CITATION: PAYMENT SOLUTION PROVIDERS HOLDING INC. v. PEOPLES TRUST COMPANY, 2025 ONSC 6722
COURT FILE NO.: CV-24-00733599-0000
DATE: 20251202

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: PAYMENT SOLUTION PROVIDERS HOLDING INC.

Plaintiff/Responding Party

AND:

PEOPLES TRUST COMPANY, PAYMENT SERVICES INTERACTIVE GATEWAY INC. and PEOPLES PAYMENT SOLUTIONS LTD.

Defendants/ Moving Parties

BEFORE: L. Brownstone J.

COUNSEL: Gregory Gryguc for the Plaintiff (Responding party)

Ian C. Matthews and Laura Thistle for the Defendants (Moving Parties)

HEARD: November 17, 2025

ENDORSEMENT

[1] The defendants move for summary judgment dismissing the plaintiff PSPH's claim on the basis that it is barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

Background

[2] The plaintiff, PSPH, is a holding company of PSP Services Inc. ("PSPS") and Payment Services Interactive Gateways Inc. ("New Gateway"). Danny Gurizzan is the sole shareholder and director of each of these entities. New Gateway offers an online payment gateway for processing credit and debit card payments.

[3] The first defendant, Peoples Trust ("Peoples") is the parent company of the defendant Peoples Payment Solutions Ltd. ("PPS"). PPS provides payment processing solutions through a variety of services including credit and debit card processing. It is the parent company of the defendant Payment Services Interactive Gateway Inc. ("Old Gateway").

[4] In March 2022, the plaintiff purchased the assets of the defendant Old Gateway. In the purchase agreement, among other things, the plaintiff acquired Old Gateway's merchant payment processing software and was assigned Old Gateway's merchant agreements. The plaintiff then transferred the assets and undertakings it had purchased from Old Gateway to New Gateway.

[5] Under the purchase agreement, settlement files were first processed under a settlement account controlled by Peoples at the Bank of Montreal. In that account, the old settlement account, the funds were comingled with other funds.

[6] Peoples opened a second settlement account, the new settlement account, at Desjardins. The parties then undertook a process whereby settlement funds in respect of New Gateway merchants would be migrated from the old settlement account to the new settlement account so that moving forward, settlement funds would be deposited into the same account from which they were disbursed to merchants.

[7] The cutover to the new settlement account was to be completed by close of business on November 30, 2022.

[8] Between the time the new settlement account was opened and the November 30, 2022, cutover date, some deposits were made to the new settlement account that related to disbursements made from the old settlement account. There is a dispute between the parties as to whether either the plaintiff or New Gateway instructed Peoples to disburse finds from the old settlement account. The plaintiff denies that either it or New Gateway did so, and says if there was a misalignment between deposits and disbursements, it was due to Peoples' actions, as Peoples controlled and determined the payment processes. The plaintiff states that the operations of receiving funds and facilitating payments to merchants were not transferred to it until about March of 2023.

[9] Peoples said that to address the misalignment in the new settlement account, it periodically transferred incoming funds from the new settlement account to the old settlement account, to ensure there were funds available in the old account to be disbursed.

[10] The old settlement account was to be migrated fully to the new settlement account on November 30, 2022. On that date, at 7:31 pm, Peoples sent the plaintiff an email that contained its calculation of the reconciled amount between the settlement accounts, and attached a very lengthy spreadsheet. The email stated that Peoples was transferring $4,417,371.72 from the new settlement account to the old settlement account. From December 1, 2022, forward, the settlement funds for New Gateway transactions would be both deposited into and paid out of the new settlement account.

[11] The November 30, 2022, email from Peoples stated:

