



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Bell v. Vinking Marine Enterprises Inc.*, 2023 NLSC 9

Date: January 18, 2023

Docket: 202001G3679

BETWEEN:

KIM N. I. BELL

PLAINTIFF

AND:

VINKING MARINE ENTERPRISES INC.

DEFENDANT

Before: Justice Garrett A. Handrigan

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

December 7, 2022

Summary:

Kim N. I. Bell sued Vinking Marine Enterprises Inc. in debt for consultancy services he allegedly provided to Vinking. Vinking applied under Rule 14.24(1)(a) of the *Rules of the Supreme Court, 1986* to strike his Statement of Claim for that it discloses no reasonable cause of action. Vinking argued that the claim was statute-barred as being out of time and that it was plain and obvious on the face of the Statement of Claim that it could not succeed.

The Court agreed and allowed the Application, striking the Statement of Claim. It ordered Mr. Bell to pay Vinking's costs, to be taxed on Column 3 of the Scale of Costs.

Appearances:

Kim N. I. Bell	Appearing on his own behalf
David G. L. Buffett, K.C.	Appearing on behalf of the Defendant

Authorities Cited:

CASES CONSIDERED: *Roberts v. Browning Ferris Industries Ltd.* (1998), 170 Nfld. & PEIR 228, 522 A.P.R. 228 (Nfld. C.A.); *Bond Architects & Engineers Ltd v. McNamara Corp. of Newfoundland* (1988), 69 Nfld. & PEIR 229, 211 A.P.R. 229 (Nfld. C.A.); *David Brace v. Watch Tower Bible and Tract Society of Pennsylvania*, 2009 NLTD 171; *Keeping v. Vinking Marine Enterprises Inc.*, 2014 NLTD(G) 159; *Jones v. Friedman* (2006), 206 O.A.C. 214, 47 C.C.E.L. (3d) 195

STATUTES CONSIDERED: *Limitations Act*, S.N.L. 1995, c. L-16.1; *Temporary Variation of Statutory Deadlines (2020) Order*, NLR 33/20

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

HANDRIGAN, J.:

INTRODUCTION

[1] On July 10, 2020, Kim N. I. Bell (Mr. Bell) started an action in this Court claiming two amounts, \$199,492.41 and \$131,198.65, from Vinking Marine Enterprises Inc. (Vinking), each based on debts that he says Vinking owed him but failed and refuses to pay him. Vinking filed its defence on September 17, 2020, denying it owed Mr. Bell any money, calling on him to prove the allegations in his Statement of Claim and asking that his claim be dismissed with costs.

[2] On March 25, 2022, Vinking also filed an Interlocutory Application in this Court, asking to strike Mr. Bell’s claim “on the grounds that it discloses no reasonable cause of action in that the Statement of Claim was issued past the expiry of the limitation period under the *Limitations Act*, S.N.L. 1995, c. L-16.1” (at para. 1 of the Interlocutory Application). I heard the Interlocutory Application on December 7, 2022, and reserved my judgment until now.

ISSUE

[3] Should Mr. Bell’s Statement of Claim be struck as disclosing no reasonable cause of action?

THE LAW

Statute – *Limitations Act*

[4] Section 6(1)(h) of the *Limitations Act* provides:

6(1) Following the expiration of 6 years after the date on which the right to do so arose, a person shall not bring an action

....

(h) to recover a debt.

[5] Sections 14 and 15 deal with postponing the “running of time.” The former sets out the “discoverability” principle and the latter deals with claimants who have a “disability,” neither of which apply here.

[6] Section 16 states when a cause of action is “confirmed” and the following parts are of some, though limited, relevance to this matter:

16(1) A confirmation of a cause of action occurs where a person

- (a) acknowledges that cause of action, right or title of another person; or
- (b) makes a payment in respect of that cause of action, right or title of another.

16(2) Where a person against whom an action lies confirms that cause of action, the time before the date of that confirmation shall not count when determining the limitation period for a person having the benefit of the confirmation against the person bound by that confirmation.

16(3) Subsection (2) applies only to a right of action where the confirmation is given before the expiration of the limitation period for that right of action.

