NOVA SCOTIA COURT OF APPEAL
Citation: *Peill v. Soil and Sea Co-op Limited*, 2025 NSCA 11

Date: 20250220
Docket: CA 531192
Registry: Halifax

Between:

Edward Peill, David Peill, and Kathi Peill

Appellants

v.

Soil and Sea Co-op Limited, Peter Peill, Lyndhurst Farms Limited, and Minas Seed Co-operative Limited and 3324949 Nova Scotia Limited

Respondents

Judge:	The Honourable Justice Cindy A. Bourgeois
Appeal Heard:	December 11, 2024, in Halifax, Nova Scotia
Facts:	A family dispute arose over the ownership of Soil and Sea Co-op Limited, a cooperative formed by a mother and her six children to hold a parcel of land in Nova Scotia. In 2006, the mother requested her children to return their shares. Most complied, but one child, Edward, did not. Subsequently, Edward's membership was purportedly revoked, leading to a legal challenge over the validity of this revocation and whether his claim was statute-barred (paras 3-7).
Procedural History:	*Peill v. Soil and Sea Co-op Limited*, 2023 NSSC 286: The motion judge dismissed both parties' motions for summary judgment on the validity of Edward's share revocation, finding genuine issues of material fact. However, the judge granted summary judgment dismissing Edward's claim as statute-barred (paras 12-18).

Parties Submissions:	Appellants: Argued that the motion judge erred in dismissing Edward's claim as statute-barred, asserting that there were material disputes of fact regarding the revocation process, which should preclude summary judgment (paras 19-21). Respondents: Contended that the limitation period had expired, as Edward was aware of the revocation in 2006, and no genuine issue of material fact existed regarding the expiry of the limitation period (paras 14-15, 30-31).
Legal Issues:	Did the motion judge err in dismissing Edward Peill's claim for membership in Soil and Sea Co-op Limited as statute-barred, given the alleged material disputes of fact regarding the revocation process? (para 19)
Disposition:	The appeal was dismissed with costs awarded to the respondents.
Reasons:	Per Bourgeois J.A. (Fichaud and Derrick JJ.A. concurring): The Court found no error in the motion judge's approach. The judge correctly applied the principles from Milbury to determine that the limitation period had expired, as Edward was aware of the revocation in 2006. The existence of a genuine issue of material fact regarding the revocation process did not affect the limitations issue. The appellants' argument conflated the merits of the underlying claim with the limitations issue, and the motion judge's findings were consistent with the legal framework (paras 26-32).

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Judges:	Bourgeois, Fichaud and Derrick, JJ.A.
Appeal Heard:	December 11, 2024, in Halifax, Nova Scotia
Held:	Appeal dismissed with costs, per reasons for judgment of Bourgeois, J.A.; Fichaud and Derrick, JJ.A. concurring
Counsel:	Tipper McEwan, Laura Woodworth and Calvin DeWolfe, for the appellants Ian Dunbar and Noah Entwisle, for the respondent Soil and Sea Co-op Limited Michael Scott and Matthew MacLellan, for the respondents, Peter Peill, Lyndhurst Farms Limited, Minas Seed Co-operative Limited and 3324949 Nova Scotia Limited

Reasons for judgment:

[1] On December 11, 2024, this Court heard an appeal brought by the appellants, Edward Peill, David Peill and Kathi Peill, of a summary motion judge's determination that a claim being advanced by Edward Peill was statute-barred. The appellants argue the motion judge had found there were material facts in dispute, and as such, she was precluded from granting summary judgment.

[2] For the reasons that follow, I would dismiss the appeal.

Background

[3] Dorothy Peill inherited a parcel of land on the South Shore of Nova Scotia. In 1989 she formed Soil and Sea Co-op Limited ("Soil and Sea") pursuant to the *Co-operative Associations Act*, R.S.N.S., 1989, c. 98 to hold ownership of the property. The original members of Soil and Sea were Mrs. Peill and her six children, with each holding one issued share. Because I will be referencing individuals with the same family name, I will use their first names throughout these reasons for enhanced readability. I mean no disrespect in doing so.