> Dear Elya and Sujata

> Below are details of how we determined the Opening balance for the PSiGate [New Gateway] CAD Settlement Account on Desjardins based on the attached report generated from BIKE as of November 30, 2022 (and planned cutover of December 1, 2022).
>
> The following amounts represent PSIGate merchants funds:
>
> - Carry Forward Balance tab (cell C251) $ 120,092.64 (note, BuyBBrands was an account written off by Peoples and we are holding the loss on this account so the $786.23 belongs to Peoples; you should proceed in closing this account)
> - Reserves Rolling Detail tab (cell J7836) $1,785,030.43
> - Outstanding Funding tab (cell H1968) $5,044,212.44
>
> TOTAL $6,949,335.51
>
> As a result of the above balance being left in the Desjardins Settlement account with a current balance of $11,366,707.23, we are transferring $4,417,371.72 to our BMO account.
>
> There may be some additional funds owed to PSIGate by Peoples, however it requires some collaborative work to validate the amounts:
>
> - Collateral – To Be Reviewed tab --- unfortunately the report is not accurate i.e. it dates back to 2006 and notes clearly indicate funds released in many instances
> - Build to Reserve tab --- need clarity on what these accounts represent since they are not showing on the Reserves tab
>
> Can we arrange call/working session with Luke & Ferry to identify the number of active merchants for which PSIGate is holding collateral, the collateral amounts and clarify the details of the Build to Reserve account?
>
> Please let us know if you have any questions or want to have a call to review together.

[12] The plaintiff expected the opening balance of the new settlement account to be higher. It therefore attempted to "reverse-engineer" the accounts. Mr. Gurizzan's affidavit states:

> [O]nce the [Peoples] Settlement Account was migrated to the [New Gateway] Settlement Account setup with Desjardins in or around November 30, 2022, PSPH undertook to reverse engineer the Settlement Accounts on the basis that the provided opening balance from [Peoples] was lower than expected and to determine what the opening balance of the [New Gateway] Settlement Account should have been.

[13] The plaintiff states it only discovered the deficiency on or about September 25, 2023, after it completed an extensive and time-consuming analysis. Mr. Gurizzan deposed:

> Contrary to the allegation stated in paragraph 19 of the [defendants'] August 22 Affidavit, PSPH discovered the deficiency on or about September 25, 2023, after an extensive and time-consuming analysis was completed by PSPH. Therefore, September 25, 2023, serves as the date which PSPH discovered the claim.
>
> […]
>
> PSPH conducted its own analysis to confirm the opening balance provided by Ms. Coschignano.

[14] On September 25, 2023, the plaintiff and Peoples had an email exchange. Peoples sent an email asking about a note in the plaintiff's financial statements, which was attached. The email's subject line was "RE: Update from PSP". The financial statement note reads as follows:

> The Company is disputing discount fees, gateway fees and other services revenues with the sponsor bank. Although it is management's opinion that the matter will be positively resolved and these amounts will ultimately be collected, no amount has been recognized in the financial statements as the outcome is not predictable with assurance, and collectability is not reasonable assured.

[15] The plaintiff responded to Peoples with the following email:

> Gerry,
> Good morning.
> Note 13: references the discrepancy in the beginning balance, from day of acquisition, into the PSI Gate settlement account. Lucy insisted this value is zero, this is incorrect and has been demonstrated to be incorrect.
> As this amount is of significance to our auditors, they insisted that a note be included, as they also expect the $9.3 million will be transferred to our settlement account.
> The meeting at the PSP offices demonstrated this delta and our team will work with PTC to complete and close off on this item.
> If you have any other questions, please feel free to contact me.

[16] Neither party provided the court with any correspondence between them for the period from November 30, 2022, to September 25, 2023, although it appears there was correspondence about this issue.

[17] The statement of claim was issued on December 19, 2024. In it, the plaintiff seeks a declaration that the defendants breached the terms of the asset purchase agreement and an

order directing a full reconciliation of the new settlement account. It also seeks damages for breach of contract and unjust enrichment.

Law and Analysis

[18] Under s. 4 of the *Limitations Act*, there is a basic limitation period of two years from the date of discovery of a claim. Section 5 of the Act specifies when a claim is discovered. It provides:

> 5 (1) 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 is 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).
>
> (2) 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.

[19] The defendants have raised the issue of the limitation period as a positive defence. On a summary judgment motion, the defendant bears the burden of establishing there is no issue requiring a trial with respect to the limitation period: *AssessNet Inc. v. Taylor Leibow Inc*., 2023 ONCA 577, 168 O.R. (3d) 276 at para. 34.

[20] It is up to the plaintiff to rebut the presumption in s. 5(2). The presumption can be rebutted by the plaintiff proving that its actual discovery of the claim within the meaning of s. 5(1)(a) was not on the date the act or omission occurred: *AssessNet* at para. 35.

