

CITATION: Kisac v. Defence Construction (1951) Ltd., 2023 ONSC 5192
COURT FILE NO.: CV-23-100
DATE: September 14, 2023

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
SULE KISAC, a woman)
) Self-Represented
Plaintiff/Responding Party)
)
– and –)
)
DEFENCE CONSTRUCTION (1951)) Russell McCrimmon and Vanessa Poirier for
LTD., o/a DEFENCE CONSTRUCTION) the Defendant
CANADA)
)
Defendant/Moving Party)
)
)
)
) **HEARD:** August 29, 2023

2023 ONSC 5192 (CanLII)

DECISION ON MOTION TO STRIKE

Justice Sally Gomery

[1] Defence Construction (1951) Limited (“DCC”) moves to strike the plaintiff Sule Kisak’s Amended Statement of Claim on the basis that it discloses no reasonable cause of action and is scandalous, vexatious, or otherwise an abuse of the court’s processes. DCC further asks that Kisak not be given leave to amend. In the alternative, if leave is granted, it asks that Kisac be required to pay outstanding costs before she can proceed further with this action. In the further alternative, DCC asks that Kisac be ordered to post security before taking any further steps.

[2] For the reasons that follow, I grant the motion to strike under rules 21.01(1)(b), 21.01(3)(d), and 25.11(b) and (c) of the *Rules of Civil Procedure*. Kisac has leave to amend her statement of claim, but only if she first posts security in the amount of \$10,000.

History of proceedings

[3] Evidence is not admissible on a motion to strike under r. 21.01(1)(b). Evidence is admissible under rules 21.01(3)(d) and 25.11(b) and (c), however. The history of the parties' proceedings is also relevant to the question of whether Kisac should be required to post security for costs.

[4] Sule Kisac was employed by DCC. On November 19, 2021, she was placed on leave for failing to adhere to DCC's COVID-19 Vaccination Policy.

[5] On December 22, 2021, Kisac commenced an action against Derrick Cheung, DCC's President and Chief Executive Officer (Court File No. CV-21-00000332-0000, the "Cheung Action"). She was self-represented, as she is here. In the Cheung Action, Kisac alleged, among other things, that DCC had unilaterally and illegally changed the terms of her employment through the introduction and enforcement of its COVID-19 Vaccination Policy.

[6] DCC successfully brought a motion to dismiss the Cheung Action. In his decision granting the motion, Regional Senior Justice MacLeod held that Kisac had not pleaded facts that would sustain a right of action against Mr. Cheung, as opposed to her employer DCC, and that her pleading contained pseudo-legal argument and language associated with frivolous and vexatious proceedings: *Kisac v. Cheung*, 2022 ONSC 3986, at paras. 4 and 6. MacLeod RSJ also observed that Kisac took the position, in her claim, that she was not bound by the *Rules of Civil Procedure*. At paras. 7, 8, and 11 of his decision, MacLeod RSJ noted that:

[Kisac] is entitled to be treated with respect and she is entitled to her own beliefs and opinions. What she cannot do however is to invent legal theories, pick and choose what rules and processes she is willing to follow or seek to entangle the defendant and the court in legally meaningless and confusing arguments.

This court administers the law of Canada and of Ontario which includes the common law as well as statute law. It does so in accordance with recognized legal principles and rules. Of particular importance for purposes of this motion is that civil proceedings in Ontario are governed by the *Rules of Civil Procedure*. The claimant was able to determine how to launch a lawsuit by consulting those rules and by completing a statement of claim in Form 14A prescribed by those rules. She cannot pursue litigation before this court and then assert that the rules which govern that litigation do not apply to her.

(...)

There are other difficulties with the statement of claim. In many instances it contains opinions or theories or evidence. Rule 25 requires that every pleading contain a concise statement of the material facts on which the party pleading relies for the claim or defence but not the evidence by which those facts are to be proved. Conclusions of law may only be pleaded if the material facts supporting such a conclusion are pleaded. There is little point parsing each paragraph of the claim, however, if it is fundamentally flawed by suing the wrong person or a non-existent legal entity.

[7] In light of the insuperable problems with Sule's statement of claim, MacLeod RSJ struck the statement of claim and stayed the Cheung Action. He wrote that she remained free to begin a legal action against her employer, DCC, but counselled her to obtain legal advice before doing so: *Kisac v. Cheung*, at para. 12.

