

CITATION: Chodha v. Times Kitchen, 2024 ONSC 2384
COURT FILE NO.: CV-19-629872
DATE: 20240422

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Pardeep Chodha, Plaintiff

-and-

Times Kitchen, Times Custom Woodworking, Jose De Sa (Owner), 1352866 Ontario Inc. O/A Times Kitchen and Bath and 2040766 Ontario Inc. O/A Times Kitchen and Bath Corp., Defendants

BEFORE: Justice J. S. Shin Doi

COUNSEL: Self-Represented, Plaintiff

Eva Melamed, for the Defendants

HEARD: October 13, 2023

ENDORSEMENT

- [1] The Plaintiff suffered a workplace injury in 2014 while employed by the Defendant 1352866 Ontario Inc. The Plaintiff filed claims with the Workplace Safety and Insurance Board (“WSIB”), the Ministry of Labour, and the Human Rights Tribunal of Ontario (“HRTO”). The Plaintiff then commenced this action in 2019. The Defendants move for summary judgment against the Plaintiff and seek an order dismissing the Plaintiff’s action.
- [2] I grant the Defendants’ motion. I dismiss the Plaintiff’s action against the Defendants because there is no genuine issue for trial. WSIB has exclusive jurisdiction over claims for loss of earnings due to workplace injuries. WSIB has already adjudicated the Plaintiff’s claims for loss of earnings and the Plaintiff’s actions against WSIB have been dismissed. Also, the Plaintiff’s claims for other relief are extinguished by the two-year limitation period. The principles of res judicata and abuse of the court process support dismissal of the Plaintiff’s action with respect to the issues of accommodation, discriminatory termination, and forgery. In addition, the Defendants Jose De Sa and 2040766 Ontario Inc. did not employ the Plaintiff. Times Kitchen and Times Custom Woodworking are not legal entities or business names, and not proper defendants. Also, Mr. De Sa’s personal liability as a director of 1352866 Ontario Inc. for unpaid wages has expired.

I. Facts

- [3] The Defendant 1352866 Ontario Inc. carries on business as a cabinet maker under the business name, Times Kitchen & Bath. The Defendant 2040766 Ontario Inc. is a corporation carrying on business as Times Kitchen and Bath Corp. The Defendant Jose De Sa is the President of both corporations. Times Kitchen and Times Custom Woodworking are not legal entities.
- [4] The Plaintiff is an engineering graduate who immigrated to Canada from India in 1990. He began working as a cabinet maker in 1991-1992 in Ontario.
- [5] On April 28, 2014, the Plaintiff, at the age of 52, started working as a cabinet maker for the Defendant 1352866 Ontario Inc. He worked an average of 55 hours per week at the rate of \$25/hour and earned an average of \$1573.00 per week including overtime and vacation pay.
- [6] The Plaintiff pleads that an accident occurred at work on June 2, 2014. The Plaintiff suffered injuries to his lower back, neck and upper back. He left work to see his family physician and informed his co-workers and asked them to inform Mr. De Sa. The Plaintiff submits that his physician and chiropractor informed the WSIB because the accident happened at the workplace.
- [7] The Plaintiff pleads that on the morning of June 4, 2014, he gave a doctor's note to Mr. De Sa who advised him to rest and contact Mr. De Sa on Sunday. The Plaintiff further pleads that he returned to work on June 9, 2014 and Mr. De Sa denied him work due to the Plaintiff's condition. On June 26, 2014, the Plaintiff was dismissed. The Plaintiff alleges that he was only partially paid for his work.
- [8] The Plaintiff made a complaint to the Ministry of Labour seeking overtime pay in 2014, submitted a compensation claim to WSIB in 2014, commenced actions against WSIB in 2016 and 2019, and commenced a human rights application in 2014 (*Chodha v. 1352866 Ontario Inc. o/a Times Kitchen and Bath*, 2015 HRTO 1139 (CanLII), *Chodha v. 1352866 Ontario Inc. o/a Times Kitchen and Bath* 2016 HRTO 1241, *Chodha v. 1352866 Ontario Inc.*, 2016 HRTO 1444 (CanLII), *Chodha v. The Workplace Safety and Insurance Board*, 2023 ONSC 6729 (CanLII)).
- [9] The Plaintiff then commenced this action against the Defendants by Statement of Claim issued on October 25, 2019. The Plaintiff claims damages for loss of earnings, for unlawful termination of employment, and for loss of earnings from June 13, 2016 to October 19, 2019. The Plaintiff alleges that he was not accommodated, wrongfully terminated, and not paid wages for nine months. He also pleads that the Defendants provided false earnings information and forged the date on his doctor's note to defame him.
- [10] The Defendants argue that summary judgment should be granted in favour of the Defendants because the WSIB has exclusive jurisdiction, the limitation period has expired, and the claims are res judicata and abuse of process.

