

CANADA / JUDGMENT

Nagy v. William L. Rutherford (B.C.) Limited

2020 BCSC 324

COURT

Supreme Court of British Columbia

DECIDED

6 March 2020

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2020 BCSC 324 Nagy v. William L. Rutherford (B.C.) Limited

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nagy v. William L. Rutherford (B.C.) Limited,

2020 BCSC 324

Date: 20200306

Docket: S193503

Registry: Vancouver

Between:

Ernest Nagy

Plaintiff

And

William L. Rutherford (B.C.) Limited

Defendant

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Counsel for the Plaintiff:

B.E. Tarnow

Counsel for the Defendant:

M.D. Carter

Place and Dates of Hearing:

Vancouver, B.C.

August 30 and November 12, 2019

Place and Date of Judgment:

Vancouver, B.C.

March 6, 2020

I. INTRODUCTION

- [1] The plaintiff brings a summary trial application.
- [2] The plaintiff was employed by the defendant for approximately four years. The plaintiff's employment started on October 1, 2014.
- [3] On November 21, 2018, the plaintiff claims that he was dismissed from his employment without cause. The plaintiff seeks ten months' salary in lieu of notice, special damages, and costs.
- [4] The defendant says that the plaintiff quit his employment on November 20, 2018 and, in the alternative, that it had just cause to terminate the plaintiff's employment.
- [5] For the reasons that follow, the Court finds that the defendant had just cause to terminate the plaintiff's employment. The plaintiff's claim fails.

II. SUMMARY TRIAL

- [6] The plaintiff sought that the dispute be resolved summarily.
- [7] Initially, the defendant opposed a summary trial.
- [8] The action is one suitable for resolution by way of a summary trial. On the first day of the hearing there were several admissions which reduced the need to make significant credibility findings. With such, I proceeded stating that I expected to be able to render judgment without sending the action to the trial list. My consideration of the matter did not change my view.
- [9] The amount involved is less than \$100,000. The matter is not particularly complex. The cost of taking the matter to a conventional trial would be significant. There is no need to make credibility findings that may go to a person's reputation. Accordingly, I find the matter one to be suitable for a summary trial: *Hryniak v. Mauldin*, 2014 SCC 7; *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.).

III. FACTS

[10] The plaintiff is a 63-year-old licenced customs broker.

[11] The defendant, William L. Rutherford (B.C.) Limited, is a company incorporated under the laws of our Province. The defendant carries on business as a customs broker and freight forwarder.

[12] The defendant is part of a group of companies referred to as the Rutherford Global Logistics.

[13] The defendant has approximately 45 employees of which approximately 32 work at the defendant's head office in Richmond, British Columbia, located near the Vancouver Airport.

[14] On September 23, 2014, the defendant offered the plaintiff employment as the defendant's "BC Head Office Customs Import Manager". The plaintiff's salary was to start at \$55,000 per annum with three weeks vacation and various benefits.

[15] The defendant's offer of employment to the plaintiff reads (in part):

Your role and responsibilities to include (and not limited to) supervisor/management functions, general brokerage, some after-hours, consulting, compliance, tariff data base, handling shpts of all modes, holiday/illness relief, new business, staff training, CSCB/CBSA committee work and general harmonious relations with all depts, staff and clients. Essentially you'll have multiple roles and no specifically set "working environment".

[Emphasis added.]

[16] On September 23, 2014, the plaintiff accepted the defendant's offer of employment. The plaintiff's email of acceptance reads (in part):

I look forward for the chance to be tremendous value and benefit everyone I work with. Thank you as well for the breakdown of my responsibilities and especially the negotiation of my salary and vacation entitlement.

Everything is well understood and accepted and I very much look forward to working in harmonious relations with all staff and departments. Thank you again for the opportunity, I look forward to the commencement of my employment on October 01, 2014.

[Emphasis added.]

[17] On October 3, 2014, Mr. Edmond Wong, the defendant's vice-president, wrote on behalf of the defendant to the plaintiff welcoming him to the defendant's organization. The letter reads (in part):

Once again, welcome and we certainly look forward to a lengthy harmonious and prosperous relationship with you.

[Emphasis added.]

[18] During his employment with the defendant, the plaintiff reported to Mr. Wong.

[19] As BC Head Office Customs Import Manager, the plaintiff was responsible, as described by his counsel, "for managing a team of 8 - 9 customs agents. He was also responsible for hiring of staff, scheduling, staff training, compliance with CBSA matters, administering general company email accounts, amongst other duties".

