COURT OF APPEAL FOR ONTARIO

CITATION: Soave v. Stahle Construction Inc., 2024 ONCA 706
DATE: 20240923
DOCKET: COA-23-CV-1279

2024 ONCA 706 (CanLII)

Miller, Trotter and Copeland JJ.A.

BETWEEN

Roberto Soave

Plaintiff (Respondent)

and

Stahle Construction Inc.

Defendant (Appellant)

Justin Heimpel, for the appellant

Lesley Parsons and Danielle Thomas, for the respondent

Heard: September 17, 2024

On appeal from the judgment of Justice Linda M. Walters of the Superior Court of Justice, dated October 23, 2023, with reasons at 2023 ONSC 5916.

REASONS FOR DECISION

[1] Stahle Construction Inc. (“Stahle”) appeals the trial judge’s order that it pay its former employee, the respondent Roberto Soave, just under $250,000 in general damages and out of pocket expenses as well as all-inclusive costs of $110,000. At the conclusion of Stahle’s oral submissions we dismissed the appeal for the reasons given below.

2024 ONCA 706 (CanLII)

Background

[2] Mr. Soave was hired by Stahle as a construction site supervisor in October 2013. Under his employment contract, he was required to participate in a group health benefits insurance plan administered by Mercon Benefit Services. This plan entitled Stahle’s employees to reimbursement for prescription costs and long-term disability benefits (“LTD”) provided by Great-West Life. Eligibility for coverage was set out in a booklet issued by Mercon (the “Mercon Booklet”).

[3] On January 27, 2014, Mr. Soave requested and was granted leave from his job pending surgery to repair a hernia. On March 13, 2014, while still awaiting surgery, he was seriously injured in a car accident and became totally disabled. When he tried to pay for medication through the appellant’s group plan, the pharmacy advised that his benefits had been terminated. When Mr. Soave contacted Stahle, they took the position that he had quit his job on January 27, 2014, and so Stahle had terminated his coverage.

2024 ONCA 706 (CanLII)

[4] Mr. Soave sued Stahle for breach of contract and negligence. Following a five-day trial in October 2021, the trial judge held in January 2022 that Stahle had improperly terminated Mr. Soave's LTD coverage. She awarded Mr. Soave general damages and out of pocket expenses as well as the costs of trial. Stahle appealed.

[5] In April 2023, this court held that the trial judge should not have granted judgment in Mr. Soave's favour without determining whether he would have been eligible to apply for LTD under the appellant's group policy in March 2014: *Soave v. Stahle Construction Inc.*, 2023 ONCA 265. This question was remitted back to the trial judge.

[6] The trial judge sought further written submissions from the parties on the question remitted to her. Based on these submissions and her assessment of the trial evidence, she concluded in supplementary reasons that Mr. Soave would have been eligible for disability benefits under Stahle's LTD plan had Stahle not terminated his coverage. She affirmed her first judgment and ordered Stahle to pay additional costs. It is from this order that it appeals.

Analysis

The trial judge did not err in finding that Mr. Soave was disabled prior to the car accident

[7] To be eligible for LTD benefits, Mr. Soave had to prove that he was already disabled when he went on leave from work on January 27, 2014, and that he remained disabled up to the time of the motor vehicle accident. This is due to the

Mercon Booklet limiting an employee's eligibility for LTD benefits if they were on leave from work when the incident rendering them disabled took place.

2024 ONCA 706 (CanLII)

[8] The Booklet provided that, in order to qualify for benefits, an employee had to be either "actively at work" or, if on leave, eligible for a continuation of coverage. Eligibility for continuation of coverage was explained as follows:

> **Continuation of Coverage**
>
> If your employment is temporarily interrupted, under the following circumstances, your benefit coverage may be continued on a contribution basis. (…)
>
> ***Leave of Absence*:** You may continue your benefits under this plan, with the exception of disability benefits, for up to six months during a leave of absence elected by you with your employer's agreement. Prior to beginning the leave, you and your employer must agree to the scheduled start and finish dates.
>
> …
>
> ***Disability*:** You may continue your benefits while you are unable to work due to disability for up to 24 months from the date you become disabled. To be eligible for the continuation of benefits, you must either be in receipt of Workers' Compensation or Long Term Disability benefits, or be approved for waiver of premium under the Employee Life Insurance benefit.

