IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cadrin v. Dunsmuir Holdings (New Westminster) Ltd.,* 2023 BCSC 130

Date: 20230130
Docket: S223786
Registry: Vancouver

Between:

Gai Cadrin

Plaintiff

And

Dunsmuir holdings (New Westminster) Ltd.

Defendant

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Plaintiff:	N. Tzemis L. Singer
Counsel for the Defendant:	J.H. Hoopes A. Peng
Place and Date of Trial/Hearing:	Vancouver, B.C. December 12 – 16, 2022
Place and Date of Judgment:	Vancouver, B.C. January 30, 2023

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Introduction

[1] This is an action for wrongful dismissal by the plaintiff Gai Cadrin. The defendant, Dunsmuir Holdings (New Westminster) Ltd. ("Dunsmuir Holdings"), terminated the employment of Ms. Cadrin on March 29, 2022 after 35 years of service. The parties agree the termination was without cause. Ms. Cadrin seeks damages for pay in lieu of reasonable notice. She also seeks aggravated and punitive damages.

Employment at Jolly Miller Pub

[2] The defendant Dunsmuir Holdings operates Jolly Miller Pub and Liquor Store (the "Jolly Miller") in Chilliwack, BC. Ms. Cadrin started work as a clerk at the Jolly Miller in April 1987. Mr. Parmbaksh Singh Dhaliwal became the owner and general manager of Dunsmuir Holdings in May 1989. Through the years, the operation expanded in size. The Jolly Miller currently has approximately 48 employees, with 11 of these employees working in the retail liquor store.

[3] Ms. Cadrin worked for 35 years at the Jolly Miller retail liquor store. She started as a clerk, and was promoted to the position of manager in 1990 or 1991 by Mr. Dhaliwal. Her duties as manager included selecting new products, placing orders, receiving shipments, and handling transactions. In March 2022, her hours of work were from Tuesday to Friday, 6 a.m. to 4 p.m. She was paid $23 per hour for 8 hours, and $34.50 for each of the two hours of overtime. Ms. Cadrin had no written employment contract.

[4] Ms. Cadrin and Mr. Dhaliwal and their spouses became friends. Mr. Dhaliwal was the godfather of Ms. Cadrin's daughter. Starting in 2013, Mr. Dhaliwal paid for flights to Mexico for Ms. Cadrin and her husband. Ms. Cadrin described these flights as an appreciation for her hard work at the Jolly Miller. There were trips to Mexico every year from 2013 to 2020; however, in 2021 and 2022 the trips were cancelled due to the COVID-19 pandemic. Ms. Cadrin also received bonuses, medical benefits and employer paid contributions to CPP.

The BC Liquor Distribution Branch Order

[5] A significant part of the manager's job at the Jolly Miller retail liquor store was to place the weekly order to the BC Liquor Distribution Branch ("the LDB"). Sales representatives from the LDB would routinely visit the store to promote new products and vie for prime retail space. Mr. Dhaliwal testified that after 2002, the LDB order became larger as private liquor stores were able to sell spirits, in addition to beers, wines, coolers and ciders. The LDB order was handled by different employees over the years.

[6] Ms. Heather Peterson started working as a clerk at the Jolly Miller in 1995. She left the Jolly Miller from 2001 to 2005. She returned to the Jolly Miller in 2006 and shortly after that, began handling the LDB order. In early 2020, Ms. Cadrin asked Mr. Dhaliwal if she could take over the LDB order. Mr. Dhaliwal testified that he agreed to Ms. Cadrin handling the LDB order for a period of time. Once Ms. Cadrin had learned how to do it the task should be shared between Ms. Cadrin and Ms. Peterson.

[7] Sometime in June 2021, Mr. Dhaliwal decided to give the LDB order back to Ms. Peterson. Mr. Dhaliwal testified that this was due to Ms. Peterson approaching him, and advising him that she was considering leaving for a job at another liquor store. Mr. Dhaliwal testified he wanted to give Ms. Peterson more responsibility so she would not leave the Jolly Miller, and decided that she ought to have the LDB order back. He also promoted Ms. Peterson to be co-manager with Ms. Cadrin.

