SUPREME COURT OF NOVA SCOTIA

Citation: Kennedy v Hewlett Packard (CANADA) Co., 2011 NSSC 502

Date: 20111207
Docket: Syd. No. 354720
Registry: Sydney

Between:

April Dawn Kennedy

Plaintiff

v.

Hewlett Packard (CANADA) CO.
Hewlett Packard (CANADA) CIE.

Defendant

Judge:	The Honourable Justice Patrick J. Murray
Heard:	October 13, 2011
Final Written Submissions:	November 3, 2011
Written Decision:	December 7, 2011
Counsel:	Mr. Kennedy (in person) for Plaintiff (spouse) Ms. Katie Roebothan for Respondent

By the Court:

THE FACTS:

[1] The Plaintiff in this matter is April Dawn Kennedy. On August 30, 2011, she filed a Notice of Action, Statement of Claim, against the Defendant Hewlett Packard, who apparently was her employer.

[2] That Statement of Claim consisted of five (5) paragraphs of which virtually all allege discrimination by the Defendant against her as Plaintiff.

[3] The Defendant states that the Plaintiff's claim, discloses no cause of action at common law and, for this reason, must be set aside pursuant to Civil Procedure Rule 13.03(1)(a).

[4] The Defendant therefore filed a Motion for Summary Judgment on the pleadings on September 20, 2011. The Defendant consulted with the Plaintiff prior to filing the motion and effected proper service upon her.

[5] The Plaintiff is not represented by Counsel. Instead she is represented by her husband, Ambrose Kennedy, with her consent.

[6] The Plaintiff did not file a brief in response to the Defendant's Motion. The Defendant's brief in support of its motion was filed in accordance with the Rules.

[7] In his submission on behalf of the Plaintiff, Mr. Kennedy argued that his wife's claim was not based solely on discrimination but also on a "medical issue" related, apparently, to work conditions. The Court advised Mr. Kennedy that the pleadings themselves must disclose a valid cause of action.

[8] Mr. Kennedy sought to amend his pleadings at the Summary Judgment hearing. If able to do so, the Plaintiff's claim, he stated, would be "much better articulated." No notice or indication of any amendment had been given to the Defendant despite the Plaintiff having been served personally with the Notice of Motion 3-4 weeks before the motion being heard on October 13, 2011.

[9] In view of this, I decided to allow both parties to make submissions on the motion for summary judgement, without an amendment. In reserving my decision,

I further allowed each party the opportunity to make further submissions in writing, given that Mrs. Kennedy was not represented by legal counsel.

[10] Subsequent to the hearing, the Plaintiff submitted an amended Statement of Claim by removing four (4) of the five (5) paragraphs originally submitted and adding two (2) more. In the result, the amended statement of claim, should I allow it, would consist of the following three (3) paragraphs:

> 5) The Plaintiff claims a Claim action because Mrs. Kennedy has medical notes from both her doctors and also Manualife's doctor. The fact is that Mrs. Kennedy has has kept up to date all records. (Typed as shown)
>
> 1.) The Plaintiff claims a Claim action because Mrs. Kennedy who was born with bipolar 2, has developed more than one anxiety disorders at HP, that will not ever let her return to work.
>
> 2.) The Plaintiff would like you to consider the attached medical information as evidence.

[11] The Defendant through their solicitor, Ms. Roebothom asked for and was granted additional time to respond, with further submissions, to the Amended Statement of Claim, as proposed by the Plaintiff.

ISSUE:

[12] Is the Plaintiff entitled to Summary Judgment on the pleadings pursuant to Rule 13.03 of the *Nova Scotia Civil Procedure Rules*?

LAW AND ANALYSIS:

[13] First, with respect to the original Statement of Claim, the Plaintiff/ Respondent in her brief stated as follows: "My Lord, HP's lawyer was correct in regarding my claim numbers 1 through 4." The Defendant submitted case law authority that claims of discrimination are not a cause of action at common law (**Seneca College of Applied Arts & Technology v. Bhadauria** [1981] 2 S.C.R. 181 (SCC).

[14] In **Taylor v. Bank of Nova Scotia** 2005 O.J. No. 838, the Ontario Court of Appeal ruled that:

> "Discrimination claims do not give rise to a civil cause of action, but must be addressed by the Human Rights Commission."

[15] I agree with this proposition and would add that under the Human Rights Code of Nova Scotia, jurisdiction for human rights claims and ensuing complaints are vested in the Human Rights Commission pursuant to that Act and its

Regulations. (See Section 4 for definition of discrimination, as well as Sections 24(1) and 29(1) regarding administration and procedure.)

[16] Therefore, even had the Plaintiff not withdrawn its claim of discrimination (clauses 1 - 4) the Court would have set aside the claim as disclosing no cause of action under Section 13.03(1)(a) and as well it being a claim outside of this Court's jurisdiction under Rule 13.03(1)(b). Quite apart from those Rules, it would likely have also been dismissed as unsustainable under 13.03(1)(c). In view of my ruling however , that is unnecessary.

[17] I will proceed now to determine whether the amended statement of claim ought to be dismissed summarily. I will allow the amendments on the basis of Civil Procedure Rule 38.11.

