

**CITATION:** Eco Kids-Child Care Centre Inc. v. Emmabby Prop. Mngmt Inc., 2026 ONSC 4335  
**COURT FILE NO.:** CV-23-709926  
**DATE:** 2026 07 24

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** ECO KIDS-CHILD CARE CENTRE INC. o/a BALLOONS CHILDREN'S  
DEVELOPMENT CENTRE, *Plaintiff*

- and -

EMMABBY PROPERTY MANAGEMENT INC., ARISTON REALTY CORP.,  
BGS REALTY INC. o/a RE/MAX ELITE REAL ESTATE, DOLGONOS LLP  
and ALEXANDR DOLGONOS, *Defendants*

**BEFORE:** Associate Justice Todd Robinson

**COUNSEL:** R. Watt, *for the plaintiff (moving party)*  
S. Saha, *in his personal capacity and for the defendants, Dolgonos LLP and  
Alexandr Dolgonos*

**HEARD:** March 4, 2026 (by videoconference)

**REASONS FOR DECISION  
(Motion to Amend Statement of Claim)**

[1] The plaintiff moves for leave to further amend its statement of claim to add Sukanta Saha as a party defendant. Mr. Saha is the lawyer of record for the defendants, Dolgonos LLP and Alexandr Dolgonos (the “Dolgonos Defendants”). The motion is opposed by the Dolgonos Defendants and Mr. Saha in his personal capacity on the basis that there is no legally tenable claim against Mr. Saha personally, that the underlying limitation period for a claim against him has expired, and that the responding parties would be prejudiced by the proposed amendments and addition of Mr. Saha as a party defendant.

[2] During responding submissions, following a series of questions by me, Mr. Saha requested and adjournment of the motion on his own behalf and on behalf of the Dolgonos Defendants. That request was opposed by the plaintiff. I heard submissions on both the adjournment request and, since submissions on the substantive motion were nearly completed, the balance of motion submissions. I reserved my decision on both the adjournment request and, if the adjournment was not granted, the motion.

[3] I am denying the adjournment request. I also reject the responding parties’ arguments in opposition to this amendment motion and am granting leave to amend the statement of claim to

add Mr. Saha as a party defendant, albeit without prejudice to pursuing the asserted limitations defence.

## **ANALYSIS**

### ***Requested Adjournment of Motion***

[4] The timing of the adjournment request is fatal to it. Mr. Saha, acting in his personal capacity and as lawyer for the Dolgonos Defendants, did not request an adjournment until part way through the responding submissions. The plaintiff's submissions on the motion had already been completed. Having heard those submissions, Mr. Saha opted to proceed with responding submissions. It was only in response to questions posed by me on the lack of evidence supporting the responding position that an adjournment request was made for an opportunity to prepare supplementary materials.

[5] In my view, it would be procedurally unfair to the plaintiff to allow the Dolgonos Defendants and Mr. Saha to hear and consider the plaintiff's full submissions and then be afforded an opportunity to deliver further materials. The time to request an adjournment was at the outset of the hearing or, at the very latest, before commencing responding submissions. Having reevaluated the sufficiency of their position and evidence during submissions in response to questions from the bench is not a proper basis for an adjournment.

### ***Legal Framework***

[6] Rule 26.01 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 provides that, 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. As set out by the Court of Appeal, amendments to add parties should be presumptively approved, unless there is abuse of the court process or non-compensable prejudice, which may include expiry of a limitation period: *Schembri v. Way*, 2012 ONCA 620 at paras. 25-26.

[7] Whether to grant leave to amend is a discretionary decision. On a motion to amend pleadings, the allegations in the pleading are taken to be true and provable: *Schembri v. Way*, *supra* at para. 27. The onus to prove actual prejudice lies with the responding party: *1588444 Ontario Ltd. v. State Farm Fire and Casualty Co.*, 2017 ONCA 42 at para. 25.

[8] However, despite the inherent discretion of the court on a motion to amend, if a limitation period in respect of a claim against a person has expired, then the claim cannot be pursued by adding the person as a party to any existing proceeding: *Limitations Act, 2002*, SO 2002, c 24, Sched B, s. 21(1).

### ***Assessment of Prejudice***

[9] The responding parties have not met that their onus of establishing non-compensable prejudice. Apart from the argument that no tenable cause of action against Mr. Saha is disclosed by the proposed amendments and the alleged limitations defence, all other prejudice asserted by

the responding parties is compensable. Reopening pleadings, expanding documentary discovery, adding examinations for discovery to those that currently remain incomplete, additional examination of parties already examined (if any), and increasing the scope of the litigation are all compensable forms of prejudice. Mr. Saha rightly conceded this point in oral submissions.