[8] When Mr. Dhaliwal advised Ms. Cadrin that the LDB order would go back to Ms. Peterson, he testified that Ms. Cadrin was very upset, and swore at him. Shortly after, there was an incident between Ms. Cadrin and Ms. Peterson. Mr. Dhaliwal had asked Ms. Peterson to go in an hour earlier than her usual time, as Ms. Cadrin had a medical appointment and it was unclear whether she would be able to go in to work the next morning. A service worker needed access to the building that morning. When Ms. Peterson arrived at 7 a.m. at the Jolly Miller, Ms. Cadrin was upset and asked what Ms. Peterson was doing there so early. Ms. Cadrin admits she called Ms. Peterson a backstabber and other names. Ms. Cadrin testified that this was when

she learned that Ms. Peterson had also been promoted to be a co-manager. Ms. Cadrin testified she was very upset that she had not been told earlier of Ms. Peterson's promotion. She went home for the day and called Mr. Dhaliwal, complaining that he in effect demoted her so he could keep Ms. Peterson. Shortly after, Mr. Dhaliwal held a meeting with both Ms. Cadrin and Ms. Peterson. Ms. Cadrin apologized to Ms. Peterson. Mr. Dhaliwal explained how their duties would be divided, and that moving forward, both of them should report only to him.

[9] After June 2021, Mr. Dhaliwal testified there was tension at work. There were no further incidents, but Mr. Dhaliwal testified that it became a very difficult situation. Ms. Cadrin agreed that there was tension, but testified that she remained committed to her job, and she was able to communicate with Ms. Peterson when required. Ms. Peterson testified Ms. Cadrin was hostile, rude and abrupt with her.

June 2021 to March 2022

[10] Ms. Cadrin testified that after June 2021, she was very stressed from the situation at the Jolly Miller. She testified she was very disappointed in how she was treated, as she had been a long serving employee and considered Mr. Dhaliwal a family friend. Her husband took the initiative to contact Mr. Dhaliwal in June 2021, without Ms. Cadrin's knowledge, to see if he could mediate a resolution. The issue was not resolved.

[11] In February 2022, Ms. Cadrin was prescribed anti-depressants and advised by her doctor to take some time off work. She was off work on sick leave from February 7 to March 8, 2022. She returned to work on March 8, 2022 for a week. On March 15, 2022, Ms. Cadrin testified she was at work when Mr. Dhaliwal approached her, wanting to discuss the tension. Ms. Cadrin testified she told Mr. Dhaliwal she did not create this tension, and that she was coming to work to do her job. She testified that the incident upset her and she went home, advising Mr. Dhaliwal she needed to take a week off for sick leave. On March 22, 2022, Mr. Dhaliwal offered Ms. Cadrin another week of sick leave, which she accepted.

[12] On March 21, 2022, Mr. Dhaliwal texted Mr. Cadrin, asking him to call. They had a phone call later that day. Mr. Cadrin testified that on this phone call, Mr. Dhaliwal offered to lay off Ms. Cadrin so she could collect unemployment insurance, and that Mr. Dhaliwal would then top that up by paying money to Mr. Cadrin's business for a year. Mr. Cadrin testified he was not interested in that proposal. From March 21 to March 25, 2022, Mr. Dhaliwal communicated with Ms. Cadrin and her husband about different options for Ms. Cadrin to leave the Jolly Miller. Mr. Cadrin testified that on March 24, 2022, he came home from work to find Ms. Cadrin speaking with Mr. Dhaliwal on the telephone. Ms. Cadrin put the call on the speaker so Mr. Cadrin could participate. Mr. Dhaliwal testified that during this time, he was discussing different possibilities for Ms. Cadrin to leave the Jolly Miller, hoping to find a resolution to satisfy all parties. On March 25, 2022, Ms. Cadrin advised Mr. Dhaliwal that he should not be discussing her work situation with her husband. Mr. Dhaliwal apologized, and suggested early retirement, offering to pay her six months of wages plus two more trips to Mexico. She advised at that time that she did not want to take early retirement and that she wanted to keep her job. She advised Mr. Dhaliwal she was returning to work on March 29, 2022.

March 29, 2022: The Termination

[13] On March 29, 2022, Ms. Cadrin went to the Jolly Miller at 6 a.m., preparing for her work day. Mr. Dhaliwal came in holding an envelope, advising Ms. Cadrin that he had a witness on the phone, Karen Rutledge, a human resources specialist. Ms. Cadrin phoned her husband to come to be her witness. As it happened, Mr. Cadrin was already at the parking lot of the Jolly Miller.

