CITATION: Benquesus v. Amazing Print, Corp., 2025 ONSC 6155
COURT FILE NO.: CV-18-00135556
DATE: 20251031

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
REUBEN BENQUESUS Plaintiff	David Elmaleh, Counsel for the Plaintiff/ Defendants by Counterclaim, Reuben Benquesus, 232362 Ontario Ltd., also known as Print Three Inc., Racad Tech, Inc., Ney Bendayan, Print Three Franchising Corporation, Andrew Hrywnak, Esther Willinger, Eden Advertising & Interactive Inc., and Jacques Benquesus also known as Jack Banks
– and –	
AMAZING PRINT, CORP. Defendant	
AND BETWEEN:	
AMAZING PRINT, CORP. Plaintiff by Counterclaim	Lorne Levine, Counsel for the Defendant/Plaintiff by Counterclaim, Amazing Print, Corp.
– and –	No one appearing for the Defendant, John M. Wiseman as the Counterclaim has been discontinued as against him.
REUBEN BENQUESUS, 232362 ONTARIO LTD., also known as PRINT THREE INC., JOHN M. WISEMAN, RACAD TECH, INC., NEY BENDAYAN, PRINT THREE FRANCHISING CORPORATION, ANDREW HRYWNAK, ESTHER WILLINGER, EDEN ADVERTISING & INTERACTIVE INC., and JACQUES BENQUESUS also known as JACK BANKS Defendants by Counterclaim	**HEARD:** May 1, 2025

REASONS FOR DECISION

S.E. FRASER, J.:

I. Overview

[1] The Defendants by Counterclaim bring this motion for partial summary judgment arguing that it is appropriate in the context of the whole of the litigation. They have two principal arguments. First, they assert that the counterclaim is statute barred as the limitation period had expired when it was commenced. Second, they argue that there is no evidence establishing liability of any of the Defendants by Counterclaim.

[2] The Plaintiff frames the main action is one for the recovery of a debt of $250,000. However, the matter is more complicated. The debt arises from a share purchase agreement. The business relationship between the Plaintiff and Amazing Print, Corp. ("Amazing Print") also involved some of the Defendants to the Counterclaim.

[3] The remaining Defendants to the Counterclaim are related in the following ways. The individual Defendants to the Counterclaim are family and friends of the Plaintiff. The corporate Defendants to the Counterclaim are businesses of the Plaintiff. The Plaintiff is an officer of Eden Advertising & Interactive Inc. and a shareholder, officer and director of Racad Tech, Inc. ("Racad Tech").

[4] The Counterclaim has been discontinued as against John Wiseman.

[5] Summary judgment is not being pursued in the main action. It appears that there are triable issues relating to commissions alleged to be owed to Amazing Print by the Plaintiff and/or Racad Tech such that there may be a set-off.

[6] By way of background, on January 21, 2009, the Plaintiff and Amazing Print entered into a Securities Purchase Agreement by which Amazing Print agreed to sell the Plaintiff 33 Common Shares, representing 25% of Amazing Print for $250,000, among other things ("the buy-in").

[7] Also on January 21, 2009, Racad Tech and Slava Apel, the Principal of Amazing Print, entered into an Option Agreement. At the time, the Plaintiff was the sole director of Racad Tech. In that agreement, Apel agreed to purchase, and Racad Tech agreed to issue and to sell to Mr. Apel, an option to purchase 8,333,333 shares in Racad Tech for $650,000, among other things.

[8] Amazing Print alleges that rather than converting the shares of Amazing Print under the Securities Purchase Agreement, the Plaintiff released software directly competing with Amazing Print and, at that time, the buy-in was converted to a loan.

[9] An acknowledgement, signed by Slava Apel for Amazing Print, is at the heart of the main action. Dated August 1, 2013, it was signed by the Plaintiff on August 26, 2013 and signed September 9, 2013 by Mr. Apel on behalf of Amazing Print. The acknowledgement provides, among other things, that the Amazing Print acknowledges an outstanding debt of $250,000 principal, plus interest of prime plus 2%, and that the debt will be paid when Amazing Print is able to do so which was not to exceed five years.