[20] In his August 12, 2019 affidavit, the plaintiff swears (in part):

7. Over the four (4) years that I was employed with the Company, I endeavored to perform my responsibilities to the best of my abilities and diligence to ensure full CBSA and OGD compliance for the Company and their clients.
8. Many of the responsibilities in my portfolio required me to work collaboratively with other staff members which I was able to do successfully.
9. I am very proud of the accomplishments that I achieved during the term of the employment with the Company. For example, one of these accomplishments involved successfully changing the working structure and process of the customs department. I empowered the customs staff by providing them with identical responsibilities, maintaining client relationships and on the job training. The Company's clients benefited as a result since each staff was prepared to handle all situations for their designated clients and, in turn, the client had one direct contact at the Company.
10. During my employment with the Company, we were able to achieve an error ratio with the CBSA that was greater than 99% accuracy. The customs staff was able to achieve this standard by working collaboratively as a team.
11. I understand there is an allegation in this litigation that I engaged in a pattern of disrespectful and harassing behavior towards the Company's staff and clients. This allegation is false. For the most part, I enjoyed positive working relationships with staff and clients of the Company during the term of my employment.

[21] On November 20, 2018, the plaintiff sent an email to two other of the defendant's employees relating to shipping documents of a customer of the defendant. The plaintiff's email reads:

Hi guys - I am ASSuming that they want us to arrange pickup?

[22] The email was brought to Mr. Wong's attention. Mr. Wong went to the plaintiff's office around 4:20 that afternoon. The plaintiff viewed the capitalization in "ASSuming" as a joke. According to Mr. Wong, the plaintiff became upset and said "I quit". The plaintiff says his statement was "spontaneous". He then left for the day because it was near the end of his workday.

[23] The plaintiff says that he did not intend to resign.

- [24] Mr. Wong changed the plaintiff's alarm pass code for the building so that the plaintiff could not enter on his own. Mr. Wong did not ask for the defendant's company laptop computer or the plaintiff's office keys. Mr. Wong did not block the plaintiff's email access to the defendant's system.
- [25] At approximately 8:10 a.m. on November 21, 2018, the plaintiff returned to the defendant's offices and started his daily routine of connecting his laptop, logging into the defendant's computer system, and started to work.
- [26] Shortly later, Mr. Wong went to the plaintiff's office and asked, "What are you doing here?" The plaintiff said he had reconsidered and felt regret about their discussion the previous day. Mr. Wong then left to consult with the defendant's owner and chief executive officer, and its central human resources manager, both of whom are based in Ontario.
- [27] At 8:30 a.m., the plaintiff sent the following email to Mr. Wong:
- Edmond - once again the hostility towards me is prevalent.
- Brad sure did not seem like I had insulted him in this reply. Did Erik take this email as an insult as well? How is my trying to make a joke by using ASS in assuming, calling Brad an ass? My reply to his email used the same word and spelling, as well as spelling right as write, as a joke. Was that taken as an insult as well?
- This refreshes the Shareen situation with Michael McKay when Shareen went directly to Michael McKay accusing me of saying things I had not said. What happened to that harassment complaint of mine Edmond? I would like a reply to the status of that situation, as well as this one.
- It is very clear and obvious to me that I cannot say anything to any of the RGL staff for fear that an innocent comment/remark/joke is immediately taken as an insult. Further, your first reaction and attitude is not of support towards me, but rather of blame and accusation. This makes it extremely difficult to work in this environment Edmond, one that has been fostering for some time now. And for this I point the finger at Michael McKay and his poisoning of his staff on their opinion about me.
- [28] In the foregoing email, the references to "Brad" and "Erik" are to two of the defendants in the defendant's freight division which is managed by Mr. Michael McKay. The reference to "Shareen" is an employee in the customs and brokerage division which was managed by the plaintiff. Shareen was a subordinate employee to the plaintiff.
- [29] At approximately 10 a.m. on November 21, 2018, Mr. Wong and the defendant's local human resources manager went to the plaintiff's office and asked him to leave. The plaintiff asked for the reason and he says that Mr. Wong replied, "He just doesn't want you here anymore". The plaintiff understood the reference to "he" was to the owner of the defendant.
- [30] The plaintiff says that he then requested a termination letter. He says that Mr. Wong and the local human resources manager told him that they did not have the authority to do that.