[14] Mr. Dhaliwal testified that neither Ms. Cadrin nor her husband wanted to take the envelope. Ms. Cadrin testified she heard the person on the phone tell Mr. Dhaliwal he should take the keys and ask them both to leave. She testified that Mr. Dhaliwal mentioned the name of the person on the phone, but she did not recognize the name. Ms. Cadrin left her key, took the envelope and left the building with her husband.

[15] Inside the envelope was the termination letter. She was paid severance of eight weeks, and was offered an additional 32 weeks. She did not accept the offer.

March to December 2022

[16] After the termination, Ms. Cadrin testified that she was devastated. She was depressed, anxious and on many days could not get off her couch. She testified that the termination was particularly difficult for her, as she felt betrayed by Mr. Dhaliwal. She testified that she was not in any proper frame of mind to start looking for another job. She continued taking anti-depressants.

[17] Ms. Cadrin testified that she did not start looking for a new job until the end of June 2022. She asked someone to help her put together a resume. Her job search skills were rusty. She has very limited computer skills. She did not know how to search online for jobs. On July 27, 2022, her husband drove her to 13 liquor stores in the Chilliwack area to drop off her resumes. These were the first job applications she submitted. As I understand the evidence, at least some of these were cold calls, as it was unclear whether there were job openings at these 13 stores. One of these places did not accept her resume after she advised she was not looking to work nights or weekends.

[18] She applied to two non-liquor stores in early August 2022. She expanded her search to include other retail places, long term care homes, and horse stables, as she testified she had experience with horses when she was young. She continued to drop off her resumes in person in a few places in October and November. She did not apply online to any job until November 23, 2022. She then applied online through job search websites in early December 2022, though those efforts consisted of sending short emails with no resumes attached. It is unclear if she signed up for any job alerts through any of the websites. She could not explain why she received job alerts for jobs in Ontario that are unrelated to the liquor industry. It seems that most of the jobs she applied to came from job postings sent to her by the defendant. In total, from the date of termination until the trial date in December 2022, Ms. Cadrin applied to 32 jobs. She did not include cover letters, reference letters and did not follow up with any of

the applications. As I understand the evidence, she had two to three interviews, and no job offers.

Issues

[19] The issues to be determined by the court are:

1. What is the reasonable notice period for Ms. Cadrin?

2. Has the defendant established that Ms. Cadrin failed to mitigate?

3. Should there be a mitigation contingency?

4. Should there be an award of aggravated and/or punitive damages?

Credibility and Reliability of Witnesses

[20] The main witnesses are the plaintiff and Mr. Dhaliwal, her employer. In addition, Ms. Cadrin's husband testified for the plaintiff and Ms. Peterson, another employee, testified for the defence. Both sides submit that the other side's witnesses are not credible, and provided inconsistent statements that are not reliable. However, I find that on almost all key points, all the witnesses testified to a similar version of events. The inconsistencies pointed out by counsel on both sides were minor, and do not detract from credibility. There were some variances by witnesses as to dates and minor details; however, none of these differences go to any key issues. I find all the witnesses were credible and were trying their best to recollect the events.

The Applicable Notice Period

[21] The factors to determine the reasonable notice period to which an employee is entitled on termination without cause include those set out in *Bardal v. Globe and Mail Ltd.* (1960), 24 D.L.R. (2d) 140 at 145, 1960 CanLII 294 (Ont. H.C.). These factors are: an employee's age, length of service, the nature of their position, and the availability of similar employment, having regard to the experience, training and qualifications of the employee. What is an appropriate period of notice is to be determined on a case by case basis.

[22] The plaintiff argues similar cases show a range of 22 to 26 months based on these factors. She argues she is entitled to 24 months notice. The defendant argues the appropriate range in this case is from 15 to 18 months.

