

CITATION: Chandrakumar v. Quality Allied Elevator, 2025 ONSC 1528
COURT FILE NO.: CV-23-00155
DATE: 20250307

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Ramesh Chandrakumar, Plaintiff/Responding Party

AND:

Quality Allied Elevator, Defendant/Moving Party

BEFORE: Justice J. Di Luca

COUNSEL: Dennis Ovsyannikov, Counsel for the Plaintiff

Faraz Kourangi, Counsel for the Defendant

HEARD: January 29, 2025

ENDORSEMENT

OVERVIEW

- [1] By way of background, this is a wrongful dismissal action. The plaintiff claims that the defendant wrongfully dismissed him, discriminated against him contrary to the *Human Rights Code*, failed to discharge its duty of good faith and fair dealing in the manner of dismissal and engaged in conduct amounting to an intentional infliction of nervous shock/mental distress.
- [2] The plaintiff seeks damages representing fourteen (14) months' notice, general damages for the *Human Rights Code* violation and the tort of intentional infliction of nervous shock, moral damages in relation to the alleged breach of good faith and fair dealing, and punitive damages relating to the alleged callous and malicious conduct of the defendant.
- [3] The defendant's position is that the plaintiff was terminated for just cause and wilful misconduct, disobedience and/or wilful neglect of duty.
- [4] The defendant brings a motion under Rules 25.11 and 25.06 of the *Rules of Civil Procedure* for an order striking out two portions of the plaintiff's statement of claim on the basis that the impugned pleadings: (a) may prejudice or delay the fair trial of this action; (b) are scandalous, frivolous and/or vexatious; and, (c) constitute evidence as opposed to a concise statement of material facts.
- [5] The plaintiff argues that the impugned pleadings are relevant to issues raised in the litigation including the nature of the workplace environment and the defendant's knowledge of workplace environment. The plaintiff asserts that the material facts pleaded are essentially similar acts that will be relied upon at trial to establish the main claims advanced. The plaintiff also argues that the impugned pleadings are relevant to punitive damages.

The Statement of Claim

- [6] The impugned portions of the statement of claim allege that other employees suffered injuries and were treated unfairly at the hands of the defendant and a common supervisor, Mr. Johnston. More specifically, the impugned portions, which are found in paragraphs 9 and 20 of the statement of claim state, state as follows:

9. During the last two and a half years of the plaintiff's employment with QAE it consistently compromised on safety and standards of service. This neglect of safety standards is evident by the fact that a serious accident occurred shortly after the termination of Mr. Chandrakumar: QAE allowed non-licensed technicians to provide services to its customers, as such on August 30, 2022, one of the employees of QAE suffered serious injuries (head injury and broken ribs) while performing services for QAE. This incident occurred as a result of unsafe practices encouraged by QAE, the injured employee was admitted to hospital (in the Intensive Care Unit).

20. The plaintiff was not the only technician who had issues with Mr. Johnston. In fact, shortly after the termination of the plaintiff's employment by QAE senior elevator technician Ryan L. resigned from his employment with QAE due to unfair/unacceptable treatment by his supervisor Mr. Johnston. Moreover, elevator technician Brian McKenna was unfairly suspended due to unfair/unacceptable treatment by his supervisor Mr. Johnston. [Emphasis added]

- [7] At paragraph 16 of the statement of claim, the plaintiff alleges that he sustained an injury on the job as a result of unsafe practice and/or a lack of assistance by the defendant. At paragraphs 11-19, the plaintiff alleges that he was exposed to a toxic work environment and mistreatment by his supervisor, Mr. Johnson.