- [31] The plaintiff asked for the RCMP to be called to serve as a neutral witness. At approximately 10:45 a.m., an RCMP officer attended. The plaintiff says he discussed the situation with the officer, packed his personal belongings, and then left the defendant's offices around 11 a.m.
- [32] Mr. Wong swears that the plaintiff "had been threatening to quit the Company so that there was no doubt in my mind that he intended to resign".
- [33] In his August 28, 2019 affidavit, Mr. Wong swears that on June 29, 2018, he met with the defendant's local human resources manager and also an employee who was a subordinate to the plaintiff. The subordinate employee alleged that the plaintiff was making derogatory comments about co-workers.
- [34] Mr. Wong says that he warned the plaintiff that he needed to conduct himself in a professional manner. Mr. Wong says that as a result of the meeting, the plaintiff told him that he saw three possible outcomes:
- 1) remain at work and sue the defendant;
 - 2) resign and sue the defendant; or
 - 3) take stress leave and sue the defendant.
- [35] Over a year before, on February 1, 2017, Mr. Wong had sent an email to the plaintiff and Mr. McKay, the defendant's freight manager, which reads:

Hello Ernie and Michael, there has been much turmoil within our office (emails, in person) amongst the staff and each other that I hope we can shed our personal agendas aside and work in harmony and efficiently with each other and any other outside party.

It is essential that maintenance of good relations and proper business communication are necessary for us to continue our business together as one company.

I want an end to the bickering and nonsensical comments, emails, discussions.

- [36] On February 2, 2017, Mr. Wong wrote an email to the plaintiff which reads (in part):

Michael had to deflect the three party concerns about you, and Michael needs to be addressed and apologized to.

Your email yesterday to Michael was out of line and condescending.

It is obvious that your tone and delivery of message are an issue.

This is an official notice and is in your file.

- [37] After November 21, 2018, the defendant found an August 30, 2017 email on the defendant's computer system that had been sent to Ms. Wong-Moon. At that time, Ms. Wong-Moon was working for the defendant in the group that the plaintiff managed. At the time, the plaintiff and Ms. Wong-Moon were dating.

[38] The defendant does not have a policy directed to dating between employees.

[39] The subject line of the plaintiff's August 30, 2017 email is "DUMB" and it reads:

Yes, on all counts, this place never ceases to amaze.

I still don't understand why she is in the position she is. Lets take it a step further and ask ourselves why the HR manager thinks its ok to post notes in the ladies regarding where to do your business, or knowing what a companies responsibilities are to an employee who asks for something as simple as a wrist rest

As dumb as Shareen is, BHB is twice as stupid. I have never heard of anyone who does accounting that has such a difficult time with simple addition and understanding credit and debit.

[40] The "BHB" in the email is a reference to the defendant's local human resources manager. As noted, "Shareen" is another of the defendant's employees working in the group then managed by the plaintiff.

[41] Counsel did not dispute that BHB were initials for a highly derogatory and insulting personal description.

IV. ANALYSIS

a) Did the plaintiff quit?

[42] As noted above and as discussed in detail below, the defendant had just cause to terminate the plaintiff's employment. This was the defendant's alternative ground.

[43] For completeness, I will address briefly the defendant's primary ground that the plaintiff intended to resign. On a balance of probabilities, I find that the plaintiff did not intend to resign on November 20, 2018 when he said "I quit".

[44] An employee's intention to resign must be clear and unequivocal: *Danroth v. Farrow Holdings Ltd.*, 2005 BCCA 593 at para. 8. An emotional and spontaneous outburst may not demonstrate a clear intention to resign: *Cox v. Victoria Plywood Co-operative Association*, [1993] B.C.J. No. 2788 (S.C.). The question is whether a reasonable person would have understood from the employee's words or actions that the employee had abandoned the contract: *Pereira v. The Business Depot Ltd.*, 2011 BCCA 361 at para. 47.

[45] I find that the plaintiff's November 20, 2018 statement, "I quit", was an emotional outburst and did not demonstrate a true intention to resign. As Mr. Wong observed, the plaintiff became "upset" when he was confronted about the November 20, 2018 email. He left work late in the afternoon, did not return any of the company property in his possession, and returned to work the following morning. The plaintiff's conduct did not demonstrate a "clear and unequivocal" intention to resign.

b) Just Cause

[46] In *Ma v. Columbia Trust Co.*, [1985] B.C.J. No 582 (S.C.), Justice Locke, then sitting in this Court stated, at para. 12:

the law is clear that an employer can rely on an after-discovered ground as justifying or assisting to justify the initial dismissal

[47] I find that the plaintiff's August 30, 2017 email to Ms. Wong-Moon justifies the defendant's termination of the plaintiff's employment.