16(4) Confirmation by way of an acknowledgement of a cause of action for recovery of a liquidated sum need not include a promise to pay.

16(5) In order to be effective a confirmation must be in writing and signed by

- (a) the person against whom that cause of action lies; or
- (b) his or her agent

and given to the person or agent of the person having the benefit of that cause of action.

[7] Finally, I note section 17(1) of the *Act* which provides: “A cause of action and the right or title on which it is based are extinguished upon the expiration of the limitation period for that cause of action.”

Rules of the Supreme Court, 1986 – Striking out Pleadings

[8] Rule 14.24 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D provides:

14.24(1) The Court may at any stage of a proceeding order any pleading...to be struck out or amended on the ground that

(a) it discloses no reasonable cause of action or defence;

...

and may order the proceeding to be stayed or dismissed or judgment to be entered accordingly.

(2) Unless the Court otherwise orders, no evidence shall be admissible by affidavit or otherwise on an application under rule 14.24 (1) (a).

Case Law – *Limitations Act*

[9] In *Roberts v. Browning Ferris Industries Ltd.* (1998), 170 Nfld. & P.E.I.R. 228, 522 A.P.R. 228 (Nfld. C.A.), Wells, J.A. dealt with an appeal of an order from this Court striking out a statement of claim under Rule 14.24(1)(a) as disclosing no reasonable cause of action. Wells, J.A. allowed the appeal and set aside the trial judge's order.

[10] He noted that the test for a court, dealing with an application to strike under Rule 14.24(1)(a), could be “simply stated”: “A statement of claim, or the impugned portion, will not be struck unless, proceeding on the assumption that the facts alleged in it can be proven, it is plain and obvious, on its face, that it cannot succeed at law. Where, plainly and obviously, it cannot succeed, it will be struck” (at para. 25).

[11] In *Roberts*, Wells, J.A. also refers to Goodridge, C.J.N.'s formulation of the test in *Bond Architects & Engineers Ltd v. McNamara Corp. of Newfoundland*

(1988), 69 Nfld. & PEIR 229, 211 A.P.R. 229 (Nfld. C.A.), which Wells, J.A. commends as “succinctly stated.” This is as Goodridge, C.J.N. stated it in *Bond*: “A claim will not be struck out, on the basis that it may not succeed, but only on the basis that it cannot succeed” (at para. 22) [underlining mine].

[12] Green, C.J., as he then was, considered the application of Rule 14.24(1)(a), amongst other aspects of Rule 14.24 (1) in *David Brace v. Watch Tower Bible and Tract Society of Pennsylvania*, 2009 NLTD 171. He described the test to be applied to striking a statement of claim (“whether it is plain and obvious that the plaintiff cannot succeed”) as a “stringent one” and offered this “approach to be taken” on an application to strike: “[E]xamine the pleading to see if the plaintiff has pleaded any factual circumstance that could found the legal right asserted that would justify granting the relief sought: [authority deleted]. [T]he pleading of a factual basis that could support the cause of action asserted is a ‘fundamental requirement.’ Each element of the asserted cause of action must have a pleaded factual substratum” (at para. 15).

[13] In the *Brace* matter, Green, C.J. also considered, *apropos* of this matter, whether “[a]n application to strike a statement of claim on grounds of an expired limitation period may also be made in advance of trial in some circumstances” (at para. 24). He concluded that it could and offered both substantive and procedural guidelines:

[24] ... If it is apparent from the statement of claim that the cause of action arose outside of the applicable limitation period and there is no issue as to the possible postponement of the running of the limitation period because of such things as lack of knowledge or incapacity (which might depend on assessment of conflicting evidence) then the matter could be dealt with on the basis that the claim discloses no reasonable (i.e., active) cause of action.

[25] Even where the issue of expiration of a limitation period cannot be decided by reference to the statement of claim alone, there may be other incontrovertible evidence placed before the court that establishes when the cause of action arose and that there could not be any postponement of the running of the period. In such cases, it could be said that it would be an abuse of process either under Rule 14.24(1)(d) or the common law to allow the claim to proceed.

