

In the Court of Appeal of Alberta

Citation: Walczak v Canadian Imperial Bank of Commerce, 2026 ABCA 38

Date: 20260210
Docket: 2401-0186AC
Registry: Calgary

Between:

Sylwester Walczak and Regal Homes Inc.

Appellants

- and -

**Canadian Imperial Bank of Commerce – Toronto, Ontario
and Canadian Imperial Bank of Commerce – Calgary, Alberta**

Respondents

The Court:

**The Honourable Chief Justice Ritu Khullar*
The Honourable Justice Jo'Anne Strekaf
The Honourable Justice L. Bernette Ho**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice L.A. Silver
Dated the 21st day of June, 2024
Filed on the 7th day of August, 2024
(2024 ABKB 373, Docket: 2201-13423)

*Chief Justice Khullar did not participate in the final disposition of the judgment.

Memorandum of Judgment

The Court:

Overview

[1] The action commenced by the appellants against the CIBC was summarily dismissed by an applications judge on the grounds that it was statute barred by the ten-year ultimate limitation period in the *Limitations Act*, RSA 2000, c L-12. A chambers judge of the Court of King's Bench upheld that dismissal: *Walczak v Canadian Imperial Bank of Commerce*, 2024 ABKB 373. The appeal to this Court is dismissed for the reasons that follow.

Background

[2] The appellants were victims of fraud. The individual appellant wrote a cheque on July 26, 2012 for \$232,000 on behalf of the corporate appellant payable to 078919 AB Ltd for the purpose of investing in a five-year GIC. His then business partner altered the name of the payee to 978919 AB Ltd and deposited the cheque into a different numbered company's bank account at CIBC, which was solely controlled by the business partner. The appellants claim they were unaware of the alteration on the cheque until 2021, when the appellants' accounting documents (including the cancelled cheque) were returned by the Canada Revenue Agency following an investigation. The appellants' action against the CIBC was commenced on November 18, 2022.

[3] The chambers judge agreed that the action was statute barred by section 3(1)(b) of the *Limitations Act*, which prohibits the bringing of a claim more than "10 years after the claim arose". This period was extended by 75 days by a Ministerial Order in 2020.

[4] The chambers judge concluded that the "claim arose" for the purpose of the ten-year limitation period "when the wrongful or harmful conduct happened", not when parties became aware of the conduct, applying the reasoning in *Stuffco v Stuffco*, 2006 ABCA 317 at para 40. This occurred when the altered cheque was deposited on July 27, 2012. As a result, the ten-year limitation period plus the additional 75 days expired on October 20, 2022, approximately one month before the action was commenced on November 18, 2022.

[5] The chambers judge acknowledged that the "ultimate" limitation period is "a matter of public policy", as discussed in *James H Meek, Jr Trust v San Juan Resources Inc*, 2005 ABCA 448 at para 37 and *Peixeiro v Haberman*, [1997] 3 SCR 549 at para 34, 1997 CanLII 325 (SCC). She noted that it is an "absolute cut off date" that "applies to all claims in Alberta without exception ... even if the claim has merit".

[6] The chambers judge then considered whether the exception under section 4(1) of the *Limitations Act* applies. It provides that the ten-year limitation period may be suspended “during any period of time that the defendant fraudulently conceals the fact that the injury ... has occurred”. She found that “CIBC did not alter the cheque, nor did CIBC deliberately conceal the fact and effects of the altered cheque. Neither was CIBC the business partner’s agent or servant”. The chambers judge concluded that section 4(1) did not suspend the ultimate limitation period.

Analysis

[7] The interpretation of the *Limitations Act* is a question of law reviewed for correctness. Absent an extricable error of law, whether a limitation period has expired is a question of mixed fact and law and this Court’s intervention is warranted only if palpable and overriding error is shown: *Nammo v Canada (Justice and Attorney General)*, 2015 ABCA 389 at para 8. A decision to grant summary dismissal is a discretionary decision reviewed for reasonableness: *Balm v Aikins MacAuley & Thorvaldson LLP*, 2012 ABCA 96; *Nammo* at para 7.

[8] Summary judgment is available where a party can establish that “there is no merit to a claim or part of it”: rule 7.3(1)(b) of the *Alberta Rules of Court*.

[9] The appellants submit summary judgment should not have been granted because the chambers judge erred in her interpretation and application of the law. They also allege that misrepresentations were made by the CIBC at the application.

[10] We are of the view that the chambers judge correctly interpreted and applied the relevant provisions of the *Limitations Act*. The Alberta ten-year ultimate limitation period, rather than the Ontario fifteen-year ultimate limitation period, applies as the cheque was written, altered and deposited in Alberta and the action commenced in Alberta. The appellants claim that they were under a disability for some period of time does not assist them as this is not a relevant consideration with respect to the ultimate limitation period in section 3(1)(b). The appellants have not demonstrated that any misrepresentations were made by the respondent to the chambers judge or that the chambers judge erred in her application of the relevant provisions of the *Limitations Act*. The appellants have referred to various provisions in the *Bank Act*, SC 1991, c 46, the *Alberta Evidence Act*, RSA 2000, c A-18, *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2 and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, none of which are relevant to the issues on this appeal.

[11] We are satisfied that this was an appropriate case for summary dismissal.

Conclusion

[12] The appeal is dismissed

Appeal heard on December 9, 2025

Memorandum filed at Calgary, Alberta
this 10th day of February, 2026

Strekaf J.A.

Ho J.A.

Appearances:

Appellant S. Walczak

J. Heelan KC (no appearance)

D. Brunson

K. Singh

for the Respondents