

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

File: MC-344-2023

2025 NBKB 007

BETWEEN:

TERRILEE JILL BLACK,

Plaintiff,

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, CUPE LOCAL 2745

Defendant

DECISION

BEFORE: Justice Jean-Paul Ouellette

AT: Moncton, New Brunswick

DATE OF HEARING: December 9 and 11, 2024

DATE OF ORAL DECISION: January 10, 2025

APPEARANCES: Brian F.P. Murphy, K.C., on behalf of the Plaintiff

Brenda Comeau, on behalf of the Defendant

OUELLETTE, J.

INTRODUCTION

- [1] The Canadian Union of Public Employees, Local 2745 is seeking a Summary Judgment for a claim filed by Terrilee Jill Black for a breach of duty of fair representation.
- [2] After more than 20 years employment with the Anglophone East School District, Terrilee Jill Black, represented by Local 2745, executed a release consisting of a termination of her employment with the school district retiring while retaining her retirement allowance after facing numerous complaints supporting termination of employment. The agreement also release Local 2745 against any action involving an alleged failure of its duty of fair representation toward Mrs. Black.
- [3] For the reasons that follow, the motion is granted, and the statement of claim filed by Mrs. Black against Local 2745 is dismissed.

FACTUAL BACKGROUND

- [4] Local 2745 is the bargaining agent for a group of employees employed by the Province of New Brunswick. From the date of employment until her retirement, Mrs. Black was a member of Local 2745.
- [5] Over the years, numerous issues have been raised about Mrs. Black's conduct, and after numerous complaints which Mrs. Black had always been informed of by the school district, her employment could be terminated.

- [6] On May 4, 2021, a meeting was called by the school district as it was considering terminating Mrs. Black as a result of another founded harassment complaint. The school district, Local 2745 and Mrs. Black were present at this meeting.
- [7] Upon having discussed the founded harassment conduct justifying the termination, Mrs. Black stated that she wanted to resign rather than face termination which, after discussions, was acceptable to the school district.
- [8] After the meeting on May 4th, T. McAllister, president of Local 2745, met with Mrs. Black and explained her two options. She could file a grievance to challenge any termination the school district issues against her or she could resign. Mrs. Black confirmed that she wanted to resign. These options were always made available to Mrs. Black until she signed a Letter of Agreement.
- [9] Mrs. McAllister pursued discussions with T. Siliphant, Human Resources Director for the school district, to negotiate an agreement whereby Mrs. Black could resign.
- [10] From May 4, 2021, the union representative discussed with Mrs. Black and the school district the issues that were of Mrs. Black's concerns in relation with her retirement. On numerous occasions, she confirmed her intentions and not wanting to be fired. Her retirement allowance was of concern and her pension. On numerous occasions, she was reminded by the union representative of her option to file a grievance if she did not want to retire. Mrs. Black insisted on retiring.

- [11] Mrs. Black was explained in details between May 4th and May 18th, 2021 by the union representative about the positives and negatives consequences of signing an agreement to retire.
- [12] The ensuing agreement allowed Mrs. Black to retire and retain her retirement allowance and pension. The agreement also released Local 2745 against any action involving an alleged failure of its duty to fair representation. Specifically, the Letter of Agreement contains a clause that states:
- By accepting this Agreement, Terrilee Black releases the Canadian Union of Public Employees and CUPE Local 2745 against any actions involving an alleged failure of its duty of fair representation. In the event Terrilee Black would make any claim, complaint or commence an action or proceedings, this document may be raised successfully as an estoppel and complete bar to any such claim, complaint or proceedings.
- [13] In those discussions prior to signing the agreement, she wanted to add that her resignation was “due to disability” to facilitate her application for her Canada Pension Plan benefits. Such words were added before signature.
- [14] On May 18, 2021, S. Veysey, Vice President of Local 2745, and J. Melanson, CUPE National Servicing Representative, met Mrs. Black at her residence. Mrs. Melanson reviewed the Letter of Agreement with Mrs. Black and confirmed she wanted to sign the said letter.
- [15] In her affidavit in opposing this motion, Mrs. Black states that she was in no state of mind to execute the Letter of Agreement submitting her resignation. She further alleges that Local 2745 disregarded her mental health condition and coerced her to sign a termination agreement that should be considered as malicious, oppressive, highhanded, harsh and reprehensible.

[16] Mrs. Black further alleges that as a result of Local 2745 actions, she sustained serious and lasting mental health issues including anxiety, alcoholism, depression, PTSD, trouble sleeping, and suffered considerable loss, out of pocket expenses and special damages.

[17] At the motion hearing, Local 2745 objected to Mrs. Black's affidavit admissibility as it is replete with inadmissible evidence including speculations, conjectures, opinion arguments, legal and medical opinions and conclusions to which Mrs. Black is unqualified to give, hearsay and information outside of the deponent's personal knowledge without citing the source of that knowledge. The Court reviewed with the parties the affidavit and was deemed admissible in part while hearsay and opinion was admitted as a narrative and a lot would be subject to weight.