[8] In the wake of the Cheung Action, DCC terminated Kisac's employment, for cause, on July 7, 2022.

[9] On October 17, 2022, MacLeod RSJ ordered Kisac to pay Cheung \$7,264.00 in costs. Kisac has not yet paid these costs.

[10] On October 27, 2022, Kisac delivered a document to DCC's counsel, Russell McCrimmon, entitled "PUBLIC NOTICE OF CLAIM OF RIGHT made under the Common Law" against Mr. Cheung. Mr. McCrimmon responded by letter to Kisac on November 7, 2022, advising that the document did not constitute a valid proceeding under Ontario law and that she remained liable for \$7,264.00 in costs.

[11] On March 23, 2023, Kisac began this action against DCC. The statement of claim consists of four paragraphs, which I will reproduce in their entirety:

1. 1, Sule Kisac, woman, claim Defence Construction (1951) Limited caused me sickness and mental harm and financial loss and hardship through fraud and theft and misconduct and breach of trust with fraudulent intend and with coercion and with breach of contract and with malicious and false statements and intimidations and threats and discrimination and with trespasses of my God given unalienable rights and with denial of my right of not to be subject to medical and scientific experiment without consent,

see Declaration- Affidavit of Sule Kisac of March 23, 2023, Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD,EE, FF, GG, HH, II, JJ, KK, LL, MM, NN

2. I require \$1,371,941.19 remedy, prejudgment interest, post judgment interest and costs of this action, see Declaration- Affidavit of Sule Kisac of March 23, 2023, Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD,EE, FF, GG, HH, HI, JJ, KK, LL, MM, NN
3. I require common law court of record and trial by jury
4. I rely on:
 - a. God's Law, naturally common to all men and women
 - b. God given unalienable rights
 - c. Contract Law
 - d. Tort Law
 - e. Canadian Charter of Rights and Freedoms
 - f. International Covenant on Civil and Political Rights

[12] The statement of claim attached a lengthy affidavit sworn by Kisac, which in turn attached 40 exhibits.

[13] On April 6, 2023, Mr. McCrimmon wrote a letter to Kisac advising her that her new statement of claim did not comply with rule 25 and expressing the view that, in the context of the parties' history, its service constituted an abuse of process. He invited Kisac to discontinue the action and refile with a proper statement of claim, failing which he would bring a motion to dismiss.

[14] On April 7, 2023, Kisac delivered a hand-written note to Mr. McCrimmon, saying she would amend her statement of claim so that it was clear that her affidavit was an exhibit to it, as opposed to part of her pleading. She accused Mr. McCrimmon of intimidation and threats, and said that, if he did not desist, she would sue him "for criminal activity of extortion, perjury and an attempt to delay and prevent justice."

[15] On April 20, 2023, Kisac amended her statement of claim. The amended statement of claim is identical to the original pleading except that Kisac's affidavit and exhibits thereto are described as evidence that will be presented at trial.

[16] This motion was served on April 25, 2023, and argued on August 29, 2023.

Should the claim be struck?

[17] On its face, Kisac's amended statement of claim does not comply with Rule 25.06(1). As RSJ McLeod advised her in his decision on the Cheung Action, the rule requires that every pleading "shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved". The statement of claim recites no material facts, just bald assertions that Kisac has been wronged in a variety of ways and a claim of entitlement for \$1,371,941.19 in damages.

[18] Since the amended statement of claim does not allege material facts, it does not advance any reasonable cause of action. It must therefore be struck under r. 21.01(1)(b). Given Kisac's failure to make even a minimal effort to comply with the rules of pleading, despite the directions given to her in the Cheung Action, I also find that her amended statement of claim is frivolous, vexatious, and otherwise an abuse of the court's processes. It must therefore also be struck under r. 21.01(3)(d) and 25.11.

[19] A plaintiff whose statement of claim has been struck on a r. 21 motion is usually given an opportunity to file an amended claim. Leave to amend may be denied if the claim appears unsalvageable, as was the case in Cheung Action. As MacLeod RSJ observed in his decision on the motion to strike in that Action, however, Kisac may have a tenable claim against DCC for breach of her employment contract. This is still the case following her dismissal in July 2022.

