent some successive or repeated actionable conduct on the part of the defendant: at paras. 48-49.

[35] I therefore conclude that the Plaintiff's proceeding is barred by s. 15(2) of the *Limitations Act* and summary judgment is granted in favour of the Defendant.

Costs

[36] The Defendant is the successful party on the motion and is presumptively entitled to costs. The parties are encouraged to resolve the issue of costs. If the parties cannot resolve the issue of costs for this proceeding, they may file brief written submissions not exceeding two pages, exclusive of Bills of Costs. The Defendant shall file its submissions by July 18, 2025, and the Plaintiff shall file his submissions by August 1st, 2025. Costs submissions are to be sent to scj.assistants@ontario.ca and to my attention.

Released: June 27, 2025

Anne London-Weinstein J.

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