CITATION: Campbell v Grand Bovino Inc., 2026 ONSC 257
COURT FILE NO.: CV-24-1326-0000
DATE: 2026-01-13

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Kylie Campbell, Plaintiff

-and-

Anthony Niro, Grand Bovino Inc., Orin Contractors Corp., Roni Excavating Limited, Orin Civil Inc., Orin Landscaping Inc., Orin Demolition Inc., Iron Shoring Inc., and Iron Forming Inc., Defendants

BEFORE: C. Chang J.

COUNSEL: C. Eisen, D. McQuillan, for the Plaintiff

T. Stefanik, M. Athansopoulos, for the Defendant

HEARD: October 14, 2025 (in-person), December 19, 2025 (via videoconference)

ENDORSEMENT

[1] The plaintiff brings this motion for summary judgment on her wrongful dismissal action, which is governed by the simplified procedure rules. It is undisputed that the plaintiff was terminated from her employment without cause, she makes no claim for punitive, moral, or other damages, the defendant[1] does not allege any failure to mitigate, and the defendant does not advance any claim for setoff or damages. Indeed, the only disputed issues are the amount of reasonable notice of termination, and whether the plaintiff is entitled to a bonus payment.

[2] Both the plaintiff and defendant agree that summary judgment is appropriate.

[3] For the reasons set out below, I am dismissing the motion.

FACTUAL BACKGROUND

[4] The underlying material facts are undisputed.

[5] Under a written agreement dated December 1, 2021, the plaintiff was employed by the defendant as its Director, Project Management Office, earning a base salary of $180,000 with an annual discretionary bonus, a monthly vehicle allowance, and participation in the company health benefits and pension plans. She commenced that employment on January 12, 2022, and was terminated without cause on October 13, 2023.

Upon that termination, the defendant paid to the plaintiff two weeks' pay *in lieu* of notice plus an additional $3,323.07 on account of accumulated vacation pay.

[6] Before taking up employment with the defendant, the plaintiff was employed by Averton Residential Inc. as a Director of Project Management. She commenced employment with Averton on January 18, 2021, and left that employment to work for the defendant. While employed by Averton, the plaintiff earned an annual base salary of $180,000 plus a guaranteed bonus equal to 20 percent of that base salary, a monthly vehicle allowance, and participation in Averton's group benefits and RRSP plans. She decided to leave Averton after being contacted by a recruiter on behalf of the defendant, and thereafter negotiating the December 1, 2021 employment agreement.

[7] As set out above, the only issues for determination in this action are the applicable reasonable notice period, and the plaintiff's entitlement to any applicable bonus.

[8] No examinations for discovery have yet been conducted.

ISSUES

[9] The issues for determination on this motion are as follows:

a. Is this an appropriate case for summary judgment?

b. If this is an appropriate case for summary judgment, what period of reasonable notice and what bonus amount, if any, is the plaintiff entitled to?

ANALYSIS

Issue: Is this an appropriate case for summary judgment?

Parties' Positions

[10] The plaintiff submits that this is an appropriate case for summary judgment, as there is no genuine issue requiring a trial respecting her claims to payment *in lieu* of reasonable notice of termination, and an applicable bonus. She argues that, based on the evidence, including the transcripts of the parties' respective cross-examinations, it is clear that she was induced by the defendant to leave secure employment with Averton, and that she is entitled to pay *in lieu* of notice that factors in that inducement, as well as bonus payments for 2023 and for the remainder of the reasonable notice period in 2024. The plaintiff submits that the reasonable notice period is therefore seven months, and her bonus entitlement is the full 20 percent for 2023 plus *pro rata* for the notice period in 2024.

[11] The defendant also submits that this is an appropriate case for summary judgment. It argues that, based on the evidence, including the cross-examination transcripts, it is clear that the plaintiff was not induced by the defendant to leave secure employment with Averton, that she is entitled to pay *in lieu* of notice that does not factor in any inducement,

and that she is not entitled to payment of any bonus for 2023 or 2024, *pro rata* or otherwise. The defendant submits that the reasonable notice period is three to four months.