[21] In *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, [2021] 2 S.C.R. 704, the Supreme Court of Canada considered the requisite degree of knowledge required to discover a claim in the context of a limitation period. It acknowledged at para. 46 that the test is one that seeks to strike "the equitable balance of interests that the common law rule of discoverability seeks to achieve." The following principles govern:

- "[A] claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn": para. 42;

- "[A] plaintiff will have constructive knowledge when the evidence shows that the plaintiff ought to have discovered the material facts by exercising reasonable diligence. Suspicion may trigger that exercise": para. 44;

- "Finally, the governing standard requires the plaintiff to be able to draw a plausible inference of liability on the part of the defendant from the material facts that are actually or constructively known": para. 45.

- "The plausible inference of liability requirement ensures that the degree of knowledge needed to discover a claim is more than mere suspicion or speculation": para. 46.

- Certainty of liability is not required: para. 46.

[22] The plaintiff does not need to know the exact extent or type of harm it has suffered. In order for the limitation period to start to run, the extent of monetary loss is not required to be known, only that some loss had been suffered*: Hamilton (City) v. Metcalfe & Mansfield Capital Corporation*, 2012 ONCA 156, 347 D.L.R. (4th) 657 at para. 54; *Pickering Square Inc. v. Trillium College Inc*., 2016 ONCA 179, 395 D.L.R. (4th) 679 at para. 33.

[23] The defendants assert that the plaintiff knew it had an injury and cause of action on November 30, 2022; it simply did not know the precise amount of that injury. Knowledge of the injury, without the amount, is sufficient to start the limitation period running.

[24] The plaintiff states that it was impossible for it to know if there had been damage on November 30, 2022, as the plaintiff was not in control of the information necessary to make any such determination. The plaintiff argues that it had no control over the information on which the balance of the account was calculated on November 30, 2022, and only had an expectation, basically, a suspicion, that the amount Peoples reported to be the opening balance was lower than the plaintiff expected. The plaintiff argues that it did not know if there was any damage on November 30, 2022. It was not just the amount or extent of damage that the plaintiff did not know on that date, it was whether there was any loss or damage at all.

[25] The parties both submitted that the matter could be determined by the summary judgment procedure.

[26] Under r. 20.04 of the Rules of Civil Procedure, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence, or if the parties agree to have all or part of the claim determined by summary

judgment and the court is satisfied that it is appropriate to grant it. Rules 20.04(2.1) and (2.2) provide the court with expanded fact-finding powers to make this determination.

[27] In accordance with *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 57, in order to be appropriate for summary judgment, the evidence before the court must be such that a judge is confident that she can fairly resolve the dispute.

[28] The court must first determine if there is a genuine issue requiring trial based only on the evidence before it, without using the extended fact-finding powers in r. 20.04. There is no genuine issue requiring trial if the evidence allows the court to fairly and justly adjudicate the dispute through this proportionate procedure: *Hryniak*, at para. 66.

[29] If there appears to be a genuine issue requiring a trial, the court must determine if the need for a trial can be avoided by using the powers in rr. 20.04(2.1) and (2.2). These powers may be used if it would not be against the interests of justice to do so: *Hryniak*, at para. 66.

[30] The moving party bears the evidentiary burden of showing there is no genuine issue requiring a trial. Parties are required to put their best foot forward: *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11.

[31] As the Court of Appeal noted in *AssessNet*, in the context of a motion for summary judgment motion on the basis of a limitation period:

> 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.

[32] The summary judgment procedure is appropriate if it permits the court to use this proportionate, expeditious, and cost-effective means to achieve a just result. The court must be able to fairly and justly adjudicate the dispute on the basis of the record before it. Despite the parties' confidence that summary judgment is an appropriate procedure for this case, I find I am unable to determine the facts with the requisite degree of certainty to achieve a fair and just result.

[33] Here, the defendants assert the presumed date on which the putative loss occurred was November 30, 2022, the date the cutover of the accounts occurred, and the plaintiff is presumed to have known that damage existed on that date. Moreover, the defendants assert that the plaintiff, by stating that the balance was lower than expected on November 30, 2022, has conceded that it had actual knowledge that a loss had occurred.