Age and Length of Service

[23] The plaintiff was 58 years old at the time of her termination, and had worked at the Jolly Miller for 35 years. The plaintiff argues that her age and long service supports a longer period of notice. While the defendant acknowledges that traditionally, older employees are entitled to a longer period of notice in recognition that it may be more difficult for them to find another job, the defendant argues that in the circumstances of this case, age will benefit her or is at most a neutral factor. The defendant argues that with her years of skill and experience in the liquor industry the plaintiff has built up invaluable contacts that could lead to employment. Further, the defendant argues age will not hinder the plaintiff in seeking comparable employment, as her role as manager of a liquor store did not involve physical labour.

[24] In my view, in this case, the plaintiff's age and length of service militates in favour of a higher award. The plaintiff has not been competing for jobs for the last 35 years. She graduated from secondary school in the 1980s, and has not taken any further formal training. She does not have the computer skills that the modern-day work force requires. As Ms. Peterson testified, the plaintiff had difficulties handling the LDB order, as the order is done online. Ms. Peterson testified that she was assisting the plaintiff in placing the weekly LDB order throughout the entire 16 months that the plaintiff was handling it. While the plaintiff has skills, experience and contacts accumulated through her years of work at the Jolly Miller, I find that her lack of familiarity with technology will make her a less attractive candidate.

Nature of the position and the availability of similar employment

[25] The plaintiff argues that her role of manager involved significant responsibility, and justifies a longer period of notice. The defendant argues the nature of the plaintiff's employment shows she was not a true manager as she was not in a supervisory role. Her duties did not involve hiring, firing or discipline of other employees. The defendant

describes the plaintiff's job as akin to a sales clerk without any specialized skills or expertise. As such, her skills are easily transferable to other retail sectors. The defendant argues the evidence shows there are many similar jobs available, as the defendant sent more than 200 job listings to the plaintiff from June to December 2022.

[26] In my view, the plaintiff's role did involve a low level of managerial duties. The evidence shows she was in charge when Mr. Dhaliwal was away from the premises, and she was involved in training sales clerks. She also met sales representatives, selected new products for the store, placed and received liquor orders and determined how best to display products. There is evidence that other similar jobs in private liquor stores were available in the Chilliwack area.

Conclusion on reasonable notice period

[27] I have reviewed the cases cited by both parties. I place particular reliance on the following cases which I find to be the most similar:

1. *Moody v. Telus*, 2003 BCSC 471 (24 months notice for 51-year-old manager with 29 years service).

2. *Nicolas Jr. v. Ocean Pacific Hotels Ltd*., 2022 BCSC 1052 (18 months notice for 58-year-old hotel houseperson with 32 years service).

3. *Goetz v. Instow Enterprises Ltd*., 2021 BCSC 709 (18 months notice for 53-year-old senior corporate sales representative with 31 years service).

4. *Hooge v. Gillwood Remanufacturing Inc*., 2014 BCSC 11(18 months notice for 57-year-old production supervisor with 36 years service).

[28] In my view, in the circumstances of this case, the appropriate notice period is somewhere between 18 and 24 months. I find the plaintiff's age and lack of computer skills will make it difficult for her to compete with younger employees for jobs for which she is qualified – i.e. lower level managerial positions which do not require a high degree of expertise. However, the evidence shows there are jobs in sales and

customer service, both inside and outside the liquor industry, available in the Chilliwack area. In my view, the appropriate notice period is 20 months.

Duty to mitigate

[29] In a wrongful dismissal claim, a plaintiff has a duty to mitigate her loss by taking reasonable steps to search for another job after termination. The duty to mitigate is not a duty owed to an employer, rather it is a duty an employee owes to conduct himself or herself as a reasonable person. The onus is on the employer to prove on a balance of probabilities that the employee failed to mitigate by not acting reasonably: *Coutts v. Brian Jessel Autosports Inc*., 2005 BCCA 224 at paras. 22–23. Further, the employer has to prove that alternate employment could likely have been obtained had reasonable steps been taken: *Ehman v. Preston Chevrolet Buick GMC Cadillac Ltd*., 2021 BCSC 1033 at para. 55.

[30] The defendant argues the plaintiff has failed to mitigate and as such any award ought to be reduced. The defendant argues the plaintiff failed to mitigate by not taking any steps to look for another job for four months after termination; the steps she did take from June to December 2022 were so inadequate they were unreasonable; and her criteria for determining which jobs she would apply to were so random that she did not undertake any concerted effort to find alternative employment.