[12] In complete disregard for rule 76.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, both parties conducted cross-examinations of the deponents on their respective affidavits filed on this motion. Both parties heavily rely on those cross-examinations in support of their joint submission that summary judgment is appropriate in the case-at-bar.

Law

[13] The law respecting summary judgment is settled.

[14] On a motion properly brought by either plaintiff or defendant, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or a defence, or if the parties agree to have all or part of their claim determined by summary judgment, and the court is satisfied that it is appropriate to grant summary judgment (see: *Rules of Civil Procedure*, rr. 20.01 (1) and (3), and 20.04(2)). In determining whether there is a genuine issue requiring a trial, the court is required to consider the evidence submitted by the parties, and may weigh evidence, evaluate the credibility of a deponent, and/or draw reasonable inferences from the evidence (see: *Rules of Civil Procedure*, r. 20.04(2.1)). In exercising those powers, the court may order the presentation of oral evidence (see: *Rules of Civil Procedure*, r. 20.04(2.2))

[15] In order for there to be no genuine issue requiring a trial, the motion judge must be able, on the motion, to reach a fair and just determination on the merits; i.e., when the motion 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 (see: *Hryniak v Mauldin*, 2014 SCC 7, at para. 49). These principles are interconnected (see: *Hryniak*, at para. 50).

[16] In deciding a motion for summary judgment, the judge should: 1) first determine if there is a genuine issue requiring a trial based only on the evidence before her or him, without resort to r. 20.04(2.1); and 2) if there appears to be a genuine issue requiring a trial, the judge should then determine if the need for a trial could be avoided by using the enhanced powers under rr. 20.04(2.1) and (2.2) (see: *Royal Bank of Canada v 1643937 Ontario Inc.*, 2021 ONCA 98, at para. 24).

[17] Cases involving serious material credibility disputes are less appropriate for summary judgment because "[t]he more important credibility disputes are to determining key issues, the harder it will be to fairly adjudicate those issues solely on a paper record" (see: *2212886 Ontario Inc. v Obsidian Group Inc.*, 2018 ONCA 670, at para. 40).

[18] Although available in actions brought under the simplified procedure, "the test for granting summary judgment will generally not be met where there is significant conflicting

evidence on issues confronting the motion judge" (see: *Singh v Concept Plastics Limited*, 2016 ONCA 815, at para. 23). This is because the simplified procedure rules prohibit, among other things, cross-examinations on affidavits on motions (see: *Singh*, at para. 23).

Decision

[19] In my view, summary judgment is inappropriate in the case-at-bar; however, before setting out my reasons for this finding, I will first address the parties' breach of rule 76.04(1).

[20] Rule 76.04(1) prohibits the cross-examination of a deponent on an affidavit filed on a motion. That prohibition is unqualified (see: *Singh*, at paras. 22-24; *Cornacchia v Rubinoff*, 2018 ONSC 2732, at paras. 3 and 29; *Cooper v 2208011 Ontario Limited et al.*, 2018 ONSC 5512, at para. 7; *Steven Sanderson v Joan Jay*, 2019 ONSC 2117, at paras. 16 and 19; *Diao v Zhao*, 2017 ONSC 5511, at para. 9; *Royal Bank of Canada v Aleksandar Mijailovic, Tatjana Mijailovic, and 7915381 Canada Inc.*, 2018 ONSC 6798, at para. 33). As set out above, in complete disregard for this unqualified prohibition, the parties conducted cross-examinations on the affidavits filed on this motion, and seek to rely on the resultant evidence.

[21] When I raised this issue with counsel, they admitted that they had failed to turn their minds to rule 76.04(1), and had mistakenly proceeded with the cross-examinations in breach of it. They then submitted that I should palliate their collective breach by "transferring" this action to the "regular procedure", or, alternatively, simply overlooking that breach. I do not accept either submission.

