

Date: 20240826  
Docket: CI 23-01-42315  
(Winnipeg Centre)  
Indexed as: Ellis v. Opportunities for Independence Inc.  
Cited as: 2024 MBKB 127

**COURT OF KING’S BENCH OF MANITOBA**

**B E T W E E N:**

JAMES H. ELLIS, )  
 )  
 plaintiff, ) Self-represented  
 )  
 - and - )  
 )  
 OPPORTUNITIES FOR INDEPENDENCE INC., ) Davis A. J. Hirsch  
 ) for the defendant  
 defendant. )  
 )  
 ) Judgment delivered:  
 ) August 26, 2024

**ASSOCIATE JUDGE GOLDENBERG**

**INTRODUCTION**

[1] The plaintiff filed a statement of claim against the defendant seeking to enjoin the defendant from making defamatory statements concerning the plaintiff and seeking damages against the defendant for wrongful dismissal and defamation. The defendant brings the within motion to strike the statement of claim on the basis that it is frivolous, vexatious, and an abuse of the process of the court, and that it fails to disclose a reasonable cause of action.

## **EVIDENCE**

[2] In support of its position that the statement of claim is frivolous, vexatious and an abuse of the process of the court, the defendant relies upon the affidavit of Brad Torgerson affirmed November 1, 2023. The plaintiff filed two affidavits in support of his position that the claim should not be struck. Initially, he affirmed an affidavit on October 25, 2023. Given that the defendant's affidavit had been filed subsequent to that affidavit, I gave the plaintiff leave to file one further affidavit, which he did, affirmed on November 21, 2023.

## **BACKGROUND FACTS**

[3] The defendant is a not-for-profit charitable organization based in Manitoba. The plaintiff was employed with the defendant as a treatment worker from March 16, 2009, to March 16, 2020, when his employment was terminated.

[4] Following the termination of his employment, the plaintiff filed a statement of claim against the defendant on August 4, 2020, in file number CI 20-01-27889 (the "initial civil claim"). On or around October 29, 2020, the plaintiff contacted Workplace Safety and Health and requested a review of his file.

[5] On January 22, 2021, the defendant filed a notice of motion to strike the initial civil claim.

[6] The plaintiff was subsequently represented by legal counsel and the parties reached a settlement in respect of all matters related to the plaintiff's employment with the defendant and the termination of his employment. As part of that settlement, the

plaintiff executed a Full and Final Release on March 30, 2021 (the "Release"). A notice of discontinuance was filed regarding the initial civil claim on April 7, 2021.

[7] On July 28, 2021, the plaintiff wrote to Workplace Safety and Health stating that the Release inappropriately suppressed his rights and infringed upon his rights under Workplace Safety and Health legislation and that his signature was coerced. He requested an investigation and asked that his "employment termination Appeal be heard".

[8] On July 12, 2022, the Workplace Safety and Health officer dismissed the plaintiff's Workplace Safety and Health complaint. The plaintiff appealed that decision to the Workplace Safety and Health director, who confirmed the officer's decision on September 26, 2022. The plaintiff appealed the director's decision to the Manitoba Labour Board and the Manitoba Labour Board dismissed that appeal on April 25, 2023.

[9] On September 11, 2023, the plaintiff filed the within statement of claim.

### **POSITION OF THE PARTIES**

[10] The defendant's position is that the parties have reached a full and final resolution of all matters relating to the plaintiff's employment and the termination thereof. The defendant says that the Release prevents the plaintiff from bringing the within claim and that bringing the claim is frivolous, vexatious, and an abuse of the process of the court.

[11] The defendant says further that the statement of claim fails to disclose a reasonable cause of action because the Release covers all claims related to matters existing up to March 30, 2021. As the statement of claim relates to matters that took place prior to that date, the claim cannot and does not disclose a reasonable cause of action.

[12] The plaintiff denies that the claim is frivolous, vexatious, or an abuse of the process of the court and disagrees that it does not disclose a reasonable cause of action against the defendants. He says that before signing the Release, and unbeknownst to him at the time, the defendant had made libelous defamatory statements about him. He says that the defendant knew that he would not have signed the Release if he had become aware of the defamatory statements before signing the Release.

[13] The plaintiff says that the defendant's actions were nefarious, deceptive, and not in good faith, and therefore, invalidated the Release.

### **ANALYSIS**

[14] The motion is brought pursuant to Rule 25.11 of The Court of King's Bench Rules, Man Reg 553/88 ("the KBR") which provides as follows:

**25.11(1)** The court may on motion strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious;
- (c) is an abuse of the process of the court; or
- (d) does not disclose a reasonable cause of action or defence.

