

Citation: *Lawless and Lawless v Legere, Evers and 672090 N.B. Inc.*, 2026 NBKB 31

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

MC-940-2024

BETWEEN:

LINDA LAWLESS and MICHAEL LAWLESS

PLAINTIFFS

- and -

**ANGELA LEGERE (EVERS), RICHARD EVERS, and
672090 N.B. Inc.**

DEFENDANTS

ORAL DECISION

BEFORE: Justice Maya Hamou

DATE OF HEARING: February 18, 2026

DATE OF DECISION: February 20, 2026

APPEARANCES: Louise Duguay, Counsel appearing on behalf of the Plaintiffs
Nicholas O'Toole, Counsel appearing on behalf of the Defendants

OVERVIEW

Background

1. This matter involves the Plaintiffs, Linda Lawless and Michael Lawless, and the Defendants, Angela Legere (Evers), Richard Evers, and 672090 N.B. Inc. and centres on a dispute over funds advanced by the Plaintiffs to the Defendants between April 2017 and November 2018. The parties disagree on the nature of the funds, the recipients of the funds, the terms of the loan, the repayment of the funds, and on whether an acknowledgement of the debt was made.

Position of the Parties

2. The Defendants, by Motion for summary judgment and determination of a question of law seek the dismissal of the Claim in its entirety or, at minimum, the dismissal of the Claim against Richard Evers and the corporate defendant, 672090 N.B. Inc. The Defendants' Motion focuses on the *Limitation of Actions Act*, SNB 2009, c L-8.5 and asserts the Claim is statute barred under the *Limitation of Actions Act*.
3. The Plaintiffs argue summary judgment is inappropriate because the case is "replete with material factual disputes" and credibility issues requiring a full trial with testimony from witnesses to determine the issues.

Summary Judgment

4. Rule 22 of the *Rules of Court* provides that summary judgment shall only be granted where there is no genuine issue for trial; and where the record allows the Court to weigh the evidence, evaluate credibility, and draw inferences (see Rules 22.04(1) and (2)).

22.04(1) The court shall grant summary judgment if

- (a) the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence, or

[...]

22.04(2) In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and may exercise any of the following powers for the purpose, unless it is in the interests of justice for those powers to be exercised only at a trial:

- (a) weighing the evidence;
- (b) evaluating the credibility of a deponent; and
- (c) drawing a reasonable inference from the evidence.

5. The guidance from the Supreme Court of Canada and the New Brunswick Court of Appeal on the use of the summary judgments was aptly summarized by Justice Morriison in *Estephan v Dykeman et al*, 2020 NBQB 65 at paragraph 14.

[14] [...]

1. **The only test for summary judgment is whether there is a genuine issue requiring a trial;**
2. **The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;**
3. **The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;**
4. The rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;
5. **In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge must grant summary judgment;**
6. If the judge cannot adjudicate the dispute on the filed evidence he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there may be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the “mini-trial”);
7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.

[Emphasis added]

6. The Defendants in this case have not sought a mini-trial in the Motion. Rule 37.03(a) of the *Rules of Court* requires that the motion must “state the precise order sought,” this includes the request for a mini-trial under Rule 22.04(3). Courts have reiterated that mini-trials should only be ordered if mini-trials are sought or addressed by the parties (*Lin v Homestead Bay Contracting Inc.*, 2024 NBKB 97, paras 17 to 18, *O’Toole v Peterson*, 2018 NBQA 8, para 72). In any event, even if a mini-trial could be ordered by the Court in the circumstances, the Court, in the exercise of its discretion, declines to order a mini-trial for reasons outlined further in this decision.
7. The Defendants rely on Rules 22.04(4) and 22.04(5) to request that the Court direct a trial to proceed on the issue of the amount to which a party is entitled if it is the only genuine issue

for trial; the Defendants also request that the Court determine the question of law if it is the only genuine issue.

