

COURT OF APPEAL FOR ONTARIO

CITATION: Tewari v. Singh, 2023 ONCA 249

DATE: 20230411

DOCKET: C70462

Fairburn A.C.J.O., MacPherson and Miller JJ.A.

BETWEEN

Gaurav Tewari

Plaintiff (Appellant)

and

Aditya Vikram Singh

Defendant (Respondent)

Gaurav Tewari, acting in person

Bobby Sachdeva, for the respondent

Heard and released orally: April 6, 2023

On appeal from the judgment of Justice Jill C. Cameron of the Superior Court of Justice, dated February 11, 2022.

REASONS FOR DECISION

[1] The appellant's employment as Director of Plant Operations at a pickle manufacturing plant was terminated, initially on a without cause basis. The employer later alleged cause. The appellant sued his former employer for wrongful dismissal and the former employer counterclaimed.

[2] The present action arises from two affidavits sworn in the employment proceeding by the respondent, a former co-worker of the appellant. The appellant alleges that the respondent participated in a conspiracy to have the appellant's employment wrongfully terminated, and that the statements about him in the second affidavit are defamatory.

[3] The respondent did not file a statement of defence within the prescribed time period, and the appellant moved for default judgment.

[4] The motion judge dismissed the motion for default judgment on the basis that the appellant had not proved his case on the evidence he presented. The motion judge's reasons did not expressly state that the action was dismissed.

[5] The appellant re-attended before the motion judge on a motion styled as a "supplementary default judgment motion". The respondent then brought a cross-motion under Rule 59.06(1) seeking clarification that the motion judge's intention had been to dismiss the action.

[6] On the reattendance of the parties, the motion judge granted the cross-motion, explaining that it had been her intention to dismiss the action when she dismissed the original default judgment motion.

[7] The appellant appeals on the basis that the motion judge erred in dismissing the action.

[8] We do not agree. The appellant has not identified any reversible error in the motion judge's reasons.

[9] The "supplementary default judgment motion" was not in accordance with the *Rules of Civil Procedure* and constitutes an abuse of process. The motion judge made no error in not acceding to it.

[10] The appeal is dismissed.

[11] The respondent is awarded costs in the amount of \$5,000 inclusive of disbursements and HST.

"Fairburn A.C.J.O."

"J.C. MacPherson J.A."

"B.W. Miller J.A."