

SUPREME COURT OF NOVA SCOTIA

Citation: *Lohnes v. Kohltech International Limited*, 2026 NSSC 28

Date: 20260123

Docket: Hfx No. 515269

Registry: Halifax

Between:

Matthew Lohnes

Plaintiff

and

Kohltech International Limited, a body corporate

Defendant

and

Stewiacke Hardware and Building Supplies Limited (c.o.b. as Stewiacke Home
Hardware Building Centre) and Shane Clements

Third Parties

DECISION ON SUMMARY JUDGMENT FOR LIMITATION

Judge: The Honourable Justice Scott C. Norton

Heard: January 14, 2026, in Halifax, Nova Scotia

Decision: January 23, 2026

Counsel: Aaron Connolly, for the Plaintiff
Andrew Sowerby, for the Defendant

By the Court:

Introduction

[1] The defendant moves for an order for partial summary judgment on evidence and the dismissal of the plaintiff's claim in negligence with respect to the design, manufacture and installation of doors and windows for the plaintiff's newly constructed home.

[2] In its defence, Kohltech International Limited ("Kohltech") pleads that the action for negligence is out of time under the provisions of the *Limitations of Actions Act*, SNS 2014, c. 35 ("LAA"). It is this issue that frames the motion for summary judgment. The plaintiff, Matthew Lohnes ("Lohnes"), also claims against the defendant for breach of warranty. That claim is not in issue on the motion. The third parties did not participate in the motion.

[3] The plaintiff does not contest Kohltech's position that there are no disputes of material fact, nor that the challenged pleading requires a determination of a question of law. Mr. Lohnes asserts that, due to Kohltech's ongoing assurances to service and remedy its deficient products, he has established a real chance of success on the issue of discoverability with respect to the limitation period.

The parties also agree that the claims relating to Kohltech's negligence in servicing the products after June 2, 2020, are not time barred by the LAA.

Background

[4] The plaintiff filed a Notice of Action and Statement of Claim on June 2, 2022, alleging breach of warranty and negligence against Kohltech in relation to door and window products installed in new home construction in Porter's Lake, Nova Scotia.

[5] Kohltech filed a Notice of Defence and Statement of Defence on November 15, 2022, alleging, *inter alia*, the provisions of the LAA and that the action for negligence was barred by the passage of time.

[6] Kohltech's products were installed in late 2010 or early 2011. Mr. Lohnes complained to Kohltech about water ingress issues through the windows and doors in November 2011. The issues persisted until 2017 at which time Kohltech agreed to replace the windows and doors. The reinstallation work was done between 2017

and 2019. Kohltech provided assurances to Mr. Lohnes between 2017 and 2021 that Kohltech would remedy the water ingress issues. Kohltech ceased any additional servicing of its products around May 2021. Water ingress issues allegedly continued after this date.

Law and Analysis

[7] The parties agree on the law that is applicable to this motion. It is well known and has been repeatedly stated. Summary judgment on evidence is governed by *Civil Procedure Rule* 13.04. The test is that set out by Justice Fichaud in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, at paras. 33-34. There are four sequential questions to be answered on the motion:

1. Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?
2. If not, does the challenged pleading require the determination of a question of law?
3. If the answers to the above are No and Yes respectively, does the challenged pleading have a real chance of success?
4. If the answer to #3 is Yes, leaving only an issue of law with a real chance of success, then, under Rule 13.04(6)(a): Should the judge exercise the “discretion” to finally determine the issue of law?

[8] The parties agree that the answer to question 1 is “No” and the answer to question 2 is “Yes”. The Court must then determine whether the claim has a “real chance of success”. The respondent on the motion (here the plaintiff) has the onus to establish that their pleading has a real chance of success.

[9] Under the LAA, the claimant has the burden of proving that the pleading was brought within two years from the day on which the claim is “discovered” [Section 9(1)].

[10] In *Nova Scotia Home for Coloured Children v. Milbury*, 2007 NSCA 52, the Court of Appeal described the approach to summary judgment on the evidence in the context of a limitations defence, based on the former *Limitation of Actions Act*, which was in effect at the time. At paras. 20 and 23-24:

[20] Did the defendants establish that there are no genuine issues of fact on the question of whether the plaintiff’s action is statute barred because the limitation period has expired? ...

