

2011 CarswellOnt 12149

Lopez v. Frias

Lopez v Frias et al

Ontario Superior Court of Justice

Spence J.

Judgment: April 21, 2011

Docket: Toronto 06-CV-317959SR

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[Proceedings: Leave to appeal refused, 2011 ONSC 5939](#) (Ont. Div. Ct.)

Counsel: Ira E. Book, for Plaintiff, Virginia Lopez

Subject: Civil Practice and Procedure; Corporate and Commercial; Property

Civil practice and procedure.

Real property.

***Spence J.:***

1 Plaintiff moves to amend. Defendant opposes on the basis that the proposed amendments are statute barred.

2 In her cross-exam on her Affidavit of February 6/07 (in which she said her husband may have conspired to register the mortgage without her consent), held on 16 Feb 07, Mrs. Frias stated at question 487 that she thought her husband had signed the mortgage (ie in her name). She did not say why she thought so. It was in her interest to support the view that she had not signed. A reasonable person with the abilities and in the circumstances of the Plaintiff might well have had reason to suspect that that ought to be so but to initiate a claim for fraud solely on that basis would be perilous. So it is not clear that the Plaintiff knew at that time or ought to have known that (per S 5(1)(b) of the Act) that a proceeding would be the appropriate means to seek to remedy it. So the Limitation Period has not expired.

3 While the pleadings in respect to conspiracy is not detailed in paragraphs 24 and 25 of the proposed amended statement of claim with all the particulars that are expected, in the circumstances it cannot be expected that the Plaintiff would be able to plead more particulars as, in the nature of the matter, they would likely be known only to the Defendants. It appears that the allegations are specific enough to allow the Defendants to

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plead to them in the Statement of Defence.

4 Accordingly, the motion for leave to amend is granted. Costs to the Plaintiff of \$7,164.20 payable in 30 days.

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