[31] While the defendant acknowledges that a plaintiff is not required to start a job search immediately after termination, he argues not doing anything for four months is unreasonable. In this case, the evidence is that the plaintiff did not start looking for another job until June or July 2022. Her first job applications were dropped off on July 27, 2022. Further, the defendant argues that the plaintiff's efforts were cursory, and she did not approach her job search in a diligent, methodical and organized manner. The defendant points to many examples of conduct, which he argues shows that the plaintiff did not have a genuine desire to obtain another job:

- the plaintiff did not apply to some jobs until after the deadline for application had passed;

- the plaintiff did not include any cover or reference letters, and never followed up with any of her job applications;

- the plaintiff did not utilize online job websites to full advantage, as she did not sign up for job alerts and did not update her profile so her job search would be targeted; and

- the plaintiff's refusal to commute was unreasonable, as was her stated desire to find a job equivalent to her Jolly Miller position in pay and schedule.

[32] In my view, the defendant has shown the plaintiff did not mitigate by acting reasonably in her job search. She did not undertake a thorough and methodical job search and her efforts appeared random and haphazard. She did not take any steps to learn how to search and apply for jobs online, even though it was clear in the job postings sent to her by the defendant that online applications were common. She did not follow up with the liquor stores where she had dropped off her resumes in July 2022, even though some of those stores had jobs posted afterwards.

[33] The defendant argues that due to lack of mitigation, the plaintiff should be entitled to no damages at all, or in the alternative, any award ought to be reduced by three to four months. In my view, as the plaintiff did take some steps to mitigate, there is no basis to reduce the award to zero.

[34] As I have found the steps taken by the plaintiff to find another job were inadequate, the issue then becomes whether the evidence supports the inference that the plaintiff would have obtained another job if she had taken reasonable steps. Here, I return to my earlier observation that, due to the plaintiff's age and lack of technology skills, she will face some difficulties in securing another job. Contrary to the defendant's submissions, there is no evidence that the plaintiff would have received job offers if she had been more flexible and willing to work nights and weekends. The defendant argues that at the two liquor stores – The Other Liquor Store and the Angry Otter – where the plaintiff was interviewed in July 2022, the only reason she did not get the job was due to the plaintiff not being willing to work nights and weekends. In

my view, that is not a fair assessment of the evidence. There is no evidence that the plaintiff was offered a job at either of these locations, and turned it down due to having to work nights and weekends. The evidence shows the plaintiff was not interested in those two locations due to the shift schedule, but does not go any further to prove she would have been offered a job if she was more flexible.

[35] In my view, an appropriate reduction in this case for the plaintiff's inadequate job search methods is two months.

Contingency reduction

[36] The defendant argues as the notice period goes beyond the trial date, a contingency reduction ought to be applied, as it is likely the plaintiff will find another job within the notice period. I have determined that an appropriate reduction in this case is a further one month. While there are similar jobs in customer service and retail available for which the plaintiff's skills may be transferable, in my view, taking into her account her age and lack of computer savvy, she will face some difficulties in competing against younger candidates. This leaves an award of 17 months notice.

Quantifying the award

[37] The plaintiff submits that in quantifying the award, she is entitled to her wages, vacation pay, bonus, medical and dental expenses, flights to Mexico, and Canada Pension Plan contributions during the notice period. The plaintiff's position is that she would have received all of these benefits as part of her compensation, and these should be included in the damages award. In my view, the evidence supports these amounts, with the exception of the flights to Mexico. I find that the cost of the flights to Mexico were not part of her regular compensation package, but a gift provided by the defendant at its discretion. I note that in 2021 and 2022 when travel was impacted by the pandemic and the trips had to be cancelled, there was no reimbursement of the cost of the flights to the plaintiff. This supports the view that the flights were not part of the plaintiff's regular compensation.

[38] I leave it to counsel to do the appropriate calculations for 17 months. The defendant has paid the plaintiff eight weeks of severance in the amount of $8,115.45, and this should be deducted.