[10] The Acknowledgement contains a schedule for a repayment. The debt (principal and interest) set out in the Acknowledgement has not been paid and the Plaintiff in the main action seeks recovery of that debt.

[11] Amazing Print defended the main action and counterclaimed.

[12] For its part, Amazing Print asserts that the action is not about the repayment of a loan. Rather, it was a victim of a well-planned and executed illegal scheme by the Plaintiff and Defendants by Counterclaim to misappropriate income-producing assets of Amazing Print.

[13] Amazing Print asserts that the relationship was not simply debtor/creditor, noting the buy-in. As consideration for the buy-in, Amazing Print developed software for Racad Tech and was selling its software as well as software for Racad Tech on a commission basis. In addition, Amazing Print was a tenant of Print Three Inc. and at times, commissions owing set-off Amazing Print's rent.

[14] Mr. Apel states that the Plaintiff's family business was Print Three Inc. Amazing Print sold its own software and software for the Plaintiff's family's business on commission. He clams that Amazing Print was owed over $85,000 for sales commissions from accounts acquired by Amazing Print, for the benefit of the Print Three, Racad, Eden Advertising & Interactive Defendants to the Counterclaim.

[15] Amazing Print's principal Slava Apel testified by affidavit that at the time of the signing of the promissory notes that comprise the debt, he was under duress as, the Plaintiff was threatening to put Amazing Print out of business.

[16] Amazing Print resists that its claim is statute barred stating that the parties' bookkeepers were communicating about commissions owed as late as April 23, 2019, days before the Defendant issued its Counterclaim.

[17] Having considered the evidence and submissions, I find that there is a genuine issue for trial relating to the limitation period due to the interrelated nature of the parties and their dealings that continued into 2019.

[18] I also find that the Defendants by Counterclaim have demonstrated that there is no genuine issue for trial in respect of Ney Bendayan, Andrew Hrywnak, Esther Willinger and Jacques Benquesus (Jack Banks) such that the Counterclaim as against those Defendants is dismissed.

[19] I allow the Counterclaim to continue as against the remaining Defendants because there are genuine issues requiring a trial. I cannot resolve those issues on this record. It does not make sense to order a mini-trial on them, in light of the whole of the litigation. I find that partial summary judgment is not appropriate as against the remaining Defendants.

[20] Below I set out how I reached this conclusion by setting out the issues and then analyzing them.

II. Issues

[21] The issues on this motion are:

a. What is the test on partial summary judgment?

b. Have the moving parties satisfied me that partial judgment is appropriate in the context of the litigation as a whole?

III. Analysis

A. Governing Principles

(i) Summary Judgment and Partial Summary Judgment

[22] Summary judgment is available where there is no genuine issue requiring a trial. Under Rule 20.04 (2.1), in determining whether there is an issue requiring a trial, a judge may weigh evidence, evaluate credibility and draw reasonable inferences, unless it is in the interests of judges for those powers to be exercised only at trial. A judge has a power to order a mini-trial to exercise the powers under subrule (2.1).

[23] On a motion for partial summary judgment, I must determine whether partial summary judgment is appropriate given the litigation as a whole: *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450, at paras. 33-37. I must be cautious about duplicative or inconsistent findings and consider whether, in the circumstances, partial summary judgment will achieve the objectives of proportionate, timely, and affordable justice or, instead, cause delay and increase expense: *Malik v. Attia,* 2020 ONCA 787, at para. 61.

[24] In *Malik v. Attia, supra*, the Court of Appeal, noted, at para. 62, that partial summary judgment motions can delay the adjudication of the trial on the merits and that when faced with a request to hear a motion for partial summary judgment a motion judge should require the parties:

a. to demonstrate that the dividing of this case into several parts will prove cheaper for the parties;

b. to show how the parties will get the parties' case in an out of the court system more quickly, and

c. establish how partial summary judgment will not result inconsistent findings by multiple judges touching the divided case.

