Date: 20240827
Docket: CI 16-01-03950
(Winnipeg Centre)
Indexed as: Winnipeg Regional Health Authority v. Hancock
Cited as: 2024 MBKB 126

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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

WINNIPEG REGIONAL HEALTH AUTHORITY,	)	
	)	Lynda Troup
plaintiff,	)	for the plaintiff
	)	
SHANNON HANCOCK, FORMERLY KNOWN AS SHANNON LOECHNER,	)	Shannon Hancock on her own behalf
	)	Judgment Delivered:
defendant.	)	August 27, 2024

HUBERDEAU J.

INTRODUCTION

[1] This matter relates to alleged breaches of a settlement agreement dated July 29, 2014 (the "Settlement Agreement") between the Winnipeg Regional Health Authority (the "WRHA") as plaintiff/defendant by counterclaim and Shannon Hancock ("Hancock") (formerly known as Shannon Loechner) as defendant/plaintiff by counterclaim.

[2] The WRHA seeks, by way of summary judgment, the following relief:

i. an order confirming Hancock breached the Settlement Agreement;

ii. damages in the amount of $126,000 arising from Hancock's breaches of the Settlement Agreement;

iii. a permanent injunction preventing Hancock from committing further breaches of the Settlement Agreement; and

iv. an order dismissing Hancock's counterclaim.

(collectively referred to as the "Relief")

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[3] In support of its summary judgment motion the WRHA relied upon the affidavit of Jane MacKay ("MacKay") sworn July 27, 2023. Hancock relied upon her affidavits dated March 1, 2024, and April 11, 2024.

[4] As a roadmap, my judgment will address the following points:

- the Issues;
- the Factual Background;
- the Law respecting Summary Judgment and Settlement Agreements;
- the Position of the Parties;
- my Analysis; and
- my Conclusion.

THE ISSUES

[5] The issues are twofold. First, is the matter appropriate to proceed by way of summary judgment? If so, should the WRHA's Relief be granted?

FACTUAL BACKGROUND

[6] The factual background relating to this matter is set out in MacKay's affidavit sworn July 27, 2023. Despite the fact MacKay was not fully cross-examined by Hancock on her

affidavit, which I found to be justified in the circumstances (See Endorsement Sheet dated May 6, 2024, document No. 65, at para. 9), I still find her evidence to be credible, reliable and persuasive. I make such a finding given much, if not all, of the evidence contained therein is supported by detailed documentation which are marked as lettered exhibits.

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[7] I place limited weight on Hancock's March 1, 2024 affidavit given:

i. she refused to be cross-examined on her affidavit; and

ii. much of the information contained therein was irrelevant, of limited probative value and immaterial. (See Endorsement Sheet dated May 6, 2024, document No. 65, at paras.12 to 17)

[8] I also place limited weight on her April 11, 2024 affidavit given it focused on issues addressed in my May 6, 2024 Endorsement.

[9] The factual background can be summarized as follows.

(i) The Settlement Agreement

[10] Prior to entering into the Settlement Agreement, Hancock was working as a registered nurse with the WRHA. During that time, she was a member of the Manitoba Nurses Union (the "MNU") and was governed by a collective agreement between the WRHA and the MNU (the "Collective Agreement").

[11] The MNU was the bargaining agent for Hancock respecting issues related to the Collective Agreement.

[12] During Hancock's employment with the WRHA, the MNU filed several grievances on her behalf, one of which alleged that her termination from the WRHA was wrongful and without cause (collectively referred to as the "Grievances").

[13] During the grievance process, Hancock was represented by the MNU and its legal counsel, Mr. Richard Deeley. The Grievances were heard together at one arbitration hearing.

[14] Following the arbitration hearing, but prior to a decision being given, Hancock, the MNU and the WRHA agreed to enter into the Settlement Agreement. In addition to the MNU's legal counsel, Hancock received legal advice from outside counsel.

[15] The key provisions of the Settlement Agreement included the following:

i. the Grievances would be withdrawn;

ii. the termination letter placed on Hancock's personnel file would be replaced with a resignation document;

iii. the WRHA would pay Hancock the sum of $126,000, less statutory deductions;

iv. a confidentiality clause where the parties agreed to keep the terms of the Settlement Agreement in strict confidence (the "Confidentiality Clause");

v. a non-disparagement clause where the parties agreed not to disparage or otherwise discuss the character or abilities of the griever, or any employees or former employees, officers, or directors of the WRHA (the "Non-Disparagement Clause"); and

vi. Hancock would sign a release in favour of the WRHA (the "Release").