[48] In considering the August 30, 2017 email, I have given no weight to the fact that the plaintiff and Ms. Wong-Moon were in a dating relationship as going to cause. As noted, the defendant did not have a policy regarding such. That said, a dating relationship, like any good relationship between a manager and a subordinate employee, does not change the manager's role and responsibilities.

[49] Ms. Wong-Moon was an employee of the defendant working in the group that the plaintiff was responsible for managing.

[50] The defendant's September 23, 2014 offer to the plaintiff made it clear that an essential condition of employment was helping to ensure "general harmonious relations with all depts., staff and clerks".

[51] The plaintiff in his September 23, 2014 acceptance email specifically acknowledged:

Everything is well understood and accepted and I very much look forward to working in harmonious relations with all staff and departments.

[Emphasis added]

[52] Plaintiff's counsel argues the August 30, 2017 email "isn't relevant at all to the cause allegations, but merely is raised here to put Mr. Nagy in a negative light as he clearly is saying critical things about his co-workers but it has nothing to do with his conduct". Plaintiff's counsel says it was "just gossip" and is not evidence of "abrasive or rude behaviour".

[53] With respect, the plaintiff's August 30, 2017 email was to Ms. Wong-Moon, a subordinate, and was critical of one of Ms. Wong-Moon's co-workers in the group the plaintiff managed. It also ridiculed the local human resources manager and further gave a highly derogatory and insulting personal description of the local human resources manager. Within the scope of one's duties, a manager may say critical things about a subordinate employee (e.g., a performance review). The plaintiff's sending of the August 30, 2017 email was well beyond the scope of his duties and I find that it was conduct that could only harm the defendant.

[54] I also note that the plaintiff wrote the email during business hours and the email was on the defendant's corporate server.

- [55] I find that the plaintiff's August 30, 2017 email to Ms. Wong-Moon was a breach of an essential condition of the plaintiff's contract of employment with the defendant.
- [56] Standing alone, the after-discovered August 30, 2017 email justifies the defendant's termination of the plaintiff's employment: *McKinley v. B.C. Tel*, 2001 SCC 38 at para. 48.
- [57] The plaintiff was offered and he accepted employment as the defendant's BC Head Office Customer Import Manager. The defendant's offer made it clear that the plaintiff's role and responsibilities would include supervisory and managerial functions and expressly included "general harmonious relations with all depts, staff and clients".
- [58] A manager of any organization serves to represent that organization, including its values and principles. The plaintiff's August 31, 2017 email to Ms. Wong-Moon was antithetical to his role as a manager.
- [59] I do not find the August 31, 2017 email to be "just gossip". It was "abrasive and rude behaviour". If viewed as just gossip by Ms. Wong-Moon, the email or its content may well have been further circulated. Insulting personal and derogatory descriptions do not belong in the workplace, if they belong anywhere.
- [60] The plaintiff's email goes to the core of the employment relationship and is not reconcilable with sustaining the employment relationship: *McKinley* at para. 57.
- [61] In the context of the defendant's offer of employment, it was, as noted, an essential condition that the plaintiff's role and responsibilities would include "general harmonious relations with all depts., staff and clients". The plaintiff's September 23, 2014 email acceptance recognized specifically this essential condition.
- [62] The subordinate employees in the group managed by the plaintiff prior to his termination were, like all subordinate employees, vulnerable to the conduct and actions of their superiors.
- [63] Having regard to the August 30, 2017 email, if the plaintiff's employment was not terminated, a subordinate employee's sense of vulnerability would be heightened. The requisite respect for senior management and officers would be diminished. The general well-being of the defendant's subordinated employees would be affected adversely. The defendant's reputation as an employer would be harmed and would make it more difficult for the defendant to attract and retain good employees.
- [64] I find that the defendant's termination of the plaintiff's employment is justified and accordingly the plaintiff is not entitled to an award for damages.

V. CONCLUSION

- [65] The plaintiff's claim is dismissed.

VI. COSTS

[66] The defendant is awarded its costs and disbursements under R. 15-1(15) of the Supreme Court Civil Rules.

"Funt J."

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