[4] In 2006, the members of Soil and Sea changed. Based on the record, it appears there have been a number of changes since. In her written decision[1] the motion judge, Justice Denise Boudreau, thoroughly set out the history of Soil and Sea and the various disputes arising between some of the Peill siblings.

[5] I do not intend to repeat all of what the motion judge canvassed; but rather, highlight those facts that are relevant to the narrow issue advanced on appeal:

- In or around May 2006, Dorothy asked all of her children to return their shares of Soil and Sea;

- Most of the Peill siblings voluntarily relinquished their shares at that time. Edward did not;

- A directors' meeting was held on June 7, 2006. At that time it was noted that most of the members had relinquished their shares. The minutes of that meeting documented:

[1] *Peill v. Soil and Sea Co-op Limited*, 2023 NSSC 286.

5) Remaining outstanding shares from Eve Rowsell and Edward Peill are being recalled immediately.

- At the end of the June 7th meeting, Dorothy asked two of her sons, Peter and David, to stay on as members of Soil and Sea;

- Following the meeting, Dorothy sent an email to Edward and advised:

Dear Edward, After speaking with you yesterday, I called the Inspector of Co-ops to verify our previous conversation. Following his instructions I called a meeting and your share was officially withdrawn. You will be receiving your 5$ membership fee by registered mail with notification. It would not be fair to the others if you withheld . . .

- On June 14, 2006, Dorothy sent Edward a letter by registered mail which provided:

Mr. Edward L. Peill;

Under it's (*sic*) current structure Soil and Sea Co-op has failed to achieve the original goals as set out by Mrs. Dorothy Peill.

Therefore:

Mrs. Dorothy Peill has formally requested all members of Soil and Sea to voluntarily return their shares. As of June 14/2006 five members have complied.

Mrs. Peill has appointed an interim board of directors during the restructuring of Soil and Sea.

Enclosed is a cheque representing the original share value of five dollars, which formally conclude your membership in Soil and Sea Co-op. The Co-op Act states that upon receipt of this letter you have 30 days to appeal.

Please direct all communications in regards to an appeal IN WRITING to Mrs. Dorothy Peill;

- Edward wrote to Dorothy on July 17, 2006 and advised that he would not return his share until a Board of Directors of non-family members had been established and until he was confident that those directors

would manage Soil and Sea in a responsible manner. At that time, Edward believed all of his siblings had relinquished their shares;

- On July 5, 2007 Dorothy wrote an email to Edward:

  > Hi Edward,
  >
  > You are no longer a member of Soil and Sea Co-op as per the registered letter received by you on June 15, 2006.
  >
  > I have re-structured the Co-op and have appointed Peter Peill and David Peill as Directors. I also have an outside advisor.
  >
  > I am extremely happy with the progress we are making.
  >
  > Love Mom

- Since June 2006, Edward has not participated in the governance of Soil and Sea, nor has he attended any member meetings or directors' meetings;

- In 2008 Edward hired legal counsel to explore his options in relation to his membership in Soil and Sea. Although legal action was threatened by his counsel, none was taken.

[6] On July 30, 2021, the appellants filed a Notice of Action against Soil and Sea, their brother Peter and his companies, in which they assert, amongst other things, that Edward's share in Soil and Sea was not properly revoked in 2006.[2] They sought a declaration that Edward is a member of Soil and Sea.

[7] In its Amended Notice of Defence and Counterclaim with Crossclaim filed May 13, 2022, Soil and Sea advanced a limitation defence:

> 14. Soil and Sea pleads and relies on the *Limitation of Actions Act*, SNS 2014, c. 35 and says that the Plaintiffs' claims against it are barred by the passage of time.

[2] The Notice of Action was subsequently amended on September 23, 2021 and February 17, 2023.

[8] Similarly, in their First Amended Notice of Defence and Counterclaim filed April 5, 2023, Peter and his companies plead:

> 29. The Defendants plead and rely on provisions of the *Limitation of Actions Act*, SNS 2014, c. 35 and say that each and all of the Plaintiffs' claims are expired.

[9] Multiple motions were filed by the parties, five of which were heard simultaneously by the motion judge on May 8, 9 and 10, 2023. Three are relevant to the appeal, although the appellant has only appealed the outcome of one of those. Some explanation is in order.