[22] Respecting the proposed "transfer to the regular procedure", the clear and unqualified wording of rule 76.02(1) is dispositive. That rule unqualifiedly mandates the use of the simplified procedure in actions involving claims for money or real/personal property having a total value, exclusive of interest and costs, of $200,000.00 or less. The total monetary amount of the plaintiff's claim in the case-at-bar, on either party's theory, is less than $200,000; meaning that the prosecution of this action under the simplified procedure is unqualifiedly mandatory. Moreover, there is no provision in the *Rules of Civil Procedure* for the parties' proposed "transfer to the regular procedure", and I am, in any event, neither prepared nor inclined to make such an order.

[23] I am also neither prepared nor inclined to accede to the parties' request that I simply overlook their breach of rule 76.04(1). As set out above, the prohibition in that rule is unqualified, and parties to civil matters before this court to which the simplified procedure rules apply must comply with it. I am not persuaded by the cases cited by the parties where breaches of rule 76.04(1) were overlooked, and, contrary to the parties' submissions, I am not bound by those cases. The applicable findings therein were driven not by statements of applicable legal principle, but, rather, by the specific factual circumstances of each case. Based on those specific factual circumstances, the judges in those cases decided, in the exercise of their inherent discretion to control the court's process, to depart from the

wording in rule 76.04(1). I do not see the case-at-bar as one of those few and clear cases (see: *Ziebenhaus v Bahlieda*, 2015 ONCA 471, at para. 13) in which an exercise of this court's inherent discretion is warranted to depart from the unqualified prohibitions set out in rule 76.04(1). I must therefore follow the express wording of that rule.

[24] I also do not accept the defendant's argument that rule 76.04(1) only applies to non-dispositive interlocutory motions. The express wording of rule 76.04(1) – including rule 39.02 referred to therein – is clear on its face, and does not lend itself to the defendant's proposed interpretation of it. Moreover, as the defendant admits, there is no jurisprudence that supports such an interpretation, and, in fact, cases like *Diao*, at para. 9, make the contrary finding.

[25] I therefore find the evidence obtained through the parties' breach of rule 76.04(1) to be inadmissible, and I refuse to consider that evidence in determining this motion.

[26] Based on the admissible evidence before me, I find this case to be inappropriate for summary judgment because there are material credibility issues that cannot be determined without a trial. Indeed, those credibility issues are so serious that, even had I found the cross-examination evidence to be admissible, I would still have found this case to be inappropriate for summary judgment.

[27] As set out above, there are only two disputed issues: 1) the amount of reasonable notice of termination; and 2) the plaintiff's entitlement, if any, to a bonus payment. The affidavit evidence adduced by the parties respecting both of these issues materially conflicts. The plaintiff's evidence is that she was induced to leave secure employment with Averton to work for the defendant, thereby increasing the period of reasonable notice, and that she is entitled to a bonus payment for 2023 and the balance of the reasonable notice period in 2024. The defendant's evidence is that the plaintiff was not induced, and that she is not entitled to any of the claimed bonus payment.

[28] The issue of reasonable notice turns on whether the defendant induced the plaintiff to leave secure employment to join its ranks. The plaintiff alleges that she was so induced. The defendant denies any such inducement. The materially conflicting evidence does not allow me to make a fair and just determination of this disputed issue using the motion process. The parties must adduce the evidence of witnesses with knowledge of the relevant facts, and that evidence must be tested by cross-examination. In my view, only after receiving that evidence, tested by cross-examination and subject to a proper assessment of those witnesses' credibility, can the court determine the issue of whether the plaintiff was induced to leave secure employment with Averton to take up employment with the defendant.

[29] Similarly, the issue of the plaintiff's bonus entitlement, if any, turns on the credibility of witnesses with knowledge of the relevant facts, including an unexplained $20,000 payment from the defendant to the plaintiff at the end of 2022. Again, the parties

must adduce the evidence of those witnesses, and that evidence must be tested by cross-examination before the court can properly determine this disputed issue.

[30] In my view, the case-at-bar is the type of case described by the Court of Appeal for Ontario when it mandated a cautious approach to the disposition of simplified procedure actions by summary judgment (see: *Singh*, at paras. 23-25; *Manthadi v ASCO Manufacturing*, 2020 ONCA 485, at para. 33).

