

CITATION: Coar v Doe 1 2025 ONSC 4433
COURT FILE NO.: CV-21-00671311
MOTION HEARD: 20250729

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Onika Julia Coar, Plaintiff

AND:

John Doe 1, John Doe 2, YM Inc. (Sales) o/a Sirens, Square One registered trademark of Square One Property Corporation and OMERS Realty Management Corporation, Defendants

BEFORE: Associate Justice Jolley

COUNSEL: Jenen Sirithar, counsel for the moving party plaintiff

Thomas Durcan, counsel for the proposed defendant La Maison Simons Inc., responding party

HEARD: 29 July 2025

REASONS FOR DECISION

- [1] The plaintiff brings this motion for an order amending the name of the defendant YM Inc. (Sales) a/o Sirens (“Sirens”) to la Maison Simons Inc. on the basis of misnomer.
- [2] While the plaintiff did not include this information in her motion record, the proposed defendant advised me that the plaintiff had discontinued her action against Sirens. A review of the court record confirms that the plaintiff filed her notice of discontinuance against Sirens on 15 October 2024.
- [3] This significantly changes the landscape of this motion. The remedy of misnomer is not available to the plaintiff as there is no defendant Sirens whose name could be amended to now read Simons.
- [4] The plaintiff argued that it was within the limitation period to add the proposed defendant as a distinct party and that the motion could be dealt with on that basis. A review of the notice of motion confirms that the plaintiff did not seek to add Simons as a defendant. She sought only to “amend the name of the Defendant, YM Inc. (Sales) o/s SIRENS to La Maison Simons Inc.” As no relief to add a party is before me, I am not prepared to add Simons on that basis.
- [5] Even if I were to consider adding Simons as a separate party, I am not persuaded on the evidence contained in the record that the plaintiff would meet the burden of proving that

the date she should have known of her claim against the proposed defendant is anything other than 3 November 2019, the date her injury occurred.

- [6] Subsection 5(1) of the *Limitations Act, 2002*, S.O. 002, c.24, Sch.B. provides that “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; 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).” Subsection 5(2) goes on to provide that “a person with a claim shall be presumed to have known of the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.”
- [7] The plaintiff did not file an affidavit on her motion to provide any information about when she knew of the involvement of Simons. Her lawyer, Mr. Zwiebel, swore an affidavit that stated that he received the statement of defence of the defendants Square One and OMERS on 2 March 2023 and it pleaded that Simons was the parent of the store in issue and the sole employer of the security agents involved. He did not unequivocally say, or say at all, that this was the first time he knew of the involvement of Simons.
- [8] This position is also contradicted by an email sent by Square One’s counsel to Mr. Zwiebel in January 2022 enclosing its notice of intent to defend and jury notice and advising him of the involvement of Simons. Plaintiff’s counsel orally advised me on this motion that Mr. Zwiebel did not receive that email. That position is not in evidence before me. It also lacks any explanation, given the email was sent to the email address regularly used by Mr. Zwiebel. Further, Square One and OMERS filed an affidavit confirming service on the plaintiff when they filed the notice of intent to defend and jury notice that were enclosed with that email.
- [9] If the limitations issue were before me, the evidence filed by the plaintiff is not sufficiently compelling to overcome the presumption in the *Limitations Act, 2002* that the limitation period runs from 3 November 2019.
- [10] For these reasons, the plaintiff’s motion is dismissed with costs to the proposed defendant on a partial indemnity basis in the all-inclusive amount of \$2,500, as requested.

Associate Justice Jolley

Date: 30 July 2025