COURT OF APPEAL FOR ONTARIO

CITATION: Tran v. University of Western Ontario, 2015 ONCA 295
DATE: 20150430
DOCKET: C58616

Blair, Pepall and Lauwers JJ.A.

BETWEEN

Leanne Tran

Plaintiff (Appellant)

and

The University of Western Ontario, Justin Amann,
Christopher Watling, Salvatore Spadafora,
Stewart Kribs, Royal Etemad-Rezai, David Bach and Terri Paul

Defendants (Respondents)

Michael B. Fraleigh and Martine Garland, for the appellant

Sarah Jones, for the respondents

Heard: November 25, 2014

On appeal from the judgment of Justice Edward M. Morgan of the Superior Court of Justice dated January 27, 2014, with reasons reported at 2014 ONSC 617.

Pepall J.A.:

[1] The appellant, Leanne Tran, sued the University of Western Ontario ("UWO") and several members of the faculty of medicine after she was dismissed from a medical residency programme. The respondents successfully moved to

strike all her claims against the individual faculty members, and against UWO for intimidation. Ms. Tran appeals.

[2] For the reasons that follow, I would allow the appeal to the extent that the appellant is granted leave to amend her statement of claim within 20 days from the date hereof.

BACKGROUND

[3] The appellant is a medical doctor and was a radiology resident in the Diagnostic Radiology programme of the Schulich School of Medicine and Dentistry at UWO. She experienced difficulties throughout the programme and was eventually dismissed for unprofessional conduct. She brought claims against UWO and the individual respondents, who were administrators and supervisors in the residency programme. Her statement of claim raised causes of action in negligence, negligent misrepresentation, intimidation, breach of trust, breach of fiduciary duty and duty of good faith, breach of contract, inducing breach of contract, interference with economic relations and conspiracy. She argued that unfair treatment by the respondents ultimately led to her being unable to complete the programme and to practise as a radiologist. She sought damages totalling more than $20 million.

[4] In her statement of claim, the appellant pled that, at all material times, the individual appellants were “employees, agents, principals and/or legal

representatives of UWO." Alternatively, they exercised actual or apparent authority given to them by UWO. The appellant pled that, in any event, UWO was vicariously liable for the acts and omissions of the individual respondents.

[5] The appellant also advanced claims of conspiracy and intimidation. She alleged that the individual respondents acted outside the scope of their authority in committing these torts.

[6] The individual respondents did not serve and file a statement of defence.

[7] In its statement of defence, UWO admitted that the individual respondents were "employees, agents, or legal representatives" of the university. It denied any wrongdoing.

[8] In her reply to UWO's statement of defence, the appellant pled that the individual respondents "were not, at all material times, acting within the scope of their duties and authority on behalf of UWO."

[9] The respondents brought a motion pursuant to rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to strike all claims against the individual respondents on the basis that they disclosed no reasonable cause of action and to strike the claim of intimidation against all respondents due to a failure to plead facts in support of the essential elements of the cause of action.

MOTION JUDGE'S REASONS

[10] The motion judge addressed the claims against the individual respondents and applied *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (C.A.), and *Lobo v. Carleton University*, 2012 ONSC 254, aff'd 2012 ONCA 498. He observed that the actions of the individual respondents must themselves be tortious or exhibit a separate identity or interest from that of UWO so as to make the acts or conduct complained of their own. He noted that, in a pleading, the suggestion of a separate identity must be more than "window dressing": at paras. 14-15.

[11] The motion judge concluded that the acts of the individual respondents described in the statement of claim – teaching, mentoring, supervising, designing and administering an educational programme – were indistinguishable from those of UWO. The appellant's attempt to isolate personal acts amounted to little more than "window dressing". Furthermore, the pleadings contained internal contradictions, particularly on the question of whether the individual respondents were acting within their authorized capacity. The motion judge was of the view that the internal contradictions on the issue of authority made it impossible for the claims against the individual respondents to succeed: at paras. 25-26.

[12] The motion judge also concluded that the appellant had failed to plead all of the requisite elements of the tort of conspiracy, most notably the facts in

support of an agreement to act and that the offending conduct resulted from an agreement. Absent a pleading of these elements, there could be no conspiracy: at paras. 37-44.

[13] On the issue of intimidation, both as against the individual respondents and UWO, the motion judge concluded that the appellant had failed to plead all of the requisite elements of the tort. In particular, the appellant had failed to plead that any of the individual respondents or UWO had threatened to commit an unlawful act. Further, neither the individual respondents nor UWO had demanded that the appellant do any specific act or follow any specified course of conduct that redounded to her detriment or that caused her any loss: at paras. 50-56.

[14] The motion judge accordingly struck out the entire statement of claim as against the individual respondents and the claim of intimidation as against UWO. He refused to grant the appellant leave to amend but gave no rationale for that refusal: at paras. 57-58.