[10] The subject matter of two of the motions was whether or not Edward's share in Soil and Sea had been properly revoked in June 2006. The appellants brought a motion for summary judgment on evidence in which they sought a declaration the revocation was not done in accordance with the requirements of the *Co-operative Associations Act*, and as a result Edward was still a member of Soil and Sea.

[11] The respondents brought a mirroring motion for summary judgment in which they sought a determination that Edward's share had been properly revoked and he was, therefore, not a member of Soil and Sea.

[12] In her reasons, the motion judge relied on the principles set out by this Court in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89. After having reviewed the evidence adduced by the parties, the motion judge found there was competing evidence concerning the process by which Edward's share was revoked. That competing evidence went directly to the issue of whether the revocation was done in accordance with the law. As a result, the motion judge dismissed both motions for summary judgment finding there were genuine issues of material fact in dispute. The motion judge's findings in this regard have not been appealed.

[13] The third motion, and the subject of this appeal, was also a motion for summary judgment on evidence. The respondents sought to have Edward's claim to membership in Soil and Sea summarily dismissed as being statute-barred. In her reasons, the motion judge referenced the *Limitation of Actions Act*:

> [139] The *Limitation of Actions Act*, SNS 2014, c. 35, provides that claims are to be brought within two years from the day on which the claim is discovered, or reasonably ought to have been discovered (s. 8(1)(a)). Section 8(1)(b) provides that a claim may not be brought after 15 years from the day on which the act or omission on which the claim is based occurred.

> [140] Section 8(2) of that same *Act* provides that a claim is discovered when a plaintiff knows or reasonably ought to have known:
>
> > a) that the injury, loss or damage had occurred;
> >
> > b) that the injury, loss or damage was caused by or contributed to by an act or omission;
> >
> > c) that the act or omission was that of the defendant; and
> >
> > d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.

[14] The motion judge also referenced this Court's decision in *Nova Scotia Home for Coloured Children v. Milbury*, 2007 NSCA 52. *Milbury* set out the following two-step analysis for assessing a motion for summary judgment advanced on the basis of the expiry of a limitation period:

> [23] When the defendant pleads a limitation period and proves the facts supporting the expiry of the time period, the plaintiff has the burden of proving that the time has not expired as a result, for example, of the discoverability rule: **Soper v. Southcott**, [1998] O.J. No. 2799 (C.A.) at ¶ 14; **Gray Condominium Corp. No. 27 v. Blue Mountain Resorts**, [2005] O.J. No. 793 (S.C.J.) at ¶ 18.
>
> [24] In the context of a summary judgment application where a limitation defence is pleaded, the defendant applicant must first establish that there is no genuine issue of fact for trial. In this case the defendants have established that the statutory limitation period has long expired. Unless the discoverability principle applies, the defendants satisfied the first part of the summary judgment test on the facts alleged by the plaintiff, that is, that the wrongs were committed at the latest in 1947, and that the longest limitation period, six years, expired in 1972, six years after the plaintiff reached the age of majority in 1966. Since the defendants have met the initial threshold, the plaintiff has to demonstrate that there is a real chance of success by presenting evidence that the limitation period has not expired, because of the discoverability principle.

[15] The motion judge proceeded to apply the principles in *Milbury* and determined the statutory limitation period had expired:

> [142] Returning to the motion before the Court (i.e., summary judgment) therefore, the first question is: Does the challenged pleading disclose a "genuine issue of material fact", either pure or mixed with a question of law?

> [143] As was the case in *Milbury*, *supra*, in the present case the statutory limitation period has passed. In fact, by the time of the filing of the action a full 15 years had passed, raising not only the limitation period but also the prohibition at section 8(1)(b). There is no genuine issue of material fact in relation to the expiry of the limitation period. On its face, the claim is statute barred.
>
> . . .
>
> [149] Edward has known since June 2006 that a process had taken place which purported to revoke his share in Soil and Sea. In my view, that is the date that meets the criteria of section 8(2) of the *Act*. It should also be noted that this act occurred more than 15 years before the filing of the claim (from June 7, 2006, to July 30, 2021). By application of section 8(1)(b) of the *Act*, such would bar the claim in any event.
>
> [150] Using the process suggested in *Milbury*, *supra*, I find that the defendants have easily met the initial threshold in that the statutory limitation period for Edward's claim has expired, and that no genuine issue of material fact or law exists in regard to that question. I must then consider whether the plaintiff has shown that they retain a real chance of success by "presenting evidence that the limitation period has not expired, because of the discoverability principle".