LEGAL PRINCIPLES

- [8] Under Rule 25.11 of the *Rules*, all or part of a pleading may be struck where, *inter alia*, that pleading may prejudice or delay the fair trial of an action or where the pleading is scandalous, frivolous or vexatious. Motions under this rule should only be granted in the clearest of cases, see *Bansal v. 2343467 Ontario Inc.*, 2015 ONSC 1016 at para. 37.
- [9] The principle of proportionality found in Rule 1.04(1) of the *Rules* informs the balancing of the added complexity and potential prejudice of the impugned pleading versus the potential probative value of the alleged facts, see *Javitz v. BMO Nesbitt Burns Inc.*, 2011 ONSC 1332 at para. 29.
- [10] In *Carney Timber Company Inc. v. Padebinskas*, 2008 CanLII 63163 (ON SC), at para. 16, Strathy J. (as he then was), offered the following summary of principles that apply to motions under Rule 25.11:

[16] Rule 25 was examined by Madam Justice Epstein in *George v. Harris* (2000), 97 A.C.W.S. (3d) 225, [2000] O.J. No.1762 (S.C.J.), particularly at paras. 19-23 and by Madam Justice Molloy in *Brodie v. Thomson Kernaghan & Co.*, [2002] O.J. No. 1850, (2002), 27 B.L.R. (3d) 246 (S.C.J.), particularly at paras. 26-28. I would summarize their observations as follows:

- a fact that is relevant to a cause of action cannot be scandalous, frivolous or vexatious;
- a pleading that has no material facts is frivolous and vexatious;
- a pleading that is superfluous or can have no effect on the outcome of the action is scandalous, frivolous and vexatious;
- portions of a pleading that are irrelevant, argumentative, inserted only for colour or are bare allegations without material facts in support, will be struck as scandalous;
- a pleading that is purely argumentative will be struck out;
- a pleading that contains unfounded and inflammatory attacks on the integrity of a party, and speculative and unsupported allegations of defamation will be struck as scandalous and vexatious;
- a pleading may be struck on the ground that it may prejudice or delay the fair trial of the action where the probative value of the evidence would be outweighed by the time and effort involved and would seriously interfere with the fair and focused trial of the issues;
- striking a pleading on the ground that it may prejudice or delay the fair trial of an action is an exercise in discretion – the court must balance the added complexity of the pleading against the potential probative value of the facts alleged;
- pleadings that are replete with conclusions, expressions of opinion and contain irrelevant matters will be struck in their entirety; and
- pleadings that are clearly designed to use the judicial process for an improper purpose are an abuse of process – these include harassment and oppression of other parties by multifarious proceedings, the re-litigation of issues previously decided and the litigation of matters that have been concluded.

[17] The common thread of the criteria of Rule 25.11 is that the facts pleaded are irrelevant to the issues before the court, or are so prejudicial that the pleading or portion thereof should be struck in spite of their relevance. The Rule itself provides that the pleading may be struck with or without leave to amend, and in *Lysko v. Braley*, above, the Court of Appeal noted that in appropriate cases the court may strike the pleading entirely and order the party to deliver a fresh pleading. Leave to amend should be granted except in the clearest of cases: *Lido Industrial Products v. Exbar Properties Inc.*, [1988] O.J. No. 349, (1988), 28 O.A.C. 385 (Div. Ct.).

[11] Similar facts may be pleaded so long as the added complexity arising from the pleading does not outweigh the potential probative value, see *Allan Etherington v. National Hockey League*, 2020 ONSC 5789 at para. 115, *Dosanjh v. Maple Leaf Sports*, 2016 ONSC 8005, at para. 29, and *Garwood Financial Ltd. v. Wallace* (1997), 1997 CanLII 12276 (ON SC),

35 O.R. (3d) 280 (Gen. Div). As discussed in *Dosanjh*, at para. 33, the following principles apply to pleading motions involving alleged similar fact evidence:

- a. If similar facts will be material to a portion of the claim including punitive damages, they may be pleaded in order to give fair notice that they will form part of the discovery and will be part of the case at trial;
- b. Similar facts that are mere evidence and are not in themselves material facts should not be pleaded as doing so offends Rule 25.06(1);
- c. Similar facts that are not material and are irrelevant should be struck pursuant to Rule 25.11(b) as scandalous, frivolous or vexatious but even relevant similar facts may be struck out under Rule 25.11(a) if they will prejudice or delay the fair trial of the action;
- d. Even in those cases where the similar facts are relevant and material, they should not be permitted if the added complexity arising from their pleading does not outweigh their potential probative value.