[16] Both the Confidentiality and Non-Disparagement Clause allowed for communication(s) by either party, if required by law, or by persons operating under lawful authority (the "Permitted Exceptions").

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[17] As per the Settlement Agreement, the WRHA did the following:

i. forwarded the net settlement funds of $115,800 ($126,000 less the required deductions of $10,200) to Mr. Deeley's office who in turn confirmed receipt and release of the funds to Hancock; and

ii. substituted Hancock's letter of termination with a resignation document while also providing a letter to the College of Registered Nurses of Manitoba.

(ii) The Alleged Breaches of the Settlement Agreement

The unfair labour practice complaint to the Manitoba Labour Board (the "Board")

[18] On January 8, 2015, Hancock filed a complaint against the MNU with the Manitoba Labour Board (the "Board") claiming the MNU had violated its duty of fair representation and therefore committed an unfair labour practice. In making her complaint, she referred to, among other things, entering into the Settlement Agreement and that the Board could request a copy for their review. (See MacKay's affidavit, vol. 1, at exhibit F, para. 6(b) and the bottom of page 8)

[19] In dismissing Hancock's complaint on June 17, 2015, the Board referenced various provisions of the Settlement Agreement which had been raised by Hancock in her complaint. (See MacKay's affidavit, vol. 1, at exhibit G, para. 8 (p)(q)(r)(s)(t) and (u))

The Application for Review and Reconsideration

[20] On July 16, 2015, Hancock filed an application seeking Review and Reconsideration of the Board's decision. (See MacKay's affidavit, vol. 1, at exhibit H)

[21] On July 30, 2015, legal counsel for the WRHA forwarded a cease-and-desist letter to Hancock indicating that her actions relating to the Board amounted to a breach of the Settlement Agreement. (See MacKay's affidavit, vol. 1, at exhibit I)

[22] On September 4, 2015, the Board dismissed Hancock's Application seeking Review and Reconsideration. (See MacKay's affidavit, vol. 1, at exhibit J)

[23] On December 1, 2015, Hancock forwarded a letter to the Board requesting that revisions be made to its September 4, 2015 written reasons. In her letter, Hancock attached extracts of the Settlement Agreement while also informing the Board to having "received intimidating correspondence from the WRHA's legal counsel …", being "reasonably fearful of retaliation for speaking out …" and that "other WRHA employees and MNU members continue to endure similarly confrontational and adversarial processes." (See MacKay's affidavit, vol. 1, at exhibit K)

The Personal Health Information Act, C.C.S.M. c. P33.5 ("PHIA") complaint

[24] On July 27, 2017, Hancock filed a complaint with the Manitoba Ombudsman under s. 39(2) of ***PHIA***. In her complaint, Hancock alleged that in February 2013, while employed by the WRHA as a registered nurse, another WRHA employee had improperly accessed her personal health information and improperly disclosed it to another WRHA employee. (See MacKay's affidavit, vol. 1, at exhibit N)

[25] On January 30, 2018, the Manitoba Ombudsman dismissed Hancock's complaint finding that the WRHA employee's use of her personal health information was authorized under ***PHIA***. (See MacKay's affidavit, vol. 1, at exhibit O)

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The Freedom of Information and Protection of Privacy Act, C.C.S.M. c. F175 ("FIPPA") complaint

[26] Between August and September 2017, Hancock also forwarded a series of ***FIPPA*** requests to the WRHA requesting information dating back to 2013 relating to, among other things, an alleged unauthorized use and disclosure of her personal health information (See MacKay's affidavit, vol. 1, at exhibit P). The WRHA denied her requests pursuant to s. 23(1)(a) of ***FIPPA***.

