

# Baccilieri v. Tomasone

Between

Pasquale Baccilieri, Antonietta Baccilieri and Letizia Homes Limited, plaintiffs (appellants), and  
John Tomasone, Luigi Fortini, Stel-Van Homes Ltd. and Innisbrook Developments Inc., defendants (respondents)

[1999] O.J. No. 2336

Court File No. 98-CV-158044 and Court of Appeal File No. C31137

**Ontario Court of Appeal  
Toronto, Ontario  
Labrosse, Laskin and O'Connor JJ.A.**

June 17, 1999.  
(2 pp.)

*Practice — Pleadings — Striking out pleadings — Statement of claim.*

Appeal by the plaintiffs Baccilieri from an order striking out a part of a proposed statement of claim respecting waiver and promissory estoppel.

**HELD:** Appeal allowed. Since there was an absence of direct authority, the Court was not prepared to strike that part of the claim at this stage.

**Counsel:**

Keith M. Landy, for the plaintiffs/appellants.  
No counsel mentioned for the defendants (respondents).

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The judgment of the Court was delivered by

¶ 1 **LABROSSE J.A.** (endorsement):— It would have been preferable if the motion below on this issue had been dealt with on the basis of proper pleadings.

¶ 2 In light of the absence of direct authority, we are not persuaded that waiver and promissory estoppel can never succeed on the facts contained in the proposed pleadings.

¶ 3 Accordingly, at this stage we are not prepared to strike that fact of the clause.

¶ 4 The appeal is allowed. Cost of the appeal and the motion below to be in the cause of the will.

LABROSSE J.A.

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