

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Pereira v. Dexterra Group Inc.*,  
2023 BCCA 210

Date: 20230510  
Docket: CA48495

Between:

**Corinne Pereira**

Appellant  
(Plaintiff)

And

**Dexterra Group Inc. and Margaret Klonarakis**

Respondents  
(Defendants)

And

**The Attorney General of British Columbia**

Respondent  
(Pursuant to the *Constitutional Question Act*)

Before: The Honourable Justice Griffin  
The Honourable Mr. Justice Butler  
The Honourable Mr. Justice Grauer

On appeal from: An order of the Supreme Court of British Columbia, dated  
August 25, 2022 (*Pereira v. Dexterra Group Inc.*, 2022 BCSC 1481,  
Terrace Docket S21140).

## Oral Reasons for Judgment

The Appellant, appearing in person:

C. Pereira

Counsel for the Respondent, Dexterra  
Group Inc.:

D.A. Crawford, K.C.

Counsel for the Respondent, Attorney  
General of British Columbia:

F. Zaltz

Place and Date of Hearing:

Vancouver, British Columbia  
May 10, 2023

Place and Date of Judgment:

Vancouver, British Columbia  
May 10, 2023

**Summary:**

*The appellant appeals an order dismissing her claim that her former employer is vicariously liable for alleged defamation of the appellant by its employees, and her constitutional question application. Held: Appeal dismissed. The appellant's claims are res judicata. The same question of jurisdiction over claims of defamation by the appellant's co-workers during her employment was raised and determined in a prior, separate proceeding brought by the appellant. To the extent that the appellant raises new allegations in relation to that same issue, those allegations were within her knowledge at the time she initiated the prior, separate proceeding and she should have raised them then.*

[1] **BUTLER J.A.:** The appellant, Corinne Pereira, appeals an order dismissing her claims of vicarious liability for defamation against the respondent (her former employer), and her constitutional question application.

**Background**

[2] The parties' dispute has resulted in protracted and convoluted litigation. I will summarize only facts and proceedings that are directly relevant to this appeal.

[3] Ms. Pereira was formerly employed by Horizon North. The respondent, Dexterra Group Inc. ("Dexterra"), is Horizon North's parent company. At all material times during her employment, Ms. Pereira was subject to a collective agreement between UNITE HERE, Local 40 (the "Union") and Horizon North. Between May and June 2020, as a result of a number of complaints by other employees about Ms. Pereira's behaviour, she received a verbal warning, a written warning, and a three-day suspension. The Union grieved this discipline.

[4] On June 18, 2020, Ms. Pereira took a leave of absence from work for stress. On September 23, 2020, Horizon North terminated her employment, on the basis that she had violated their Respectful Workplace Policy during her leave of absence. The Union grieved the termination of her employment.

[5] The Union and Horizon North ultimately settled both the discipline grievances (on September 21, 2020) and the termination grievance (on March 12, 2021).

[6] Ms. Pereira brought two unfair representation complaints against the Union with the BC Labour Relations Board (the “Board”), under s. 12 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 [Code], one in relation to the discipline grievances and one in relation to the termination grievance. The Board dismissed both complaints: 2021 BCLRB 44 (the “Discipline Section 12 Decision”); 2021 BCLRB 150 (the “Termination Section 12 Decision”). Ms. Pereira filed applications for leave to reconsider both Section 12 Decisions. The Board denied both applications: 2021 BCLRB 89 (the “Discipline Reconsideration Decision”); 2021 BCLRB 195 (the “Termination Reconsideration Decision”). Ms. Pereira sought judicial review of both reconsideration decisions. The Court dismissed both of her petitions for judicial review: 2022 BCSC 1205, aff’d in 2023 BCCA 165.

[7] Ms. Pereira also pursued litigation against various parties. On March 26, 2021, she filed a notice of civil claim against Dexterra and Horizon North, claiming she had been unjustly dismissed and defamed (the “First Supreme Court Action”). On July 30, 2021, Justice Punnnett dismissed the action for lack of jurisdiction and abuse of process: 2021 BCSC 1484 (the “First Supreme Court Decision”).

### **Decision Under Appeal**

[8] On July 5, 2021, Ms. Pereira commenced the present action against Dexterra. She claimed that Dexterra was vicariously liable for alleged defamatory statements made by its employees about her both during and after her employment with Dexterra.

[9] The order under appeal was pronounced by Justice Punnnett on August 25, 2022, with reasons indexed at 2022 BCSC 1481.