If Only Genuine Issue is Amount

(4) If the court is satisfied the only genuine issue is the amount to which the moving party is entitled, the court may direct a trial of that issue.

If Only Genuine Issue is Question of Law

(5) If the court is satisfied the only genuine issue is a question of law, the court may determine that question and grant judgment accordingly.

ISSUES

8. Is there a genuine issue for trial? Is the Claim statute barred by operation of the *Limitation of Action Act*? And, can the Court fairly and justly resolve the dispute based on the filed evidence?

ANALYSIS

Summary Judgment – Rule 22

9. The Defendants assert the two-year limitation period under subsection 5(2) of the *Limitation of Actions Act*, even accounting for a six-month COVID-related suspension, expired in May of 2021. The action was filed on December 30, 2024, and, the Defendants argue, it was filed more than three years late.
10. Additionally, the Defendants further argue that the alleged 2024 acknowledgements and payments could not reset the limitation period because, under the *Limitation of Actions Act*, such actions must occur before the initial limitation period expires to be effective (sections 19 and 20 of the *Limitation of Actions Act*).
11. The Defendants distinguish the extension of a limitation period and the revival of a limitation period. This concept was addressed by Justice Dysart in *Sheldon Butland, as an Executor of the Estate of Hilton S. Butland v Carol Anne Bezanson & Wendy Louise Turpin*, 2022 NBQB 92. In that case, the Court noted an acknowledgement must be made before the expiry of the limitation period to extend it under subsection 19(1) of the *Limitation of Actions Act* and that such acknowledgement must meet the requirements of subsection 19(2) of the *Limitation of Actions Act*.

12. Similarly, the Defendants rely on a decision from the Nova Scotia Supreme Court in *Halef v 3104457 US Investments Inc.*, 2023 NSSC 65. In that case, in determining whether a claim was statute barred by operation of the *Limitation of Actions Act*, the Court examined the 2-year limitation period and communications between the parties' constituting acknowledgements of liability. The Court granted summary judgment finding that, in that case, the acknowledgements of liability occurred after the expiry of the two-year limitation period.
13. In the present Claim, the Plaintiffs assert that following a verbal loan agreement with Angela Legere (Evers), and her husband, Richard Evers, they transferred funds to the Defendants to assist with legal expenses and stabilize their finances. While both parties agree money was advanced and the last advance occurred in November of 2018, they disagree on nearly all other material facts. The parties disagree on the nature of the funds, the recipients of the funds, the terms of the loan, the repayment of the funds and on whether an acknowledgement of debt was made.
14. On the question of the nature of the funds transferred, the Defendants contend in their Defence that the funds were gratuitous gifts. This assertion is inconsistent with the communications exchanged between the parties (discussions surrounding the acknowledgement of a debt and the extinguishment of a debt – irrespective of whether this constitutes a proper acknowledgement under the *Limitation of Actions Act*). Further, the amount advanced and the fact that the Plaintiffs borrowed the funds through a line of credit certainly does not suggest a gratuitous gift.
15. More importantly, the difficulty on this Motion for summary judgment lies in determining the terms of the loan agreement. The Plaintiffs contend the money was a loan with an expectation of repayment within two years, which was "later repeatedly extended." The Plaintiffs' Claim indicates \$78,000 was transferred to the Defendants. The Plaintiffs' Affidavits, on the other hand, state the loan was for a total amount of \$85,200, to be repaid in full within 2 years at an interest rate of 2.57%. The Defendants for their part suggest \$65,000 was transferred to them by the Plaintiffs. The amount of the loan and the terms of the loan are highly disputed. To reject a Claim by application of the *Limitation of Actions Act*, the Court needs to have some certainty on key material facts. In this case, the terms of the loan are pivotal material facts and the evidence advanced by both parties raises a genuine issue for trial.
16. For the Motion, the Defendants were prepared to accept the facts set out by the Plaintiffs for the purpose of the calculation of the limitation period. However, the Court notes a calculation error in the identification of the purported expired limitation period. If the last amount was

