COURT OF APPEAL FOR ONTARIO

CITATION: George v. 2411363 Ontario Inc. (Ontario Health Clinics Brantford FHO Inc.), 2024 ONCA 752
DATE: 20241011
DOCKET: COA-24-CV-0037

Roberts, George and Wilson JJ.A.

BETWEEN

Terry George

Plaintiff (Appellant)

and

2411363 Ontario Inc. operating as
Ontario Health Clinics – Brantford FHO

Defendant (Respondent)

Michael A. Jaeger, for the appellant

Paul Hancock, for the respondent, Robert Henry Lewis Galliver

Dennis Touesnard, for the respondent, Thomas Leslie Spaxman

Lorne Singer, for the respondent, Jaswinder Singh Dhillon

Heard: October 3, 2024

On appeal from the order of Justice David A. Broad of the Superior Court of Justice, dated December 12, 2023.

REASONS FOR DECISION

[1] The appellant appeals from the order dismissing her motion to add the three individual respondents as defendants in her wrongful dismissal action.

[2] The appellant alleges that the individual respondents were her common employers, along with 2411363 Ontario Inc. and Ontario Health Clinics Brantford FHO Inc. ("Clinics"). She instigated a motion in October 2021 to add the individual respondents and Clinics as defendants, some three years following the termination of her employment on June 6, 2018, and the commencement of her action on July 30, 2018.

[3] The individual respondents opposed the appellant's motion on the basis that the relevant limitation period had expired.

[4] The motion judge agreed that the appellant's proposed claim against the individual respondents was statute-barred and dismissed the motion against them; he allowed the appellant's motion to add Clinics as a defendant to her action because Clinics did not appear on or oppose the motion.

[5] The appellant submits that the motion judge erred by concluding that she failed to rebut the presumption under s. 5(2) of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B ("LA") that she knew or ought to have discovered her claim on the date of her termination from employment on June 6, 2018. She contends that the motion judge erred by interpreting her affidavit evidence too narrowly and that a generous reading of her affidavit supports her argument that she did not reasonably discover her claim until Dr. Jatinder Dhillon's examination for discovery in 2021. Finally, she submits that the motion judge erred by failing to

specifically address the other aspects of her proposed claim against the individual respondents: they were her "real employers"; and they attempted to avoid their responsibilities to her by hiding behind "various operating companies".

[6] We are not persuaded that the motion judge made any reversible errors. The motion judge correctly referenced and applied the governing discoverability and common employer principles. We see no error in his consideration of the evidence nor with his factual findings.

[7] As the motion judge correctly stated, the motion turned on s. 5(1)(a)(iii) of the LA, and the determination of the day that the appellant first knew that the act or omission was that of the individual respondents and Clinics against whom her claim was made. As this court reiterated in *Levac v. James*, 2023 ONCA 73, [2023] O.J. No. 471, at para. 105, a plaintiff need not know the exact act or omission by the defendant that caused the loss, but rather must have knowledge of the material facts upon which a "plausible inference of liability" can be drawn.

[8] Having carefully reviewed the evidence, the motion judge determined, correctly in our view, that the appellant had knowledge of the material facts upon which a plausible inference of liability against the individual respondents could be drawn by the date of the termination of her employment. As the motion judge noted, the appellant's affidavit evidence revealed that she knew the material facts supporting her common employer claim because of the individual respondents'

interactions with her and their management of her workplace and control over her employment prior to and including the termination of her employment. The motion judge's interpretation of the appellant's affidavit evidence was open to him and absent error, which we do not see here, is subject to considerable appellate deference.

[9] The material facts set out in the appellant's affidavits are the kind of material facts that could support the application of the common employer doctrine. The doctrine may apply when there is conduct reflecting an intention to contract between the employee and the common employers, including effective control over the employee: *O'Reilly v. ClearMRI Solutions Ltd.*, 2021 ONCA 385, 460 D.L.R. (4th) 487, at para. 53; *Downtown Eatery (1993) Ltd. v. Ontario*, 54 O.R. (3d) 161, at para. 33.

[10] For example, as the motion judge noted in his reasons, in her affidavit and reply affidavit, the appellant sets out first hand information that she had prior to her termination about her employment with essentially the same group of physicians for many years which ultimately included the individual respondents, and that the direction and management of the group's employees, including her, came from the same common core of physicians.

[11] We do not accept that the motion judge erred in his treatment of the appellant's proposed claim. The appellant's proposed claim against the individual

respondents relies on the pleaded material facts that they managed, directed and were in control of the appellant and her workplace. As a result, there is no basis to interfere with the motion judge's conclusion that the appellant knew the material facts giving rise to her proposed claim against the individual respondents by the time of the termination of her employment.

[12] Moreover, it was unnecessary for the motion judge to deal with the appellant's allegation in her proposed statement of claim that the individual respondents used various corporate structures to hide their identities and avoid their responsibilities to the appellant. Her affidavits make clear that she was aware of the identity and actions of the individual respondents regardless of the corporate structures that they may have employed. Moreover, she did not seek to add as a party any corporation other than Clinics. The proposed claim of common employer as pleaded against "John Doe" was not against a corporation but "a doctor practising medicine and operating a medical clinic". The motion judge's finding that the appellant knew all material facts by the date of the termination of her employment also disposed of her proposed claim against "John Doe".

[13] We agree with the motion judge's conclusion that: "A plain reading of the [appellant's] affidavits discloses a clear distinction between information that [the appellant] says she learned by virtue of the examination [of Dr. Jatinder Dhillon] and facts that she related from her own experience in the workplace." As the motion judge further noted, this was not a case "where the

identities of the proposed common employers were unknown to the [appellant] or withheld from her, as she worked with them everyday in the clinic."

[14] Accordingly, we see no basis to interfere with the motion judge's dismissal of the appellant's motion to amend her statement of claim with respect to the individual respondents. The appeal is therefore dismissed.

[15] The individual respondents are each entitled to their partial indemnity costs of the appeal from the appellant in the agreed upon all-inclusive respective amounts of $10,000, for a total of $30,000.

"L.B. Roberts J.A."
"J. George J.A."
"D.A. Wilson J.A."