CITATION: Dore v 2647846 Ontario Inc.., 2024 ONSC 4702
COURT FILE NO.: CV-23-00004962-0000
DATE: 20240823

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MELISSA DORE, Plaintiff

AND:

2647846 ONTARIO INC. o/a OAKWOOD HEALTH NETWORK, Defendant

BEFORE: The Honourable Justice Ranjan K. Agarwal

COUNSEL: Melissa Dore, self-represented

Katherine Golobic, for the defendant

HEARD: August 22, 2024

ENDORSEMENT

I. OVERVIEW

[1] The plaintiff Melissa Dore alleges that she was wrongfully dismissed by the defendant 2647846 Ontario Inc. (o/a Oakwood Health Network). Dore is self-represented. After pleadings closed, she tried, unsuccessfully, to get Oakwood's agreement to a discovery plan. Oakwood is moving to strike Dore's claim as barred by the *Limitations Act, 2002*, SO 2002, c 24, Sched B.

[2] Dore moves to strike Oakwood's statement of defence as an abuse of process of the court under rule 25.11(c) of the *Rules of Civil Procedure*. She alleges that Oakwood's lawyer has been non-responsive to her. She also raises an issue about Oakwood's representation.

[3] I endorse an order dismissing Dore's motion. I agree that Oakwood's lawyer has been non-responsive. But a pleading can't be struck under rule 25.11 because of the defendant's or their lawyer's conduct. This rule is reserved for when the document itself is abusive.

[4] Though Oakwood is the successful party on this motion, I deny its request for costs. This motion could've been avoided if Oakwood's lawyer had promptly communicated with Dore.

II. BACKGROUND

[5] Dore sued Oakwood for wrongful dismissal in December 2023. She amended the claim in mid-January 2024.

[6] Oakwood defended the claim. Pleadings closed in February 2024. Oakwood asserted, among other things, a limitations defence.

III. ANALYSIS AND DISPOSITION

A. Is the defendant's lawyer's failure to respond in a timely manner an abuse of process?

[7] The court may strike out all of a pleading on the ground that the pleading is an abuse of the process of the court. See *Rules of Civil Procedure*, r 25.11(c). This provision is designed to "allow for an early and expeditious determination of claims" that can't succeed. See *Wernikowski v Kirkland, Murphy & Ain* (1999), 50 OR (3d) 124 at para 11.

For example, when the plaintiff is attempting to relitigate issues decided in an earlier proceeding. See *Wernikowski*, at para 15.

[8] In this case, Dore alleges that the conduct of Oakwood's lawyer, Matthew Dewar, is an abuse of process.

[9] On May 17, 2024, Dore emailed Dewar a draft discovery plan. Dewar didn't respond. Dore emailed him her productions on May 24th as contemplated in the draft discovery plan, and demanded immediate production of Oakwood's documents.

[10] Now, Dewar responded within minutes—he announced that Oakwood wasn't "proceeding to discoveries at this juncture" because it was moving to have the action dismissed as "statute-barred".

[11] Dore emailed Dewar a few days later expressing some doubt about Oakwood's motion (as Dore explained at the hearing, she didn't know what "statute-barred" meant). Dewar refused to clarify, saying: "Our instructions are to bring a motion to have your claim dismissed as statute-barred. Put simply, because it is." He said Oakwood's motion would be served "in due course".

[12] It wasn't. Dore followed up with Dewar on June 21st asking when the motion would be scheduled and when she'd get materials. Dewar responded that the materials "are in the works" and Dore "should be served soon." Dore rightly pointed out that Dewar didn't answer her questions.

[13] On July 4th, Dore wrote again asking about the motion. She said that if didn't hear back by the following Monday, she'd take next steps. Dewar didn't respond, so Dore booked this motion (initially for August 13th). She advised the court that Oakwood hadn't consented to the date because it wasn't responding to emails.

[14] On July 18th, Katherine Golobic, Dewar's associate, emailed Dore, asking Dore to communicate with her now. She asked what motion Dore was bringing on August 13th. She also said that Oakwood's motion would be served "within the next week." Finally, she explained that their delay in responding was caused by an office move. Golobic served Oakwood's motion on July 19th. The parties agreed that Oakwood's motion would be heard on September 10th (initially, Oakwood tried to move in writing but the court isn't hearing opposed motions without a hearing).

[15] Though I acknowledge a self-represented litigant might view an adverse lawyer's conduct as potentially coming within "an abuse of process of the court", the rule isn't used to sanction a lawyer's conduct during the proceeding. It's to be used where the pleading itself is abusive.

B. Did Oakwood need to serve a change of lawyer?

[16] A party who has a lawyer of record may change the lawyer of record by serving on the lawyer and every other party and filing, with proof of service, a notice of change of lawyer. See *Rules of Civil Procedure*, r 15.03(1).