...

[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:

...

[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.

[Emphasis added]

[11] The LAA prescribes the timeframe in which a person may bring a claim in Nova Scotia. Section 8(1)(a) sets a basic limitation period of two years from the date a claim is “discovered”:

8 (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of

- (a) two years from the day on which the claim is discovered; and
- (b) fifteen years from the day on which the act or omission on which the claim is based occurred.

[12] The LAA further sets out the test for when a claim is “discovered” for the purposes of a limitation period:

8 (2) A claim is discovered on the day on which the claimant first knew or ought reasonably 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.

[13] The parties agree that based on the date of filing (June 2, 2022), Mr. Lohnes discovered or ought to have discovered the claim on June 2, 2020, at the latest.

[14] The parties also agree that the provisions of s. 8(2)(a), (b), and (c) are not in issue on this motion. The motion rests on the interpretation of s-s. (d) and when Mr. Lohnes knew or ought reasonably to have known that the loss and damage was sufficiently serious to warrant a proceeding.

Shannex Question 1

[15] The material facts are all contained in documentary disclosure (email correspondence), were confirmed in Mr. Lohnes' discovery evidence, and are not disputed between the parties:

1. The Kohltech doors and windows were installed at the property in either the end of 2010 or the beginning of 2011 (as confirmed by Mr. Lohnes at discovery).
2. Mr. Lohnes knew and had concerns about water infiltration through the Kohltech doors and windows in 2011.
3. Mr. Lohnes contacted Kohltech about the water infiltration and Kohltech made warranty repairs to the doors and windows in 2011.
4. By 2016, Mr. Lohnes knew his house had been delayed four years and repairs had not been working.
5. On March 8, 2017, Mr. Lohnes wrote in an email to Kevin Pelley asking about replacement of doors and windows at his property and stated "am I going to have to put the brakes on this project again due to the windows and doors?"
6. On May 30, 2017, Mr. Lohnes wrote in an email to Kevin Pelley: "I have other contractors waiting and items bought that can't be delivered as the house is too damp, some items there are getting damaged now so this has to be done..."
7. In the same May 30, 2017, email Mr. Lohnes noted, "So this is now costing me big time, my daughter didn't start school this coming September as I wanted to be in the house so she is in 1 school, but all this due to already big delays stemming from these windows".
8. On July 25, 2017, Mr. Lohnes wrote in an email: "the longer the stone sits without the proper supports the more issues will come from this, the last thing we need is to have to restore the whole house as I'm already seeing stress cracks from little no support".

And: "My electrical inspection passed and next is plumbing inspection, after that the project will again be put on hold due to the windows and doors, and I'll be

then looking for financial compensation as it's already costing me huge as I've put this project on hold a few times because windows..."

9. On October 16, 2017, Mr. Lohnes emailed Kevin Pelley outlining two options and stating he "needs this rectified asap with winter coming":

"Option A you finish replacing windows and stone work in a timely manner, complete the lake side before winter and road side in spring

Option B I finish my house with new brand windows and secure for winter, this will then follow with legal against yourself for damaging my house and abandoning a multi million dollar house before winter fully exposed to further damaging the custom stone".
10. On October 18, 2017, Mr. Lohnes wrote in an email: "the windows were out of adjustment and have also failed in many areas like the seals, and finishing lips inside even Paul said final QA was poor on them as there was no finishing done on the internal seams then he added a sil too, there was gaps all around the windows where the rubber wasn't even touching the sides, so the first level of weather protection is failing to relying on secondary rubber and when wind hits that then fails as it's not suppose to be the primary weather proofing seal, so that is a fail of the window in 2 areas, ok let's look at the rusting stainless steel (which I paid extra for) hinges? Or flaking paint or the fact that the doors were actually fully rotten?"
11. On the same date, Mr. Lohnes wrote: "I'm 5 years into a project house that your windows have leaked since day 1 and mods and band aids and stuff have been done but true issue is not cone..." and "Your windows failed in many areas. The install was wrong. This is homeowners issue? No it's not."
12. Kohltech replaced some of the doors and windows at the property beginning in 2017. The doors at the back of the property were replaced by January 2018.
13. On December 10, 2019, Mr. Lohnes emailed Kevin Pelley the following: "Well the doors are leaking and a couple of the big windows too it's then going down the wall inside the floors lower. I'm going to cancel the drywall company now again. I'm at my end with this as it has cost me huge money and time to allow you to fix this and yet still the doors are not adjusted and stuff and water all thru the house. I have videos it's the doors failing not the install on most. There is 1 I think the install is the cause too. I now have cracked stone from having the load bearing stones removed for so long the first time..."
14. On December 23, 2019, Mr. Lohnes sent videos via email to Kevin Pelley of the leaking doors and windows The email stated: "also the doors themselves are failing swelling which is leading to the core going to rot again plus the coatings rubbed off and the seals all chewed apart so these door slabs need to be replaced and the seals again".
15. On February 11, 2020, Mr. Lohnes emailed Kevin Pelley the following:

