

CANADA / JUDGMENT

Young v. British Columbia Hydro and Power Authority

2002 BCSC 647

COURT

Supreme Court of British Columbia

DECIDED

30 April 2002

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2002 BCSC 647

Citation:

Young v. B.C. Hydro and Power Authority
Date: 20020430
2002 BCSC 647

Docket:

S004028
Registry: Vancouver
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LOLO YOUNG
PLAINTIFF

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BARROW

Counsel for the Plaintiff:

Richard H. Hamilton, Q.C.

Counsel for the Defendant:

Dale B. Pope

Dean A. Crawford

Date and Place of Hearing:

April 19, 2002

Vancouver, BC

- [1] The trial of this action took place over the course of five days in January and February, 2002. The plaintiff claimed damages for wrongful dismissal and argued that the otherwise appropriate period of notice should be extended, because of the manner in which she was dismissed. In advancing this claim, the plaintiff relied on *Wallace v. United Grain Growers* (1997), 152 D.L.R. (4th) 1 (S.C.C.). The plaintiff succeeded on a number of issues at trial but was unsuccessful on the claim founded on *Wallace*, supra. Relying on Rule 57(15) of the Rules of Court the defendant seeks to recover its costs for that portion of the trial devoted to the *Wallace* claim.
- [2] Rule 57(15) provides as follows:
- (15) The court may award costs that relate to some particular issue or part of the proceeding or may award costs except so far as they relate to some particular issue or part of the proceeding.
- [3] This rule, of course, operates as an exception to the general rule contained in Rule 57(9), to the effect that costs of a proceeding follow the event. The discretion conferred on the court through Rule 57(15) "must be exercised judicially, not arbitrarily or capriciously, and it cannot be exercised on grounds unconnected with the litigation" (*B.C. (Govt.) v. Worthington (Can.) Inc.* (1988), 29 B.C.L.R. (2d) 145 (C.A.) per Hutcheon J.A. at p. 162). Misconduct is not a condition precedent to the exercise of the discretion conferred by the rule. "The only condition precedent is that there has been mixed success on issues" (*Worthington*, supra, at p. 164, per Esson J.A.). Although the discretion conferred by the rule is broadly defined, it is relatively rarely exercised. As noted by Spencer J. in *BDG Pacific Resources Inc. v. Teck Corp.*, [1995] B.C.J. No. 1337 (S.C.) at para. 5:

...the court should resist the temptation to embark upon a costly and painful analysis of every issue and sub-issue in a case for the purpose of apportioning costs.

- [4] It is not seriously contended that the bad faith discharge or the *Wallace* claim does not amount to an "issue", as that word is used in Rule 57(15) and explained in *Worthington*, supra, at pp. 163-164. A so called 'bad faith' dismissal does not create a separate cause of action. In terms of a remedy it results in an extension of that which would otherwise be a reasonable notice period. However it usually is, and was in this case, grounded on evidence that is for the most part irrelevant to a determination of the factors described in *Ansari v. British Columbia Hydro and Power Authority* (1986), 2 B.C.L.R. (2d) 33 (S.C.). Viewed from that perspective it is a separate 'issue'.

- [5] A claim of bad faith in the context of a wrongful dismissal action, if proven, carries with it consequences beyond merely increasing the quantum of any damages awarded. In explaining the nature of the type of conduct that would attract additional compensation, Iacobucci J. in *Wallace*, supra, commented as follows at para. 88:

...by no means do I condone the behaviour of employers who subject employees to callous and insensitive treatment in their dismissal, showing no regard for their welfare. Rather, I believe that such bad faith conduct in the manner of dismissal is another factor that is properly compensated for by an addition to the notice period.

- [6] He further observed at para. 98:

...I believe that in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive.

- [7] Allegations of bad faith raise questions of reputation and carry with them, if proven, significant stigma. For this reason, once raised, they tend to be vigorously defended and may, as was observed by Wilkinson J. in a related context, fetter the prospect of settlement (*Surfside R.V. Resort Ltd. v. Parksville (City)*, [1993] B.C.J. No. 2993 (S.C.)). The allegation in this case was successfully defended. In my view, it is appropriate to exercise the discretion conferred by Rule 57(15) in these circumstances.

- [8] The defendant seeks its costs related to defending the *Wallace* claim and argues that the issue consumed approximately 60 percent of the trial. I am satisfied that the trial was extended by virtue of the *Wallace* claim, but I do not agree that it was extended to the extent argued by the defendant. A portion of the evidence relating to the allegations of a bad faith discharge was also relevant to an assessment of the appropriate notice period in relation to the factors set out in *Ansari v. British Columbia Hydro and Power Authority*, supra. In addition the plea by the defendant that the plaintiff failed to reasonably mitigate her damages, a plea that was abandoned at the conclusion of the trial, resulted in the court hearing evidence that would otherwise have only been relevant to the claim of bad faith discharge.

- [9] In the result, the plaintiff is entitled to her costs based on a four-day trial. The defendant is entitled to recover its costs for one day of the trial together with the associated preparation. The costs awarded to the defendant shall be set off against the costs to which the plaintiff is entitled.

"G.M. Barrow, J."

The Honourable Mr. Justice G.M. Barrow

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