

COURT OF APPEAL FOR ONTARIO

CITATION: Portuguese Canadian Credit Union Limited v. Pires, 2012 ONCA 335

DATE: 20120518

DOCKET: C54847

Cronk, Juriensz and Epstein JJ.A.

BETWEEN

Portuguese Canadian Credit Union Limited,
by its liquidator, Deposit Insurance Company of Ontario

Plaintiff (Respondent)

and

Virgilio A. Pires

Defendant (Appellant)

Richard Campbell, for the appellant

Mark Dunn, for the respondent

Heard and released orally: May 11, 2012

On appeal from the order of Justice Ruth E. Mesbur of the Superior Court of Justice, dated December 14, 2011.

ENDORSEMENT

[1] We see no error in the motion judge's reasoning or in her conclusion that the appellant's proposed counterclaim is statute-barred.

[2] Based on the appellant's own pleading, he was aware before May 2006 that his shares were not redeemable in the manner that he claimed had been

represented to him. Any losses suffered by him ultimately arose from the restrictions on his share redemption rights.

[3] This admission is fatal to the appellant's claim for damages for alleged fraud, breach of fiduciary duty and misrepresentation. His counterclaim was not issued until June 16, 2010, well beyond the applicable two-year limitation period for these claims.

[4] Before this court, the appellant also argues, for the first time, that his claim for damages for alleged breaches by the respondent of the *Securities Act*, R.S.O. 1990, c. S.5, is not statute-barred because it is subject to a six-year limitation period under s. 129.1 of that Act. We would not give effect to this argument.

[5] Even assuming that the appellant can advance a damages claim against the respondent of the type asserted by him based on alleged infractions of the *Securities Act*, the appellant has provided no authority to support the conclusion that his claim is "a proceeding under the Act" within the meaning of s. 129.1 so as to trigger the six-year limitation period.

[6] In any event, we note that s. 38(1) of the *Securities Act*, on which the appellant relies in part, does not appear to apply in respect of securities that are subject to redemption obligations. Further, although the appellant's pleading invokes s. 38(2) of the *Securities Act*, no claim on this basis was pursued before the motion judge or in oral argument before this court.

[7] In all the circumstances, the appeal is dismissed. The respondent is entitled to its costs of the appeal, fixed in the amount of \$5,000, inclusive of disbursements and all applicable taxes.

“E.A. Cronk J.A.”

“Russell Juriansz J.A.”

“Gloria Epstein J.A.”