

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Nazim Rajbally, Plaintiff

AND:

TD Canada Trust, Defendant

BEFORE: Associate Justice B. McAfee

COUNSEL: Nazim Rajbally, In Person, Plaintiff, assisted by spouse, B. Rajbally

Elizabeth Kurz, Counsel, for the Defendant

HEARD: March 24, 2026

ENDORSEMENT

- [1] This is a motion brought by the plaintiff for an order granting leave to amend the statement of claim and for the issuance of summonses to witness.
- [2] The statement of claim was issued on August 11, 2014, under the simplified procedure, seeking the amount of \$25,000.00 for damages for loss of reputation and favourable credit rating, the amount of \$25,000.00 for damages for breach of contract, the sum of \$25,000.00 for pain and suffering as a result of mental stress, and the sum of \$50,000.00 for punitive damages.
- [3] In the statement of claim the plaintiff alleges that on or about August 13, 2012, the defendant mistakenly withdrew \$1,600.00 from the plaintiff's TD VISA credit card instead of his bank account. The plaintiff alleges that as a result of withdrawing \$1,600.00 from his TD VISA credit card that had a credit limit of \$500.00, and similar errors in January 2013, his credit rating was downgraded to such an extent that he is unable to obtain a position in his chosen field of law or any other similar position. The plaintiff alleges that he has been unable to invest in business due to his poor credit rating and had difficulties obtaining a good mortgage rate. The plaintiff alleges that he has been affected emotionally and physically as a result of the stress caused by the alleged negligence of the defendant.
- [4] The defendant's statement of defence is dated November 24, 2014. The defendant pleads that on or about August 12, 2012, the plaintiff attended at a TD Branch and presented the teller with a TD VISA credit card and an unknown credit card from the United Kingdom. The defendant pleads that the plaintiff told the teller that he wished to pay the UK credit card with the TD VISA credit card. The defendant pleads that the teller explained that the

plaintiff's request was not possible but offered to provide the plaintiff with a cash advance from the TD VISA credit card to his chequing account, which the plaintiff could then apply to the UK credit card. The defendant pleads that the plaintiff agreed with the teller's proposed plan and the transaction was executed. The defendant pleads that the plaintiff is the author of his own misfortune having chosen to accept a cash advance on the TD VISA and taking time to pay off the advance.

- [5] The action was dismissed for delay by the Registrar on August 29, 2019. On consent, on November 29, 2019, Associate Justice Brott set aside the dismissal order (endorsement of Associate Justice Brott dated November 29, 2019).
- [6] Examinations for discovery were completed in April 2021.
- [7] Mandatory mediation took place on September 20, 2023.
- [8] A pre-trial conference was held on July 17, 2025. At the pre-trial, the plaintiff advised that he would be bringing a motion for leave to amend the statement of claim. Associate Justice McGraw adjourned the pre-trial to a date to be scheduled after the within motion has been disposed of (endorsement of Associate Justice McGraw dated July 17, 2025).
- [9] The proposed amended statement of claim does not contain underlining so as to distinguish the amended wording from the original (Rule 26.03(2)). The proposed amended statement of claim appears to be a fresh as amended statement of claim with amendments to each of the existing 18 paragraphs and further paragraphs added.
- [10] Rule 25.06 of the *Rules of Civil Procedure* provides as follows:

26.01 On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.
- [11] Non-compensable prejudice is established where an amendment would add a new cause of action beyond a limitation period (*McFadden v. Psutka*, 2022 ONSC 6239 (Ont. S.C.J.) at para. 48).
- [12] As stated in *Monster Snacks Inc. v. David*, 2023 ONSC 6223 (Ont. S.C.J.) at para. 10:

[10] An amendment will be refused when it seeks to advance, after the expiry of a limitation period, a fundamentally different claim based on facts not originally pleaded: *100997 Ontario Limited v. North Elgin Centre Inc.*, 2016 ONCA 848 at para. 23. That is because expiry of a limitation period is one form of non-compensable prejudice. A party cannot circumvent the operation of a limitation period by amending their pleadings to add additional claims after the expiry of the relevant limitation period: *Klassen v. Beausoleil*, *supra* at para. 26 [2019 ONCA 407].

