Case In Point

Don’t Rush to Summary Judgment!

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The Court of Appeal has overturned a decision by a motion judge which allowed the plaintiffs’ wrongful dismissal actions to be decided by way of summary judgment motion.

In Singh v. Concept Plastics Limited, the two plaintiffs were long-term former employees of Concept Plastics. Both brought motions to resolve their actions by way of summary judgment. The employer argued against the summary judgment motion on the basis that there were credibility issues that required a trial to determine, including whether the employees had requested an extension of their employment, whether they were constructively dismissed and whether they took reasonable steps to mitigate their losses.

The motion judge disagreed with the employer. She held it was appropriate to proceed by way of summary judgment and ordered an 18 month notice period for one employee and a 20 month notice period for the other.

The employer appealed and argued that the motion judge erred: i) in adjudicating by way of summary judgment as it was unfair in the circumstances; and ii) in concluding that the employees had reasonably mitigated their losses.

The parties had significant differences in their positions with respect to the facts relating to mitigation. For example, the employer had argued that one employee was in Fiji and therefore unavailable to mitigate but the motion judge held that there was no evidence to support this submission. Similarly, there was conflicting evidence as to whether the other employee was employed during the mitigation period.

Key to the Court of Appeal’s decision were the simplified rules procedural constraints under Rule 76, which prohibit written examinations for discovery, cross-examination of a deponent on an affidavit and examination of a witness on a motion. It concluded that the restraints in Rule 76 placed significant limitations on the employer’s ability to prove its case and that a motion for summary judgment was not appropriate in this case.

Moreover, neither of the former employees offered an explanation for failing to actively seek employment during the first six months following the termination of their employment. Despite the fact that the motion judge indicated that she was “underwhelmed” by their efforts in the first six months, the motion judge ultimately held that six months was a reasonable period for each employee “to get oriented.” The Court of Appeal concluded that there was no evidence on the summary judgment motion that a six-month suspension of the employees’ duty to mitigate was warranted.

The Court allowed the appeals, dismissed the motions for summary judgment and ordered costs to the employer for the appeal.

Various courts have suggested that wrongful dismissal actions are generally ripe for summary judgment. However, this decision as well as the decision of the Court of Appeal in Hall v. Jones DesLauriers Insurance Management Inc. underscore that the courts will nonetheless examine each decision on its own merits to determine whether summary judgment is in fact appropriate.