
CANADA / JUDGMENT

Liu v. UPS Canada

2017 BCSC 1660

COURT

Supreme Court of British Columbia

DECIDED

20 September 2017

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2017 BCSC 1660 Liu v. UPS Canada

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liu v. UPS Canada,

2017 BCSC 1660

Date: 20170920

Docket: S171367

Registry: Vancouver

Between:

Wilson Shunliang Liu

Plaintiff

And

UPS Canada, Ravi Sandhu, Jody Dominey, Jocelyn Pike and

Sukhoveyev Kirill

Defendants

Before: The Honourable Madam Justice H. Holmes

Reasons for Judgment

Appearing on his own behalf as Plaintiff:

W. Liu

Counsel for the Defendants UPS Canada, Jody Dominey, Jocelyn Pike and Sukhoveyev Kirill:

R. Sieg

J. Dong

Counsel for the Defendant Ravi Sandhu:

A. Tait

Place and Date of Hearing:

Vancouver, B.C.

August 31, 2017

Place and Date of Judgment:

Vancouver, B.C.

September 20, 2017

INTRODUCTION

- [1] Wilson Liu, the plaintiff, reported a work place injury when he was hit on the head by a piece of cardboard in the course of his employment as an auditor with the defendant, UPS Canada.
- [2] His claims in the present action relate to the proceedings before the Workers' Compensation Board (which operates as WorkSafe BC) and the Workers' Compensation Appeal Tribunal.
- [3] The defendants, who are a Board employee and the employer UPS, as well as several UPS employees, all ask that the claims against them be struck under Rule 9-5(1)(a) and (d) of the Supreme Court Civil Rules, and the action dismissed. The Court has jurisdiction under these sub-rules to strike out a pleading that discloses no reasonable claim, or is otherwise an abuse of the process of the Court.
- [4] For the reasons I will give, I so order.
- [5] To give context to my discussions of the legal principles at play, I will first briefly outline the background.

BACKGROUND

- [6] Mr. Liu's claim was based on an event on February 17, 2015. He filed his application to the Board for compensation on March 2, 2015.
- [7] Mr. Liu's claim for physical injury was denied. However, his claim for anxiety was referred to a Board case manager, the defendant Ravi Sandhu. Mr. Sandhu denied the claim for mental disorder on June 17, 2015, and the Review Division upheld Mr. Sandhu's decision on January 15, 2016.

- [8] The Workers' Compensation Appeal Tribunal upheld the Review Division's decision on December 20, 2016. However, the Tribunal expressly invited Mr. Liu to ask the Board to adjudicate a claim for a mental disorder based on a cumulative series of workplace stressors over time, including the February 17, 2015 event. The Tribunal referred to Mr. Liu's evidence about several instances of bullying in the workplace before the February 17, 2015 event, which event Mr. Liu also described as resulting from bullying.
- [9] Mr. Liu then, on January 20, 2017, asked the Board to consider mental disorder on the bases of a cumulative series of significant workplace stressors, including the February 17, 2015 event. In his application, he referred to the Tribunal's comments on the point, and also to the various reports he had previously made to the Board.
- [10] The Board opened a new claim file in respect of this request, and wrote to Mr. Liu on February 7, 2017, advising him of the new claim number and of the basis under s. 5.1 of the Workers Compensation Act for compensation for mental disorder, including "a cumulative series of significant work-related stressors, arising out of and in the course of employment". The Board also asked Mr. Liu to provide various types of information by phone or on-line.
- [11] Mr. Liu responded on February 21, 2017, saying that the evidence to support the new claim was the same as that supporting his previous claim. However, he said also that much of the evidence before the Board and the Tribunal was false, or perjured, and that the truth of the matter would be determined in court. He asked that the new claim be suspended.
- [12] Mr. Liu had started this action several days earlier, on February 15, 2017. His notice of civil claim of that date was later replaced by an amended notice of civil claim on February 20, 2017.
- [13] The Board suspended Mr. Liu's claim, as he had requested, and wrote to him on February 24, 2017 saying that his claim was suspended for lack of information. The Board invited Mr. Liu to call if he had questions or would like to discuss the matter.
- [14] Mr. Liu did not contact the Board. The claim remains suspended.

CLAIM AGAINST RAVI SANDHU

- [15] During the hearing of the defendants' applications, Mr. Liu said that he has no interest in proceeding against Mr. Sandhu, and he confirmed several times that he wishes to withdraw the claim against Mr. Sandhu.
- [16] While one might therefore treat the claims against Mr. Sandhu as withdrawn, the more appropriate course, in the particular circumstances, is, in my view, to strike the claims and dismiss the action against Mr. Sandhu under Rule 9-5(1)(a) and (d), with or without Mr. Liu's consent. Mr. Sandhu does not seek an order for costs.