[27] Hancock responded by filing a written complaint with the Manitoba Ombudsman on September 13, 2017, which included the following representation:

> The matter proceeded to arbitration which commenced on August, 2013. We argued we were entitled to production of the final investigation report into [name of program area removed] since it was evident there had been discussions about me of which I had never been made aware, were highly suspect and to which I was unable to respond. The Board agreed with our position ([names removed]) however before the report could be produced, the parties decided to settle, a decision with which I was not in agreement but had no alternative but to accept. …

(See affidavit of Jane MacKay, vol. 1, at exhibit Q, p. 3 of the Manitoba Ombudson's Report dated May 25, 2018)

[28] On May 25, 2018, the Manitoba Ombudsman dismissed Hancock's complaint. (See MacKay's affidavit, vol. 1, at exhibit Q)

The Judicial Review of the FIPPA complaint

[29] Hancock then filed a Notice of Application seeking a judicial review of the Manitoba Ombudsman's decision. Abra J. dismissed the Application on March 27, 2019, noting, among other things, that he was satisfied the Release that Hancock provided to the WRHA in settlement of her grievance prevented her from seeking the redress that she wanted. (See para. 33 in ***Hancock v. WRHA***, 2019 MBQB 52, [2019] M.J. No. 87.)

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The re-activation of the 2012 Workplace Safety and Health Act, C.C.S.M. c. W210 ("WSHA") complaint

[30] On March 12, 2018, Hancock contacted Workplace Safety and Health ("WSH") requesting that her ***WSHA*** complaint be re-activated. The complaint was in relation to Hancock's workplace transfer in or about November or December 2012.

[31] On August 29, 2018, the director for WSH declined Hancock's request, primarily due to the passage of time. (See MacKay's affidavit, vol. 2, at exhibit S, specifically Marty Danielson's August 29, 2018 letter)

[32] The matter was then referred to a safety and health officer for the WSH for further review.

[33] On October 15, 2018, the safety and health officer for the WSH dismissed Hancock's request to re-activate the ***WSHA*** complaint based on extreme delay and the fact she had "already resolved the matter through other forums". (See MacKay's affidavit, vol. 2 at exhibit S, specifically Bik Dhaliwal's October 15, 2018 letter)

[34] On November 6, 2018, Hancock appealed the matter to the Board. (See MacKay's affidavit, vol. 2, at exhibit S)

[35] In her written material to the Board, Hancock asserted, among other things, that after having entered into the Settlement Agreement, the "discrimination and retaliation not only continued but intensified …", that she was subjected to "years of retaliation and defamation by employees of the WRHA as well as organizations with whom it contracts." She further asserted the Settlement Agreement was "overly-broad and vague", and that the WRHA had used "tactics and methods designed to intimidate, coerce and "force"

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[Hancock] into settlement and silence." (See MacKay's affidavit, vol. 2, at exhibit U, paras. 9, 10, 11, 13, 14, 23 and 56)

[36] On March 7, 2019, the Board dismissed Hancock's appeal citing the following:

i. she was "profoundly out of time",

ii. the intent of the Settlement Agreement had been to put an end to her action; and

iii. the manner in which she attempted to relitigate matters, which had been settled by the WRHA in good faith some four years prior, was frivolous, vexatious and constituted an abuse of the processes of the Board and was entirely without merit.

(See MacKay's affidavit, vol. 2, at exhibit V)

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The e-mail communication and correspondence

[37] In addition to her various filings and complaints, Hancock also repeatedly sent e-mail correspondence to lawyers, government officials and other alleged interested parties stating, among other things, that the WRHA (and/or its counsel) was litigating an unconscionable agreement against her, was using scorched earth tactics and was obstructing justice. She further stated that she was being threatened, intimidated and discriminated against. (See affidavit of Jane MacKay, vol. 2, at exhibit W)

THE LAW

(i) Summary Judgment

[38] The Supreme Court of Canada ***Hryniak v. Mauldin***, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49 (QL) set out factors that a judge must consider in determining whether a summary judgment should proceed. They are whether:

> … the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result [than going to trial].

[39] At paras. 27 and 28 of ***Free Enterprise Bus Lines Inc. et al. v. Winnipeg Exclusive Bus Tours Inc.***, 2018 MBQB 64, [2018] M.J. No. 106 (QL), the court provided the following analysis relating to the issue of summary judgment in Manitoba.

> **27** … The new rules are designed to promote proportionality to ensure "the just, most expeditious and least expensive determination of every civil proceeding on its merits" … and reflect the Supreme Court's direction in *Hryniak v. Mauldin*, 2014 SCC 9 (para. 2), [2014] 1 S.C.R. 87, that "a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system."
>
> **28** Manitoba's new summary judgment rules are similar to the Ontario summary judgment rules interpreted by the Court in *Hryniak …* To that end, the test on a summary judgment motion is no longer whether there is a "genuine issue for trial: but rather whether there is a "genuine issue requiring a trial" … The traditional trial is no longer the default position but should be pursued only where the judge cannot "achieve a fair and just adjudication of the issues" on the basis of the evidence produced on a summary judgment motion … .

