

COURT OF APPEAL FOR ONTARIO

CITATION: Natario v. Rodriguez, 2015 ONCA 227

DATE: 20150402

DOCKET: C59864

Gillese, van Rensburg and Pardu JJ.A.

BETWEEN

Maria Natario

Plaintiff (Respondent)

and

Manuel Rodriguez and Lucia Goncalves

Defendants (Appellants)

K. Sherkin and C. Ryan Wozniak, for the appellants

P. Michael Rotondo and Vahe Avagyan, for the respondent

Heard: April 1, 2015

On appeal from the order of Justice Howden of the Superior Court of Justice,
dated December 12, 2014.

APPEAL BOOK ENDORSEMENT

[1] The plaintiff (“respondent”) commenced an action against the defendants (“appellants”) seeking damages for a fall she allegedly sustained in the appellants’ premises. The action was framed in negligence and for breach of the *Occupier’s Liability Act*.

[2] By order dated December 10, 2014 (the “Order”), among other things, the respondent was given leave to amend her statement of claim in this proceeding.

[3] The appellants appeal to this court, claiming that the amendment is outside the limitation period and that the Order has the effect of eliminating their defence to it under the *Limitations Act, 2002*. They say that the impugned aspect of the Order is final and, therefore, they have the right to appeal to this court.

[4] We do not agree.

[5] In order to accept the appellants’ argument, we would have to accept that the impugned amendments constitute a new cause of action. We do not accept that.

[6] In granting leave, the motion judge found that the amendment arose from the same facts, namely a fall in the appellants’ premises which engaged the occupier’s duty of liability. He explained that the statement of claim alleged facts in support of an occupier’s liability action and that the amendment arose from the same facts but simply alleged an alternative scenario – a fall through floor boards rather than down stairs. We see no error in the motion judge’s analysis or conclusion and agree that the amendment did not add a cause of action.

[7] This court’s jurisprudence establishes that an order granting leave to amend paragraphs in a statement of claim is interlocutory: *Merling v. Southam Inc.* (2000), 42 C.P.C. (4th) 26, (Ont. C.A.), at para. 2.

[8] As the Order is interlocutory in nature, the appeal lies to the Divisional Court with leave of a judge of the Superior Court of Justice: s. 19(1)(b) of the *Courts of Justice Act*.

[9] Accordingly, the appeal is quashed for want of jurisdiction with costs to the respondent fixed at \$4,145.00, all inclusive.