[25] The concern about delay is real. This motion was originally to be heard in the 2019 November sittings and was not reached and then became a victim of pandemic and other delays.

[26] Partial summary judgment should be a rare procedure used for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously

and in a cost-effective manner: *Butera v. Chown*, Cairns LLP, 2017 ONCA 783, at para. 34.

[27] Courts have held that a limitation period can be a discrete issue.

[28] It can also be appropriate to dismiss an action as against some defendants to avoid putting them to the time and expense of a full-blown trial: *Kueber v. Royal Victoria Regional Health Centre*, 2018 ONCA 125, at para. 3.

B. Is partial summary judgment appropriate?

[29] I will first examine the limitation period. I will then examine whether there is a genuine issue requiring a trial for any of the Defendants by Counterclaim and whether summary judgment is appropriate in the context of the whole of the action.

(i) Limitation Defence

[30] A defendant who raises the expiration of a limitation defence has the burden of proving that defence. A defendant bears the onus of establishing that there is no issue requiring a trial with respect to the limitation period. In *AssessNet Inc. v. Taylor Leibow Inc*., 2023 ONCA 577, at para. 34, the Court of Appeal held:

> A defendant may rely on the presumption in s. 5(2) that the claim was discovered on the day the act or omission on which the claim is based took place. In order to rebut the presumption in s. 5(2) the plaintiff need only prove that its actual discovery of the claim within the meaning of s. 5(1)(a) was not on the date of the events giving rise to the claim: *Fennell v. Deol*, 2016 ONCA 249, at para. 26; *Morrison v. Barzo*, 2018 ONCA 979, 144 O.R. (3d) 600, at para. 31; *Ridel*, at para. 28. Once the presumption is rebutted, the burden remains on the defendant, who is asserting the defence, to prove that the plaintiff knew or ought reasonably to have known the elements of s. 5(1)(a) more than two years preceding the commencement of the proceeding.
>
> Determining whether an action is statute-barred or declaring when a claim was discovered requires the court to make specific findings of fact about each element set out in s. 5 of the *Limitations Act*. If the record does not permit the summary judgment motion judge to make those findings with the certainty required by *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, then a genuine issue requiring a trial may exist: *Nasr Hospitality Services Inc. v. Intact Insurance*, 2018 ONCA 725, 142 O.R. (3d) 561, at paras. 34-39.

[31] The acknowledgment is dated August 1, 2013 and signed September 9, 2013 such that the debt in the acknowledgment was finally due September 9, 2018. The Statement of Claim was issued on April 25, 2018, before the debt was finally due. The Counterclaim was commenced July 3, 2018.

[32] Under s. 4 of the *Limitations Act, 2002,* S.O. 2002, c.24, a proceeding shall not be commenced more than two years after the claim was discovered. Under s. 5(1) a claim is discovered on the earlier of the day on which the person with the claim first new that the injury, loss or damage had occurred, as further qualified by 5(1)(a), and the day on which a reasonable person ought to have known of the injury, loss or damage.

[33] Section 5(2) of the *Limitations Act, 2002* provides 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."

[34] The Defendants to the Counterclaim submit that Amazing Print knew of its grievances against them as early as 2014 or 2015. It relies on the facts set out in the Counterclaim in support. The Defendants to the Counterclaim urged me to find that this claim ought to have been discoverable in 2014 or 2015. However, as the parties' relationship was on-going, as evidenced from the emails between the bookkeepers of Amazing Print and Racad Tech and the controller for the Plaintiff relating to outstanding commissions owed to Amazing Print, Amazing Print has adduced evidence supporting that it was lulled into a false sense of security.

[35] For this reason, I find that on this record, I am not able to make the factual findings necessary to determine the elements of s. 5 and that a trial is required. Considering the whole of the action, partial summary judgment in respect of the limitations issues is not appropriate and I decline to grant it on this basis.

(ii) Actions as Against the Defendants Willinger, Banks, Hrywnak, Bendayan, 232362 Ontario Ltd. aka Print Three Inc., Print Three Franchising Corporation and Eden Advertising & Interactive Inc.