II. Summary Judgment

- [11] Rule 20.04 (2)(a) of the *Rules of Civil Procedure* provides that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.
- [12] The Supreme Court of Canada in *Hryniak v. Mauldin* at para 66 set out the approach in applying in Rule 20.04,

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

III. WSIB

- [13] The Plaintiff's claims for loss of earnings due to a workplace injury fall under the exclusive jurisdiction of WSIB. Accordingly, this court does not have the jurisdiction to determine those claims as against the Defendants. The Plaintiff's claims are statute-barred.
- [14] The *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, s. 118 provides,

118 (1) The Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise.

(2) Without limiting the generality of subsection (1), the Board has exclusive jurisdiction to determine the following matters:

1. Whether an industry or a part, branch or department of an industry falls within a class or group of industries in Schedule 1 or in Schedule 2 and, if so, which one.
2. Whether personal injury or death has been caused by an accident.
3. Whether an accident arose out of and in the course of an employment by a Schedule 1 or Schedule 2 employer.

4. Whether a person is co-operating in reaching his or her maximum medical recovery, in returning to work or in the preparation and implementation of a labour market re-entry plan.
5. Whether an employer has fulfilled his, her or its obligations under the insurance plan to return a worker to work or re-employ the worker.
6. Whether a labour market re-entry plan for a person is to be prepared and implemented.
7. Whether loss of earnings has resulted from an injury.
8. Whether permanent impairment has resulted from an injury, and the degree of the impairment.
9. The amount of a person's average earnings and net average earnings.
10. Whether a person is a spouse, child or dependant of an injured worker for the purposes of the insurance plan.

(3) An action or decision of the Board under this Act is final and is not open to question or review in a court.^[5]

[15] The Workplace Safety and Insurance Appeals Tribunal (“WSIAT”) has exclusive jurisdiction to hear and decide “all appeals from final decisions of the [WSIB] with respect to entitlement to benefits under the insurance plan.”

[16] WSIB and WSIAT already adjudicated the Plaintiff's claims for loss of earnings and the Plaintiff was paid loss of earnings from June 2, 2014 to November 19, 2014 (*Chodha v. The Workplace Safety and Insurance Board*). Furthermore, this court dismissed the Plaintiff's 2016 and 2019 actions against WSIB which included allegations of breach of rights under the legislation. Centa J., held at para 25, “Mr. Chodha cannot circumvent the statutory scheme for granting benefits for workplace injuries by alleging bad faith and coupling his allegation with a claim for damages.”

[17] Hence, the Plaintiff's claims for loss of earnings are statute barred.

IV. Limitation Period

[18] During the hearing of the motion, the Plaintiff submitted that his claim is actually for non-payment of wages owed to him in 2014. That claim made by the Plaintiff as well as claims for wrongful dismissal, forgery, and defamation are extinguished by the limitation period.

