

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Funmilayo OLADAPO v. Maxwell OBONNA, Rose OBONNA, Brian OBONNA (Minor) by his Litigation Guardian Rose OBONNA

BEFORE: Fragomeni J.

COUNSEL: Richard Odeleye, for the Plaintiff

H.J. Doan, for the Defendants

ENDORSEMENT

[1] The plaintiff brings a motion for the following relief:

- (a) An order granting leave to present evidence at her Rule 21.01(1)(a) motion.
- (b)
- (c) An order dismissing the defendants' counterclaim dated April 2008 on the basis that it is outside the limitation period prescribed.
- (d)

Background

[2] Paragraphs 1(a) and (b) of the plaintiff's claim seeks the following relief:

- (e) (a) General damages in the sum of \$1,000,000.00 and
- (f) (b) Aggravated damages in the sum of \$300,000.00 for the pain, hardship, disgrace, deprivation of liberty, degradation, humiliation, anguish, agony, trauma and loss of enjoyment of life that resulted to and or endured by the plaintiff on account of the malicious

prosecution and Intentional Infliction of Mental Suffering by the defendants.

(g)

(h)

[3] The plaintiff was employed by the defendants as a nanny. The plaintiff commenced her employment in or about January 2004. The plaintiff states that she was paid \$8.00 per hour for a 9 hour day and lodging. The plaintiff alleges, however, that she was not paid during the period of her employment and she had to pay her own taxes from part-time jobs which she was forced to engage in in addition to her domestic duties with the defendants.

[4] The plaintiff, being overworked, complained to the defendants. The plaintiff also alleges that Maxwell Obonna sexually harassed her. Eventually the plaintiff's employment was terminated in August 2004.

[5] The defendants refused to pay the plaintiff her unpaid wages and the plaintiff filed a claim with the Labour Board. A hearing was held by the Ministry of Labour and the defendants were ordered to pay the plaintiff \$6,104.24 for wages, termination and vacation pay. The April 4, 2005 letter advising of the results of the hearing is at Tab 2C of the plaintiff's motion record and it reads as follows:

April 4, 2005

Re: Mr. Maxwell Obonna and Mrs. Rose Obonna
27 Cranberry Cres.,
Brampton, Ont.
L6Y 4P7
[F]ile number 40016995

Order to pay number 02087
Dear Ms. Oladapo

Further to our telephone discussion of April 4, 2005 please be advised that I have issued [our] order to pay number 02087 totalling \$6964.66. This includes wages, termination pay and vacation pay as well as the administrative penalty and a \$250.00 notice of contravention as the employer failed to maintain payroll records in accordance with Section 15 of the Employment Standards Act 2000.

It was determined that the employer violated section 54 of the Employment Standards Act 2000 as well as section 11 of the Employment Standards Act 2000. The employer failed to maintain any payroll records as per section 15 of the Act and [as] such were fined the amount of \$250.00 as a notice of contravention for failure to maintain payroll records in accordance with the requirements of the Employment Standards Act 2000, section 15.

The total the employer must now issue within 30 days time is \$6964.66. In the event the employer fails to issue all monies owing within 30 days, the file will be sent to the collection agency for pursuit. The amount you are owed is \$5784.24 in wages and termination pay of \$320.00 for a total amount owing of \$6104.24. At this time we await payment or for the employer to file their appeal of the decision. Thank you and we are pleased to have provided assistance to you in this matter. Should you wish to appeal the decision, I enclosed instructions.

Yours truly,

Lorraine Quast
Employment Standards Officer

[6] On April 11, 2005, the defendants attended at the police station to lay an assault charge against the plaintiff, alleging she assaulted the child, Brian Obonna, between February and July 2004 when the plaintiff was employed as a nanny. The plaintiff was charged, detained for two weeks and was prosecuted. The plaintiff was acquitted of all charges on April 19, 2007 by the Honourable Madam Justice Van Melle of the Superior Court of Justice. The reasons for judgment are set out at Tab 2E of the plaintiff's motion record. In her Statement of Claim, the plaintiff sets out the following at paragraphs 24 to 27:

24. While the indictment was still pending and the plaintiff awaiting trial at the Superior court, the defendants took steps and entered the plaintiff's name into the Child Abuse Registry. As a result of the combined effects of the indictment and the insertion of the plaintiff's name in the Child Abuse Registry, the plaintiff was unable to find work in her area of specialization or any employment at all. The plaintiff's life came to a stand still.
25. After a lengthy trial at the Ontario Superior Court of Justice, Brampton, the plaintiff was acquitted on all counts of the indictment and or cleared of all charges levelled against her. In her judgment, while acquitting the plaintiff on all counts of the indictment, the presiding Judge found, in effect, that a lie was created by the defendants against the plaintiff.
26. The defendants had no reasonable or probable cause to justify initiating the criminal prosecution against the plaintiff and subjecting her to a painful and humiliating indictment. The defendants sole motivation was revenge after the plaintiff prevailed over the defendants in a civil suit at the Ministry of Labour. At no time prior to the plaintiff prevailing against the defendants at the Ministry of Labour, was there an allegation that the plaintiff assaulted the defendant, Brian Obonna.
27. On account of the defendants abusing the criminal justice system for the end it was not designed to serve, the plaintiff suffered and continues to suffer damages as particularized below:
 - (a) Indignity, humiliation, degradation and emotional trauma.
 - (b) Depression and loss of enjoyment of life.
 - (c) Unemployment and loss of income, the exact loss to be provided before the trial of this suit.
 - (d) Mental anguish.