[10] With respect to whether the claim is tenable, I disagree with the responding parties' factum submission that the proposed amended pleading against Mr. Saha fails to disclose material facts capable of establishing an independent cause of action against him. The proposed pleading asserts that Mr. Saha was the supervising lawyer to the Dolgonos Defendants (para. 8E), that the plaintiff had no knowledge of Mr. Saha's involvement at the time and had no contact with him (paras. 14D and 14E), and that the plaintiff did not learn that Mr. Saha was involved until September 2024 (para. 32C).

[11] Mr. Dolgonos is a paralegal. Given the limitations on the scope of practice for paralegals under the *Law Society Act*, RSO 1990, c L.8 and its regulations, lease review would be beyond the scope of his practice authority. In my view, proximity or assumption of responsibility for Mr. Dolgonos' acts and omissions is fairly inferred from a pleading that Mr. Saha was the supervising lawyer. In any event, the pleading also provides particulars of Mr. Saha's alleged negligent conduct, including allegations regarding his review of the lease agreement (para. 32D). These allegations, if proven, support a finding of liability against Mr. Saha personally. I find the proposed pleading against Mr. Saha to be sufficient in all the circumstances.

[12] The responding parties have also tendered evidence on the merits of the proposed claim against Mr. Saha, arguing that it is not tenable. It is beyond the scope of a pleadings amendment motion to delve into the facts and make factual findings. This is not an appropriate forum to make factual and legal determinations that are more properly the subject matter of a summary judgment motion or trial.

[13] For example, the responding defendants argue that the plaintiff never retained them regarding the lease, which is in direct conflict with the evidence of Yuliia Zarystka, the principal of the plaintiff, who expressly states that Dolgonos LLP and Alexandr Dolgonos were retained to review the lease agreement. I also agree with the plaintiff that the lack of a formal retainer does not necessarily mean that the Dolgonos Defendants and Mr. Saha cannot be found liable for negligent legal advice (if found that they did provide it). It would be unfair to the plaintiff to decide any of those issues without affording it a clear opportunity to address the position taken by the responding parties, which in this case I find was not reasonable for the plaintiff to do in its moving materials or even by way of reply.

[14] Since allegations are presumed to be true and provable on a motion of this nature, and given my finding that the proposed pleading as against Mr. Saha is sufficient, delving into the merits of the proposed claim would, in my view, be improper.

[15] Mr. Saha further argued that he is a partner in Dolgonos LLP, which is already a defendant, so adding him as a party defendant is unnecessary. However, I have no direct evidence confirming that Mr. Saha is, in fact, a partner in the firm. Mr. Dolgonos' affidavit states only that he is "a supervising lawyer associated with Dolgonos LLP." I am not prepared to take judicial notice that

Mr. Saha is a partner in that firm, as I have been asked to do. Moreover, even if Mr. Saha is a partner (and I have no reason to doubt his assertion), that does not itself preclude a claim against him personally. Rule 8.01 permits a proceeding against two or more partners to be commenced using the firm name. It does not mandate it.

[16] With respect to the limitations defence, discoverability is addressed in s. 5 of the *Limitations Act, 2002*, which provides that a claim is discovered on the earlier of the day on which the person with the claim first knew or ought to have known that (i) the injury, loss or damage had occurred, (ii) the injury, loss or damage was caused by or contributed to by an act or omission, (iii) the act or omission was that of the person against whom the claim is made, and (iv) having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

[17] The responding parties rely on *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31. In that case, when discussing discoverability under New Brunswick's limitations legislation, the Supreme Court of Canada observed, at para. 45, that "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." The responding parties submit that the plaintiff had a plausible inference of liability by no later than July 27, 2023. That is the date on which the plaintiff received an email from the Toronto and Region Conservation Authority confirming that institutional uses (including day-care facilities) were not permitted on the subject lands. The responding parties argue that, upon receiving that email, the plaintiff knew sufficient material facts to support claim of negligence.

[18] I agree with the responding parties that items (i), (ii) and (iv) discussed above were generally known to the plaintiff by no later than July 27, 2023, which was more than two years before this motion was brought. However, that does not address (iii) in respect of Mr. Saha. Importantly, s. 5 of the *Limitations Act, 2002* is not focused on general awareness, but rather focuses on subjective or objective knowledge about the act or omission of a specific defendant that is actionable by the plaintiff.

[19] Ms. Zarystka has set out that she (and the plaintiff) were unaware of Mr. Saha's involvement prior to her lawyer receiving a letter from Alexandr Dolgonos in September 2024, in which Mr. Dolgonos confirmed Mr. Saha's involvement as a supervising lawyer. That evidence is uncontested on this motion. I thereby have no reason to doubt that, subjectively, the plaintiff was unaware of Mr. Saha's involvement prior to September 2024.