[19] The *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B s. 4 provides that a claim must be commenced within the second anniversary of the day on which was discovered. The Plaintiff is presumed to have discovered the claim on the day the injury happened unless the contrary is proved (s.5 (2)).

4. Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

5. (1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

5. (2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved

[20] The Ontario Court of Appeal in *Fennell v. Deol*, 2016 ONCA 249 explains at paras 20 and 21,

The basic two-year limitation period begins to run on the day the claim was discovered. The date of discovery is the earlier of the two dates under s. 5(1) – when (a) the person with the claim had knowledge of, or (b) a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have had knowledge of, the matters referred to in s. 5(1)(a)(i) to (iv). If either of these dates is more than two years before the claim was issued, the claim is statute-barred.

Section 5(1)(a) considers when the person with the claim had actual knowledge of the material facts underlying the claim. Unless the contrary is proved, under s. 5(2), the person is presumed to have known of the matters in s. 5(1)(a)(i) through (iv) on the date of the events giving rise to the claim.

[21] The evidence indicates that the Plaintiff knew about his claims in 2014. The Plaintiff swears in his Affidavit, “I am continuously pursuing since 2014 actively at different Tribunals to resolve this matter and get remedies to avoid any duplication.” The Plaintiff submits that he filed loss of earnings at WSIB on or about June 10, 2014 and made a claim to the Ministry of Labour on June 15, 2014. The Plaintiff states that on June 26, 2014, he forwarded the dismissal note and record of employment to WSIB, Ministry of Labour and Service Canada.

- [22] The Defendants submit that on October 8, 2014 the Plaintiff made an application at the HRTO, and that is the latest date that the Plaintiff had actual knowledge of the act or omission on which the action is pleaded.
- [23] The HRTO decision in *Chodha v. 1352866 Ontario Inc. o/a Times Kitchen and Bath* 2016 HRTO 1139 (CanLII) at paras 11, 12, 13, 14, and 15, confirms that there was a dispute between the parties over unpaid work. The HRTO Adjudicator B. Cook concluded on September 23, 2016, that it was determined by the Employment Standards Officer that the Plaintiff worked overtime and was not paid. Accordingly, the Plaintiff had actual knowledge of the claim on September 23, 2016, at the latest, and more than two years passed before the commencement of the action in 2019.
- [24] The Plaintiff explains in his amended Statement of Claim that he commenced the action in 2019 because WSIAT informed him in 2019 that it could not grant remedies due to its limited jurisdiction. That pleading raises the issue of when the Plaintiff knew or ought to have known that an action in court was the appropriate means to seek a remedy as against the Defendants (*Har Jo Management Services Canada Ltd. v. York (Regional Municipality)*, 2018 ONCA 469 (CanLII)).
- [25] The Plaintiff would have known or ought to have known in 2014 that an action in court was an alternative forum to seek a remedy as against the Defendants because that is when the Plaintiff filed an employment standards complaint with the Ministry of Labour for failure to pay wages and wrongful termination.
- [26] Given the facts and evidence indicating discoverability in 2014, the Plaintiff's claims against the Defendants in the 2019 action are extinguished by the limitation period.

V. *Res Judicata* and Abuse of Process

- [27] The Defendants argue that the Plaintiff's claims are *res judicata* and abuse of process of the court because of the HRTO decision. The HRTO decision, however, deals with the Plaintiff's claims with respect to the issues of accommodation, discriminatory termination and forgery by the Defendants, and not all of the Plaintiff's claims in the 2019 action. Only those claims dealt with by the HRTO are *res judicata* and abuse of process of the court as against the Defendant 1352866 Ontario Inc.
- [28] *Res Judicata* is a common law doctrine consisting of two branches: issue estoppel and cause of action. The preconditions for the application of issue estoppel were set out in *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 SCR 77 at para 23,

Issue estoppel precludes the relitigation of issues previously decided in another proceeding. For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same or their privies (*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, 2001 SCC 44, at para. 25, per Binnie J.).