[26] Where, however, the determination of the running of the limitation period may be the subject of conflicting evidence a preliminary application to strike should not

generally be allowed; the matter should either proceed to trial or be the subject of an evidentiary pre-trial hearing.

[14] This generally is the law that I will apply to the issue I stated above; but before I analyze that issue, let me summarize the principles that apply to striking a statement of claim under Rule 14.24(1)(a) of the *Rules of the Supreme Court, 1986*, as I discern them from the case law just reviewed:

- A statement of claim will be struck only if it *cannot* succeed, not for that it *may not* succeed.
- The test for striking a statement of claim is a “stringent” one.
- When applying the test, the court assumes that the facts alleged in the statement of claim can be proved, so in order to succeed the applicant must show that it is plain and obvious that it cannot succeed.
- It is fundamental that the statement of claim offers a pleaded factual basis for each cause of action asserted.
- An application to strike a statement of claim under Rule 14.42(1)(a) for an expired limitation period may be made for that it discloses no reasonable cause of action.
- The expiration of a limitation period may be postponed if the claimant lacks knowledge of the cause of action or acts under a disability.
- On an application to strike a claim for an expired limitation period, the court should look first to the statement of claim but may rely on other, incontrovertible evidence before it is to decide when the cause of action arose and if the limitation period should be postponed.
- If there is conflicting evidence about the running of a limitation period, it is preferable to deal with the conflict in an evidentiary pre-trial hearing than on an application to strike.

ANALYSIS

BACKGROUND

[15] Mr. Bell filed his Statement of Claim in this matter on July 10, 2020. He claimed in paragraph 3 that Vinking “engaged” him in 2013 “to perform consultancy work.” He alleged that Vinking owed him two amounts of money for his work and referred to them as “Debt A” and “Debt B.”

[16] Debt A was for “\$58,790 for consultancy work performed up to July 31, 2013” (at para. 5) [underlining mine]. Mr. Bell says that he and Vinking agreed that he would be “compensated in shares of the Company in lieu of payment” (at para. 6). He also alleged that Vinking issued shares to him on July 11, 2013, but that “the shares issued by the Directors on July 11, 2013, were cancelled on December 18, 2014, in the ruling of the case” (at para. 7).

[17] The “case” that Mr. Bell refers to is a decision of Thompson, J. of this Court on December 18, 2014, *Keeping v. Vinking Marine Enterprises Inc.*, 2014 NLTD(G) 159. Mr. Bell was not a party to those proceedings, but he claims that it affected him, as noted. He alleged in paragraph 8 of his Statement of Claim that “[t]he effect of the ruling was to convert the shares back into Debt A for which the shares had been intended to be compensation.”

[18] As to Debt B, Mr. Bell claims that Vinking “owed ... \$42,640.56 ... for consultancy work (and expenses) performed after July 31, 2013, and until January 1, 2014” (at para. 13) [italics in original; underlining mine]. Mr. Bell says he “issued an invoice to ... [Vinking] for Debt B on January 16, 2014” (at para. 15) and followed up when Vinking did not respond to him by sending an invoice to Vinking’s counsel in March 2014 and then to Vinking’s CEO by registered mail on June 6, 2014, to which neither counsel nor the CEO responded.

[19] These allegations are, to adopt the phrase that Green, C.J. coined in the *Brace* matter, the “factual substratum” on which Mr. Bell bases his claims against Vinking.

DISCUSSION

[20] Let me begin this discussion by setting out in the table that follows, the essential dates that Mr. Bell relies on for his claim against Vinking, as to both Debts

