

SUPREME COURT OF NOVA SCOTIA
Citation: *Krishna v. Gauthier*, 2018 NSSC 305

Date: 20181130
Docket: HFX416441
Registry: Halifax

Between:

Selvie Krishna

Plaintiff

v.

Serena Gauthier, Adecco Employment Services Limited,
Canada Post Corporation and Enterprise Rent-A-Car Canada Company

Defendants

Decision

Judge: The Honourable Justice Michael J. Wood
Heard: November 13, 2018, in Halifax, Nova Scotia
Counsel: Selvie Krishna, Plaintiff - Self-Represented
Ian Pickard and Sarah McInnes for the defendant
(Adecco Employment Services Limited)

By the Court:

[1] On June 16, 2010, Selvie Krishna was a passenger in a motor vehicle driven by a co-worker, Serena Gauthier, which was involved in a motor vehicle accident. On June 8, 2013, Ms. Krishna commenced legal proceedings against a number of defendants, including Ms. Gauthier and their employer, Adecco Employment Services Limited (“Adecco”). The claim was for special and general damages arising out of the accident, and Adecco was said to be vicariously liable for the negligence of Ms. Gauthier.

[2] In 2018 an agreement was reached to settle Ms. Krishna’s claim for personal injuries arising out of the motor vehicle accident. A consent order was issued on August 8, 2018, dismissing the proceeding against Ms. Gauthier and the car owner. The action against Adecco was dismissed with respect to any claim for damages for personal injury arising out of the accident. The order also said that Ms. Krishna would have the opportunity to seek leave to amend the notice of action and statement of claim to add a claim against Adecco alleging “breach of employment rules / arrangement with the Plaintiff ie, adhering to the WCA and employment laws.”

[3] On October 15, 2018, Ms. Krishna filed a notice of motion for an order to amend the notice of action and statement of claim to “add claims against Adecco Employment Services for alleged breach of employment rules, and failure to adhere to the *Workers Compensation Act*.”

[4] In support of her motion Ms. Krishna filed a brief but no affidavit or proposed amended statement of claim. She also filed a bundle of documents, which she described as exhibits containing various documents, in support of the allegations which would be in the proposed amendment.

[5] Adecco opposed the motion on the basis that the limitation period for the proposed claims had expired, and, as a result, the amendment should be refused.

[6] In the written materials filed by Ms. Krishna and her oral submissions at the motion hearing, she confirmed that the events which give rise to the new allegations took place during the calendar year 2010.

[7] The *Limitation of Actions Act*, S.N.S. 2014, c. 25, came into force on September 1, 2015. In this case the proposed claims are based upon events that took place prior to September 1, 2015, and therefore s. 23 of the Act applies. The relevant portions of that section are as follows:

- (2) Subsection (3) applies to claims that are based on acts or omissions that took place before the effective date, other than claims referred to in Section 11, and in respect of which no proceeding has been commenced before the effective date.

- (3) Where a claim was discovered before the effective date, the claim may not be brought after the earlier of
 - (a) two years from the effective date; and
 - (b) the day on which the former limitation period expired or would have expired.

[8] Section 23(2) indicates that where the acts or omissions relied on took place before September 1, 2015, ss. (3) applies so long as no proceeding “in respect of” those claims had been commenced prior to the effective date.

[9] This court considered s. 23(2) of the Act in *Dyack v. Lincoln*, 2017 NSSC 187, where a plaintiff wished to amend a claim to expand the allegations against the defendant physician. The initial statement of claim had been issued before the effective date and was limited to an allegation of a lack of informed consent. That proceeding was sufficient to take the matter outside of s. 23 because the claims related to acts or omissions in the treatment of the plaintiff which was also the basis for the proposed amendments.

[10] Here the existing pleading relates to injuries from a motor vehicle accident and Adecco’s alleged vicarious liability for the actions of the defendant driver. These are not “in respect of” the proposed employment claims by Ms. Krishna and so the new claims fall within s. 23 of the Act and the discoverability issue raised by ss. (3) must be considered.

[11] Section 8(2) of the Act defines when a claim is discovered and it reads:

- 8(2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known
 - (a) that the injury, loss or damage had occurred;
 - (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
 - (c) that the act or omission was that of the defendant; and
 - (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.

[12] The materials filed by Ms. Krishna, as well as her submissions at the hearing, satisfy me that the proposed claims to be included in the amendment were discovered by her (as that term is defined in s. 8(2) of the Act), prior to September 1, 2015. As a result, s. 23(3)(a) provides that the limitation period expired on September 1, 2017.

[13] Section 22 of the Act specifically deals with amendment of pleadings where a limitation period has expired. That section provides:

Claims added to proceedings

- 22 Notwithstanding the expiry of the relevant limitation period established by this Act, a claim may be added, through a new or amended pleading, to a proceeding previously commenced if the added claim is related to the conduct, transaction or events described in the original pleadings and if the added claim
- (a) is made by a party to the proceeding against another party to the proceeding and does not change the capacity in which either party sues or is sued;
 - (b) adds or substitutes a defendant or changes the capacity in which a defendant is sued, but the defendant has received, before or within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits; or
 - (c) adds or substitutes a claimant or changes the capacity in which a claimant sues, but the defendant has received, before or within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits, and the addition of the claim is necessary or desirable to ensure the effective determination or enforcement of the claims asserted or intended to be asserted in the original pleadings. 2014, c. 35, s. 22.

[14] As this section indicates, a new claim may be added by way of amendment if it meets one of the listed circumstances and is “related to the conduct, transaction or events described in the original pleadings”. Although she has not provided a draft amended pleading, I am satisfied that Ms. Krishna’s proposed claims relate to the manner in which Adecco dealt with her alleged disabilities and their impact on her employment. One allegation is that there was an agreement with respect to how her duties might be modified, which was subsequently breached by Adecco. Another is that Adecco provided inaccurate information to the Workers’ Compensation Board in relation to her claim. I do not believe that these allegations are sufficiently related to the original pleading, which was limited to the personal injuries suffered in the motor vehicle accident, to meet the requirements of s. 22.

[15] *Civil Procedure Rule 83.11(3)* permits an amendment after the expiry of a limitation period where two requirements are met. That rule says:

83.11(3) A judge who is satisfied on both of the following may permit an amendment after the expiry of a limitation period, or extended limitation period, applicable to a cause of action:

- (a) the material facts supporting the cause are pleaded;
- (b) the amendment merely identifies, or better describes, the cause.

[16] In this case the material facts supporting the new allegations are not found in the existing pleading, nor could it be said that the amendment merely better describes the cause of action. As a result, neither of these requirements are met and the proposed amendment cannot be authorized under this Rule.

[17] For the above reasons I am satisfied that the limitation period has expired in relation to the claims to be included in the proposed amendment. There is no real connection between the new allegations and the original claim for personal injuries arising out of the motor vehicle accident. Amendment is not available under *Rule 83.11(3)*. For all of these reasons, the plaintiff's motion for a leave to amend is dismissed.

Wood, J.