[10] The matters at issue were: 1) Ms. Pereira’s application for an interlocutory injunction pending trial, pursuant to Rule 10-4 of the *Supreme Court Civil Rules*, restraining one of her former co-workers from publishing orally or in writing any defamatory statements referring to her; 2) Dexterra’s application for an order dismissing or staying the plaintiff’s claims against it for vicarious liability for alleged

defamation; and 3) Ms. Pereira's constitutional question application, challenging ss. 136 and 137 of the *Code*.

[11] The judge denied Ms. Pereira's application for an interlocutory injunction. Ms. Pereira does not challenge this ruling on appeal.

[12] In determining Dexterra's application to dismiss or stay the claims, the judge dealt first with Ms. Pereira's claims regarding alleged defamation that occurred while she was working for Horizon North (pre-termination claims) and secondly with her claims regarding alleged defamation after her employment was terminated (post-termination claims).

[13] The judge dismissed Ms. Pereira's pre-termination claims. The judge noted that Ms. Pereira sought damages from her former employer for alleged defamatory statements which her co-workers made in the course of reporting workplace problems to supervisors for Horizon North, and alleged defamatory statements in her termination letter. The judge found that the essential character of her causes of action involved the interpretation, application, operation or alleged violation of a collective agreement. The judge held that, as per *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 and *Haight-Smith v. Neden*, 2002 BCCA 132, Ms. Pereira's claims were within the jurisdiction of the *Code* and the collective agreement, and the court lacked jurisdiction to try the matter. Further, the judge held that Ms. Pereira's claims were *res judicata* and an abuse of the court's process. He held that the alleged defamatory statements were all within Ms. Pereira's knowledge before she filed the First Supreme Court Action. He held that the present action concerned allegations that Ms. Pereira could, should and, in part, did bring in the First Supreme Court Action.

[14] The judge dismissed Ms. Pereira's post-termination claims, finding that they were doomed to fail. Ms. Pereira does not challenge this ruling on appeal.

[15] The judge held that as he had resolved the parties' claims on their merits, he did not need to address the constitutional question posed by Ms. Pereira. He

dismissed her constitutional question application challenging ss. 136 and 137 of the *Code*, which provide that the court does not exercise jurisdiction over claims covered by a collective agreement.

**On Appeal**

[16] In this appeal, Ms. Pereira challenges the judge’s dismissal of her pre-termination defamation claim and constitutional question application. She argues that:

- a) The pre-termination defamation claim was not *res judicata* because the judge erred in dismissing the same claim in the First Supreme Court Action;
- b) The judge erred in holding that she should have raised her additional allegations of defamation in the First Supreme Court Action, as at that time, the matter was being adjudicated by the Board;
- c) The judge erred in not addressing her constitutional question; and
- d) The judge erred in finding that the essential character of her causes of action involved the interpretation, application, operation or alleged violation of a collective agreement.

**Was the Claim *Res Judicata*?**

**Argument That the First Supreme Court Decision was Wrongly Decided**

[17] The judge found that the question of whether the alleged pre-termination defamation was within the jurisdiction of the court or fell under the collective agreement was *res judicata*, as it had already been determined in the First Supreme Court Decision.

[18] As described by this Court in *Sood v. Hans*, 2023 BCCA 138 at para. 48, issue estoppel is a branch of *res judicata* which precludes the re-litigation of issues previously decided in another court proceeding. For this doctrine to apply, the prior

judgment must have been made by a court of competent jurisdiction: *Sood* at para. 49.

[19] The appellant argues that her claim in the First Supreme Court Action was actually in respect of alleged defamation that occurred *after* her employment was terminated. She says that Justice Punnett erred in ruling on her pre-termination defamation claim in the First Supreme Court Decision, when she was in fact making a post-termination defamation claim. She argues that she should be able raise the pre-termination defamation claim in this proceeding because its determination in the First Supreme Court Action was an error.

[20] The appellant’s argument mischaracterizes her claim in the First Supreme Court Action. Ms. Pereira’s claim in the First Supreme Court Action was that, due to a valid pre-union employment agreement, the court had jurisdiction over alleged workplace bullying and harassment, breach of employment contract, constructive dismissal, defamation and wrongful dismissal. She also mischaracterizes her period of employment. She argues that she was constructively dismissed on June 28, 2020, such that her claims of defamation arising after that date could not have been considered in the First Supreme Court Action because she was no longer an employee. However, there is no basis for that characterization as the judge found that her employment was terminated on September 23, 2020. Her claim clearly related to the period of time during which she was employed by Horizon North and Dexterra. Her pleadings in this action are not exactly the same as her pleadings in the First Supreme Court Action, but both assert that she was defamed or libelled by co-workers during her employment. Consequently, it was not an error for Justice Punnett to determine that the court had no jurisdiction over her pre-termination defamation claim in the First Supreme Court Decision.