[36] The Defendants by Counterclaim urge me to dismiss the actions as against the Defendants Esther Willinger (the Plaintiff's sister), Jack Banks (the Plaintiff's father), the Plaintiff's friend and client Andrew Hrywnak, Ney Bendayan, a friend and colleague of the Plaintiff and the corporations 232362 Ontario Ltd. (Print Three Inc.), Print Three Franchising Corporation, and Eden Advertising & Interactive Inc.

[37] In my view, partial summary judgment dismissing the actions as against these corporations does not make sense in the whole of the litigation. This is because Amazing Print has raised triable issues relating to the interrelated nature of the corporations. The relationships are interwoven at a minimum because of the tenancy and the commission structure. For example, when the Plaintiff failed to pay commissions owed to Amazing Print, there was a set off to rent owed by Amazing Print.

[38] Amazing Print has persuaded me both that there is a genuine issue requiring at trial about 232362 Ontario Ltd. (Print Three Inc.), Print Three Franchising Corporation, and Eden Advertising & Interactive Inc. relationship to Amazing Print and the commissions owed by them. The financial issues between the parties require a trial and it is not appropriate considering the whole of the litigation to dismiss the Counterclaim as against these Defendants.

[39] That leaves the remaining individual Defendants to the Counterclaim, who Amazing Print alleges were all working against Amazing Print. In support of the claim against them, Amazing Print offered little evidence and much speculation. Esther Willinger filed tax returns for Eden Advertising. Andrew Hrywnak signed a tenancy document on behalf of Print Three Inc. and Print Three Franchising. This did not demonstrate that there was an issue requiring a trial.

[40] Amazing Print did demonstrate that the Plaintiff Reuben Benquesus' evidence may be unreliable. Amazing Print tendered the decision in *Shelanu Inc. v. Print Three Franchising Corp.*, 2000 CanLII 2278, which found that Mr. Banks was the founder and, at the time of that decision, the owner of Print Three Franchising Corporation. This undermines the Plaintiff's assertion in his affidavit that:

> The fact is that my father, at no time, has been a shareholder, officer or director of the corporations which are named as Defendants by Counterclaim in this action. My father is an experience businessman and, when requested from time to time, provides informal advice to me and my sister, Esther Willinger.

[41] I am concerned about such a significant discrepancy. It undermines my ability to rely on the Plaintiff's evidence.

[42] However, if there is no case against the individual Defendants, I agree that summary judgment would make sense. It would narrow the issues at trial. Amazing Print has offered no evidence respecting wrongdoing by Hrywnak, Willinger, Bendayan or Banks. It has offered nothing to support that the corporate veil should be pierced such that personal liability should attach. That Mr. Banks may have founded the business does not raise a genuine issue for trial.

[43] I have been persuaded both that there is no genuine issue for trial as against the individual Defendants to the Counterclaim and that it is appropriate given the whole of the litigation to grant partial summary judgment against them. It will narrow the scope of the proceedings, and it will lessen the time and expense of a trial. I do not see a risk of duplicative or inconsistent findings.

IV. Conclusion

[44] The motion is granted in part. The Counterclaim is dismissed as against the Defendants Esther Willinger, Jack Banks, Andrew Hrywnak, and Ney Bendayan.

[45] The Counterclaim shall proceed as against the remaining Defendants to the Counterclaim.

[46] The parties shall attempt to resolve costs. If they cannot within seven days of this decision, the Defendants to the Counterclaim shall provide written submissions no longer than two double-spaced pages, exclusive of relevant attachments, by November 14, 2025. Amazing Print shall file its response by November 21, 2025. If there is any reply, if shall be filed by

November 26, 2025 and limited to one page. All submissions are to be filed through the portal and uploaded to Case Center.

[47] The parties are also directed to establish a timetable to get this matter to trial. If agreement cannot be reached, the parties shall seek a case conference in accordance with the Consolidated Practice Direction for Central East Region.

Justice S.E. Fraser

Date: October 31, 2025