[13] Non-compensable prejudice is also presumed where a party seeks an amendment after a long and unjustified delay (*Family Delicatessen Ltd. v. London (City)*, 2006 CanLII 5135 (C.A.) at paras. 6, 7).

[14] As stated in *Davis v. East Side Mario's Barrie*, 2018 ONCA 410 at paras. 31 and 32:

[31] As this court recently said in *1100997 Ontario Limited v. North Elgin Centre Inc.*, 2016 ONCA 848, 409 D.L.R. (4th) 382, at para. 19:

A cause of action is a “factual situation, the existence of which entitles one person to obtain from the court a remedy against another person”. [Citations omitted]

[32] And, quoting from Paul M. Perell & John W. Morden, *The Law of Civil Procedure in Ontario*, 3d ed. (Toronto: LexisNexis Canada, 2017), at p. 186:

A new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or amount simply to different legal conclusions drawn from the same set of facts, or simply provide particulars of an allegation already pled or additional facts upon [which] the original right of action is based.

See also *1100997 Ontario Limited*, at para. 20.

[15] The plaintiff's proposed amended statement of claim pleads new facts that were not originally pleaded. The proposed pleading alleges that the defendant knowingly or recklessly reported false credit information to Equifax and that the defendant suspended the plaintiff's TD VISA credit card. These facts are absent from the original claim. The proposed amended claim is based on fundamentally different alleged facts. The proposed amended claim no longer mentions the alleged TD VISA credit card incident from August 2012 upon which the original claim is based nor does the proposed amended claim mention the similar alleged errors from January 2013.

[16] The proposed claim relating to false reporting of credit information is alleged to have occurred between 2012 and 2016. The proposed claim relating to the suspension of the TD VISA credit card is alleged to have occurred in 2016. The presumptive limitation period would have expired at the latest in 2018. There is no pleading or evidence of discoverability.

[17] Even if some or all of the proposed amendments do not amount to pleading of a new cause of action after the expiry of a limitation period, the plaintiff has not provided sufficient evidence to explain the delay in seeking the amendments or to rebut the presumption of prejudice (see *Horani v. Manulife Financial Corporation*, 2023 ONCA 51 at paras. 32 and 33). While the plaintiff does refer to his medical condition at paragraph 4 of his affidavit, this evidence does not indicate that it is an explanation for the delay. There is no evidence in support of the statement at paragraph 9 of the plaintiff's factum.

- [18] The motion for leave to amend the statement of claim is dismissed.
- [19] The plaintiff also seeks an order pursuant to Rule 53.04 for the issuance of summonses to witness. This is a simplified procedure action. Assuming a jury notice had not been delivered, the trial would be a summary trial (Rule 76.12). No trial has been scheduled. I am not satisfied of a basis to grant this relief on the record before me.
- [20] The motion for an order for the issuance of summonses to witness is dismissed.
- [21] With respect to costs, the defendant is successful on this motion and is entitled to costs. The defendant seeks costs on a partial indemnity basis in the all-inclusive amount of \$5,900.00, payable within 30 days. Had the plaintiff been successful, the plaintiff sought costs in the all-inclusive amount of \$5,200.00, payable within 30 days. A fair and reasonable amount that the plaintiff could expect to pay for the defendant's costs is the all-inclusive amount of \$5,000.00, payable to the defendant in any event of the cause.
- [22] Order to go as follows:
1. The motion is dismissed.
 2. Costs of the motion are fixed in the all-inclusive amount of \$5,000.00, payable by the plaintiff to the defendant in any event of the cause.

Associate Justice B. McAfee

Date: July 22, 2026