[15] The terms "frivolous" and "vexatious" were considered by Edmond J., (as he then was), in the context of KBR 25.11 in ***Rebillard v. Manitoba (Attorney General)***, 2014 MBQB 181, as follows at para 30:

**30** In ***Bellan v. Curtis et al.***, 2007 MBQB 221, 219 Man. R. (2d) 175 at para. 37, the court considered the meaning of "scandalous", "frivolous" and "vexatious" in light of Queen's Bench Rule 25.11 as follows:

[37] Queen's Bench Rule 25.11 allows a court to strike a pleading that is "scandalous, frivolous or vexatious". Epstein, J., dealt with the meaning of "scandalous, frivolous or vexatious" in ***George Estate v. Harris et al.***, [2000] O.T.C. Uned. 404 (Sup. Ct.); [2000] O.J. No. 1762. At para. 20, he stated:

"The next step is to consider the meaning of 'scandalous', 'frivolous' or 'vexatious'. There have been a number of descriptions provided in the multitude of authorities decided under this or similar rules. It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious. Similarly, portions of a pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations should be struck out as scandalous. The same applies to a document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation. In such a case the offending statements will be struck out as being scandalous and vexatious. In addition, documents that are replete with conclusions, expressions of opinion, provide no indication whether information is based on personal knowledge or information and belief, and contain many irrelevant matters, will be rejected in their entirety."

[16] Cameron J., (as she then was), described the notion of "abuse of process" in ***Nygaard International Partnership v. Canadian Broadcasting Corporation et al***,

2011 MBQB 124, as follows at paras. 15 and 16:

**15** The focus of an abuse of process claim is on the court's integrity and its interest in maintaining confidence in the administration of justice.

**16** Abuse of process has been succinctly described in the oft-quoted passage by Arbour J. in ***Toronto (City) v. C.U.P.E., Local 79***, 2003 SCC 63, [2003] 3 S.C.R. 77:

- **35** Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, 1994 CanLII 126 (S.C.C.), [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, 1989 CanLII 66 (S.C.C.), [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, 1990 CanLII 27 (S.C.C.), [1990] 3 S.C.R. 979, at p. 1007:
  - ... abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in

a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.

[17] Based on the language set out in the Release, it is clear that the Release signed by the plaintiff is comprehensive. It protects the defendant from all claims that the plaintiff "ever had, now has or may have ... by reason of any cause, matter or thing whatsoever existing up to" the day that the plaintiff signed the Release on March 30, 2021. It indicates that it covers matters arising out of the plaintiff's employment with the defendant and the termination thereof, but it does so "without restricting the generality of the foregoing".

[18] Further, the Release indicates that any claims filed by the plaintiff that relate to his employment with the defendant or the termination thereof would be "frivolous, vexatious and an abuse of process".

[19] The plaintiff had the benefit of legal advice before signing the Release. In the Release the plaintiff affirms that he was "given ample opportunity to obtain independent legal advice with respect to the termination of [his] employment" and the terms of the Release. He also affirms that he executed the Release voluntarily.

[20] Despite executing the Release, the plaintiff continued to act in a manner that the defendant says violates the Release. For example, the plaintiff continued to pursue the Workplace Safety and Health complaint. When he did so, the defendant contacted the plaintiff's counsel and asked that the plaintiff cease such conduct. The plaintiff's counsel indicated that he would "advise [the plaintiff] of his obligations under the release and to cease this conduct." However, the plaintiff persisted with the Workplace Safety and

Health complaint. The Workplace Safety and Health complaint was dismissed at all stages of the complaint and appeal process, including on a final basis, by the Manitoba Labour Board on April 25, 2023.

[21] The Labour Board upheld the decision of the Director of Workplace Safety and Health who found that there was no remedy available to the plaintiff for wrongful dismissal pursuant to *The Workplace Safety and Health Act*, C.C.S.M. c. W120, unless the dismissal was a reprisal within the meaning of that *Act*. The Labour Board upheld the earlier findings of the Safety and Health officer and, subsequently, the Director of Workplace Safety and Health, who found that there had not been any reprisals. The Labour Board found that the plaintiff's assertion that he was wrongfully dismissed was not a matter within its jurisdiction to consider.

[22] The Labour Board also noted that the plaintiff had signed a Release which precludes the filing of any further claims against the Employer in regard to his employment and termination".

[23] The defendant says that with the filing of the statement of claim, the plaintiff is continuing his pattern of violating the full and final Release. I agree.

[24] As noted in the introduction, I have summarized the statement of claim as including a claim against the defendant for defamation and wrongful dismissal.

[25] At paragraph 2 of the statement of claim, the plaintiff alleges that he was wrongfully dismissed from his employment on March 16, 2020. In his prayer for relief in paragraph 1, the plaintiff's claim for damages includes loss of wages, benefits, and

severance pay. The balance of the claim relates to allegations that the defendant has defamed the plaintiff.