Looking for an update on the door issues.

- Front door replacement
- Stonework not completed
- Repointing of stones due to this repair taking so long
- Water ingress when wind blows towards the doors and windows on lake side
- Wearing and failing components again

I have since December cancelled my dry wall contractors again.

I had all the kitchen appliances delivered now as the time line was fitting that the doors wouldn't leak.

The adjustments took forever and now the doors and seals are failing again there is tears in the seals and splitting of the doors. The delays in my house are out of control because of these issues almost zero urgency on this.

I'm paying 25,000\$ a year in taxes on a property I can't use as I can't finish it with water coming thru the doors and windows. I'm ready to dry wall the top floor and the main floor, all this water dampness is not helping anything in this house.

I have power bills on a property I can't use but I have to heat, I'm paying for repairs to other things now due to the water ingress.

3 years ago you said you were going to look after this mess and yet here I am still pushing for you to do that.

3 years ago I was fed up with the water test delays and zero urgency of fixing the issues and the excuses I was given since day 1 when the windows failed in 2011-12, 8 years later, 2000\$ in taxes, 100,000\$ in repairs, 30,000\$ in power bills, still cannot finish my house.

When I Bought the top of the line windows estate serious with the added SS hardware and stuff and lifetime warranty I never in my life thought I would be going thru this 8 years later.

All the money I invested into my house to have just sitting every day is foolish.

Shannex Question 2

[16] The parties agree that the issue of whether the claim of negligence is stature-barred requires the determination of a question of law.

Shannex Question 3

[17] Moving to the third question under the *Shannex* test, Kohltech says that Mr. Lohnes' claim has no real chance of success. It is at this stage of the test that limitation defences are given effect on summary judgment motions. The burden

shifts to Mr. Lohnes to demonstrate that the claim nonetheless has a real chance of success based on the undisputed facts.

[18] Mr. Lohnes submits that, due to Kohltech's commitment to address the water ingress issues under its express warranty, Kohltech's negligence was not "sufficiently serious" to "warrant" a proceeding until Kohltech ceased additional remedial work on its products.

[19] Mr. Lohnes relies on the decision of the Ontario Court of Appeal in *Presley v. Van Dusen*, 2019 ONCA 66. There, the court found that the trial court had not considered s. 5(1)(a)(iv) of the Ontario *Limitations Act* that stated:

5 (1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

...

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; ...

[20] In *Presley* the appellants were homeowners, who retained the respondent contractor to install a septic system in their home in 2010. The homeowners noticed a smell from the system in 2011, which the contractor initially appeared to have fixed. Problems were ongoing, and the contractor and homeowners were unable to arrange time for the contractor to fix the problem. In 2015, the homeowners called the local health unit. Subsequent inspection led to a finding that the septic system was condemned, and the health unit issued an Order to Comply to the homeowners. They brought a Small Claims Court action against contractor and the health unit who claimed the action was statute-barred. The Court of Appeal held that the homeowners did not have knowledge to proceed against the health unit, until they had knowledge necessary to proceed against the contractor.