[31] I am not prepared to exercised the discretionary expanded fact-finding powers under rule 20.04. In my view, doing so would not avoid a trial in the case-at-bar, and would serve only to further the improper and inappropriate procedure pursued by the parties herein, and result in additional delay and wasted costs. That said, given my finding that this motion should be dismissed, I am prepared to consider making orders under rule 20.05 of the *Rules of Civil Procedure* in an effort to prevent further delay in this action, and move same along to a timely and efficient trial. My directions in this respect are set out below under the "Disposition" heading.

[32] Moreover, despite the parties' stated joint intention of furthering the efficiency rationale of the simplified procedure, they have, in my view, acted contrary to it. The parties prepared, served, and filed no fewer than four motion records (including reply and supplementary records from the plaintiff), two cross-examination transcripts, multiple documents related to undertakings from those cross-examinations, three factums, three books of authorities, and a long motion compendium. They have also made multiple attendances respecting this motion: three at court, and one for the cross-examinations. These efforts could – indeed, should – have instead been directed to getting this matter to a focused and expeditious trial (perhaps a summary trial) of the two outstanding issues.

[33] In conclusion, I find the case-at-bar to be inappropriate for summary judgment, and that this motion must therefore be dismissed.

Issue: If this is an appropriate case for summary judgment, what period of reasonable notice and what bonus amount, if any, is the plaintiff entitled to?

[34] Given my findings above, I am neither required nor permitted to determine the issues of the reasonable notice period or bonus entitlement, and I decline to do so.

COSTS

[35] Because I was advised by counsel during the hearing that there are operative offers to settle, I did not receive the parties' costs submissions at that time. However, I do note their respective claims in the event of success on the motion, both on a partial indemnity basis: the plaintiff - $36,814.94; and the defendant - $21,053.03. The parties claim these costs based on determinations that summary judgment is appropriate, and that the plaintiff is entitled to payment in accordance with either of the parties' respective positions.

[36] Based on my finding that the case-at-bar is not an appropriate one for summary judgment, neither party was successful on this motion. Moreover, both parties have breached the *Rules of Civil Procedure*, and both the Provincial and Central West Regional Consolidated Practice Directions. In addition to their breach of rule 76.04(1) of the *Rules of Civil Procedure* as set out above, the parties also both uploaded stand-alone documents to CaseCentre that were unanchored to the evidence (i.e., an affidavit), uploaded improper books of authorities, and improperly uploaded affidavits of service where service was not in issue. The plaintiff also served, filed, and uploaded an improper confirmation form for the October 14, 2025 court attendance. The parties also uploaded bills of costs that failed to properly attribute the claimed time to specific timekeepers, thereby providing virtually no assistance to the court respecting the adjudication of costs.

[37] Based on all of the above, I find that the only appropriate order respecting costs is that the parties bear their own.

DISPOSITION

[38] For the reasons set out above, I am dismissing the plaintiff's motion for summary judgment, and sending the matter on for trial. However, I will be making orders under rule 20.05 of the *Rules of Civil Procedure* for the progress of this action to a timely and efficient trial on the narrow outstanding issues identified above.

[39] I therefore make the following orders:

a. on consent, this action is dismissed, without costs, as against the defendants, Anthony Niro, Orin Contractors Corp., Roni Excavating Limited, Orin Civil Inc., Orin Landscaping Inc., Orin Demolition Inc., Iron Shoring Inc., and Iron Forming Inc.;

b. the plaintiff's motion for summary judgment is dismissed without costs; and

c. counsel shall jointly schedule through the Trial Coordinator's Office a TBST attendance before me to address next steps, including orders under rule 20.05.

C. Chang J.

Date: January 13, 2026

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[1] The plaintiff and the defendants agree that the plaintiff's employer in this matter is Grand Bovino Inc., and that the action can be dismissed as against the remaining defendants. I therefore refer to Grand Bovino Inc. as the "defendant".