- [29] As explained by Binnie J., in *Danyluk v. Ainsworth Technologies Inc.* at 31, these rules have since been extended to decisions classified as being of a judicial or quasi-judicial nature pronounced by administrative officers and tribunals. “In that context the more specific objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided.”
- [30] HRTO Adjudicator Cook concluded that the fact that the Defendant 1352866 Ontario Inc. told the Plaintiff that there was no modified work available during the period before the Plaintiff was terminated was not discriminatory and not an infringement of the Plaintiff’s Code-protected rights. HRTO Adjudicator Cook also concluded at para 34 that it is “more probable than not that the note that the [Plaintiff] provided to the [Defendant] on June 4, 2014 was not altered and that it had the date February 6, 2014...this mystery is not enough to lead to a conclusion that the note was altered.”
- [31] Notably, HRTO Adjudicator Cook found that it would not be fair to apply the principle of issue estoppel to the decision of the Return to Work Claims Manager to find that the issue of whether the Defendant 1352866 Ontario Inc. terminated the Plaintiff’s employment was because the Plaintiff had a disability and because the Plaintiff had claimed WSIB benefits.
- [32] The preconditions of issue estoppel are satisfied. The HRTO decision was final as HRTO Adjudicator Cook declined to reconsider it. The parties to the HRTO decision were the Plaintiff and the Defendant 1352866 Ontario Inc. and not all of the Defendants. It would not be fair for the Defendant 1352866 Ontario Inc. if those issues decided by HRTO Adjudicator Cook were relitigated by the Plaintiff. I note that the Plaintiff did receive loss of earnings payments through WSIB.
- [33] Accordingly, the Plaintiff’s claims about the Defendant 1352866 Ontario Inc.’s failure to accommodate, discriminatory termination, and forgery are *res judicata*. The Plaintiff’s claims regarding those issues are an abuse of process of the court as against that defendant.

VI. Proper Defendants

- [34] The Defendants Jose De Sa and 2040766 Ontario Inc. o/a Times Kitchen and Bath Corp were not the employers of the Plaintiff in 2014. The public record of the other proceedings initiated by the Plaintiff and the decision of the Ministry of Labour indicate that the employer and proper defendant is 1352866 Ontario Inc. o/a Times Kitchen and Bath.
- [35] The Ministry of Government and Consumer Services corporate profile report dated September 9, 2022 indicates that TKB Custom Millwork Corp. was the prior corporate name of the Defendant 1352866 Ontario Inc., and Times Kitchen & Bath and Times Fine Cabinetry were business names that were registered in 2016 and subsequently cancelled. Times Kitchen and Times Custom Woodworking were not business names or legal entities in 2014 and not proper defendants.
- [36] Also, the time period to sue Mr. De Sa personally as a director of 1352866 Ontario Inc. for unpaid wages has expired. A director is personally liable for unpaid wages for up to six

months and for up to one year for vacation pay (*Business Corporations Act*, R.S.O. 1990, c. B. 16, s. 131(1)).

[37] Accordingly, the action should be dismissed as against the Defendants Jose De Sa and 2040766 Ontario Inc. o/a Times Kitchen and Bath Corp, as well as Times Kitchen and Times Custom Woodworking.

VII. Disposition and Costs

[38] The Plaintiff's action against the Defendants is dismissed. I conclude that there is no genuine issue for trial because the WSIB has exclusive jurisdiction over claims for loss of earnings arising from workplace injuries, the limitation period has expired for other relief, certain issues in the Plaintiff's action are *res judicata* and abuse of process of the court, the Defendants Jose De Sa and 2040766 Ontario Inc. did not employ the Plaintiff, and any personal liability of Mr. De Sa for unpaid wages has expired.

[39] If the parties are unable to agree on costs, the parties may make costs submissions of up to 5 pages in length within 14 days.

JUSTICE J. S. SHIN DOI

Released: April 22, 2024