Aggravated and Punitive Damages

[39] The plaintiff claims aggravated and punitive damages, arguing the termination was conducted in bad faith. In the employment context, damages may result from the manner of dismissal where the employer engages in conduct during the course of dismissal that is "unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive": *Honda Canada Inc. v. Keays*, 2008 SCC 39 at para. 57. An award of punitive damages may be justified in exceptional cases for "malicious, oppressive and high-handed" misconduct that offends the court's sense of decency: *Whiten v. Pilot Insurance Co.,* 2002 SCC 18 at para. 36. Aggravated damages result from the manner of dismissal, while punitive damages seek to punish the employer for their conduct: *Cottrill v. Utopia Day Spas and Salons Ltd*., 2018 BCCA 383 at para. 8, leave to appeal to SCC ref'd, 38448 (11 April 2019).

[40] The plaintiff argues the following conduct of Mr. Dhaliwal entitles her to aggravated and punitive damages:

- Mr. Dhaliwal misled the plaintiff about Ms. Peterson's plan to leave the Jolly Miller, to justify reassigning the responsibility for the LDB order;
- Mr. Dhaliwal required the plaintiff to not come into work the week before she was terminated, despite the plaintiff advising she was able to work;
- Mr. Dhaliwal tried to negotiate the plaintiff's departure with her husband and made an illegal offer to pay severance to the husband so the plaintiff can collect employment insurance;
- Mr. Dhaliwal conducted the termination meeting in an insensitive manner by allowing a third party, Ms. Rutledge to be on the telephone;

- Mr. Dhaliwal attempted to provide the termination letter to the plaintiff's husband after Mr. Dhaliwal had been advised to deal directly with the plaintiff; and

- The termination letter was misleading in its characterization of the eight weeks of pay as "contractual severance" when this payment was statutorily required pursuant to the *Employment Standards Act*, R.S.B.C 1996, c. 113. The plaintiff argues the letter as drafted was misleading as it could lead the plaintiff to believe that she was not entitled to any more notice than eight weeks for breach of her employment contract.

[41] In my view, none of the above conduct relied on by the plaintiff can be said to be unfair, in bad faith, malicious, oppressive or high-handed. On the evidence, I do not find that Mr. Dhaliwal misled the plaintiff about the possibility that Ms. Peterson may leave the Jolly Miller to justify the reassignment of the LDB order. Ms. Peterson testified that she was offered another job and went to speak to Mr. Dhaliwal about that. Mr. Dhaliwal did not require the plaintiff to stay away from work the week of March 21, 2022; he offered her another week of paid sick leave, which she accepted. It was the plaintiff's husband who first contacted Mr. Dhaliwal in June 2021 to discuss the plaintiff's work troubles. In the circumstances, it was reasonable for Mr. Dhaliwal to have some discussions with the plaintiff's husband about her work situation. The proposal to pay severance to Mr. Cadrin's company was in the context of a discussion of options; Mr. Dhaliwal testified that he stated he would have to seek the input of his accountant. It went no further.

[42] While it may have been better for Mr. Dhaliwal to have waited until his business partner was available to attend the termination meeting, it was not unreasonable for him to seek the advice of his friend Ms. Rutledge, who had some expertise in human resource matters. The defendant is a small company with limited resources. Mr. Dhaliwal was trying to obtain advice to conduct the termination properly. The termination meeting was held early in the morning when there were no other staff or customers at the Jolly Miller. It was the plaintiff who requested her husband to be

present at the termination meeting, and the evidence was that initially neither the plaintiff nor her husband wanted to take the envelope from Mr. Dhaliwal. Finally, reading the termination letter as a whole, it is clear the eight weeks of pay was not all that was being offered; there was an offer of a further 32 weeks of pay stated in the letter. In *Moffatt v. Prospera Credit Union*, 2021 BCSC 2463, the termination letter offered an amount for severance that was less than provided for in the employment contract, and sought a longer non-compete clause than set out in the employment contract. The termination letter was found to have "limited her entitlements and increased her obligations" contrary to the terms of the employment contract, and was to the detriment of the employee and the benefit of the employer: *Moffatt* at para. 98. The errors in the termination letter presented to the plaintiff in this case did not reach the same level.

Conclusion

[43] The plaintiff is entitled to damages for 17 months of notice, including her wages, vacation pay, bonus, medical and dental expenses, and Canada Pension Plan contributions during the notice period, minus the eight weeks notice already paid. The claims for aggravated and punitive damages are dismissed. If the parties wish to make submissions on costs, they are directed to do so in writing within 14 days of receipt of this ruling.

"Chan J."