advanced in November of 2018 and the loan was for a two-year term, the debt would have been repayable by November 2020. It is in November of 2020 that the time starts ticking for the purpose of the *Limitation of Actions Act* and that period ends in November of 2022. Coincidentally, in November of 2022 discussions pertaining to the loan would have taken place between Angela Legere (Evers) and Michael Lawless. The Court needs certainty as to the nature and details of those discussions. Without knowing the terms of the agreement with relative certainty, whether there were discussions of repayment or mutual extension that took place, the Court is not in a position to consider their potential impact on the *Limitation of Actions Act* arguments advanced by the parties.

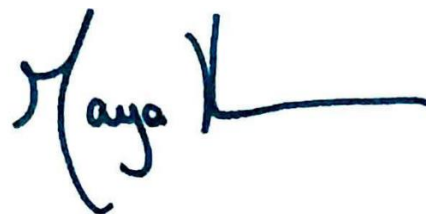
17. On the question of the parties to the loan agreement, and more specifically as it pertains to the Claim against Richard Evers, the Defendants maintain in their Motion that the funds were directed to Angela Legere (Evers). The Plaintiffs, in their Claim and in their Affidavits, suggest the loan was made to both Angela Legere (Evers) and Richard Evers. The Defendants assert that no funds were advanced to Richard Evers. However, it remains that the Plaintiffs' Affidavits reference a transfer was made to Richard Evers. There is, in this case, a genuine issue for trial, particularly as it relates to whether Richard Evers was a party to the loan from the Plaintiffs.
18. As it pertains to the Claim against the Defendant, 672090 N.B. Inc., it is an incorporated corporate body doing business as Sheer Medical Laser Inc. and owned by the Angela Legere (Evers) and Richard Evers. While the Claim references all Defendants, no nexus is outlined between the loan made by the Plaintiffs and the involvement of 672090 N.B. Inc. in the loan. Further, in the Affidavits of both parties in support of the Motion, no reference is made to the involvement of 672090 N.B. Inc. other than a mention that the Defendants own the business. As such, the Court sees no basis upon which to allow the Claim against the numbered company to continue. There is no genuine issue for trial as it relates to the numbered company.
19. While a mini-trial could have brought clarity on some questions, if it had been requested, a fair and just determination of the matters in dispute in this action require an assessment of the evidence as a whole. Much of the determination will rest on an assessment of witnesses' credibility.
20. As such, the Court concludes a genuine issue for trial is present in the circumstances as it relates to the Defendants, Angela Legere (Evers) and Richard Evers.

Determination of a Question of Law – Rule 23

21. The Defendants, in the alternative to the Motion for summary judgment under Rule 22, request that the Court answer a question of law under Rule 23.01 of the *Rules of Court*. Specifically, the Defendants request the Court determine if the Plaintiffs' Claim is barred by the limitation period imposed by the *Limitation of Actions Act*, SNB 2009, c L-8.5.
22. This assessment was already conducted under Rule 22.04(4) of the *Rules of Court*, in the analysis outlined in the prior portion of this decision. Further, considering the evidentiary constraints placed on motions proceeding under Rule 23, which are limited to the pleadings, it is nonsensical to address a Rule 23 motion after conducting a fulsome assessment with a broader evidentiary record under Rule 22 of the *Rules of Court*.
23. As the question was assessed under Rule 22, the Court declines to address the alternative question under Rule 23.01 of the *Rules of Court*.

DISPOSITION

24. The Motion for summary judgment against 672090 N.B. Inc. is granted. The Claim against 672090 N.B. Inc. is dismissed. The Motion for summary judgment seeking to dismiss the claim against Angela Legere (Evers) and Richard Evers is denied. Considering the partial success of the parties on the questions before the Court, no costs will follow.



Justice Maya Hamou
Court of King's Bench of New Brunswick