DEBT “A”	
Date(s)	Action Taken
July 11, 2013	Vinking Issues Shares to Mr. Bell
July 31, 2013	Mr. Bell Ends Consultancy Services to Vinking
July 31, 2013	Mr. Bell Claims Interest from Vinking from This Date
Date(s)	Time Lapsed
July 10, 2020	Mr. Bell Files Statement of Claim
July 11, 2013–July 10, 2020	7 Years Time Lapsed
July 31, 2013–July 10, 2020	6 Years, 345 Days Time Lapsed
DEBT “B”	
Date(s)	Action Taken
July 31, 2013	Mr. Bell Starts Consultancy Services to Vinking
January 1, 2014	Mr. Bell Ends Consultancy Services to Vinking
January 16, 2014	Mr. Bell Issues Invoice to Vinking
February 16, 2014	Mr. Bell Claims Interest from Vinking from This Date
March 2014	Mr. Bell Sends Invoice to Vinking’s Counsel
June 6, 2014	Mr. Bell Sends Invoice to Vinking’s CEO
Date(s)	Time Lapsed
July 10, 2020	Mr. Bell Files Statement of Claim
January 1, 2014–July 10, 2020	6 Years, 6 Months, 10 Days
January 16, 2014–July 10, 2020	6 Years, 5 Months, 24 Days
January 16, 2014 – July 10, 2020	6 Years, 4 Months, 24 Days
March [31], 2014 – July 10, 2020	6 Years, 3 Months, 10 Days
June 6, 2014 – July 10, 2020	6 Years, 1 Month, 4 Days

[21] It is clear from the foregoing that Mr. Bell filed his Statement of Claim, to use the words of section 6(1) of the *Limitations Act*, “[f]ollowing the expiration of

6 years after the date on which the right to do so arose,” for both Debt A and Debt B. Let me explain.

[22] In *Jones v. Friedman* (2006), 206 O.A.C. 214, 47 C.C.E.L. (3d) 195, the Court noted that “[a] limitation period commences when the cause of action arises. In a breach of contract, the cause of action arises when the contract was breached” (at para. 4). In this case, Vinking’s obligations under its contracts with Mr. Bell, if it has any obligations to him, arose when he completed the consultancy services he says that it hired him to provide.

[23] As to Debt A, he completed those services as of July 31, 2013, or maybe as early as July 11, 2013; but in either event, the date on which Mr. Bell completed his services is well outside of the six years during which section 6(1) of the *Limitations Act* requires action to be taken. It bears noting that section 17 of the *Act* says that “[a] cause of action and the right or title on which it is based are extinguished upon the expiration of the limitation period for that cause of action,” so that when the six years ran its course Mr. Bell’s right to sue Vinking was extinguished by the proscription in section 17 and it was not available to him to act on when he issued his Statement of Claim on July 10, 2020.

[24] As to Debt B, Mr. Bell completed his services on or before January 1, 2014, again well outside of the six years during which section 6(1) of the *Limitations Act* requires action to be taken to enforce the debt. His right to sue on the contract ran from that date and, as with Debt A, per section 17 of the *Limitations Act*, the “cause of action and the right or title on which it is based are extinguished upon the expiration of the limitation period for that cause of action.”

[25] Mr. Bell alludes to various matters that are not relevant to the expiration of the limitation period, but for completeness I will discuss them nonetheless. For example, as to Debt A he notes that the shares Vinking issued to him on July 11, 2013, to compensate him for consultancy services were canceled on December 18, 2014.

[26] In fact, Mr. Bell may not have a claim at all against Vinking for breaching the consultancy contract he claims he had with Vinking. He alleges in paragraph 6 of his Statement of Claim that “Debt A was to be compensated in shares of the Company in lieu of payment.” He acknowledges that he received the shares he agreed upon with Vinking, so that that Vinking actually met its contractual obligation to him for Debt A.

[27] If the shares were subsequently canceled by action of this Court, Mr. Bell may have a remedy against Vinking because of their cancellation but that right, if he has one, would not be a right of action based in debt and arising from the consultancy contract. In effect, Vinking paid the agreed consideration for his services, he accepted the payment from Vinking, and that exchange fulfilled his and Vinking’s contractual obligations to each other.

[28] In any event, Vinking issued shares to Mr. Bell to compensate him for his services and it did so to meet a contractual obligation that arose when he completed those services, which was clearly no later than July 31, 2013, and possibly as early as July 11, 2013. One or the other of those dates is the operative date from which to calculate the running of time during which Mr. Bell had to bring his claim against Vinking and it is clear from the table above that he failed to bring his action until well outside the six-year limitation period.