[21] At para. 19, the Court in *Presley* cited with approval the principles stated in *Presidential MSH Corporation v. Marr Foster & Co. LLP*, 2017 ONCA 325:

[19] First, at para. 20:

[A] legal proceeding against an expert professional may not be appropriate if the claim arose out of the professional's alleged wrongdoing but may be resolved by the professional himself or herself without recourse to the courts, rendering the proceeding unnecessary.

[20] Second, at para. 26:

Resort to legal action may be “inappropriate” in cases where the plaintiff is relying on the superior knowledge and expertise of the defendant, which often, although not exclusively, occurs in a professional relationship. Conversely, the mere existence of such a relationship may not be enough to render legal proceedings inappropriate, particularly where the defendant, to the knowledge of the plaintiff, is not engaged in good faith efforts to right the wrong it caused. The defendant’s ameliorative efforts and the plaintiff’s reasonable reliance on such efforts to remedy its loss are what may render the proceeding premature.

[Emphasis added]

[22] The court in *Presley* found that the appellant homeowners had contracted with the respondent contractor because of his special training and expertise. While the respondents argued the contractor may not qualify as “an expert professional”, the court found that there can be no question he did have expertise upon which the appellants reasonably relied. The court found that the appellants reasonably relied on the assurances of the contractor that led them to a reasonable belief that the problems could be remedied without cost and without any need to resort to the courts.

[23] Mr. Lohnes says that s. 5(1)(a)(iv) has the same meaning of s. 8(2)(d) in Nova Scotia and therefor the result in *Presley* should be the same here.

[24] He refers to my decision in *Install-A-Floor Limited v. The Roy Building Limited*, 2022 NSSC 67, where I discussed the differences in the language of the two provisions:

[36] The Roy argues that a plain language reading of these two provisions demonstrates that they are distinct. Subparagraph 5(1)(a)(iv) of the Ontario Act asks if a proceeding is “an appropriate remedy.” Comparatively, paragraph 8(2)(d) of the LOAA asks about the seriousness of the injury, loss or damage alleged. The former is a question of timing: it is not appropriate to commence an action if you are not yet able to under an agreement. The latter is not concerned with time, but rather the gravity of the injury: the phrase “sufficiently serious to warrant a proceeding” suggests that one discovers the claim the moment it is apparent that the loss is serious enough to warrant pursuing by legal means. LOAA paragraph 8(2)(d), does not ask about whether it is appropriate to file at the time of discovery or not. It is simply concerned with whether the size of a potential claim can be ascertained. Whether the proceeding can be filed on that day or sometime later is not relevant.

[37] In the context of a contractual dispute involving an agreed upon resolution process, when is a loss “sufficiently serious” to “warrant a proceeding”? While the language employed in these two acts is different, the purpose appears to be the

same: that a claim is only discovered once it is known that the loss warrants a proceeding.

[38] The word “warrant”, as a verb, is defined by *The Canadian Oxford Paperback Dictionary* (Donn Mills: Oxford University Press, 2000), page 1188, as meaning:

Justify; make necessary or appropriate in the circumstances

[Emphasis added]

[39] The effect is also the same: there must be a reasonable basis to believe that a proceeding could be commenced to address the loss.

[40] Had Floors Plus commenced an action or filed a Notice of Arbitration on June 21, 2019, the Roy could have obtained a stay of the proceeding on the basis that Floors Plus had agreed to be bound by the dispute resolution process in Part 8 of the Contract. Thus, a proceeding was not “warranted” or “appropriate” until Floors Plus knew or ought to have known that the Roy was not going to comply with the mediation process.

[25] *Floors Plus* was decided based on an express contractual agreement to be bound by a dispute resolution process which made bringing the action unwarranted and inappropriate until that resolution process was determined.

[26] The determination of whether a claim is discoverable is highly contextual and based on the facts of each case (*Presidential, supra*, at para. 18).

[27] In *Presley*, the court found that there were assurances by the contractor that the problem could be remedied without cost. Here, while Kohltech agreed to provide repair to the doors and windows (which were under warranty), no assurances were made with respect to the consequential damages that Mr. Lohnes had incurred. It would be illogical and inconsistent with the law on estoppel discussed below to find that a seller that engages in warranty work has somehow suspended the operation of the LAA.