GROUNDS OF APPEAL

[15] The appellant submits that the motion judge erred in striking out her claims. She argues that her pleadings disclose reasonable causes of action, do not preclude personal liability on the part of the individual respondents, and in any event, conspiracy and intimidation are tortious acts and are inherently

outside the scope of the individual respondents' authority. She asserts that all the requisite elements of the various causes of action relied upon were pleaded. Furthermore, even if her pleadings contain imperfections, these amount to drafting deficiencies and leave to amend should have been granted.

ANALYSIS

(1) General principles

Striking claims under rule 21.01(1)(b)

[16] The test on a rule 21.01(1)(b) motion to strike is whether it is plain and obvious that the statement of claim discloses no reasonable cause of action: *Hunt v. Carey Canada Inc.,* [1990] 2 S.C.R. 959, at p. 960. In *McCreight v. Canada (Attorney General)*, 2013 ONCA 483, 116 O.R. (3d) 429, at para. 39, this court explained that on a rule 21.01(1)(b) motion to strike: (1) all essential elements of a cause of action are to be pleaded, and (2) the pleading must be read generously with allowances for drafting deficiencies.

Individual liability of employees

[17] While the scope of individual liability as distinct from corporate liability is not always clear, it is undisputed that when a plaintiff purports to sue both a corporation and individuals within that corporation (whether officers, directors or employees), the plaintiff must plead sufficient particulars which disclose a basis for attaching liability to the individuals in their personal capacities: *Normart*

Management Ltd. v. West Hill Redevelopment Co. (1998), 37 O.R. (3d) 97, at p. 102. As Labrosse J.A. explained in *460635 Ontario Ltd. v. 1002953 Ontario Inc*. (1999), 127 O.A.C. 48, at para. 8: "'[P]roperly pleaded' as it relates to personal liability of corporate directors, officers and employees must be read as 'specifically pleaded', a separate claim must be stated against the individual in his personal capacity."

(2) Application to this case

Individual liability

[18] The appellant's statement of claim fails to distinguish the acts of each of the individual respondents from those of each other and from those of their employer, UWO. The appellant simply enumerates the "[d]efendants' [f]ailures".

[19] Furthermore, the global "failures" enumerated in the statement of claim do not reflect elements of any cause of action. They include such things as failure to assign a mentor, failure to ensure integration and training of the appellant, and failure to provide regular feedback. I agree with the motion judge that these pleadings are inadequate to sustain a cause of action.

Conspiracy and intimidation

[20] I also agree with the motion judge that the appellant failed to plead the essential elements of both the claims of conspiracy and intimidation.

[21] In *Normart,* at p. 104, this court held that a statement of claim alleging conspiracy should:

> [D]escribe who the several parties are and their relationship with each other. It should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy, and it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby.

[22] If read generously, some facts supporting these elements may be identified in the statement of claim. However, an agreement to conspire, its objects and the overt acts of each of the individual respondents have not all been pled.

[23] The tort of intimidation requires: a threat by the defendant to commit an unlawful act; an intention by the defendant that injury will result to the plaintiff; submission to the threat by the plaintiff; and actual damage suffered by the plaintiff: *Kisin v. Netron*, 2000 CarswellOnt 1149, at para. 23 (S.C.), see also *Roehl v. Houlahan* (1990), 75 O.R. (2d) 482, leave to appeal to S.C.C. refused, [1990] S.C.C.A. No. 518 and *Central Canada Potash Co. v. Saskatchewan*, [1979] 1 S.C.R. 42. Again, read generously, some of these elements may be

identified in the appellant's statement of claim. However, the presence of a threat is nowhere to be found.

[24] I conclude that the motion judge made no error in striking the appellant's claims both as against the individual respondents and as against UWO for the torts of conspiracy and intimidation.

Leave to amend

[25] Lastly, the appellant submits that the motion judge erred by failing to exercise his discretion in not granting leave to amend. I agree.

[26] In deciding whether to grant leave to amend, the motion judge gave no reasons for denying the appellant's request for leave. Leave to amend should be denied only in the clearest of cases: *South Holly Holdings Ltd. v. The Toronto-Dominion Bank*, 2007 ONCA 456, at para. 6.

[27] While a party should not be given unlimited scope to amend its pleading, no prior amendments to the statement of claim had been made in this case. Furthermore, in the absence of any articulated basis on which leave was denied, the appellant should not be deprived of the opportunity to attempt to remedy her deficient pleadings.

DISPOSITION

[28] For the reasons given, I would allow the appeal to the extent that the appellant is granted leave to amend her statement of claim within 20 days from

the date hereof in accordance with these reasons. In light of the divided success on appeal, I make no order as to costs.

Released: “RAB” APR 30, 2015

“S.E. Pepall J.A.”
“I agree. R.A. Blair J.A.”
“I agree. P. Lauwers J.A.”