

## Law Note - Law Suits that Have No Chance of Success

June 30, 2008

This appeal is from an application for summary judgment. The summary judgment rule serves an important purpose in the civil litigation system. It prevents claims or defences that have no chance of success from proceeding to trial. [Trial judges hearing] unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and on the justice system. It is essential to the proper operation of the justice system and beneficial to the parties that claims that have no chance of success be weeded out at an early stage. Conversely, it is essential to justice that claims disclosing real issues that may be successful proceed to trial.

For this reason, the bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is no genuine issue of material fact requiring trial... .The defendant must prove this; it cannot rely on mere allegations or the pleadings... . If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal... . Each side must put its best foot forward with respect to the existence or non-existence of material issues to be tried... . The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts... .

[In this case] we are of the view that, assuming that the claims disclosed triable issues and that standing could be established, the claims are barred by operation of the *Limitation of Actions Act*. There is no genuine issue for trial. Were the action allowed to proceed to trial, it would surely fail on this ground. Accordingly, we agree with the chambers judge that it must be struck out, except for the claim for an accounting of the proceeds of sale, which is a continuing claim and not caught by the *Limitation of Actions Act*.

*Law Notes: This section offers a brief note or comment on an area or point of law that may be of interest.*

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*Ed.: In a recently decided case, (Canada (Attorney General) v. Lameman (Alta.)), the Supreme Court of Canada, in the context of examining a summary judgment, provides a lucid summary about how claims or defences that have no chance of success should be treated. The Court wrote the above.*