[16] In considering "discoverability", the motion judge noted:

> [151] The plaintiffs argue that Edward's claim was not "discoverable" until much later than 2006. In particular, they note that Edward requested documentation from Soil and Sea in 2008 which he was never provided; and further, that Edward was unaware that David and Edward remained as members in the period following 2006, for a number of years.

[17] After making reference to the legal principles relating to "discoverability", the motion judge concluded:

> [154] As I have noted numerous times, Edward was told by email on June 7, 2006, that his share had been officially "withdrawn" at a directors' meeting. Edward then received a letter stating that his membership in Soil and Sea was concluded, and that he had 30 days to appeal. Edward disputed this at the time and throughout; he has maintained from the very beginning that the act purporting to revoke his membership was unlawful and illegitimate.
>
> [155] It is clear to me that whatever claim Edward might have had, it was "discoverable" then and there. While he may not have known each and every minute detail of the facts at that time, he clearly knew of sufficient facts to raise a claim seeking return or re-instatement of his membership had he wished to.

> [156] I find it difficult to understand the plaintiffs' suggestion that Edward's request for additional documents in 2008 somehow caused his claim to be "undiscoverable" until then. I also fail to see the link between David and Peter having stayed on as members of Soil and Sea after 2006, and Edward's claim being "undiscoverable" until he found that out. There is simply no connection between that fact and Edward's claim. Edward's membership was either validly revoked, or it was not. More importantly, David and Peter's status had no impact on the "discoverability" of any claim by Edward to membership.
>
> [157] Having said that, and in any event, this email from Dorothy to Edward was dated 2007:
>
> > I have restructured the Co-op and have appointed Peter Peill and David Peill as Directors.
>
> [158] In my view, given all that I have already said, the plaintiffs do not have a real chance of success on the "discoverability" issue. It seems abundantly clear to me that the claim was discoverable when Edward was told he had been "voted out" as a member and his share was being "concluded". That occurred in June 2006. I have been provided no credible argument upon which a contrary decision could be reached.

[18] Based on the above analysis, the motion judge found Edward's claim for a declaration that he is a member of Soil and Sea was statute-barred. That claim was quashed.

Issues

[19] In their Notice of Appeal filed February 26, 2024, the appellants advance a single ground of appeal:

> The Learned Motions Judge erred by dismissing Edward Peill's claim for membership in Soil and Sea Co-op Limited under the *Limitation of Actions Act*, SNS, 2014, c. 35, after concluding that there were material disputes of fact regarding whether or not the process prescribed by the *Co-operative Associations Act* RSNS 1989, c. 98 to exclude Edward Peill from membership was followed.

[20] In their factum, the appellants set out the same single issue:

> 39. The appeal raises a single issue: did the Motion Judge err by holding that Edward's claim for membership in Soil and Sea is limitation barred after concluding that there were material disputes of fact about whether or not the statutory process to exclude Edward from membership was followed?

[21] However, in the course of their subsequent written and oral argument, the appellants, in my view, went beyond the discrete issue set out in the Notice of Appeal and expanded upon their allegation of error.

[22] Civil Procedure Rule 90.11(1) provides:

> **(1)** An appellant may not rely on any ground of appeal not specified in the notice, unless the Court of Appeal or a judge of the Court of Appeal permits otherwise.

[23] The appellants did not seek permission to advance arguments on appeal other than as stated in the Notice of Appeal. As such, I intend to address only the ground pled.

Standard of Review

[24] The standard of review is not in issue. In *Burton Canada Company v. Coady*, 2013 NSCA 95, Justice Saunders wrote:

> [19] The standard of review applicable to summary judgment motions in Nova Scotia is settled law. The once favoured threshold inquiry as to whether the impugned order under appeal did or did not have a terminating affect, is now extinct. There is only one standard of review. We will not intervene unless wrong principles of law were applied or, insofar as the judge was exercising a discretion, a patent injustice would result. (citations omitted)

[25] See also *Risley v. MacDonald*, 2022 NSCA 76 at para. 21; *Arguson Projects Inc. v. Gil-Son Construction Limited*, 2023 NSCA 72 at para. 28, and *Wright v. Radcliffe*, 2024 NSCA 77 at para. 30.