[7] The plaintiff commenced her action by way of a statement of claim dated February 21, 2008. The defendants' counterclaim is dated April 2008. The issue raised on this Rule 21 motion is whether the defendants' counterclaim is statute barred.

[8] Rule 21.01(1)(a) states as follows:

21.01 (1) - A party may move before a judge,

(e) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs.

[9] Rule 21.01(2) states:

- (2) No evidence is admissible on a motion,
 - (a) under clause (1) (a), except with leave of a judge or on consent of the parties;
 - (b) under clause (1) (b).

[10] The parties consented that evidence would be admissible at the motion. Filed in support of the motion is the affidavit of Longina Masvosva, Legal Assistant at the office of the plaintiff's solicitors, sworn August 5, 2008. In response to the motion, the defendants rely on the affidavit of Maxwell Obonna sworn December 18, 2008.

[11] Maxwell Obonna deposes as follows in paragraphs 4, 5, 6 and 9:

4. I am making a claim in the Counterclaim for general damages for assault upon Brian Obonna, and a claim for general damages for injury to my character, good name and reputation. These claims would have begun when the Plaintiff moved in on or about January 2004, and would have extended to the end of her criminal trial.

5. I am also making a claim for general breach of contract, which I also believe would commence on or about January 2004 and would be extended to the end of the Plaintiff's criminal trial.

6. The claim for punitive, aggravated and exemplary damages would also extend from January 2004 until the end of the Plaintiff's criminal trial.

9. It was between February 22, 2008 and April 1, 2008, when I first discovered that my family and I could make a claim for damages against the Plaintiff by way of Counterclaim, as set out in the Counterclaim, and based on the alleged circumstances already brought up by the Plaintiff in her Statement of Claim; except that the allegations of the Plaintiff do not provide truthful information.

[12] The counterclaim for general damages relates to the alleged assault on Brian Obonna. Brian Obonna is a minor and was seven at the time of the alleged assaults. The defendants submit that this claim is not statute barred under the *Limitations Act*, 2002, S.O. 2002, c. 24 by virtue of section 6 relating to minors. Section 6 states as follows:

6. The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is a minor; and

(b) is not represented by a litigation guardian in relation to the claim.

[13] Section 4 of the *Limitations Act*, 2002 is applicable with respect to paragraphs 26 (b), (c), (d) and (e) of the counterclaim, which read as follows:

(b) General damages for injury to the good character, good name and reputation of the Defendant Maxwell Obonna in the amount of \$500,000.00;

(c) General damages for breach of contract in the amount of \$100,000.00;

(d) Damages in the liquidated amount of \$7,067.00;

(e) Punitive, aggravated and exemplary damages in the amount of \$500,000.00;

[14] In *Joseph v. Paramount Canada's Wonderland* (2008), 90 O.R. (3d) 401 (C.A.), the court stated at paragraph 8:

[8] The new Act came into effect on January 1, 2004. It represents a revised, comprehensive approach to the limitation of actions. As Weiler J. A. stated in *York Condominium Corp. No. 382 v. Jay-M Holdings Ltd.* (2007), 84 O.R. (3d) 414, [2007] O.J. No. 240 (C.A.), at para. 2, the aim of the new Act is "to balance the right of claimants to sue with the right of defendants to have some certainty and finality in managing their

affairs". The new Act introduced several important reforms in order to maintain that balance. For example, it protects the right to sue by incorporating the common law doctrine of discoverability into the process for determining the commencement date of the relevant limitation period.

Re: Paragraph 26(b) – Good Character

[15] At paragraph 9 of his affidavit, Maxwell Obonna asserts that the counterclaim is based on the plaintiff's statement of claim. The defendants cannot assert a claim for injury to character, name and reputation as a result of being served with a statement of claim.

[16] In *Rotenberg v. Modi* 2006 Carswell Ont. 6184 at para. 24 (S.C.J.), aff'd 2006 Carswell Ont. 5915 (C.A.), Whitten, J. relied on *Samuel Manu and Tech Inc. v. Redipac Recycling Corp.*, [1995] O.J. No. 3242 at paragraph 19 (C.A.) for the proposition that no action lies on the basis of any words spoken or documents used in proceedings before the court. Such words or documents are privileged.

[17] In this case, Mr. Obonna cannot assert a claim for injury to character, name and reputation on the basis of the alleged "lies" in the plaintiff's Statement of Claim.

[18] In addition to this, Mr. Obonna cannot base his claim on the plaintiff's testimony at his trial before Van Melle J.

Re: Paragraph 26(c) – Breach of Contract

[19] The plaintiff alleges her employment was terminated in August 2004. The two year limitation period would have expired in August 2006. The Labour Board decision was given in April 2005. If the limitation period had run from that time, it would have expired in April 2007. The counterclaim is dated April 2008.

[20] In either case the counterclaim is statute barred. This also applies to the claim made at paragraph 26(d).

[21] According to the Statement of Defence and counterclaim of the defendants, the claim for punitive, aggravated and exemplary damages is in relation to the claim for breach of contract and the bad faith, high-handed, callous and unconscionable conduct of the plaintiff generally. This claim is statute barred.

[22] I am satisfied, therefore, that the only claim that can survive this challenge is paragraph 26(a) because it relates to a minor and the limitation period is not applicable.

[23] The claims made in paragraphs 26 (b), (c), (d) and (e), however, are statute barred and are hereby dismissed.

[24] The parties shall file written submissions on costs within 10 days.

Fragomeni J.

DATE: February 11, 2009

COURT FILE NO.: CV-08-561-00
DATE: 20090211

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