[40] The process and procedure relating to summary judgment was also succinctly summarised by the Edmond J. (as he was then) at para. 28 of ***5976511 Manitoba Ltd. et al. v. Taylor McCaffrey LLP et al.***, 2020 MBQB 48, [2020] M.J. No. 73 (QL):

> **28** … I summarize the process as follows:
>
> i) The task of the judge is to determine whether he or she is satisfied that there is no genuine issue requiring a trial;
>
> ii) When making the determination, the judge must consider the evidence submitted by the parties, which in this case includes … affidavits …" The judge is entitled to weigh the evidence; evaluate the credibility of the deponent; and draw any reasonable inference from the evidence; unless it is in the interests of justice for these powers to be exercised only at trial …;

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iii) The moving party must prove, on a prima facie basis, that the [responding party's] action must fail;

iv) If the moving party meets this burden, then the responding party has the burden to establish that there is a genuine issue for determination requiring trial. The responding party must show his or her claim is "one with a real chance of success …;

v) A responding party may not rest on the mere allegations or denials of the parties' pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial …;

vi) There is a distinction between the term "evidential burden" and "persuasive (legal) burden". The [moving party] who seeks summary judgment dismissing the [responding party's] claim bears the evidentiary burden of proving there is no genuine issue requiring a trial. If the [moving party] proves this, the [responding party] must either refute or counter the [moving party's] evidence, or risk summary dismissal. Each side must "put its best foot forward" with respect to the existence or non-existence of material issues to be tried. The persuasive burden remains on the moving party to establish that summary judgment should be granted …

(ii) Settlement Agreements

[41] The issue of the enforceability and validity of settlement agreements was addressed in ***Winnipeg Regional Health Authority v. Laura Marie Fougere*** (26 April 2016) Winnipeg CI 15-01-98631 (MBQB).

[42] In that case, Rempel J. noted the following general principles:

> [12] It is trite law, particularly in the labour-relations context, that settlement agreements should be presumptively enforceable and parties should be required to comply with their obligations thereunder (see *Globe and Mail, a Division of CTV Globemedia Publishing Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newsmedia Guild (Breach of Memorandum Grievance)* (2013), 233 L.A.C. (4th) 265, (Ont. Labour Arbitration).
>
> [13] There is also authority for the principle that settlement agreements are afforded the presumption of validity (*Manko v. Ivonchuk* (1991), 71 Man. R. (2d) 67 (Q.B.).

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POSITION OF THE PARTIES

[43] Counsel for the WRHA submitted that it has met the evidentiary burden of proving the following:

i. the Settlement Agreement is valid and enforceable;

ii. Hancock has repeatedly breached the Release, Confidentiality and Non-Disparagement Clause set out in the Settlement Agreement;

iii. the breaches are not Permitted Exceptions as set out in the Settlement Agreement;

iv. Hancock's counterclaim should be dismissed;

v. the WRHA is entitled to:

(a) damages in the amount of $126,000; and

(b) a permanent injunction prohibiting Hancock from committing further breaches.

[44] Counsel for the WRHA also submitted that Hancock's affidavits have failed to establish a genuine issue requiring a trial in that they do not address any of the key issues set out in any of the pleadings.

[45] Finally, counsel for the WRHA also submitted that Hancock's jurisdictional argument (which was only recently raised but not included in her pleadings) is without merit given the following:

i. she attorned to the jurisdiction by filing her statement of defence and counterclaim rather than seeking a stay under King's Bench Rule 21.01(3)(a); and/or

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ii. she failed to raise the issue of jurisdiction in her statement of defence; and/or

iii. she failed to file a motion seeking to amend her statement of defence to include jurisdiction as a defence.

[46] Hancock submitted that she has established multiple genuine issues which weigh against this matter proceeding by summary judgment. On this point she submitted that the court does not have jurisdiction over the matter given it is an issue within the exclusive jurisdiction of the collective bargaining agreement and/or the Board. In the alternative, should the court find it has jurisdiction, she then submitted the following two arguments:

i. that the Settlement Agreement is unenforceable given it is overbroad and the product of fraud; and/or

ii. her comments and actions fall within the Permitted Exceptions under the Settlement Agreement.

MY ANALYSIS

Issue No. 1 - Is the Settlement Agreement valid and enforceable?