SUMMARY JUDGMENT - AMENDED CLAIM

[18] Under Rule 13.03 a Statement of Claim must be set aside if it is deficient in any one of the following three ways:

> (a) It discloses no cause of action.
> (b) It makes a claim in the exclusive jurisdiction of another Court.
> (c) It is clearly unsustainable when read on it's own.

[19] A motion in this type of matter must be decided only on the pleading itself, in this case, the Statement of Claim, as amended.

[20] I will now consider each of the three (3) clauses in the Amended Statement of Claim to determine whether it discloses a cause of action or is clearly unsustainable when read on it's own.

[21] In the first (clause five (5)) the Plaintiff claims Mrs. Kennedy has medical notes from her doctor and Manulife's doctor and has kept up to date records.

> 5) The Plaintiff claims a Claim action because Mrs. Kennedy has medical notes from both her doctors and also Manualife's doctor. The fact is that Mrs. Kennedy has has kept up to date all records. (Typed as shown)

[22] It is plain that this clause alone discloses no cause of action.

[23] In the second clause, one (1) which was added by the Plaintiff, she claims that Mrs. Kennedy was born with bi-polar and has developed more than one anxiety disorder “at HP”, that will not let her ever return to work.

> 1.) The Plaintiff claims a Claim action because Mrs. Kennedy who was born with bipolar 2, has developed more than one anxiety disorders at HP, that will not ever let her return to work.

[24] Here there is a hint that the Plaintiff had been or perhaps now is an employee of the Defendant and something occurred at work that gives rise to her claim. It does not however provide any particulars or even whether the basis of the claim is that she developed an anxiety disorder at work.

[25] In the third clause two (2), the Plaintiff asks the Court to consider the medical evidence attached.

> 2.) The Plaintiff would like you to consider the attached medical information as evidence.

[26] Dealing with this clause, the Court is not at liberty to consider evidence on the motion as it is not a claim for summary Judgment on the evidence (pursuant to Rule 13.04). As stated I must consider the pleadings only, but may do so “at their

highest" meaning I may presume that all of the claims are true and can be proven. Even if this was a motion on the evidence, it must be submitted in the proper form, an affidavit, rather than merely attaching a document to the statement of claim, which was the case here.

[27] The Plaintiff's brief is very limited in its submissions. It merely states that it wishes to "proceed with this legal action based on my medical information that can be provided as proof."

[28] The Defendant in its brief states that the Amended Statement of Claim does not contain the elements of a cause of action. In my respectful view, I must agree with the Defendant. At best the amended Statement of Claim alleges the Plaintiff developed an anxiety disorder. One even has to assume this occurred while working with or for the Defendant, although such an inference is reasonable.

[29] The fundamental purpose of pleadings being properly drafted is to ensure the Defendant will know the case against it, including the material facts. This is in keeping with the Nova Scotia Civil Procedure Rules, to provide a just, speedy and efficient resolution of all matters.

[30] In the present case the pleadings as amended are deficient in that respect. The Defendant is left to speculate as to the type of Action being contemplated. The Court as well is given no idea as to the nature of the claim. It sounds like a wrongful dismissal claim, but could be a disability claim of some sort, or simply a personal injury claim based on environmental illness. It is incumbent also upon a Plaintiff to plead what remedies it is seeking, including damages, and any other type of relief. None of these are present here. In short, attempting to understand the Plaintiff's action is pure "guess work". The Defendant is under no obligation to undertake such a task.

[31] In rendering this decision I am mindful that Summary Judgment for the Defendant is a drastic remedy. It deprives the Plaintiff at an early stage, of a right of action.

[32] For this reason I allowed the Plaintiff's request, without a formal motion, to amend it's pleadings. The course of action the Plaintiff took was to no longer allege discrimination but instead allege that she developed an anxiety disorder.

There are no particulars given, and there is no causal connection to other facts alleged in support of her claim.

[33] In my view to be sustainable the Amended Statement of Claim must contain more than this bare assertion. In his brief, Mr. Kennedy stated “the environmental work conditions at HP are questionable”. This appeared in the brief, not the pleadings.

[34] The Statement of Claim is devoid of any particulars which might have included whether a duty of care was owed, whether there was a breach of that duty, whether this occurred through negligence or otherwise.

[35] I am aware also that the Plaintiffs are unrepresented but to expect a Defendant to properly respond to a claim so lacking in substance and detail would be unjust and not in keeping with the fundamental purpose of proper pleadings.

[36] In the result it is both plain and obvious that the Statement of Claim discloses no cause of action and further that the Claim as drafted is certain to fail.

It is defective for failing to disclose any material facts in support of the claim and I so find. (See **Hunt v Carrie Canada Inc**, 1992 SCR 959 (SCC)).

[37] Finally I would point out simply that, as stated in **Sherman and Giles**, 1994 137 2d page 52 (NSCA), the mere fact that a case is weak or will likely not succeed is no basis for striking out a Statement of Claim. The test therefore on the Defendant is an onerous one. I am satisfied on the balance of probabilities that the test has been met in the present case by the Defendant.

[38] Accordingly I grant the Defendant's motion for Summary Judgment and set aside the Statement of Claim. Normally, the Defendant would be entitled to costs. I am declining to make any order with respect to costs due to the financial circumstances of the Defendants as presented during the motion.

[39] Order accordingly.

J.