ISSUE

[18] The only issue to be considered is whether this Court ought to grant summary judgment dismissing the entirety of Mrs. Black's claim on the basis that the claim is barred by the release contained in the Letter of Agreement executed on May 18, 2021.

ANALYSIS AND CONCLUSION

[19] Rule 22.04 of the ***Rules of Court*** governs the disposition of a motion for summary judgment:

22.04 Disposition of Motion

General

(1) The court shall grant summary judgment if

(a) the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence, or

(b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied it is appropriate to grant summary judgment.

[20] The question as to what constitutes a “genuine issue requiring a trial” was addressed in *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII) 1 SCR 87, in the following terms:

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[...]

[57] On a summary judgment motion, the evidence need not be equivalent to that at trial, but must be such that the judge is confident that she can fairly resolve the dispute. [...]

[21] In ruling on summary judgment motions, Rule 22.04(2) sets out the power of the Court in considering the evidence:

Powers

(2) In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and may exercise any of the following powers for the purpose, unless it is in the interests of justice for those powers to be exercised only at a trial:

(a) weighing the evidence;

(b) evaluating the credibility of a deponent; and

(c) drawing a reasonable inference from the evidence.

[22] In *O’Toole v. Peterson*, 2018 NBCA 8 (CanLII), the Court stated that the moving party is the one making the allegation that there is no genuine issue requiring a trial. At bar, Local 2745 bears the burden of persuading the Court and established, on a balance of probabilities, that no genuine issue requiring a trial exists.

[23] In *Russell et al. v. Northumberland Co-Operative Limited*, 2019 NBCA 70 (CanLII), the Court states that there is a two-step process to be followed in determining whether there is a genuine issue requiring a trial. The first step is to determine if the evidence put before it reveals a genuine issue requiring a trial. Subsequently, if the assessment of the filed evidence leads to the conclusion that there may be a genuine issue requiring a trial, the judge then needs to determine if that trial can be avoided by resorting to the fact-friendly powers under Rule 22.04.

[24] As discussed in *Lange v. Cannon*, 1998 CanLII 12248 (New Brunswick CA), our Court of Appeal discussing Rule 22 purpose as to be “secure the just, least expensive and most expeditious determination of a proceeding on its merits”, had this to say:

Common sense should move the parties to put their best foot forward on a motion under Rule 22. Such a course of conduct is particularly wise for a respondent, since he or she has the most to lose. As stated by the Ontario Court of Appeal in **1061590 Ontario Ltd. v. Ontario Jockey Club** (1995), 1995 CanLII 1686 (ON CA), 21 O.R. (3d) 547 at 557 in a vernacular expression, the respondent "must lead trump or risk losing." It will rarely be sufficient for the respondent to promise that evidence, which is admissible pursuant to Rule 39.01(4), will be produced at trial: absent a compelling explanation, the respondent is required to produce admissible evidence which will prevent a conclusion that the action or defence is bereft of merit. I have no doubt that, where the ends of justice require, the court will allow all appropriate accommodations including leave to file further affidavit evidence.

[25] At this hearing, the Court was provided with the Letter of Agreement executed by Mrs. Black and the other parties attached to the affidavit from S. Veysey, Vice President of Region Three (3) for the Canadian Union of Public Employees (CUPE), Local 2745. She explained in her affidavit having reviewed the Letter of Agreement with Mrs. Black, who confirmed that she wanted to sign the Letter of Agreement.

- [26] Mrs. T. McAllister, President of CUPE Local 2745, on May 4, 2021, attended the meeting with C. Grebenc, Acting Superintendent with the school district, J. Melanson, CUPE National Servicing Representative, T. Siliphant, Human Resources Director at the school district, and Mrs. Black. The meeting was called by the school district as it was considering terminating Mrs. Black as a result of another founded harassment complaint. At this meeting, Mrs. Black confirmed her preference to resign rather than face a termination. Mrs. McAllister further confirmed having met after the meeting with Mrs. Black who was explained her option and again, Mrs. Black's preference was to resign.
- [27] Mrs. Black, in her affidavit, stated that she was an Educational Assistant with the school district for over 20 years. She acknowledged a complaint being lodged against her and many of the allegations were deemed unsubstantiated and being under investigation. Upon being so informed, she was confronted with having to either sign the Letter of Agreement or be terminated.
- [28] Prior to the May 4th meeting with the school district, she had met with Mrs. Grebenc, the CUPE Representative, in preparation for the meeting with T. Melanson, S. Veysey, J. Melanson and her representative, Marcos Salib in his office. At the meeting, she was informed of the intent of the school district to terminate her employment and states that she was pressured to resign. There is no reliable evidence to support this allegation.
- [29] Attached to Mrs. Black's affidavit were exchange between T. McAllister, Shelley Veysey and J. Melanson representing the union at the relevant time and showing

their concern with Mrs. Black. This exchange is an indication that Mrs. Black was well represented and their due diligence in the ongoing process to her retirement agreement is evident. They were concerned that the school district would be getting rid of her and Mrs. Black being short of her employment benefits if she did not retire versus being fired.

