CITATION: Martin v Spire Global, Inc. 2024 ONSC 7205
COURT FILE NO.: CV-23-701354
MOTION HEARD: 20241219

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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: David Martin, Taylor Nicholls, Brent Van Osch and Bruce Winter, Plaintiffs

AND:

Spire Global, Inc., Defendant

BEFORE: Associate Justice Jolley

COUNSEL: Sonia Regenbogen, counsel for the moving party defendant

Junaid Malik, counsel for the responding party plaintiffs

HEARD: 19 December 2024

REASONS FOR DECISION

[1] David Martin ("Martin"), Taylor Nicholls ("Nicholls"), Brent Van Osch ("Van Osch"), and Bruce Winter ("Winter") each were employed in relatively senior positions with a company called exactEarth. Spire Global, Inc. acquired exactEarth on 30 November 2021 and the plaintiffs continued their employment with the defendant. Each plaintiff resigned his employment in the spring of 2023, alleging constructive dismissal. Martin and Van Osch also alleged that the change of control provision in their respective contracts had been triggered.

[2] The defendant seeks an order severing the plaintiffs' claims or, in the alternative, an order that the claims of Martin and Van Osch be severed and heard together and the claims of Winter and Nicholls be heard together.

[3] The defendant advances two grounds in support of severance. First, it argues that none of the criteria in Rule 5.02(1) permitting joinder of claims are met on the facts. Second, it argues that the action in its present form unduly complicates or delays the hearing or causes undue prejudice to it, such that the court should exercise its discretion under rule 5.05 to sever the claims.

Rule 5.02

[4] Rule 5.02(1) provides that where two or more persons are represented by the same lawyer of record, joinder may be appropriate where:

(a) they assert, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;

(b) a common question of law or fact may arise in the proceeding; or

(c) it appears that their joining in the same proceeding may promote the convenient administration of justice.

[5] If any of the criteria is met, joinder may be permitted.

[6] Starting with the first criteria, it is not necessary that the claims arise out of the same transaction or series of transactions. If the claims have sufficient commonalities to establish a "nexus", joinder may be appropriate. (*Baldwin v. Daubney* 2004 Can LII 21529 (ON SC).

[7] In *Baldwin*, each plaintiff sued for damages based on negligent professional financial advice. There was evidence on the motion in that case that each plaintiff would have received different advice, been in different financial and personal circumstances, had, perhaps, a different risk tolerance or profile and invested in different vehicles. Despite these differences, the court found a sufficient nexus for claims based on the commonalities that did exist.

[8] In this case, the plaintiffs each worked for the defendant in a senior position. Each alleges that the fundamental terms of his employment were changed without his consent. As a result of these changes, Martin resigned on 28 February 2023, Van Osch on 18 May 2023 and Winter and Nicholls on 31 May 2023.

[9] I am satisfied on the facts alleged that there is a nexus between the plaintiffs, such that 5.02(1)(a) is met. The employment terms alleged to have been changed are similar – reporting structure, responsibilities, compensation and benefits.

[10] I am also satisfied that, despite the differences in the claims, they have many questions of fact and law in common. Each plaintiff alleges that the defendant made the same or similar changes to the terms of his employment – it eliminated the bonus structure for each plaintiff and sent Van Osch, Winter and Nicholls identical letters ending the bonus. It eliminated at least two benefits enjoyed by each plaintiff – his employer-side RRSP matching contribution and his paid cellphone account. Further, it allegedly breached its obligations to each plaintiff concerning accrued vacation entitlement. It also altered the plaintiffs' employment responsibilities. It changed the reporting lines of Van Osch, Martin and Winter and the job titles of Winter, Nicholls and Martin. It proposed new and inferior employment agreements for Van Osch, Winters and Nicholls.

[11] I accept that the occurrences and facts are not precisely the same. Martin and Van Osch had executive employment contracts with change of control provisions. Winters and Nicholls had the same form of employment agreement, but different from the executive agreement. Despite these differences, I find there is a sufficient nexus and commonality

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and sufficient shared common issues of fact and law. Whether the test for change of control and constructive dismissal can be met will depend on similar facts. In particular, the court will have to determine whether the actions of the defendant in changing the benefit plan for all, in changing the reporting structure for some, in changing the job titles for most, and in changing job responsibilities for all, constituted a change in the terms of employment that amounted to constructive dismissal or triggered the change of control clause.

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[12] Rule 5.02(1)(c) permits joinder where it may promote the convenient administration of justice. Rule 5.05 is the flip side of the coin. It provides that if hearing the claims together "may unduly complicate or delay the hearing or cause undue prejudice to a party", the court may order separate hearings.

