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Ostfeld v. Safirstein

Between
Israel Ostfeld, plaintiff, and
Victor Safirstein, defendant

[1996] O.J. No. 4000

Court File No. 96W-98652

Ontario Court of Justice (General Division)

Ground J.

Heard: November 7, 1996.
Judgment: November 14, 1996.

(3 pp.)

Limitation of actions -- Actions in contract -- Actions for debt -- Negotiable instruments -- Demand notes.

Application by the defendant for summary dismissal of the action. The plaintiff claimed payment on loans advanced to the defendant.

HELD: Application allowed and action dismissed. The loans which formed the basis of the actions were demand loans. One loan had been paid out as evidenced by a cheque and discharge of mortgage. No demands ever having been made on the other two loans and the six-year limitation period having expired, no action could be brought.

Statutes, Regulations and Rules Cited:

Ontario Rules of Civil Procedure, Rule 21.01(1)(a).

Counsel:

Jennifer A. Greenwood, for the plaintiff.
Paul Starkman, for the defendant.

1 GROUND J.:-- The order sought by the defendants on its motion pursuant to rule 21.01(1)(a) dismissing the action will issue. I am satisfied that all of the loans which form the basis of this action were demand loans. The first loan in the amount of \$35,000 which was advanced on November 25, 1982, is pleaded in the statement of claim as a demand loan on the basis that the loan would be payable when the defendant's financial situation improved; however, the defendant was to repay the loan in full immediately upon the plaintiff's demand. The loan is not, therefore, a conditional loan but a demand loan and the loan having been advanced more than six years ago, the limitation period has expired and no action may be brought. The second loan in the amount of \$100,000, advanced on December 23, 1985, was repaid in full on August 21, 1987 as evidenced by the cheque and discharge of mortgage submitted to this court. That loan was replaced by a third loan advanced on August 21, 1987 in the amount of \$100,000. No repayment date or condition of repayment having been stated, the loan must be regarded as a demand loan. No demand for payment was ever made; there was only a demand for mortgage security made on July 3, 1990. Accordingly, the limitation period having expired, no action may be brought on the third loan. A ruling was made on the hearing of the motion admitting certain of the evidence sought to be admitted in paragraph 1 of the cross-motion record. An order having been made to dismiss the action, the balance of the cross-motion is dismissed.

2 Costs to the defendants fixed in the amount of \$1,200.00.

GROUND J.

qp/d/mii/DRS/DRS/DRS/DRS