[20] DCC suggests that Kisac should be disentitled to re-amend because she has shown, through her words and actions, that she has no respect for the court's orders. During the hearing before me, for example, she declared that she would not pay the costs ordered by a judge because only a jury has the jurisdiction to make enforceable orders against her.

[21] Evidence that a litigant is ungovernable may attract cost orders and other procedural sanctions. Limiting a party's access to the courts is, however, an exceptional order, requiring a motion or application under s. 140 of the *Courts of Justice Act*, RSO 1990, c C.43.

[22] If I grant leave for Kisac to re-amend her amended statement of claim, DCC asks that I direct that the only claim she may advance is for breach of contract. It relies on *Stedfasts Inc. v. Dynacare Laboratories*, 2019 ONSC 6626. In that case, Perell J. assessed allegations made in 168-paragraph statement of claim. He found that many of the plaintiff's allegations offended rule 25, but concluded that the plaintiff might have a viable claim for breach of contract if the claim were properly pleaded. He granted leave to the plaintiff to amend its statement of claim for this purpose. He declined to grant leave to the plaintiff to pursue a claim in negligence or unjust enrichment because, it was plain and obvious, based on the allegations in the pleading, that it had no tenable claim aside from a contract claim.

[23] The situation in this case is different. I do not have the ability to assess whether Kisac has any claims aside from a breach of contract claim, because she has pleaded virtually no material facts. In these circumstances, I decline to prohibit her from asserting other causes of action against DCC. Like RSJ MacLeod, I urge her to seek legal advice.

Should Kisac be ordered to post security for costs?

[24] R. 56.01(1) allows the court to order a plaintiff to post security for costs in certain circumstances. If ordered to post security, a plaintiff may not take any further steps in the litigation, aside from appealing the order, until the order has been complied with; r. 56.05. If a plaintiff defaults on giving security as required by an order, the court may, on motion, dismiss the proceeding against the defendant who obtained the order, pursuant to r. 56.06.

[25] In determining whether an order for security for costs would be just, courts consider such factors as the merits of the claim, any delay in bringing the motion, the impact of the defendant's impugned conduct on the plaintiff's available assets, concerns about access to justice, and the public importance of the litigation: *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827. The list of potentially relevant factors is not closed, however, and each case must be considered on its own

facts. The court must view the situation holistically and be guided by “the overriding interests of justice to determine whether it is just that the order be made”; *Yaiguaje*, at para. 25.

[26] In my view, the interests of justice in this case support an order requiring Kisac to post security for costs. Relevant factors include the merits of Kisac’s claims, which are unclear; the time, effort, and expense DCC has already incurred to respond to the Cheung Action as well as this action; threats made by Kisac to Mr. McCrimmon; Kisac’s failure to pay costs already ordered in the Cheung Action; and Kisac’s assertion at the hearing of this motion that she is not required to comply with orders made by judges alone.

[27] With respect to the amount of security that should reasonably be required, the court should not impose a security requirement that is “excessive and disproportionate, having regard to the scope of the counterclaim and the scope of the litigation as a whole”; *Crossover Health Care Fund, LLC v. Pivotal Therapeutics Inc.*, 2018 ONSC 5961, at para. 43. Kisac is seeking a very substantial damages award. Her refusal to comply with the *Rules of Civil Procedure* have required DCC to incur legal costs needlessly, and it can be expected that this pattern will continue. In this context, the amount of security of costs proposed by DCC is reasonable.

[28] I accordingly order that Kisac post security for costs in the amount of \$10,000 before taking any further step in this proceeding.

Disposition

[29] Kisac’s amended statement of claim is struck. She is granted leave to re-amend her statement of claim to plead allegations of material fact in compliance with the *Rules of Civil Procedure*. She must, however, post security for costs in the amount of \$10,000 before serving her re-amended statement of claim or taking any other step in this proceeding.

[30] DCC seeks partial indemnity costs of \$9,998.53 in costs on this motion. This is somewhat high when compared with the costs fixed on a similar motion in the Cheung Action last year. I fix costs payable by Kisac to DCC at \$8,000, inclusive of fees, disbursements, and taxes.

Justice Sally Gomery

Released: September 14, 2023

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– and –

DEFENCE CONSTRUCTION (1951) LTD., o/a
DEFENCE CONSTRUCTION CANADA

Defendant/Moving Party

DECISION ON MOTION TO STRIKE

Gomery J.

Released: September 14, 2023