- [17] The claims against Mr. Sandhu cannot stand because, as Ms. Tait's excellent written submissions explain in more detail, the Board has exclusive jurisdiction to administer the Workers Compensation Act. Its jurisdiction is protected by a privative clause in s. 96 of the Act. The Court's jurisdiction to intervene is only through judicial review under the Judicial Review Procedure Act. See, for example, *Lockyer-Kash v. Workers' Compensation Board*, 2013 BCCA 459, paras. 25-28.
- [18] Moreover, even if the claims allege misfeasance, s. 96 and s. 254-255 protect the Board and the Tribunal, respectively, against civil action. See *Gill v. WorkSafeBC*, 2017 BCCA 239, paras. 12-13.
- [19] The claims in any event stem from dissatisfaction with the conduct and decisions of the Board, and are therefore insufficient to ground an action outside the scope of the Act. See *Willow v. Chong*, 2013 BCSC 1083, paras. 32-33, and 46-47.
- [20] The claims against Mr. Sandhu must be struck because they are, thus, barred by the Act and therefore disclose no reasonable claim (Rule 9-5(1)(a)).
- [21] The claims also amount to an abuse of process, because they make an impermissible collateral attack on the Board's and the Tribunal's decisions. They must be struck for that reason also (Rule 9-5(1)(d)). The proper avenue for further challenge was judicial review, not a civil claim.

CLAIMS AGAINST UPS AND UPS EMPLOYEES

- [22] Mr. Liu's claims against UPS and several of its employees are not easy to discern from his lengthy amended notice of civil claim. However, they clearly involve allegations that evidence in the proceedings before the Board and the Tribunal was falsified. Mr. Liu confirmed during his submissions that his intent in the action is to claim against UPS and certain employees for giving false evidence or information to the Board and the Tribunal, thus causing him to suffer a major depressive disorder.
- [23] The difficulty for Mr. Liu is that people who give evidence before a court or a body such as the Board or Tribunal are protected (or immune) from civil action. *Masuhara J.* explained this in *311165 BC Ltd. v. Canada (Attorney General)*, 2016 BCSC 2068, paras. 37-42, and noted, in reasons endorsed by the Court of Appeal in *311165 BC Ltd. v. Canada (Attorney General)*, 2017 BCCA 196, at para. 43, that the protection applies even where the claim alleges the giving of false evidence motivated by malice.
- [24] Mr. Liu submits that the Court must surely concern itself with knowing of deliberate falsehood in proceedings before the Board or the Tribunal, especially if, as he alleges, that falsehood was repeated or continued at the various levels of the review and appeal process.
- [25] Without expressing any view about whether Mr. Liu's allegations are well-founded, I will say three things in response to his submission.

- [26] First, the principle of witness immunity does not try to protect falsehood. Rather, it tries to protect the integrity of the process by which the decision-maker can determine the truth. Groberman J.A. explained this in his reasons for the Court of Appeal in 311165 BC Ltd.:
- [50] It must be kept in mind that the immunities from suit that prevent claims based on evidence given in court and on bringing litigation are broad in order to protect the justice system. Witnesses should not be dissuaded from giving evidence or fettered in what they tell a court by the fear that an aggrieved person will sue them. Prosecutorial decisions must be allowed to be made in an atmosphere that is free from the chilling effects of potential civil liability. Access to the courts must not be impeded by leaving litigants in fear of being open to lawsuits brought in retaliation.
- [27] Second, Mr. Liu may not realize that the Tribunal itself recognized that the Board misunderstood some evidence that was given about Mr. Liu wearing a "hat" when the workplace event took place on February 17, 2015. See the Tribunal's decision at paras. 8-9. The Tribunal concluded that the Board's mistake made no difference to Board's decision or the issues before the Tribunal; however, if Mr. Liu reactivates his claim with the Board, the mistake will no doubt be corrected.
- [28] Third, Mr. Liu has the opportunity to have the Board consider a claim based on a cumulative series of events, including the February 17, 2015 event. Mr. Sieg pointed out that the Act and the Board's policies allow a worker to claim also for a "further injury" sustained during the claims process. He referred to s. 99(2) of the Act and Board Policy C3-22.00. These are not matters the Board has yet considered.
- [29] For the reasons I have given, Mr. Liu's claims against UPS and several of its employees must be struck because they disclose no reasonable claim (Rule 9-5(1)(a)).
- [30] The claims are, in their essence, an impermissible collateral attack on Board decisions, and must be struck for that reason also (Rule 9-5(1)(d)). The proper avenue for further challenge regarding the allegations against UPS and its employees was judicial review, not a civil claim.

ORDER

- [31] The claims in the amended notice of civil claim are struck, and the action is dismissed.
- [32] Mr. Sandhu does not seek costs.
- [33] The other defendants included a claim for costs in their notice of application, but made no submissions on the matter, such that Mr. Liu was not prompted to respond. If those defendants wish to pursue an application for costs, they should, within 21 days of these reasons, arrange through Supreme Court Scheduling for the matter to be set down before me at the parties' and the Court's earliest convenience. Otherwise, there will be no order for costs.

[34] Mr. Liu should not be asked to endorse a draft order. Instead, the draft order should be referred for my review.

"The Honourable Madam Justice H. Holmes"

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