[34] However, the defendants' own evidence is that the balance of the account was uncertain on November 30, 2022. Peoples' email sent on November 30 specifically states:

> There may be some additional funds owed to PSIGate by Peoples, however it requires some collaborative work to validate the amounts:
>
> - Collateral – To Be Reviewed tab --- unfortunately the report is not accurate i.e. it dates back to 2006 and notes clearly indicate funds released in many instances
> - Build to Reserve tab --- need clarity on what these accounts represent since they are not showing on the Reserves tab

[35] On the record before me, the question is not merely a question of the extent of a shortfall on November 30, 2022, it is a question of whether a shortfall exists at all. When the plaintiff says the amount is lower than expected, but the amount is, by the defendants' own admission, likely to rise, how is the plaintiff to be presumed to know whether it will rise sufficiently that it no longer seems lower than expected? The plaintiff's statement that the balance seemed lower than expected is not an assertion that there was damage. It may be a mere expression of surprise or disappointment. Further, Peoples suggested the parties work together to reconcile the accounts. Instead, the plaintiff swears it undertook a reconciliation of its own that took it until September 2023.

[36] I do not find that, given the contents of the November 30, 2022, email and the questions that clearly remained about the accuracy of those figures, the plaintiff could make a plausible inference of liability at that time. It was plausible that when the parties completed their reconciliation, there would be no sense of injury or loss.

[37] I find that the plaintiff has rebutted the presumption in s. 5(2). I find that there is sufficient evidence on this motion to support the plaintiff's position that its actual discovery of the claim within the meaning of s. 5(1)(a) was not on November 30, 2022.

[38] As noted by the Court of Appeal in *AssessNet*, once the presumption is rebutted the defendant bears the burden of proving that the plaintiff knew or ought reasonably to have known the elements of s. 5(1)(a) more than two years before December 19, 2024.

[39] I am left with questions about those elements.

[40] Parties are required to put their best foot forward on a motion for summary judgment. Neither party, for their own strategic reasons, adduced evidence of what happened between them in between November 30, 2022, and September 25, 2023. Each party argues the other should have adduced that evidence to meet its respective burden. Parties are entitled to make strategic decisions. However, in this case, those decisions have added to the concern that the court is unable to fairly and justly adjudicate the dispute. I am unable to determine the day on which the plaintiff first knew the injury, loss, or damage had occurred. It appears

to me that it happened after November 30, 2022, but before September 25, 2023, but I am unable to determine the date.

[41] Likewise, I cannot determine the date on which the plaintiff knew the loss was caused or contributed to by an act or omission of the defendants. Again, it seems likely this was between November 30, 2022, and September 25, 2023, but I cannot find that fact to the degree of certainty required by *Hyrniak*.

[42] I cannot determine the date on which the plaintiff knew or ought to have known that, having regard to the nature of the loss, a proceeding would be a legally appropriate means to seek to remedy it. The determination of whether a proceeding is an appropriate means to seek to remedy an injury, loss, or damage depends on the factual and statutory context of the individual case: *Sosnowski v. MacEwan Petroleum Inc*., 2019 ONCA 1005, 441 D.L.R. (4th) 393, at para 16. The fact that it must be "legally appropriate" accounts for the fact that needless litigation ought to be discouraged, but does not go so far as to permit an evaluation of whether a civil proceeding will succeed: *AssessNet* at para. 57; *Sosnowski v. MacEwen Petroleum Inc*., 2019 ONCA 1005, 441 D.L.R. (4th) 393 at para. 18; *Dass v. Kay*, 2021 ONCA 565 at paras. 28, 43. Again, the facts before me are insufficient for me to determine the date on which the plaintiff ought to have known a proceeding was a legally appropriate means to remedy its loss.

[43] Finally, I cannot determine the s. 5(1)(b) objective knowledge date, and therefore cannot determine which of the actual knowledge and objective knowledge dates is earlier.

[44] The defendants' motion for summary judgment is therefore dismissed, without prejudice to the defendants' ability to raise this defence at trial where a complete factual record will be available.

Costs

[45] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues.

[46] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful parties to pay: *Boucher v. Public Accountants Council for the Province of Ontario*, 71 O.R. (3d) 291, 132 A.C.W.S. (3d) 15(C.A.) at para. 26. A costs award should "reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend": *Apotex Inc. v. Eli Lilly Canada Inc*., 2022 ONCA 587, at para. 65.

[47] The plaintiff seeks costs on a partial indemnity scale in the amount of $6,181.10. These costs are a fraction of those sought by the defendants. Taking into account that the plaintiff was not the moving party, and its record and factum were less extensive than were those of the defendants, the amount sought is fair, reasonable, and proportionate. The amount would have been well within the moving party's contemplation.

[48] Costs of $6,181.10 inclusive of HST and disbursements payable to the plaintiff within 30 days.

JUSTICE L. BROWNSTONE

Date: December 2, 2025