

CITATION: Khanom v. Idealogic PDS Inc., 2024 ONSC 5131
COURT FILE NO.: CV-21-00662898-0000
DATE: 2024-09-16

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: NAZMA KHANOM, Plaintiff

AND:

IDEALOGIC PDS INC., Defendant

BEFORE: Parghi J.

COUNSEL: Justin Mayer, for the Plaintiff

No one appearing on behalf of Defendant

HEARD: September 16, 2024 (In Writing)

ENDORSEMENT

- [1] The Plaintiff seeks default judgment arising from the termination of her employment by the Defendant in January 2021.
- [2] I grant default judgment, for the reasons and in the amounts below. I find that default judgment is supported by the facts in the Statement of Claim that are deemed admitted due to the Defendant's default, pursuant to Rule 19.02(1)(a) of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, together with the evidence contained in the affidavit filed in support of the motion.

Wrongful Dismissal Claim

- [3] Based on the pleaded facts that are deemed to be admitted and on the affidavit evidence before me, I find that the Defendant wrongfully dismissed the Plaintiff. The Plaintiff asked the Defendant's owner/operator, Jim Sturdy, to whom she reported, if she could work at home during a time when a government-imposed stay-at-home order was in place. Her job duties were primarily computer-based and she reassured Mr. Sturdy that she would discharge her work duties remotely. She explained that she wished to work at home to protect the health of her husband, who has health issues including diabetes and is particularly vulnerable to health risks from COVID. Initially, Mr. Sturdy refused her request and said he would terminate her if she did not attend work in person the next day. He then terminated her then and there.
- [4] The Defendant did not have just cause for terminating the Plaintiff. In making the request she did, the Plaintiff did not engage in misconduct. She certainly did not engage in

misconduct that gave rise to a breakdown in the employment relationship, as would be required for a just cause dismissal (*McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161). The Defendant's conduct in terminating the Plaintiff without cause, and not paying her notice, amounts to wrongful dismissal.

- [5] I find that the Plaintiff is entitled to reasonable notice or pay in lieu thereof. Fourteen months is an appropriate notice period in all the circumstances, including her almost 13 and a half years of service to her employer and her age. The Plaintiff made a sincere effort to mitigate her damages by seeking new employment and, unfortunately, was unable to.
- [6] The Plaintiff seeks damages based on her 2018 and 2019 salary levels. However, her salary went down in 2020 due to COVID-related restrictions on her employer's business. I find that, had she not been terminated in 2021, she would have continued to earn the same income that she earned in 2020, which was \$31,696.30 annually. Accordingly, the Plaintiff is entitled to 14 months' salary at this rate, or \$36,979.02, in damages for wrongful dismissal.

Human Rights Code of Ontario Claim

- [7] The Plaintiff argues that the Defendant breached its obligations under the *Human Rights Code* of Ontario (the "*Code*"). The Plaintiff relies on s. 12 of the *Code*, which states that a right is infringed where there is discrimination "because of relationship, association or dealings with" a person identified by a prohibited ground of discrimination. The Plaintiff's husband has diabetes and therefore has a disability under the *Code*. Her argument appears to be that the Defendant terminated her because of her husband's disability, and/or failed to accommodate her wish to work from home (which was due to her husband's disability), either or both of which constituted discrimination under s. 12.
- [8] To accept the Plaintiff's s. 12 claim, I must be satisfied, on the balance of probabilities, that the Plaintiff was terminated (or, in the alternative, not accommodated) "because of" or "based on" her husband's disability (*Weiser v. Toronto District School Board*, 2018 HRTO 1286, at para. 21; *Caldwell v. The Peace Naturals Project Inc.*, 2018 ONSC 3065, 142 O.R. (3d) 69, at para. 18). There must be evidence that the Plaintiff's relationship with her husband as a person with a disability "was at least a factor in the respondent's conduct, as opposed to the respondents' actions being taken due to the applicant's own personal conduct" (*Weiser*, at para. 26).
- [9] I find that this requirement was met in this case. The Plaintiff's wish to work from home was driven by her husband's disability. The Defendant terminated her because she wished to work from home. The Defendant knew that her wish to work from home was due to her husband's disability. I therefore find that she was terminated due to her relationship with a disabled individual. This is the very harm that s. 12 is intended to protect against.
- [10] For the purposes of s. 12, the Defendant does not need to have terminated the Plaintiff due to a particular animus against individuals with disabilities generally, or the Plaintiff's husband in particular. He does not need to have intended to discriminate against the