[13] In this case, I find that separating the claims will cause more inconvenience and difficulty than leaving them joined. I say this for four reasons. The first concerns the plaintiffs' proposed witnesses. The plaintiffs intend to call the former chief executive officer and the former chief financial officer as witnesses. They also intend to testify at each others' trials. Ordering separate hearings would require these witnesses to testify four times in four different trials. Such a process is inefficient both for the parties and their witnesses, and also for the administration of the court.

[14] In this case it was estimated that the trial will take seven to ten days if the action remains in its current state. If severed, the parties – and the court – would be faced with four trials of four to five days each.

[15] As noted by Master Brott, as she then was, in denying a motion for severance in *Tanner v McIlveen Estate* 2011 ONSC 7157 ("*Tanner*") at paragraph 17, "[Having to deal with identical allegations within the confines of two separate proceedings] would certainly amount to a multiplicity of proceedings which will unduly inconvenience the expert witness(es) and possibly other witnesses at trial. Certainly it will increase the cost to each Plaintiff."

[16] Second, in addition to testifying about factual issues directly concerning each plaintiff, the former chief executive officer and former chief financial officer may be called to testify about their own employment circumstances under the guise of similar fact evidence. Each plaintiff also proposes to introduce evidence from their co-plaintiffs about their employment situation as similar fact evidence. The admissibility of similar fact evidence is an issue of fact and law common to all the plaintiffs. It is also an issue best left to one trial judge to determine, rather than having four trial judges determine the same issue, perhaps differently.

[17] As was noted by Lederman, J. dismissing the appeal in *Tanner,* 2012 ONSC 2983, at paragraph 21:

> [21] Rulings on the admissibility of similar fact evidence are solely within the authority of the trial judge. Depending on such findings, the trial judge has the power to allow the action to proceed or to sever the claims into two trials in order

> to avoid prejudice. Moreover, in this way, if the trial judge determines that the plaintiffs' evidence constitutes admissible similar fact evidence in support of each other's case, the trial judge can allow the action to proceed and thereby avoid the risk of inconsistent findings and verdicts that could arise if there were to be two trials; if the similar fact evidence is held to be inadmissible, the trial judge may order that there be two separate trials.

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[18] Third, aside from the inconvenience to all of the witnesses attending to testify on four separate occasions, because many of the same witnesses will be called by each plaintiff at each trial and the same legal arguments made, there is a risk of inconsistent results.

[19] Fourth, all the steps in this action, other than the trial itself, have already taken place. Initially, the defendant swore only one common affidavit of documents. The defendant's representative was examined for discovery once, on the issues involving all of the plaintiffs' claims. One mediation was conducted. While the defendant advised that it agreed to one examination for discovery without prejudice to its position on this motion so as not to delay the action, the fact is it was more efficient to conduct one discovery on the issues involving all four plaintiffs. I find that conducting one trial, rather than four trials, will result in similar efficiencies.

[20] While I accept that the defendant agreed to that single examination for discovery without prejudice to its position on this motion, one cannot unscramble the egg. There is only one transcript of evidence from the defendant. If the entire transcript is entered in each action, as the defendant suggested it would agree to, then there risks repeated arguments about irrelevant evidence relating to one plaintiff being tendered in the action of a different plaintiff. *Tanner, supra* held that these kinds of decisions should be left to the trial judge, stating at paragraph 20 that "A motion to sever is not intended to be about the conduct of the trial. The conduct of the trial of the action should be left to the trial judge."

[21] The defendant's concern that the plaintiffs will have access to each other's testimony and will gain unfair insights into the defendant's litigation strategy is also something that can be appropriately dealt with by the trial judge.

[22] In conclusion, I find that permitting the action to proceed as structured does not unduly complicate or delay the hearing or cause the defendant undue prejudice. To the contrary, severing this action into two or even four actions adds a number of complications and delay. Allowing the action to proceed in its present form is the most just, expeditious and least expensive resolution of the dispute between the parties.

[23] The defendant's motion is dismissed. The plaintiffs' partial indemnity bill of costs is roughly 2/3 of the defendant's bill of costs. In all the circumstances, I find the sum of $10,953.09 sought by the plaintiffs on a partial indemnity basis to be a fair and reasonable sum and one the defendant would have reasonably expected to pay in the event the plaintiffs succeeded on the motion. The defendant shall pay that all-inclusive sum to the plaintiffs within 30 days of today's date.

Date: 23 December 2024

Associate Justice Jolley

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