

COURT OF APPEAL FOR ONTARIO

CITATION: Toronto Standard Condominium Corporation No. 2587 v. Rock Contracting Services & Management Inc., 2026 ONCA 602

DATE: 20260827

DOCKET: COA-25-CV-1219

Miller, Wilson and Madsen JJ.A.

BETWEEN

Toronto Standard Condominium Corporation No. 2587

Plaintiff
(Appellant)

and

Rock Contracting Services & Management Inc.* and
John Doe Contractor

Defendants
(Respondent*)

Neil Colville-Reeves and Elisha Yao, for the appellant

Kimberly Newton and Callum Micucci, for the respondent

Heard: August 18, 2026

On appeal from the order of Justice William S. Chalmers of the Superior Court of Justice, dated August 18, 2025.

REASONS FOR DECISION

[1] The appellant, Toronto Standard Condominium Corporation No. 2587 (“TSCC 2587”) appeals the decision of the motion judge granting summary

judgment in favour of the respondent, Rock Contracting Services & Management Inc. (“Rock”), finding that the action was statute-barred. TSCC 2587 submits that the motion judge erred in law by concluding that the property damage claim was discoverable on October 4, 2019, and the action was statute-barred, as it was commenced after the expiry of the two-year limitation period. We do not agree and dismiss the appeal for the reasons that follow.

[2] There is little dispute on the facts. On Friday, October 4, 2019, a crane or scissors lift that was doing work at an adjacent condominium building struck TSCC 2587’s building, causing more than \$400,000 of damage to the concrete structure above the parking garage. The crane was under the control of Rock. The concierge of TSCC 2587 reported the damage that same day to Shari Grenade, who was the property manager for the building.

[3] No evidence from the building’s concierge or from Ms. Grenade was filed on the motion. An email from Ms. Grenade dated October 11, 2019 to TSCC 2587’s Board of Directors (“the Board”) was in the evidentiary record. This email indicated that on October 4, 2019, after being notified of the damage, Ms. Grenade instructed security to obtain pictures and a video of the damage. The email also indicated that she met with the contractor on Monday, October 7, 2019. She apologized for not contacting the Board sooner. An incident report was also prepared by the concierge on Saturday, October 5, 2019, which essentially was a summary of the investigation by the police.

[4] The Notice of Action was issued April 7, 2022. Rock pleaded in its statement of defence that the action was statute-barred and brought a summary judgment motion for determination of this issue.

[5] The motion judge agreed that the action was statute-barred. He found that the on-site property manager was an agent of TSCC 2587 and that the property manager was advised of the claim on October 4, 2019. TSCC 2587 was thus deemed to have discovered the claim on October 4, 2019. As a result, the claim was issued after the expiry of the 2-year limitation period.

[6] The appellant does not argue that this case was inappropriate for summary judgment, nor does it appeal the finding that the property manager was an agent of TSCC 2587. The appellant submits that it did not ascertain the identity of the contractor until October 7, 2019, such that the claim was not discoverable until that date, and consequently, the action was commenced in time. TSCC 2587 submits that s. 5(1)(a)(iii) of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B. was not satisfied in this case until October 7, 2019. We do not accept these submissions.

[7] We do not accept the position of the appellant that the motion judge made an error in law which is subject to the standard of correctness. The determination of the discoverability of a claim is a question of mixed fact and law and as such, absent a palpable and overriding error, is entitled to deference: *AssessNet Inc. v. Taylor Leibow Inc.*, 2023 ONCA 577, 168 O.R. (3d) 276 (C.A.), at para. 30. The

motion judge made no errors in his determination of the facts or in his application of the law.

[8] The motion judge set out s. 5 of the *Limitations Act, 2002* and he correctly identified the legal framework for determining the discoverability of this claim. He reproduced the presumption contained in s. 5(2) of the *Limitations Act, 2002*, specifically that a person with a claim shall be presumed to have known of the potential claim on the day on which the act occurred unless the contrary is proved. He then concluded that the property manager knew all the necessary information to bring a claim as of October 4, 2019, which is an implicit finding that the presumption was not rebutted.

[9] The appellant had the onus of proving that it did not have knowledge of the matters referred to in s. 5(1)(a) of the *Limitations Act, 2002* on October 4, 2019, and it failed to discharge its onus. The appellant furnished no evidence from the property manager or from the concierge, the two people who were told of the damage on that day. Instead, two affidavits of Robert MacIntyre, a member of the Board, were filed. The Board, however, was only apprised of the incident by way of Ms. Grenade's email of October 11, 2019. As a result, Mr. MacIntyre could offer no evidence of what the appellant knew as of the day of the incident.

[10] As this court has noted, to discharge the onus evidence is required. In light of the failure to file evidence from the individuals who were apprised of the damage

on the day it occurred, we agree with the implicit finding of the motion judge that the appellant failed to rebut the s. 5(2) presumption.

[11] Even accepting the submission of the appellant that the name of the subcontractor was unknown on October 4, 2019 but was known on October 7, 2019, there was no explanation for the failure to issue the claim over the course of the next 2 years, within the limitation period. The motion judge reviewed the provisions of s. 5 (1) of the *Limitations Act, 2002* and found that all of the information necessary to legally commence an action was known by the property manager and therefore by the appellant as of October 4, 2019. We agree with this finding.

[12] The motion judge made no error in determining that the appellant's claim was statute-barred because its agent and therefore the appellant knew all of the essential elements of the claim on October 4, 2019.

DISPOSITION

[13] The appeal is dismissed. Costs in the agreed-upon sum of \$10,000 are payable by the appellant to the respondent.

“B.W. Miller J.A.”

“D.A. Wilson J.A.”

“L. Madsen J.A.”