[28] On October 12, 2017, Mr. Lohnes sent an email to Kohltech stating:

I disagree with most of your findings and happy to proceed to court if this is how it's going to be.

...

So after years of messing around with my house and me being patient with your processes and my house torn apart before winter now you inform me of this, nice tactic and I'll forward this onto my lawyers and my other professionals reports will be following which state the issues involved, and causes.

Sorry it went this way but happy I trusted you folks to do the right thing and got screwed.

McInnes Cooper is my law firm

[Emphasis added]

[29] On February 11, 2020, Mr. Lohnes wrote to Kohltech detailing consequential damages totalling over \$330,000 incurred over the nine years from the installation of the windows and doors. Mr. Lohnes was not seeking just to have his windows and doors fixed but to recover these consequential damages.

[30] On discovery examination on January 10, 2024, Mr. Lohnes testified:

Q. So at this point in October of 2017, I mean, you know that there are losses due to the delay in getting this house complete, correct?

A. That's correct.

Q. And you thought that this was due to something that Kohltech did or didn't do, right?

A. That's correct.

Q. So, it could have been either the installation of the products, or the products' design themselves, or their suitability for their application, right?

A. Not either or. It's a blend of both.

Q. Right. Okay. Got 'ya.

A. That's correct.

Q. Yeah. And you also had concerns about the repairs and the investigations that Kohltech had carried out, right?

A. That's correct.

Q. And at that point in 2017, in your mind it was serious enough for you to either forward it to your lawyers, or at least consider forwarding it to lawyers, right?

A. Yes, that's correct.

[31] With respect, the evidence in this case overwhelmingly supports the conclusion that Mr. Lohnes knew that the claim was sufficiently serious to warrant a proceeding. Indeed, he had threatened to do so in October 2017.

[32] The reasoning of the Ontario Court of Appeal in *Presley* is distinguishable on the facts of this case. Here, Mr. Lohnes purchased the windows and doors through Stewiacke Home Hardware and they were installed by a third party. There is no

reference in his affidavit evidence that he relied on the expertise of Kohltech or that such expertise was unique to Kohltech.

[33] Further, the court in *Presley* noted that the legislative purpose of s. 5(1)(a)(iv) was to deter needless litigation. Here, none of the assurances made by Kohltech with respect to repairing or replacing the windows and doors would have rendered litigation needless with respect to the consequential damages. It is in respect to these damages that the provisions of s. 8(2)(d) must be applied. It is these damages that Mr. Lohnes acknowledged were serious enough in his mind to consider forwarding it to his lawyers.

[34] I am satisfied that on the circumstances of this case, Mr. Lohnes knew and a person in his situation would reasonably have known that a proceeding would be an appropriate means to seek a remedy for the consequential damages allegedly incurred prior to June 2, 2020.

[35] As I held in *Wright v. Ratcliffe*, 2023 NSSC 287, aff'd 2024 NSCA 77, at paras. 57-59:

[57] ... The time limitation is a creation of statute. There is no provision in the statute that allows for the limitation period to be waived by estoppel. Section 17 of the LAA is clear that concealment is only relevant with respect to the ultimate limitation period under s. 8(2)(b) and not the basic limitation period of s.8(2)(a).

[58] Section 20 of the LAA deals with acknowledgments and provides for the re-commencement of the limitation period at the time of the acknowledgement. However, there is no evidence or allegation that Mr. Ratcliffe made any acknowledgment as defined by the LAA at the June 27, 2019, meeting.

[59] Further, there is no evidence or allegation that Mr. Ratcliffe represented at the June 27, 2019, meeting that he was waiving any limitation period or that both parties were operating with a common, mistaken view as to when the limitation period would expire. See *Ryan v. Moore*, 2005 SCC 38.

[36] Here, like in *Wright*, there is no evidence of an acknowledgement or express waiver of a limitation period or common mistake as to the expiry of the limitation period.

Conclusion

[37] On the undisputed facts, Mr. Lohnes has not satisfied me that his claims have a reasonable chance of success. The motion for partial summary judgment is granted.

The claims by the plaintiff against the defendant in negligence for acts or omissions prior to June 2, 2020, are dismissed.

Norton, J.