[47] I am satisfied that the WRHA has met the evidentiary burden of demonstrating the validity and enforceability of the Settlement Agreement given the following:

i. Hancock never having denied the existence or validity of the Settlement Agreement in either her statement of defence and counterclaim;

ii. Hancock never alleged in her pleadings to not having received consideration, understanding the terms, or being coerced into signing the

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Settlement Agreement. In fact, she not only refers to the Settlement Agreement in her pleadings but relies on it at various points. (See para. 4 of the statement of defence and paras. 28 to 31 of the counterclaim);

iii. the well-established legal principle that settlement agreements are afforded the presumption of validity;

iv. Hancock having received independent legal advice prior to entering into the Settlement Agreement; and

v. Abra J.'s findings at paras. 33 to 35 in ***Hancock v. WRHA***, where he addressed the issue of the overall validity and enforceability of the Settlement Agreement.

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Issue No. 2 - Did Hancock breach of the Release, Confidentiality and Non-Disparagement Clause of the Settlement Agreement?

[48] I am satisfied that the WRHA has met the evidentiary burden of demonstrating Hancock breached:

i. the Release when she filed the:

(a) January 8, 2015 unfair labour practice complaint to the Board;

(b) July 16, 2015 Application for Review and Reconsideration;

(c) July 27, 2017 ***PHIA*** complaint;

(d) 2017 ***FIPPA*** complaint and subsequent 2019 Judicial Review; and

(e) request to re-activate the 2012 ***WSHA*** complaint.

ii. the Confidentiality Clause by:

(a) repeatedly referencing the Settlement Agreement in the above filings;

(b) informing the Board and the WSH that they could access and review the Settlement Agreement; and

(c) attaching a portion of the Settlement Agreement to her December 1, 2015 letter to the Board.

iii. the Non-Disparagement Clause given:

(a) the comments she made in her December 1, 2015 and November 6, 2018 correspondence to the Board; and

(b) the various e-mails set out in exhibit W of MacKay's affidavit where she alleges the WRHA (or its counsel) was threatening, bullying and intimidating her, was using scorched-earth litigation tactics and was obstructing justice.

[49] In considering the WRHA's affidavit evidence, I am satisfied that all the above referenced filings, disclosures, complaints, applications and communications touched on matters either directly related to the Settlement Agreement (i.e. the Grievances) and/or intended to be covered by the Settlement Agreement.

Issue No. 3 - Are the breaches Permitted Exceptions as set out in the Settlement Agreement?

[50] I am satisfied that the WRHA has met the evidentiary burden of demonstrating that none of Hancock's filings, disclosures, complaints, applications and communications fall within the Permitted Exceptions set out in the Settlement Agreement.

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[51] The Board encapsulated the WRHA's position the best when in dismissing Hancock's 2012 ***WSHA*** appeal on March 7, 2019, it described Hancock's actions as nothing more than an attempt to re-litigate matters that had been put to an end by way of the Settlement Agreement and that her request(s) were frivolous, vexatious and constituted an abuse of the processes of the Board and was entirely without merit.

Issue No. 4 - Should Hancock's counterclaim be dismissed?

[52] I am satisfied that the WRHA has met the evidentiary burden of demonstrating that there is no issue requiring a trial regarding Hancock's counterclaim. I make such a finding given there is nothing in Hancock's affidavit evidence that directly addresses the key allegations set out in her counterclaim. This includes the following:

i. the WRHA having filed meritless complaints with the College of Registered Nurses of Manitoba on May 28, 2013 and July 30, 2014 March 7, 2019;

ii. the WRHA induced her employer, Drake Medox Health Services to make a complaint and/or terminate her employment;

iii. the WRHA breached sections 12 and 13 of the Settlement Agreement;

iv. the WRHA disregarded an order made by the WSH on June 14, 2016; and

v. the WRHA retaliated against her, other than to say that all actions taken by the WRHA were acts of retaliations.

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Issue No. 5 - Should the WRHA be awarded damages?

[53] I am satisfied that the WRHA has met the evidentiary burden of demonstrating that it should be awarded damages. On this point, I accept the WRHA's evidence and submissions as follows:

i. the purpose of the parties entering into the Settlement Agreement was to settle matters between them on a final basis;

ii. Hancock having knowingly repeatedly breached the Settlement Agreement thereby depriving the WRHA of that possibility; and

iii. Hancock's actions resulting in the WRHA having to incur significant resources (both monetary and time) in an attempt to enforce its terms.

