

CANADA / JUDGMENT

Dyck v. Wainbee Limited Wainbee Limitee

2025 BCSC 2595

COURT

Supreme Court of British Columbia

DECIDED

2 October 2025

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2025 BCSC 2595 Dyck v. Wainbee Limited Wainbee Limitee IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Dyck v. Wainbee Limited Wainbee Limitee, 2025 BCSC 2595 Date: 20251002 Docket: S258368 Registry: New Westminster Between: Leroy Dyck Plaintiff And Wainbee Limited Wainbee Limitee Defendant Before: The Honourable Justice Norell Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: V. Sidhu Counsel for the Defendant: L. Huang Place and Date of Hearing: New Westminster, B.C. October 2, 2025 Place and Date of Judgment: New Westminster, B.C. October 2, 2025

- [1] THE COURT: This is a wrongful dismissal case. The notice of civil claim ("NOCC") was filed in June 2025. No discovery, oral or documentary, has taken place. A notice of trial has not been filed.
- [2] The defendant applies pursuant to Rule 9-5 of the Supreme Court Rules to strike portions of the plaintiff's NOCC. The plaintiff opposes the striking of the pleadings, but in the alternative seeks leave to amend. The defendant opposes leave to amend. Legal Principles
- [3] The principles which guide applications under Rule 9-5 are summarized in FORCOMP Forestry Consulting Ltd. v. British Columbia, 2021 BCCA 465, at paras. 20 to 21. The test is whether it is plain and obvious, assuming the facts pleaded are true, that the claim discloses no reasonable cause of action, has no reasonable prospect of success, or if the action is certain to fail. If there is a chance that the plaintiffs might succeed, then they should not be driven from the judgment seat. No evidence is admissible on an application under Rule 9-5(1)(a). Pleadings are read generously with a view to allowing for reasonable proposed amendments to cure deficient drafting.
- [4] A plaintiff must clearly plead the material facts in support of each cause of action, Rule 3-1(2)(a) of the Supreme Court Civil Rules, B.C. Reg.168/2009; R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, at para. 22. Bald legal conclusions are not allegations of material fact and cannot support a cause of action; Basyal v. Mac's Convenience Stores Inc., 2018 BCCA 235, at paras. 39 to 45.

- [5] Material facts are the facts that the plaintiff must prove to establish the right to the remedy sought. They are the who, when, where, how and what that give rise to liability, while evidence is the means by which the material facts will be proved; *Testar Estate v. Leslie*, 2023 BCSC 611 at para. 33; app. dismissed 2024 BCCA 129.
- [6] As set out in *Jensen v. Samsung Electronics Co. Ltd.*, 2021 FC 1185:
- [83] There is no bright line between evidence, material facts and bald allegations; they are rather points on a continuum (*Mancuso* [*Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227], at paragraph 18). It is the responsibility of the certification judge, looking at the pleadings as a whole and at all the circumstances, to ensure and be satisfied that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.
- [7] The defendant seeks two different portions of the NOCC be struck for different reasons.
- [8] First, the defendant seeks an order striking paragraph 3 in the relief sought section of the NOCC which seeks aggravated damages.
- [9] To award aggravated damages resulting from the manner of dismissal requires: (a) a finding that an employer engaged in conduct during the course of dismissal that was unfair or in bad faith; and (b) a finding that the manner of dismissal caused the employee mental distress; *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2018 BCCA 383, at para. 15.
- [10] The NOCC does not plead either. The plaintiff argues that it can be inferred from the pleadings at paragraphs 16 to 22 that the termination was in bad faith. He refers to the letter the claimant received from Canada Life outlining his options regarding the Defined Contribution Pension Plan as a result of his termination. The plaintiff's argument is that the defendant misrepresented that this was a temporary layoff when in reality he was terminated without cause. I note that the defendant has denied termination. The NOCC does not plead any mental distress.
- [11] I find that para. 3 must be struck as the material facts supporting it have not been pleaded. However, I also find that it is just and convenient that the plaintiff be permitted to amend the NOCC to properly plead these damages. First, he is entitled to one amendment without the consent of the defendant; and secondly, the amendment is necessary to adjudicate the matters in dispute between the parties. There has been no delay. This is very early on in the lawsuit and no prejudice has been alleged by the defendant.
- [12] Second, the plaintiff seeks paragraphs 16 and 18 to 20 of the NOCC be struck as they plead evidence and are not material facts. As already noted, there is no bright line between evidence, materials facts and bald allegations. They are rather points on the continuum. The purpose of pleadings is to alert the parties and the court to the issues. Pleadings are the parameters within which the action operates. They guide the discovery process, interlocutory applications and trial, ensure notice and fairness between the parties, and enable the parties and the court to know with precision the issues of fact and law to be

decided; Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc., 2021 BCCA 362, at paras. 21 to 23.

- [13] In my view, paras. 16 and 18 to 20 are evidence through which the defendant will attempt to prove his case: (a) that the termination was misrepresented, para. 16; and (b) that his termination was without cause, paras. 18 to 20. Paragraphs 18 to 20 may also be relevant to damages and bad faith. Those paragraphs could simply be recast to allege, as I understand the plaintiff, that the defendant misrepresented the layoff when it was really a permanent termination, and (b) the plaintiff was an employee who was dismissed without cause. By striking these pleadings, I am not suggesting that those paragraphs are not relevant or that evidence cannot be tendered of those matters. Provided they remain relevant by the time of trial and subject, of course, to the trial judge, nothing stops the plaintiff, if termination without cause is not admitted, from tendering for example that he had never been disciplined or had never had warnings, or that he received a letter from Canada Life as a result of termination.
- [14] Again, in my view, it is just and convenient that the plaintiff be permitted to amend for the same reasons, and I permit him to amend to properly plead those allegations.
- [15] That is the end of the reasons. So I would --
- [16] CNSL V. SIDHU: Thank you, Justice.
- [17] THE COURT: -- I would say amend within three weeks. Would that give you sufficient time?
- [18] CNSL V. SIDHU: Yes, Justice.
- [19] THE COURT: All right. So those paragraphs are struck but with leave to amend.
- [20] CNSL L. HUANG: Justice, just for costs?
- [21] THE COURT: Do you want --
- [22] CNSL L. HUANG: I would say each party bear their own costs.
- [23] CNSL V. SIDHU: Yes.
- [24] THE COURT: Yes. All right. By consent, the parties will bear their own costs.
- [25] CNSL V. SIDHU: Thank you, Justice.
- [26] THE COURT: Thank you. "Norell J."

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