[26] The defendant relies on two cases to support its position that the statement of claim should be struck under KBR 25.11 when, as here, a full and final release has been signed. The first is, ***Canadian National Railway v. Benson***, 2004 MBQB 210 ("***Benson***"). Following the termination of his employment with the defendant employer, the plaintiff employee executed a release in favour of the defendant in exchange for a severance package. The relief in that case related to all claims "in respect of or in any way arising out of [the plaintiff's] employment relationship [defendant]". The plaintiff was represented by legal counsel when he signed the release. (See ***Benson*** at paras. 48 and 49.)

[27] Notwithstanding that release, the plaintiff subsequently brought several proceedings against the defendant, including an action in the Court of Queen's Bench (as it then was) which was dismissed for disclosing no reasonable cause of action. The plaintiff then filed a second claim at the Court of Queen's Bench and the defendant brought a motion to strike the claim under KBR 25.11.

[28] The court granted the defendant's motion to strike the claim and observed with respect to the release that the plaintiff had signed that "certainly this release would cover and preclude any action for wrongful dismissal", and that the plaintiff had the benefit of legal representation when he signed it and that "there is absolutely no reasonable foundation for the claim of wrongful dismissal." (See ***Benson*** at paras. 49, 52 and 66.)



[29] In ***Bartel-Zobarich v. Manitoba Association of Health Care Professionals (MAHCP-Bargaining Unit) et al.***, 2021 MBQB 87 (“***Bartel-Zobarich***”), the plaintiff employee was terminated for just cause, and his union filed a grievance on his behalf. The grievance was eventually settled, and the plaintiff executed a release in favour of the defendant employer.

[30] Similar to the ***Benson*** decision, after initiating multiple proceedings against the defendant and the plaintiff’s union in several different forums, including an action at the Court of Queen’s Bench (which was struck on the basis that it was an abuse of process and did not advance a reasonable cause of action), the plaintiff brought a second action at the Court of Queen’s Bench. The defendant brought a motion to strike the claim under KBR 25.11.

[31] Grammond J., quoted from a decision of the Federal Court and commented on the notion of abuse of process as follows at para 19:

**19** In ***Coombs v. Canada (Attorney General)***, 2014 FC 232 (CanLII), the court stated:

- [53] ... Despite the applicants' commitment to pursuing every possible option, repackaging or re-characterizing the same application time and time again with the same allegations that have previously been adjudicated upon will not open up new avenues of relief or yield a different result.

[32] Grammond J. noted that the release that the plaintiff had signed was “a significant problem” for the plaintiff and could be relied upon by the defendant “as a shield” to the plaintiff’s claim. The defendant’s motion to strike was granted on the basis that the plaintiff’s claims were frivolous and vexatious, an abuse of process and failed to disclose a reasonable cause of action. (See ***Bartel-Zobarich*** at paras. 11 and 28.)

[33] As in the cases referred to, I am satisfied that bringing a claim against the defendant for anything relating to his employment or the termination of his employment is frivolous and vexatious and is an abuse of process and fails to disclose a reasonable cause of action. Clearly that relates to the plaintiff's claim for wrongful dismissal.

[34] The statement of claim alleges that the defendant made defamatory statements about the plaintiff in a document that was submitted to the Worker's Compensation Board by the defendant on or around June 15, 2020. The statement of claim alleges that the plaintiff did not become aware of the statement made by the defendant to the Worker's Compensation Board until March 2023.

[35] I am satisfied that the defendant's participation in the Worker's Compensation claim is a matter that arises out of the plaintiff's employment with the defendant, and the defendant's statements, as pled in the statement of claim, took place before the Release was signed on March 30, 2021. In response to allegations made by the plaintiff to the Worker's Compensation Board, the defendant responded and included in its response the reasons why it terminated the plaintiff's employment. Some of those reasons provided are the statements that the defendant now alleges to be defamatory statements.

[36] Even if the plaintiff was not aware of the defendant's June 15, 2020, submission to the WCB when he signed the Release on March 30, 2021, this does not assist the plaintiff. The Release does not carve out an exception for matters that were not known to the plaintiff at the time of the execution of the Release. The Release covers all claims that the defendant "can, shall or may have for or by reason of any cause, matter or things whatsoever existing up to March 30, 2021, whether known to the plaintiff or not."

[37] The evidence shows that the plaintiff has engaged in a pattern of repeatedly contravening the Release that he signed. Here, under a claim referencing both wrongful dismissal and defamation, the plaintiff is again attempting to relitigate matters related to his employment with the defendant and the termination thereof despite previously reaching a final resolution on those issues with the benefit of independent legal advice. Accordingly, it is my decision that the statement of claim ought to be struck in its entirety without leave to amend.

**CONCLUSION**

[38] For the reasons set out above, I find that the claim is frivolous, vexatious, and an abuse of the process of the court. In addition, because the Release covers all claims relating to matters existing up to March 30, 2021, the statement of claim also cannot, and does not, disclose a reasonable cause of action.

[39] The plaintiff shall pay the defendant costs of \$3,000.

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J. L. Goldenberg  
Associate Judge