COURT OF APPEAL FOR ONTARIO

CITATION: Baradaran v. Tarion Warranty Corporation, 2014 ONCA 123
DATE: 20140218
DOCKET: C56221

Gillese, Rouleau and Tulloch JJ.A.

BETWEEN

Manoucher Baradaran

Plaintiff (Appellant)

and

Tarion Warranty Corporation, Roger Boyd, Abbassgholi Nasseri, Master Custome Homes Inc.

Defendants (Respondents)

Manoucher Baradaran, acting in person

Sophie Vlahakis, for Tarion Warranty Corporation and Roger Boyd

Heard: February 12, 2014

On appeal from the order of Justice Robert Goldstein of the Superior Court of Justice, dated October 3, 2012.

ENDORSEMENT

[1] The appellant appeals from the motion judge's order striking his statement of claim as against one of the defendants, Roger Boyd. The motion judge found that the claim against Mr. Boyd disclosed no reasonable cause of action because, at all material times, Mr. Boyd would have been acting as an employee of Tarion Warranty Corporation ("Tarion") and not in his personal capacity.

[2] At the root of the dispute is the appellant's dissatisfaction with the way that Tarion responded to claims he made for alleged defects in the home he purchased. The claims were made pursuant to a statutory compensation scheme known as the *Ontario New Home Warranties Plan Act*, R.S.O. 1990 c. O.31. Most of the appellant's claims were rejected and his appeal to the Licence Appeal Tribunal was largely unsuccessful. Having exhausted his remedies under the statutory scheme, the appellant commenced the present action in Superior Court against Tarion, Mr. Boyd, Master Custom Homes Inc. and Abbassgholi Nasseri. In his statement of claim the appellant made essentially the same complaints about the home that were made to Tarion and in his appeal to the Tribunal. He has also alleged that he and his family have suffered stress and that one of his family members injured her ankle on a broken slot stone located at the front of the home.

[3] The respondents' motion to strike the appellant's claim pursuant to Rule 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Rules*") came before Low J. in scheduling court. The appellant's first complaint is that Low J. ordered that the respondents' Rule 21 motion proceed as a Rule 20 motion and that the motion judge erred by allowing the respondents to proceed on the basis that it was a Rule 21 motion. We disagree. From the transcript, it is clear that the motion was brought pursuant to Rule 21. Justice Low heard the matter in scheduling court and simply scheduled the motion for hearing on October 3.

Justice Low's reference to it being a summary judgment motion was simply an error. It did not, as suggested by the appellant, change the nature of the motion. As a result, the motion judge did not err in dealing with the motion as a Rule 21 motion.

[4] The appellant also alleges that various errors were committed by the motion judge, including allegations that:

1. The motion judge erred in relying on a misleading reference to case law made by the respondents;
2. The motion judge had no jurisdiction to make the order dismissing the claim and did not give the appellant a fair hearing;
3. The motion judge ought to have waited until he received transcripts of a witness' examination before deciding the motion; and
4. The motion judge made various ill-defined factual and legal errors in reaching his decision.

[5] The appellant also appeals the order that he pay costs fixed in the amount of $3,000 plus HST and disbursements.

[6] We would not give effect to these grounds of appeal. The motion judge gave the appellant a full and fair hearing and the order made was clearly within the motion judge's jurisdiction. Further, on a Rule 21 motion no evidence is admissible without leave of the motion judge. The decision is based on the

pleadings and the test is whether it is “plain and obvious” that the claim cannot succeed. There was no need for the motion judge to await production of transcripts from various cross-examinations prior to making his ruling.

[7] From our review of the statement of claim, there is simply no evidence that Mr. Boyd was at any time acting outside the scope of his employment such that he might become personally liable. As explained by this court in *Piedra v. Copper Mesa Mining Corporation*, 2011 ONCA 191, at para. 75, claims against individuals in their personal capacities “must withstand a high degree of scrutiny.” *Piedra* stressed, in the same paragraph, that courts must be “scrupulous in weeding out claims that are improperly pleaded or where the evidence does not justify an allegation of a personal tort”.

[8] Although the statement of claim contains a vague reference to the effect that there was “some financial issue between Mr. Boyd and Mr. Nasseri”, this does not amount to a claim in fraud or that Mr. Boyd was involved in some improper conduct that would potentially attract personal liability.

[9] We also agree with the motion judge’s conclusion that leave to amend the pleading should not be granted. Nothing in what the appellant proposed by way of amendments would further the allegations made against Mr. Boyd or meet the test for a proper pleading in fraud, misrepresentation, breach of trust, malice or

intent as provided in r. 25.06(8) of the *Rules*. Such claims must contain full particulars.

[10] Further, as we noted earlier, the claim against Mr. Boyd is simply an attempt by the appellant to re-litigate the issues fully canvassed in the proceedings brought before the Licence Appeal Tribunal. We agree with the motion judge's observation that the motion to strike could also have succeeded on the grounds that the claim against Mr. Boyd is frivolous and vexatious.

[11] Finally, we see no basis to interfere with the motion judge's order as to costs. Cost orders are entitled to deference in this court and the motion judge's order is reasonable and fully justified in the circumstances of this case.

[12] For these reasons, the appeal is dismissed. The respondents are entitled to their costs fixed in the amount of $1,300 inclusive of HST and disbursements.

"E.E. Gillese J.A."
"Paul Rouleau J.A."
"M.H. Tulloch J.A."