[29] Mr. Bell also implies that his dealings with Vinking left him uncertain or unclear about when, if, or how he should seek a remedy from them. Sections 14 and 15 of the *Limitations Act* provide for extending limitation periods. Section 15 applies to persons acting under disabilities and it has no application whatsoever here. Section 14 states the “discoverability” principle, so that “the limitation period fixed by this *Act* does not begin to run against a person until he or she knows or, considering all circumstances of the matter, ought to know that he or she has a cause of action.”

[30] However, section 14 specifies six causes of action to which the discoverability principle applies, and they do not include an action based on contract. Furthermore, Mr. Bell, to precis section 14 of the *Act*, knew or considering all the circumstances

of the matter, ought to have known that he had a cause of action against Vinking. In fact, Mr. Bell states the facts on which his claims are based very clearly in his Statement of Claim, so that it is obvious that he was well aware of the basis of his claim long before he filed his Statement of Claim.

[31] Additionally, Mr. Bell notes that he issued two additional invoices for Debt B after his initial billing, the first in March 2014, which he sent to Vinking’s counsel, and the other on June 6, 2014, which he sent to Vinking’s CEO. He appears to suggest that they affect the running of the limitation period. There are two things of note about these invoices: Firstly, neither is within the six-year limitation period and in each instance, as Mr. Bell observes himself, neither Vinking, its counsel, nor its CEO acknowledge receiving the invoices or in any way commit Vinking or themselves to paying them. Thus, Vinking did not confirm its indebtedness to Mr. Bell, and even if it did, it did not do so within the limitation period.

[32] Finally, Mr. Bell refers to the *Temporary Variation of Statutory Deadlines (2020) Order*, NLR 33/20. Section 2(2) of that Order provides: “Where the six-year limitation period referred to in section 6 of the *Limitations Act* expires on or after March 14, 2020, and before September 14, 2020, a person may, notwithstanding section 6 of that *Act*, bring an action on or before September 14, 2020.” The Order does not apply to Mr. Bell’s claim.

[33] His claim for Debt A arose no later than July 31, 2013, and expired six years from that date on July 31, 2019, seven and a half months outside of the March 14, 2020–September 14, 2020 period covered by the Order; as for Debt B his claim for it arose no later than January 1, 2014, and it expired on January 1, 2020, three and a half months outside the March 14, 2020–September 14, 2020 period covered by the Order.

[34] Overall, I find that:

- Mr. Bell’s Statement of Claim cannot succeed.
- It is plain and obvious from the Statement of Claim that it cannot succeed.

- The Statement of Claim discloses no reasonable cause of action.
- Neither lack of knowledge of the cause of action nor any disability warrant postponing the application of the limitation period.
- There is no conflicting evidence about the running of the limitation period, so there is no reason to decline applying the limitation period to defeat Mr. Bell's claim on this Application to Strike.

[35] In the result, I allow Vinking's application and strike Mr. Bell's Statement of Claim as it relates to both Debts "A" and "B."

COSTS

[36] Costs follow the cause so that Mr. Bell will pay Vinking's costs to be taxed on Column 3 of the Scale of Costs.

SUMMARY AND DISPOSITION

[37] Kim N. I. Bell sued Vinking Marine Enterprises Inc. in debt for consultancy services he allegedly provided to Vinking. Vinking applied under Rule 14.24(1)(a) of the *Rules of the Supreme Court, 1986* to strike his Statement of Claim, for it discloses no reasonable cause of action. Vinking argued that the claim was statute-barred as being out of time and that it was plain and obvious on the face of the Statement of Claim that it could not succeed.

[38] The Court agreed and allowed the Application, striking the Statement of Claim. It ordered Mr. Bell to pay Vinking's costs, to be taxed on Column 3 of the Scale of Costs.

ORDER

[39] I order that:

1. Kim N. I. Bell's Statement of Claim against Vinking Marine Enterprise Inc. is struck.
2. Kim N. I. Bell shall pay Vinking Marine Enterprise Inc.'s costs to be taxed on Column 3 of the Scale of Costs.

GARRETT A. HANDRIGAN
Justice