[17] Oakwood's defence contains Dewar's name and contact information. After mid-July, Oakwood's materials, including its motion to strike, contain Golobic's name. I acknowledge that the rules, on their face, suggest that Golobic should've served a notice of change of lawyer. In some cases, lawyers employed by the same entity will serve a notice of change. I anticipate they do so to ensure that the court sends notices to the lawyer with carriage of the proceeding.

[18] But in most cases, there's no need for lawyers in the same workplace to serve a notice of change. It wasn't an abuse of process for Golobic to redirect communications to her now that she was managing the action for Oakwood. There's no need to make Oakwood serve a notice of change when either Dore can communicate with either Dewar or Golobic about this action.

[19] As a result, Dore's motion is dismissed.

[20] Several online resources may assist Dore and other SRLs in understanding and applying the rules of court and the law of evidence:

- The CJC has published an informational handbook for SRLs involved in civil, criminal, and family litigation procedures.

- Pro Bono Law Ontario is a charitable organization that promotes access to justice in Ontario by creating and facilitating opportunities for lawyers to provide pro bono (free) legal services to low-income people and charitable organizations. The organization's primary focus is to help low-income people

with civil (non-family) legal problems that aren't covered by Legal Aid Ontario. Pro Bono offers a free legal advice hotline for up to 30 minutes of legal advice and assistance. The toll-free number is 1-855-255-7256.

- The National Self-Represented Litigants Project regularly publishes resources designed specifically for SRLs.

IV. COSTS

[21] Oakwood was the successful party on this motion. As a result, it's presumptively entitled to its costs. It seeks $3149.26 on a partial indemnity basis. Dore argues that she should be awarded $1000 in costs for her loss of time regardless of the outcome.

[22] Subject to the provisions of an act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and how much shall be paid. See *Courts of Justice Act*, RSO 1990, c C.43, s 131.

[23] In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, together with the result in the proceeding and any offer to settle or to contribute made in writing, the factors listed in rule 57.01 of the *Rules of Civil Procedure*.

[24] In the usual case, costs are awarded to the prevailing party after judgment has been given. The traditional purpose of an award of costs is to indemnify the successful

party in respect of the expenses sustained either defending a claim that in the end proved unfounded (if the successful party was the defendant), or in pursuing a valid legal right (if the plaintiff prevailed). Costs awards are "in the nature of damages awarded to the successful litigant against the unsuccessful, and by way of compensation for the expense to which he has been put by the suit improperly brought". See *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at paras 20-1.

[25] That said, the fact that a party succeeds in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case. See *Rules of Civil Procedure*, r 57.01(2).

[26] In this case, I endorse an order that there shall be no costs of this motion.

[27] I appreciate that dealing with some SRLs can be challenging, frustrating, and time-consuming for a party's lawyer, and expensive for the adverse party. Nonetheless, as officers of the court, lawyers have a duty to be courteous, civil, and act in good faith with SRLs. In particular, they can't communicate with an SRL in an improper tone of professional communication. See *Rules of Professional Conduct*, r 5.1-5, 7.2-4. Lawyers are expected to respect SRLs and to adjust their behaviour accordingly when dealing with SRLs. For example, lawyers should, as much as possible, avoid the use of complex legal language. See Canadian Judicial Council, *Statement of Principles on Self-represented Litigants and Accused Persons*; *Pintea v Johns*, 2017 SCC 23, at para 4. Advocates

should consider helping an SRL when doing so won't prejudice the obligations that each advocate owes to their client, will move the case forward, and will not result in significant costs. See The Advocates' Society, *The Advocates' Society Principles of Civility and Professionalism for Advocates*.

[28] There's no rule or guideline that bars a lawyer from explaining legal concepts or terms of art (like "statute-barred") to an SRL. The lawyer can't give advice, and should remind the SRL that their comments may be partisan. But lawyers can and should help SRLs understand the legal system.

[29] Further, lawyers should communicate to SRLs promptly. The parties had a mutual obligation to agree on a discovery plan. See *Rules of Civil Procedure*, r 29.1.03(2). If Oakwood didn't intend to do so, it should've taken immediate steps to move to strike Dore's claim. It's unfair that Dore's good faith efforts to prosecute the action were stalled for over two months with little or no explanation. Oakwood could've served its notice of motion soon after pleadings closed, and then worked with Dore on a timetable for the motion itself (which is, in fact, what happened once Oakwood served Dore).

[30] Oakwood's failure to help Dore led to this motion. If Oakwood had communicated with Dore promptly, Dore's motion could've been avoided.

V. CONCLUSION

[31] Lawyers enjoy a privileged position in our legal systems because of their education, training, and expertise. But that power comes with a corresponding responsibility to communicate professionally and promptly with all justice sector participants, including SRLs. Lawyers should afford the same courtesy to SRL as to each other.

Agarwal J

Date: August 23, 2024