COURT OF APPEAL FOR ONTARIO

CITATION: Scanga v. Balena, 2025 ONCA 727
DATE: 20251022
DOCKET: COA-24-CV-0844

Miller, Paciocco and Favreau JJ.A.

BETWEEN

Frances Scanga and Scangacann Inc.

Plaintiff
(Appellants)

and

Daniel J. Balena

Defendant
(Respondent)

Gregory Gryguc, Enio Zeppieri and Weis Noorani, for the appellants

Robin Moodie and Bronwyn Martin, for the respondent

Heard: October 15, 2025

On appeal from the order of Justice William S. Chalmers of the Superior Court of Justice, dated June 28, 2024.

REASONS FOR DECISION

[1] The appellants, Ms. Scanga and her corporation, Scangacann Inc., commenced an action against the respondent, Mr. Balena, for damages arising from the non-payment of referral fees they claim to be owed under an alleged

ongoing oral contract that lasted between 1984 and 2018. The appellants allege that pursuant to this contract, they are entitled to 10% of the total gross settlement or award on more than 130 lawsuits that they referred to Mr. Balena, who is a personal injury lawyer. Mr. Balena admits that he made a significant number of payments to the appellants in recognition of referrals they had made, but he claims those payments were at his sole discretion. He denies the existence of any contract. Mr. Balena brought a summary judgment motion to dismiss the action, relying on his denial of the contract, the "illegality" of the alleged contract, and limitation defences.

[2] The motion judge concluded that there were genuine issues requiring a trial relating to the existence of the contract and its legality. However, he found that the limitation issues were suitable for summary judgment given that the appellants did not raise discoverability issues and admitted knowledge of when referred lawsuits settled.

[3] The motion judge rejected Ms. Scanga's submission that the limitation period did not begin to run until the relationship ended in 2018. Ms. Scanga's position was based on the theory that the parties had a single continuing contract to pay the revolving amount owing, with interim payments being made from time to time, unconnected to specific referrals. The motion judge found to the contrary. He explained:

> [Ms. Scanga] states that the referral fees were due when the file settled. It is my view that the cause of action arose when each referred claim was settled by Mr. Balena and the referral fee was not paid. At that point Ms. Scanga was aware that there had been an act or omission by Mr. Balena that resulted in a loss to her. When she was not paid the referral fee after the action settled, she had knowledge of the material facts upon which to support a cause of action as against Mr. Balena.

[4] The motion judge therefore granted partial summary judgement, dismissing claims for damages relating to all lawsuits that settled before December 10, 2017, pursuant to the ultimate and basic limitation periods provided in ss. 15 and 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, respectively.

[5] The appellants appeal the order for partial summary judgment dismissing claims for damages relating to lawsuits that settled before December 10, 2017. They do not argue that this was not a suitable case for partial summary judgment. Instead, the appellants submit that the motion judge erred in failing to accept evidence that the referral agreement was an ongoing contract and that he erred in failing to recognize that the cause of action did not arise until the relationship ended. They argue that the principle in *Enterprise Rent-A-Car Co. v. Shapiro, Cohen, Andrews, Finlayson* (1998), 38 O.R. (3d) 257 (C.A.), governed this case such that the triggering event for an ongoing contract was the delivery of the final account, not the completion of individual referred lawsuits. We dismissed the appeal for reasons to follow at the end of oral argument. These are our reasons.

[6] In support of their appeal, the appellants argued that the motion judge's characterization of the contract was wrong because there was no evidence supporting the motion judge's keystone findings that: (1) Ms. Scanga was aware when lawsuits she referred to Mr. Balena were settled, and (2) that her referral fee then immediately became due. We do not agree. Mr. Balena's counsel took us through ample evidence, including from Ms. Scanga, to support these findings.

[7] The appellants also reviewed evidence showing a pattern of payments that had been made that were not linked to specific referrals. They argued that it was unfair to find that they were aware of the "breaches" when they did not know how much the lawsuits had been settled for, when they were going to be paid, or what referrals the payments that were made related to. This may indeed pose challenges for the appellants at the trial when the question of what referrals remain outstanding after the expiry of the limitation period is to be resolved. However, this is not a basis for denying a limitation defence. It is well settled law that "a cause of action accrues once damage has been incurred, even if the nature or the extent of the damages is not known": *Pickering Square Inc. v. Trillium College Inc.*, 2016 ONCA 179, 395 D.L.R. (4th) 679, at para. 33. The motion judge's conclusion that, even if there is a contract, the cause of action accrued when a referred lawsuit settled and payment to Ms. Scanga was not made, was arrived at without error.

[8] The appeal is therefore dismissed, and costs are payable to the respondent in the amount of $15,000 inclusive of applicable taxes and disbursements, as agreed by the parties.

"B.W. Miller J.A."
"David M. Paciocco J.A."
"L. Favreau J.A."