[21] If Ms. Pereira wished to challenge Justice Punnett’s finding that the essence of her pre-termination defamation claim involves “allegations against the Employer and other employees in relation to her work environment” and “clearly falls within the spectrum of an employment dispute and inferentially arises out of the Collective

Agreement” (First Supreme Court Decision at para. 55), the route to do so was by appealing the First Supreme Court Decision. That claim is *res judicata*, and could not be re-litigated in the decision under appeal. The judge’s ruling on this point was correct.

**Additional Allegations Made in the Present Action**

[22] The judge also found that while Ms. Pereira made additional allegations of defamatory statements by co-workers and in the termination letter in this action which were not included in the First Supreme Court Action, those allegations were nonetheless within Ms. Pereira’s knowledge when she filed the First Supreme Court Action: at para. 66. He held that she should have brought such allegations in that initial action, noting that:

[68] The plaintiff is not permitted to repeatedly engage the Court’s resources by her piecemeal approach of commencing various proceedings relating to the same facts and issues.

[23] A litigant must make all available arguments they wish to advance at the original hearing of an issue. If a litigant fails to do so, they will generally not be permitted to return to court and revisit the issue: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at paras. 18–25; *McKnight v. Hutchison*, 2022 BCCA 27 at para. 125; *Ahmed v. Canna Clinic Medicinal Society*, 2018 BCCA 319 at para. 22. As articulated in *Henderson v. Henderson* (1843), 67 E.R. 313 at 319 (applied by this Court in *Sood* at para. 40 and *Ahmed* at para. 23):

The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

[24] The appellant argues that when she filed the First Supreme Court Action, her allegations of pre-termination defamation were being dealt with by the Board as part of her s. 12 complaints against the Union. She argues that it would have been inappropriate to include the same allegations in the First Supreme Court Action, when they were being decided in another forum. She says that she decided to

pursue her allegation of defamation through the courts once she received the Board's decision to the effect that the Union was not obliged to deal with the issue of defamation.

[25] The appellant's argument is without merit for three reasons. First, her argument ignores the fact that she did raise allegations of pre-termination defamation by co-workers in the First Supreme Court Action, albeit less fully than in this action. Second, the Board proceedings arose from her complaints of unfair representation by the Union under s. 12 of the *Code*. The Board proceedings thus dealt with the question of whether the Union had represented Ms. Pereira in a manner that was arbitrary, discriminatory, or in bad faith, with respect to the discipline grievances and the termination grievance. None of the Board proceedings concerned a claim in tort for damages based on defamation by Ms. Pereira's co-workers, or by the termination letter. The appellant's suggestion that she expected the Board to make a determination on whether she had been defamed is implausible and cannot justify her failure to raise points that properly belonged to the subject of the First Supreme Court Action. Third, the appellant's argument rests on the proposition that at the time she filed her notice of civil claim, she was awaiting determination of the proceedings before the Board. Ms. Pereira filed her notice of civil claim initiating the First Supreme Court Action on March 26, 2021. This was after she received the Discipline Section 12 Decision from the Board (on March 19, 2021), and before she applied to the Board for leave to reconsider that decision (on April 6, 2021) or filed her s. 12 complaint in relation to the termination grievance (on June 7, 2021). Ms. Pereira argued, and I accept, that when she received the Discipline Section 12 Decision, she was considering an application for reconsideration. Nevertheless, it is clear that as of the date she initiated the First Supreme Court Action in which she alleged defamation, she was not waiting for the Board to determine any outstanding matter relevant to this appeal.

### **Other Alleged Errors**

[26] The appellant claims that the judge failed to address her argument that Horizon North's Respectful Workplace Policy fell outside the collective agreement.

She also argues that the judge failed to address her argument that while all of her pre-termination defamation allegations occurred in the workplace, they did not all relate to her work, presumably implying that they are within the court's jurisdiction. Finally, she says that the judge erred in declining to address her constitutional question.

[27] The finding that the appellant's claims were fundamentally *res judicata* and an abuse of process is a complete answer to all of her remaining grounds of appeal. She cannot raise these arguments in support of her position on an issue that was finally determined in another proceeding, namely, the First Supreme Court Action. Her proper recourse was to seek to appeal the First Supreme Court Action if she did not agree with it, but she chose not to do so. As stated by the Supreme Court of Canada in *Danyluk*:

[18] The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry...

[28] Given the finding of abuse of process, it also follows that the judge was correct in concluding that he need not answer the constitutional question.

**Disposition**

[29] I would dismiss the appeal.

[30] **GRIFFIN J.A.:** I agree.

[31] **GRAUER J.A.:** I agree.

[32] **GRIFFIN J.A.:** The appeal is dismissed.

“The Honourable Mr. Justice Butler”