

# COURT OF APPEAL FOR ONTARIO

CITATION: Adejuyigbe v. Boynton, 2023 ONCA 141

DATE: 20230302

DOCKET: COA-22-CV-0021

Pepall, Nordheimer and Favreau JJ.A.

BETWEEN

Adesimbo Adejuyigbe

Plaintiff/Responding Party  
(Appellant)

and

John Boynton, Torstar Corporation, and Nordstar Capital LP

Defendants/Moving Parties  
(Respondents)

Osborne G. Barnwell, for the appellant

Brandin O'Connor and Jozef Hadlaw-Murray, for the respondents

Heard: February 27, 2023

On appeal from the order of Justice Susan Vella of the Superior Court of Justice,  
dated July 28, 2022, with reasons reported at 2022 ONSC 4447.

## REASONS FOR DECISION

[1] Adesimbo Adejuyigbe appeals from the decision of the motion judge who struck out her statement of claim without leave to amend and dismissed her action.

[2] The appellant was formerly an employee of Torstar Corporation ("Torstar"). She was dismissed without cause in 2017. She was provided with a severance package and signed a full and final release on May 31, 2017. Three years later, the appellant exchanged written correspondence with Torstar's Chief Executive Officer, Mr. Boynton, advising him that she felt she had been discriminated against during the course of her employment. She stated that she believed it would be appropriate for Torstar to provide an apology and pay her compensation for the pain and suffering she experienced. Mr. Boynton responded, in writing, that, given that she raised the issue of financial compensation, dialogue was perhaps best conducted through legal counsel. Counsel subsequently exchanged correspondence. When this proved fruitless, the appellant sued the respondents.

[3] The appellant's claim is premised on her position that the letters exchanged between her and Mr. Boynton constitute a binding and enforceable agreement by Mr. Boynton, on behalf of Torstar, to pay further compensation to her based on her allegations of racial discrimination that she allegedly suffered while an employee at Torstar over an approximate 5 year period from 2012 to the time of her dismissal in 2017. The respondents moved to strike out the statement of claim on various grounds including that it disclosed no reasonable cause of action.

[4] The statement of claim and documents incorporated by reference in the pleading were considered by the motion judge. These included the release and the exchange of correspondence between the appellant and Mr. Boynton. The motion

judge applied the proper test and struck out the claim. She found that the letters upon which the appellant relied did not constitute an enforceable contract. The motion judge also found that the appellant failed to plead the constituent elements of promissory estoppel with respect to the full and final Release.

[5] Before us, the appellant essentially repeats the unsuccessful arguments advanced below. The appellant has failed to establish any error in the motion judge's analysis and conclusion. A motion under r. 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 is to be determined on the basis of the facts as pleaded in the statement of claim. As found by the motion judge, the pleaded facts do not support a conclusion that there was any agreement entered into to provide compensation to the appellant. Counsel for the appellant's reference to the need to consider the context of the case does not change that basic principle.

[6] We do not agree that this claim raises novel issues or matters that are unsettled in the law. To the contrary, the constituent elements of the causes of action pleaded by the appellant are well-settled. The pleaded facts do not support those causes of action. The motion judge's decision is consistent with the observation made in *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, 447 D.L.R. (4th) 543, at para. 18, that courts should strike out claims that have no reasonable chance of success.

[7] In our view, there is no need to address the issue relating to the motion judge's conclusion that certain emails exchanged between counsel were subject to settlement privilege. That conclusion does not affect the outcome of the motion.

[8] Finally, we note that the decision below would not, in any event, establish any liability on Nordstar Capital LP or Mr. Boynton in his personal capacity. In addition, given the flawed premise that fuelled the causes of action, it was reasonable for the motion judge to refuse leave to amend.

[9] The appeal is dismissed. The respondents are entitled to their costs of the appeal fixed in the agreed amount of \$5,000, inclusive of disbursements and HST.

"S.E. Pepall J.A."  
"I.V.B. Nordheimer J.A."  
"L. Favreau J.A."