[30] Local 2745 was prudent and negotiated the Letter of Agreement in the best interest of Mrs. Black about her being able to get her EI, Canada Pension Plan benefits being all subject matters discussed with Mrs. Black between May 4th to May 18th, 2021 when she executed the Letter of Agreement.

[31] It was in August 2021 that Local 2745 became aware that Mrs. Black was alleging being incompetent and mentally ill at the relevant time. To be satisfied of their concern, Local 2745 even asked Dr. M. Black, the psychologist who treated Mrs. Black, a confirmation of such a diagnosis to be able to go back to the school district if it was an issue. No medical information was ever provided, and there is no such evidence on file to support incompetence and/or mental illness by Mrs. Black that would invalidate the Letter of Agreement.

[32] Mrs. Black suggests that she was in a mental distress and was consulting with a psychologist and a doctor about her state of mind and mental issues at the relevant time. While some visits attending doctor's appointment are on record, again, no medical evidence was presented to support her not being capable of understanding and voluntarily sign the Letter of Agreement. She was cross

examined at trial on her affidavit and confirmed that she understood the agreement and further admitted that she voluntarily signed the Letter of Agreement.

[33] Mrs. Black advances in her affidavit that she had issues with substance abuse ever since her traumatic experience with a student in her class who suffered an insulin overdose in 2016. There is no evidence corroborating that this had anything to do with her state of mind in May 2021.

[34] Again, referring to her affidavit, she states that the Local 2745 informed her that failure to resign she would be terminated and lose all her benefits and recover any payments she received during her administrative leave. This was the reality of the situation confronted by Mrs. Black. Local 2745 could not change these facts.

[35] At no time was Mrs. Black diagnosed with mental issues nor was any medical evidence presented at this hearing to support any such mental health issues she might have had at that time. She has self diagnosed herself as having mental health issues and even alcohol issue. The Court can't give any weight to this diagnosis.

[36] The release executed by Mrs. Black was clear, understood, signed voluntary and bar any claim alleging a breach of the duty of fair representation.

[37] In contract law, a general principle is when a party signs a document affecting his or her legal rights, the party is bound by the document unless that document ought not be enforced because it is unconscionable as Mrs. Black so alleges.

- [38] There is no evidence that Mrs. Black did not understand the Letter of Agreement which was clearly explained to her and that the clause accepting this agreement clearly release Local 2745 against any action involving an allege failure of its duty to fair representation and may be raised successfully as an estopped and complete bar to any such claim, complaint, action or proceeding.
- [39] It is clear that the Letter of Agreement executed by Mrs. Black is explicit, covers the conduct in question and it is not unconscionable to enforce the release. Put another way, there is no ambiguity or any evidence to support coercion or unconscionable pressure that would invalidate the agreement.
- [40] Mrs. Black knew what she was signing and had the time and opportunity to change her mind and offered the opportunity to do so from May 4th to May 18th, 2021. She even requested “due to disability” added to the wording of the Letter of Agreement for her CPP benefits and it was included. Mrs. Black was explained the content of the document and agreed to the liability release it contains.
- [41] The scope of the Letter of Agreement and its wording is broad enough to cover the conduct of Local 2745 if in breach of its duty. For the record, there is no merit to the allegation of a lack of duty of fair representation by Local 2745.
- [42] Furthermore, there is not a shred of evidence to suggest that Mrs. Black was coerced into signing the release or that she did not understand that the release limited her legal rights. The Letter of Agreement to resign was prepared at her request to provide for her resignation facing a dismissal. While being faced with a difficult choice, it does not equate to coercion.

- [43] At Mrs. Black request, Local 2745 representative pursued discussions with the school district to negotiate a settlement whereas Mrs. Black would be able to resign. While Mrs. Black retained her retirement allowance and other benefit negotiated by Local 2745, she also release Local 2745 against any action involving an alleged failure of its duty of fair representation.
- [44] On the evidence before this Court, the Cour can fairly and justly adjudicate the dispute and it is the conclusion of this Court that there is no genuine issue requiring a trial and consequently must grant summary judgment.
- [45] The statement of claim filed by Mrs. Black is without merit and Mrs. Black's affidavit in support is short of any substance that could support her allegation found in her claim.
- [46] This Court grants judgment dismissing this action with cost of \$2,500.00 all inclusive.

DATED at Moncton, New Brunswick, this 10th day of January 2025.

Jean-Paul Ouellette
Justice of the Court of King's Bench
New Brunswick, Trial Division