Analysis

[26] Before addressing the appellants' argument, it is important to provide clarification regarding the test to be applied to a summary judgment motion where a limitations issue is raised. There has been some suggestion that this Court's decision in *Shannex* has supplanted or modified the two-step analysis in *Milbury*. That is not the case.

[27] *Shannex* was not a limitations matter. The principles outlined therein did not modify *Milbury* in anyway. The motion judge was correct to consider *Shannex* when assessing if there was a genuine issue of material fact regarding whether

Edward's share had been lawfully revoked. However, it was the principles in *Milbury* that governed her consideration of whether there was a genuine issue of material fact regarding the expiry of the limitation period.

[28] In their factum, the appellants set out the following concise overview of the appeal:

> 1. There cannot be summary judgment when there are material facts in dispute.
>
> 2. Edward, David and Kathi Peill are embroiled in a dispute with their brother Peter Peill over the ownership of the family's co-operative; Soil and Sea Co-op Limited.
>
> 3. At the heart of this appeal is the factual question of whether, back in 2006, Edward was legally stripped of his property interest in the co-operative. Edward and David say that he was not. Peter says he was.
>
> 4. In reciprocating summary judgement (*sic*) motions, Edward asked the Supreme Court of Nova Scotia to declare his interest intact, while Peter sought an order that Edward had no interest, or alternatively, that his claim was past the limitation date.
>
> 5. If Edward's interest is found to be intact, then he never lost it. There would be no limitation period because Edward never lost his property.
>
> 6. In denying Edward's motion, the Motion Judge concluded that the question of Edward's interest in the co-operative (or lack thereof) was a genuine issue of material fact requiring a trial. Yet, in allowing Peter's summary judgement (*sic*) motion, the Motion Judge concluded that this same factual question was not a genuine issue of material fact for trial.
>
> 7. The Appellants submit that this incongruency is the product of legal error and results in a patent injustice, and ask this Court to allow the appeal.

[29] In my view, the appellants' argument is based on two untenable propositions.

[30] Firstly, there is no incongruity in the motion judge's findings that there was a genuine issue of material fact in the motions relating to the validity of Edward's share revocation and none in the limitations motion. That is because the focus was different in each. What is a material fact in dispute in one motion does not

automatically equate to a material fact in dispute in another. The Peill respondents put it nicely in their factum:

> 37. It is trite law that summary judgment on the evidence cannot issue where there exists a genuine issue of material fact. However, that Edward disputes the validity of the process by which his membership was revoked is not material to a determination of whether that claim is statute-barred.
>
> . . .
>
> 41. In arguing that the dispute about the process to revoke Edward's membership amounts to a dispute "material to the limitations issue", the Appellants conflate arguments on the merits of the underlying claim with arguments about whether the claim is statute-barred.
>
> (Footnotes omitted)

[31] Secondly, the appellants suggest that prior to determining whether the limitation period had expired, the motion judge was required to assess whether Edward's share was properly revoked. They assert that if it was never revoked, then it is still his, he has not been deprived of his property, and as such, the limitation period has never started to run.

[32] In her analysis, the motion judge found that the limitation period had begun to run on June 7, 2006. Specifically, regardless of whether Edward's share was properly revoked, the denial of his status by Soil and Sea was a loss sufficient to start the limitation clock. Further, a claim that Edward's share was not properly revoked arose in 2006, meaning that claim would be statute-barred. I am satisfied the motion judge did not err in her approach.

Disposition

[33] For the reasons set out above, I would dismiss the appeal. I would order the appellants pay costs on appeal of $1,500.00 to the respondent Soil and Sea Co-op Limited and $1,500.00 to the respondents Peter Peill, Lyndhurst Farms Limited, Minas Seed Co-operative Limited and 3324949 Nova Scotia Limited.

Bourgeois, J.A.

Concurred in:

Fichaud, J.A.

Derrick, J.A.