[9] The Booklet states that, during the 120-day Qualifying Period and first two years of disability:

> In order to be considered disabled, you must be unable to perform the essential duties of your own occupation during the Qualifying Period and during the first two years immediately following the Qualifying Period.

[10] The trial judge concluded that, at the time he took medical leave, Soave was not “able to complete the significant responsibilities and physical demands of working on a construction site on a full-time basis.” Accordingly, Soave was disabled under the definition of the policy, and was eligible for LTD benefits.

[11] Stahle contends that the trial judge erred in finding that Mr. Soave met this definition when he left work pending his hernia operation.

[12] The trial judge’s determination that Mr. Soave was disabled from January 27, 2014, to the date of his car accident a month and a half later was based on mixed findings of fact and law. This court must defer to such findings absent a palpable or overriding error or error of principle. No such error has been identified.

[13] The trial judge found Mr. Soave’s evidence credible. He testified that his hernia condition in late January 2014 prevented him from performing his essential duties as a construction supervisor. Although he had been able to complete the tasks associated with the job that he had just completed for Stahle, he would not have been able to perform the same tasks at the next job site offered to him.

[14] The trial judge found the evidence of Stahle’s representative implausible. She disbelieved the representative’s denial that Mr. Soave disclosed his hernia symptoms in January 2014. The Record of Employment (ROE) that Stahle prepared and sent to Mr. Soave in February 2015 indicated that he left work due to Code D, that is, temporary leave due to medical illness. The trial judge noted

2024 ONCA 706 (CanLII)

that Stahle did not ask Mr. Soave for any medical evidence before issuing the ROE and did not tender any medical evidence at trial to refute his evidence and the records of his family doctor and surgeon.

[15] Stahle argues that Mr. Soave was required to adduce a medical opinion to corroborate his evidence that he was unable to perform his work duties in January 2014. The appellant cites *Mathers v. Sun Life Assurance of Canada*, 1999 BCCA 292, at para. 8 in support of this proposition. *Mathers*, however, does not purport to establish any rule about sufficiency of evidence. It merely notes that "objective medical evidence of total disability will usually be required" for proof of disability. The trial judge in this case determined that the evidence supplied in this case – which was not simply the respondent's testimony – was sufficient. The trial judge was entitled to come to that conclusion on the evidence.

[16] Stahle further argues that the trial judge erred in finding that Mr. Soave met his evidentiary burden to establish that he was unable to perform his work duties as of January 27, 2014, given that there was some evidence to the contrary: his surgeon recommended that he walk to lose weight, he was able to perform his work duties up until the point that he requested the medical leave of absence, and there was a disability certificate filled out by his physician that stated he was not disabled prior to the motor vehicle accident. However, the trial judge was aware of this evidence, referred to it, and explained why she was not persuaded by it.

2024 ONCA 706 (CanLII)

[17] The trial judge's conclusion about Mr. Soave's disability on January 27, 2014, was open to her on the evidence. This ground of appeal therefore fails.

The trial judge did not err in finding that Mr. Soave was disabled even though this was not pleaded in his statement of claim.

[18] Stahle contends that the trial judge should not have found that Mr. Soave was disabled on January 27, 2014, because he did not allege this in his statement of claim. We reject this ground of appeal as well. The trial judge did not err by determining the very issue remitted to her by this court for her determination.

Disposition

[19] The appeal is dismissed, with costs of the appeal in the amount of $17,500 to the respondent, inclusive of disbursements and HST, as agreed by the parties.

"B.W. Miller J.A."
"Gary Trotter J.A."
"J. Copeland J.A."

2024 ONCA 706 (CanLII)