[12] As it relates to Rule 25.06, parties are expected to plead material facts and not the evidence on which the material facts are based. A pleading that pleads evidence instead of material fact may be struck. This rule is aimed at curtailing the pleading of subordinate facts that “merely tend toward proving the truth of the material facts”, see *Jacobson v. Skurka*, 2015 ONSC 1699 at para. 44.

ANALYSIS

[13] I turn next to my analysis. The defendant’s central concern is that the impugned pleadings are irrelevant to the claims advanced and have been included in an attempt to simply make the defendant look bad.

[14] Starting with paragraph 9, I note that the plaintiff alleges that the defendant created and/or fostered a workplace environment that compromised safety and standards of service. This allegation is clearly relevant to the context in which the wrongful dismissal issues between the plaintiff and the defendant arose. The impugned portion of paragraph 9 details a specific incident suggesting that the defendant in fact compromised safety standards which resulted in a serious injury to another employee.

[15] In my view, the impugned portion of paragraph 9 is not irrelevant, frivolous or vexatious. The impugned portion provides specific particulars of an incident which supports an inference that the defendant may have had lax safety standards. The mere fact that this incident occurs a short time after the plaintiff was dismissed does not make it obviously irrelevant. Moreover, to the extent that the plaintiff can establish that this incident occurred, it is relevant in assessing the plaintiff’s claims that he was dismissed as a reprisal for having objected to the defendant’s poor safety standards.

[16] I am also not prepared to strike out the impugned portion of paragraph 9 on the basis that it pleads evidence and not material fact. I note that the defendant has demanded that the plaintiff provide particulars in relation to several other aspects of the pleadings. In

paragraph 9, the plaintiff has essentially provided particulars in relation to a narrow and defined incident. While the paragraph may have been better worded, this is not an instance where the impugned pleading should be struck on the basis that they plead evidence and not material fact.

- [17] Turning to paragraph 20, I note that the plaintiff alleges that his treatment by his supervisor Mr. Johnston was not unique. He alleges that Mr. Johnston also mistreated two other specific employees in a similar manner. Given the nature of the claim advanced, including the claim for punitive damages, I am satisfied that this paragraph is not improper. It essentially pleads similar acts which are relevant not only to establishing the nature of Mr. Johnston's conduct but also the employer's knowledge of that conduct. To be clear, I am not ruling on the admissibility of similar fact evidence at this stage. That will be for the trial judge. I am simply concluding that the pleading should not be struck as improper on any of the grounds advanced.
- [18] Lastly, I also note that this is not an instance where the impugned pleadings should be struck on the basis that they will unnecessarily result in prejudicial or unfair delay in the trial of this action. The plaintiff has advanced very specific instances of similar fact conduct. This is not an instance where the impugned pleadings will derail or sidetrack the discovery process. Moreover, the particulars provided give fair notice to the defendant.
- [19] The motion is dismissed.
- [20] In terms of costs, I have considered the costs outlines filed by the parties. The defendant's costs outline claims \$9,055.02 in costs on a partial indemnity basis. The plaintiff's costs outline claims costs of \$4,251.06 on a partial indemnity basis and \$5,668.08 on a substantial indemnity basis.
- [21] I see no reason why costs should be granted on a substantial indemnity basis.
- [22] The costs claimed by the defendant serve as a measuring stick for what the defendant may view as reasonable in the circumstances.
- [23] That said, costs are to be reasonable and proportionate to the issues at stake.
- [24] In my view, considering the principles that animate the granting of costs, I am satisfied that costs of \$4,000 are appropriate in this matter.

J. Di Luca J.

Date: March 7, 2025