

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Madam Justice Jennifer A. Pfuetzner
Madam Justice Karen I. Simonsen

Docket: AI18-30-09105
BETWEEN:

<i>YASMIN KINNARATH</i>)	
)	
<i>(Plaintiff) Appellant</i>	)	<i>Y. Kinnarath</i>
	)	<i>on her own behalf</i>
<i>- and -</i>)	
	)	<i>L. A. Novakowski</i>
	)	<i>for the Respondent</i>
<i>DELTA AIRLINES INC. and DESJARDINS</i>	)	<i>Delta Airlines Inc.</i>
<i>FINANCIAL SECURITY INC.</i>)	
	)	<i>B. C. Ross</i>
<i>(Defendants) Respondents</i>	)	<i>for the Respondent</i>
	)	<i>Desjardins Financial</i>
<i>- and -</i>	)	<i>Security Inc.</i>
)	
<i>Docket: AI18-30-09126</i>	)	<i>Appeals heard:</i>
<i>BETWEEN:</i>	)	<i>December 12, 2019</i>
)	
<i>YASMIN KINNARATH</i>	)	<i>Judgment delivered:</i>
	)	<i>January 20, 2020</i>
<i>(Plaintiff) Appellant</i>)	
)	
<i>- and -</i>)	
)	
)	
<i>DELTA AIRLINES INC.</i>)	
)	
<i>(Defendant) Respondent</i>)	

On appeal from 2018 MBQB 58

MONNIN JA

[1] This is an appeal from a dismissal of two claims brought by the plaintiff. One claim was against both defendants while the second claim was solely against the defendant Delta Airlines Inc. (Delta). Both actions were heard together.

[2] Both claims arise from the plaintiff's employment with Delta and a dispute as to whether the plaintiff was entitled to benefits from insurance coverage provided by Desjardins Financial Security Inc. (Desjardins) to employees of Delta.

[3] The details of both claims are set out in the reasons of the trial judge (at paras 4, 6):

In the first action, the plaintiff claims:

- (a) damages in the sum of \$250,000 in lieu of an optional excess group life insurance policy that she had with the defendants while the plaintiff was employed by Delta in Montréal, Québec;
- (b) damages in the sum of \$187,500 which was the maximum amount of the living benefit under the basic group life insurance that the plaintiff had with the defendants in Montréal;
- (c) damages in the sum of \$15,000 in lieu of two group life insurance policies that the plaintiff alleges that she had with the defendants for each of her two children in the sum of \$7,500 respectively;
- (d) damages in the sum of \$45,000 that the plaintiff alleges that she suffered when she had to withdraw money from her pension plan to care for herself and her two children;
- (e) aggravated damages of \$2.5 million dollars for pain and suffering, emotional and mental distress, depression and

financial hardship that the plaintiff alleges she suffered as a result of misconduct by the defendants, including fraud. The plaintiff alleges that all of these factors exacerbated the terminal cancer from which she suffered;

(f) punitive and exemplary damages in the sum of \$20 million dollars for the fraudulent, callous and high-handed manner in which the defendants allegedly conducted themselves when dealing with the plaintiff, especially when the defendants knew that she was suffering from terminal cancer; and

(g) interest and costs.

In the second action the plaintiff claims from Delta damages, interest and costs for its failure and/or refusal to transfer her from Montréal to Winnipeg. Furthermore, the plaintiff again claims punitive and exemplary damages of \$20 million dollars.

[4] In dismissing the claim against both defendants the trial judge wrote (at paras 5, 66-69, 75, 94, 103):

With respect to the first action, during the trial the plaintiff abandoned the claim for the living benefit under the basic group life insurance policy described in paragraph 4(b). Furthermore, the plaintiff did not lead any evidence whatsoever in support of the claims in paragraphs 4(c) and 4(d). I am therefore peremptorily dismissing them.

There is no merit to the plaintiff's claims against Delta and Desjardins either in the first action or the second action. To the contrary, I am satisfied that the only reason that the plaintiff commenced these actions and proceeded to trial is her obstinance and greed. I reiterate that she has no legitimate claim against either of the defendants.

I have no hesitation in finding that the plaintiff was not a credible witness. The only evidence of the plaintiff that I do believe, or accept, is that which is corroborated by other testimony or documentary evidence.

There were numerous inconsistencies and contradictions in the plaintiff's own testimony. Furthermore, in cross-examination she avoided answering questions, was evasive and consistently

changed her testimony.

I am reinforced in this finding by the plaintiff's failure to have witnesses testify whom allegedly had provided information to her. All of that evidence was hearsay, was not corroborated and I am not placing any weight on it.

Secondly, the evidence is clear that, although both Delta and Desjardins made some mistakes and committed some errors in administering the plaintiff's basic group life insurance and optional excess group life insurance, they rectified those errors. I am satisfied that both defendants took extraordinary steps in an attempt to satisfy the plaintiff. Nevertheless, she was totally unreasonable in her demands.

With respect to the claims for punitive and aggravated damages, I reject totally the plaintiff's assertion that Delta and Desjardins respectively were fraudulent and caused her to suffer emotional and mental distress, depression and financial hardship, as alleged.

Based upon the lack of evidence before me, I also reject the plaintiff's argument that she suffered any depression or mental distress that should be compensated in damages. To the contrary, I am satisfied that the plaintiff fabricated or exaggerated her allegations of depression and mental distress in an attempt to support her claim for damages and, more significantly, aggravated and punitive damages.

[5] With respect to his dismissal of the claim against Delta alone, the trial judge stated (at paras 106, 112):

With respect to the second action, I am satisfied that, when the plaintiff accepted the severance package offered by Delta and signed the Acceptance, any claim that she may have had for the loss of her employment in Montréal ended. There was both accord and satisfaction. See *Goddard v. Blackwood Hodge Equipment Ltd.*, 1983 CarswellSask 228 (SKQB), [1983] S.J. No. 1151 (QL) and *Sapieha v. Intercontinental Packers Ltd.* (1985), 42 Sask.R. 96 (Q.B.), [1985] S.J. No. 66 (QL).

I can only conclude that she started the second action in a further

attempt to extract more money from Delta. I repeat that it is a frivolous claim.

[6] In her appeals, the plaintiff raises a number of issues. However, those issues are essentially the same arguments she advanced at trial or are issues that were not raised during the trial.

[7] In order to succeed on her appeal, the plaintiff must demonstrate that the trial judge either made an error in law, or that he committed palpable and overriding error in his findings of fact or mixed fact and law.

[8] The plaintiff argued her appeals with eloquence and passion. However, it was clear that the outcome of the trial left her feeling hard done by. In essence, however, the gist of her submissions was to invite us to re-try the case. That is not the role of an appellate court.

[9] The plaintiff has failed to persuade me that the trial judge committed any error in law or that he erred in arriving at the factual conclusions that he did. There is clearly no basis upon which this Court should intervene with the decision of the trial judge and, accordingly, I would dismiss the appeals with costs.

Monnin JA

I agree: _____
Pfuetzner JA

I agree: _____
Simonsen JA