Plaintiff because her husband has a disability. It is a long-established principle that the *Code* is concerned with the impact of conduct, and not its underlying intent (*Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536, at para. 18; *Zanette v. Ottawa Chamber Music Society*, 2024 HRT0 998, at paras. 10 and 12). It would be incongruous to apply a more onerous intent-based standard under s. 12 than under other provisions of the *Code*.

- [11] Because of my finding on this issue, I do not need to consider the Plaintiff's secondary argument, which involves s. 12 and the duty to accommodate.
- [12] The Plaintiff has not provided me with any jurisprudence involving findings of disability-related discrimination under s. 12. However, having regard to the principles that underlie damages awards in these cases, including the Plaintiff's hurt feelings, humiliation, loss of dignity and self-respect, I find that an award of \$15,000.00 for the Defendant's breach of its obligations under the *Code* is appropriate.

Aggravated Damages Claim

- [13] I find that the Defendant did not act in good faith in its manner of dismissal, and that its conduct in dismissing the Plaintiff, as described above, was motivated by malice and high-handed. The Plaintiff is entitled to aggravated damages as a result (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at paras. 188-189).
- [14] At the same time, the damages I have awarded under the *Code* recognize, and go some way to compensating for, the Plaintiff's hurt feelings, humiliation, and loss of dignity. A sizeable aggravated damages award is therefore not necessary in order to compensate the full extent of the Plaintiff's loss.
- [15] I accordingly award aggravated damages in the amount of \$3,000.00.

Damages for "Inconvenience"

- [16] I find that the Defendant wrongfully indicated on the Plaintiff's Record of Employment that the Plaintiff "quit" her job, and that this created a delay of about ten months in the processing of the Plaintiff's application for Employment Insurance benefits. This caused inconvenience and stress to the Plaintiff.
- [17] The Plaintiff claims damages for this inconvenience, and this claim finds support in the case law (*Ellis v. Artsmarketing Services Inc.*, 2017 CanLII 51563 (ON SCSM)). I accordingly award the Plaintiff \$1,000.00 on this basis.

Costs

- [18] The Plaintiff has succeeded in this motion and the action and is therefore entitled to her costs. She seeks costs on a substantial indemnity basis.

- [19] In exercising my discretion to fix costs under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, I may consider the factors enumerated in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.
- [20] In the recent case of *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, the Ontario Court of Appeal restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then “step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”. The overarching objective is to fix an amount for costs that is objectively reasonable, fair, and proportionate for the unsuccessful party to pay in the circumstances of the case, rather than to fix an amount based on the actual costs incurred by the successful litigant.
- [21] Applying these principles, I find that costs are appropriately awarded on a partial indemnity basis. The Plaintiff gives no explanation for her position that substantial indemnity costs are appropriate. I see no basis on which to award substantial indemnity costs. The Plaintiff has incurred \$5,040.00 in costs on a partial indemnity basis, plus \$655.20 in HST and \$7699.39 in disbursements. I accordingly award \$6,494.59 in costs and disbursements, inclusive of HST, to be paid within 30 days.

Conclusion

- [22] I find that the Plaintiff was wrongfully dismissed and is entitled to be paid damages by the Defendant as follows:
- a. \$36,979.02 in damages for wrongful dismissal;
 - b. \$15,000.00 in damages under the *Code*;
 - c. \$3,000.00 in aggravated damages;
 - d. \$1,000.00 in damages for “inconvenience” associated with the incorrect Record of Employment; and
 - e. \$6,494.59 in costs and disbursements, inclusive of HST.

Parghi J.

Date: September 16, 2024