Issue No. 6 - Should a permanent injunction prohibiting Hancock from committing further breaches be granted?

[54] I am satisfied that the WRHA has met the evidentiary burden of demonstrating that a permanent injunction is warranted given the following:

i. the legal consideration found at paragraphs 18 and 19 in ***King v. Chapman***, 2012 MBQB 189, 282 Man.R. (2d) 67 namely that " … a prohibitive injunction is a discretionary remedy …" and " … where injunctions are sought to restrain … breach of a negative covenants, injunctions are in fact so strongly favoured that it is more accurate to say that the injunction is the presumed remedy. …" and

ii. the factors enumerated at para. 19 in ***Chapman*** which include:

(a) the Settlement Agreement being freely negotiated, with the assistance of independent counsel, for good and valuable consideration;

(b) Hancock not needing to do anything other than to refrain from doing what she already had agreed to refrain from doing;

(c) there in no unfairness, burden or hardship upon Hancock to comply with the injunction or Settlement Agreement; and

(d) damages for future breaches are likely to be inadequate.

Issue No. 7 - Has Hancock established a genuine issue for determination requiring a trial with respect to issues 1 to 6?

[55] Given the limited weight that I have placed on Hancock's affidavit evidence, I am not satisfied she has established a genuine issue(s) for determination requiring a trial on any of the issues raised. Even had I fully accepted Hancock's affidavit evidence, which I have not, they are of limited probative value given they fail to address, in any substantive way, the key issues raised in the WRHA's statement of claim, motion for summary judgment or in her statement of defence and counterclaim.

[56] Furthermore, her submissions that the court lacked jurisdiction over this matter is problematic given:

i. it is not contained in her statement of defence, nor did she file a motion to amend same, albeit she did file a motion in January 2020, seeking to

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amend her counterclaim, which I found she had abandoned. (See Endorsement Sheet dated May 6, 2024, document No. 65, at para. 20);

ii. she filed a counterclaim; and/or

iii. she failed to seek a stay or dismissal under King's Bench Rule 21.01(3)(a).

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[57] I also find that the cases Hancock referenced to support her claim, namely, ***Northern Regional Health Authority v. Horrocks***, 2021 SCC 42, 462 D.L.R. (4th) 585 and ***Winnipeg Police Association et al. v. Irvine et al.***, 1980 CanLII 3001 (MB CA), [1980] 4 W.W.R. 696 (Man. C.A.) are distinguishable both factually and with respect to the issues contained in the pleadings currently before this court.

MY CONCLUSION

[58] Given my findings, summary judgment is granted in favour of the WRHA and Hancock's counterclaim is dismissed.

[59] I am further satisfied that an award of damages in favour of the WRHA is appropriate.

[60] In determining the appropriate quantum, I have taken into consideration the following:

i. the factors considered by Rempel J. at paras. 19 and 20 in ***Fougere*** which includes, the importance of confidentiality, non-disparagement clauses and releases both generally and to the WRHA; the importance of deterring breaches; the frequency of the breaches and the harm caused to the WRHA, which includes extensive and ongoing litigation since 2016;

ii. courts and/or tribunals having ordered the return of the entire settlement proceeds following a breach(es) of a settlement agreement (See ***Fougere, O.P.S.E.U. v. Ontario (Ministry of the Attorney General)***, 2004 CarswellOnt 2909 and ***Chapman***, albeit in the latter case the return of the entire settlement amount was contemplated in the agreement; and

iii. Hancock having knowingly and repeatedly breached the Settlement Agreement despite notices to stop. This included the WRHA's July 2015 cease and desist letter, the Statement of Claim and the Board's decision of March 7, 2019.

[61] Based on these factors and considerations, I order that Hancock shall pay damages to the WRHA in the amount of $115,800, which amounts to the net settlement proceeds Hancock received under the terms of the Settlement Agreement.

[62] In addressing the WRHA's request for a permanent injunction, having considered the evidence and the first four factors enumerated at para. 19 in ***Chapman***, I am satisfied that a permanent injunction is the only remedy that holds any prospect of ensuring Hancock will comply with the terms of the Settlement Agreement going forward.

[63] For these reasons the WRHA is granted a permanent injunction prohibiting and enjoining Hancock from breaching the terms and conditions of the Settlement Agreement.

[64] The parties can speak to costs if they cannot agree.

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[65] The WRHA need not seek Hancock's consent as to form and content of the order.

_______________________________ J.

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