

COURT OF APPEAL FOR ONTARIO

CITATION: Dunn and Drummond Incorporated v. Fisher Environmental Ltd.,

2026 ONCA 529

DATE: 20260721

DOCKET: M57056 (COA-26-CV-0243)

Sossin, Monahan and Osborne JJ.A.

BETWEEN

Dunn and Drummond Incorporated

Plaintiff

and

Fisher Environmental Ltd., Davor Alexander Fisher a.k.a. David
Fisher a.k.a. Dave Fisher, Hamdani Textiles Ltd.*, Hassan H.
Hamdani*, Abbas H. Hamdani*, ~~Colonial Cleaners a.k.a. Colonial
Dry Cleaners~~, Lipsit Holdings Limited, William Lewis Lipsit,
1872276 Ontario Inc.***, Christopher Michael Douglas**, King Centre
Plaza Limited, Frank Orlando D'Alessandro a.k.a. Frank Orlando
D'Alessandro a.k.a. Orlando Franco D'Alessandro a.k.a. Frank
D'Alessandro, ~~Samuel Berger, Janet Berger, Endre Klein, Rose
Krieser, Southway Plazas Ltd., Donald J. Taliano,~~
Wittington Leased Properties Limited, ~~John E. Langdon,~~
~~W. S. Robertson~~, Loblaws Inc., Wittington Leaseholds Limited,
~~Norman John Munn~~

Defendants

(Appellants/Responding Parties*)

(Respondents/Moving Parties**)

Rosalind H. Cooper and Kirsten Sullivan, for the appellants/responding parties

Tamara Farber and Josh Cabral-Cardoso, for the respondents/moving parties

Heard: July 13, 2026

REASONS FOR DECISION

[1] The responding parties brought an unsuccessful motion before the motion judge for summary judgment, and, in the alternative, to have certain pleadings struck on the basis that the moving parties' claim is statute barred. The responding parties appealed the motion judge's decision, and the moving parties brought this motion to quash the appeal on jurisdictional grounds.

[2] Both the moving parties and responding parties are defendants in the underlying litigation arising from allegations that the plaintiff's land was contaminated by a neighbouring property. The neighbouring property was initially owned by the responding parties who sold it to the moving parties in 2013. The plaintiff brought the underlying claim in 2019. The moving parties served a statement of defence and crossclaim in which they claimed for contribution and indemnity against the responding parties. In September 2022, the moving parties served an amended statement of defence and crossclaim, which also included an independent damages claim (the "Independent Damages Claim") against the responding parties or, alternatively, a claim for equitable set off (the "Equitable Set Off Claim")

[3] There were two prongs to the limitation argument in the motion below. The responding parties primarily argued that the moving parties knew or ought to have known about the contamination issue when they bought the property in 2013, more than two years before the plaintiff's claim was brought (the "2013 limitation issue"). In the alternative, they argued that the moving parties knew or ought to have known

that the property was contaminated when they received an environmental report in May 2020, more than two years before the amended statement of defence and crossclaim was delivered (the “2020 limitation issue”).

[4] The motion judge dismissed the summary judgment motion, finding genuine issues requiring a trial as to whether the contamination was or ought to have been discovered in 2013. The motion judge also dismissed the alternative relief to strike certain pleadings as being statute-barred based on the argument that discovery occurred in 2020.

[5] This motion to quash is based on the moving party’s argument that the decision below, dismissing the motion both for summary judgment, and in the alternative, to strike certain pleadings, without leave to amend, was interlocutory.

[6] We reject this argument.

[7] The motion judge’s decision in relation to the 2013 limitation issue is not the subject of the proposed appeal. Rather, the issue in dispute relates to the motion judge’s alternative finding with respect to the 2020 limitation issue. This issue turned, in part, on whether the amended pleadings disclosed a new cause of action, which would mean the claim in dispute was statute-barred, or were only a restatement of the earlier cause of action.

[8] It is clear from the motion judge’s reasons that the 2020 limitation issue was decided under r. 21, not r. 20, of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.

194. The motion judge adverted to the principles of r. 21 in his discussion of the 2020 limitation issue. After an analysis of the cause of action set out in the pleadings, at para. 104, the motion judge concluded, “In these circumstances, I find that the Independent Damages Claim is not statute-barred.” The motion judge then stated, at para. 105 of his reasons, “Otherwise, if I am incorrect that the Independent Damages Claim is not barred by the two-year limitation prescribed by the Act, the Equitable Set Off Claim, nonetheless survives...” (emphasis added). This characterization supports the view that the motion judge considered his conclusion on the Independent Damages Claim as final.

[9] The moving party argues that the motion judge’s costs decision, however, which defers costs of the motion “in the cause”, reflects an understanding that the motion judge had not finally determined any issue. Indeed, the motion judge states, at para. 15 of the costs decision, “The result of the motion did not determine the limitation issue as between these Defendants with respect to the Independent Damages Claim and the Equitable Set Off Claim.”

[10] It is not clear whether the motion judge here is referring in this paragraph to the outcome of the summary judgment motion under r. 20 of the *Rules of Civil Procedure*, which determined that credibility issues involving discovery of the claim in 2013 required a trial, or whether this referred specifically to the finding set out above relating to the 2020 limitation issue. In our view, this ambiguous reference

in the costs decision is insufficient to displace the clear language of the motion judge's finding in his reasons on the motion.

[11] The appeal from this final determination that the pleadings were not statute barred under r. 21 lies to this court.

[12] In this context, bifurcation of the appeal as between the Equitable Set Off Claim and the Independent Damages Claim would not be appropriate given the risk of inconsistent decisions. The issues are closely related and should be heard together in this court.

[13] The responding parties are entitled to costs from the moving parties in the agreed upon amount of \$10,000, all inclusive.

"L. Sossin J.A."
"P.J. Monahan J.A."
"Osborne J.A."