[20] It is unclear when the plaintiff ought to have known that its injury, loss or damage was caused or contributed to by an act or omission of Mr. Saha, rather than the other named defendants. I have been pointed to an email from Mr. Dolgonos in December 2022, which identifies Mr. Saha as being associated with the law firm in the email signature block. However, Ms. Zarystka is not a recipient on the email. She has tendered it in her affidavit to show that Dolgonos LLP and Alexandr Dolgonos had been provide with the lease agreement and had also provided it to other defendants, representing that they were the lawyers for the plaintiff. I find that email is not dispositive of anything. Conversely, though, there is also an insufficient record to assess whether the plaintiff acted with reasonable diligence to discover its claim against Mr. Saha.

[21] I am unable to find on the materials and submissions that there is no genuine issue on whether the plaintiff knew or ought to have known that Mr. Saha was involved in reviewing the lease at issue in this litigation more than two years before this motion was brought. The evidence of both sides on this motion is insufficient to make a clear finding on that issue.

[22] Ms. Zarystka states in her affidavit that, in meetings with Alexandr Dolgonos, she was not told that he was working with a lawyer and did not meet with Mr. Saha when meeting with Mr. Dolgonos. Her affidavit supports that she did not have any subjective knowledge of Mr. Saha's relationship to Dolgonos LLP at the material times.

[23] The responding parties have tendered the affidavits of Hamid Amiran and Alexandr Dolgonos. Mr. Amiran states that he is the ex-boyfriend of Ms. Zarystka. In his affidavit, Mr. Amiran discusses that the Dolgonos Defendants were never retained, but does not address whether he knew about Mr. Saha's involvement in the file and, accordingly, whether Ms. Zarystka was aware of it. Mr. Dolgonos' affidavit similarly sets out that neither he nor his firm were retained by the plaintiff to review and advise on the lease agreement. Mr. Dolgonos does address Mr. Saha's involvement. As noted above, though, he states only that Mr. Saha "is a supervising lawyer associated with Dolgonos LLP".

[24] In my view, the responding parties' evidence supports the plaintiff's position, namely that Mr. Saha was supervising Mr. Dolgonos, but never interacted with Ms. Zarystka nor provided any advice directly to the plaintiff. Mr. Dolgonos' affidavit does state, at para. 18, that "Mr. Saha did not review, draft, negotiate, advise on, supervise, or otherwise participate in the Lease transaction" and that there is no document evidencing that Mr. Saha provided legal services to the plaintiff. However, those statements are caveated by a statement that they are made to the best of Mr. Dolgonos' knowledge, information and belief. Nowhere in Mr. Dolgonos' affidavit does it state that he did not discuss the lease agreement with Ms. Zarystka or give legal advice on it, or that he did not speak to Mr. Saha or seek his input on the lease agreement. Mr. Saha has tendered no evidence about his own involvement (or lack thereof) in response to the motion.

[25] Although it appears that the claim against Mr. Saha has been brought in time, there is insufficient evidence before me to fairly and finally decide the limitations issue. There are simply too many gaps in the evidence of Ms. Zarystka and Mr. Dolgonos. Mr. Saha's evidence may well have been able to fill them had he opted to tender evidence himself. However, he did not. Given the insufficiency of the evidence before me, it would be unfair and unjust to find that the claim is or is not statute barred at this stage. Further evidence is required to decide the issue.

[26] For these reasons, I find it fair and just to grant the plaintiff leave to further amend its statement of claim to add Mr. Saha as a party defendant, but without prejudice to Mr. Saha pleading and pursuing a limitations defence. That defence may well be provable at trial on more fulsome evidence, including his own testimony.

## **COSTS**

[27] The plaintiff has been successful and is entitled to its costs. It seeks substantial indemnity costs in the amount of \$11,983.31 or, alternatively, \$7,701.74 on a partial indemnity basis. The

plaintiff submits that the Dolgonos Defendants and Mr. Saha ought to have consented from the outset, but certainly by no later than reviewing the plaintiff's factum.

[28] I am not convinced that elevated costs are warranted here. As succinctly stated by the Court of Appeal in *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, at para. 8, substantial indemnity costs is the elevated scale of costs normally resorted to when the court wishes to express its disapproval of the conduct of a party to the litigation. Although their opposition was ultimately unsuccessful, I cannot say that the responding parties' position on this motion was without merit and that they ought to have consented. The plaintiff agreed that there was no other conduct warranting sanction.

[29] The responding parties sought \$7,500 in costs if they were successful, so the plaintiff's partial indemnity claim is clearly within reasonable expectations. Given the materials and level of opposition, I find such a costs amount to be reasonable and proportionate. It is further supported by reasonable time set out in the plaintiff's costs outline.

## **DISPOSITION**

[30] For the foregoing reasons, the plaintiff's motion is granted, without prejudice to Mr. Saha pleading a limitations defence. The Dolgonos Defendants and Mr. Saha shall pay to the plaintiff its costs of this motion on a partial indemnity basis fixed in the amount of \$7,701.74, payable within thirty (30) days. Order to go in an amended form of the draft order submitted, as amended electronically prior to signing.

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**ASSOCIATE JUSTICE TODD ROBINSON**

**DATE:** July 24, 2026